

Ordinance 2022-__

**AN ORDINANCE REVISING ORDINANCE 2021-13
ESTABLISHING A CIVILIAN POLICE REVIEW AND ADVISORY BOARD
AND RECODIFYING ARTICLE 180.5 ENTITLED “CIVILIAN POLICE REVIEW AND
ADVISORY BOARD” AS ARTICLE 178 OF THE CITY CODE**

WHEREAS, the City of Morgantown previously adopted Ordinance No. 2021-13, entitled “An Ordinance Establishing a Civilian Police Review and Advisory Board”; and

WHEREAS, pursuant to the “Final Agreement and Resolution” authorized by City Council at its May 17, 2022 Regular Meeting and executed by and between the Monongalia-Preston Fraternal Order of Police Lodge #87 and The City of Morgantown, and pursuant to the jointly submitted “Order Granting Plaintiff’s Petition for Injunctive Relief and Declaratory Judgment and Denying Defendant’s Counter-Petition for Declaratory Judgment” entered by the Monongalia County Circuit Court in the civil action styled *Monongalia-Preston Fraternal Order of Police Lodge #87, Plaintiff, v. The City of Morgantown, Defendant*, Civil Action No. 21-C-41, Ordinance No. 2021-13, codified at City Code Article 180.5, is amended to remove the last definition in the following provisions referenced in the adopted ordinance: Section 181.02, Section 181.05(e) through (f), and Section 181.06, and generally to continue the operations of the Civilian Police Review and Advisory Board without the investigatory authority as stated in the referenced portions of Ordinance 2021-13;

NOW, THEREFORE, The City of Morgantown hereby ordains that Article 180.5 is amended as follows:

Section 178.01. Board Established; Purpose.

The City shall have a Civilian Police Review and Advisory Board, established and operated in accordance with this Article. The general purpose of this Article is to provide for citizen participation in reviewing Police Department policies, practices, and procedures; and to promote the availability of data relating to police practices and procedures; ~~and to provide a prompt, impartial, and fair investigation of misconduct complaints relating to the Morgantown Police Department in a manner which protects the rights of individuals who have contact with the Morgantown Police Department while acknowledging the rights of police officers as established by state law.~~

Section 178.02. Definitions.

Board means the Civilian Police Review and Advisory Board established by this Article.

City means The City of Morgantown, West Virginia.

Immediate family means a parent, spouse, child, sibling, or domestic partner.

Member means a member of the Board.

Morgantown City Administration means all employees and officers of The City of Morgantown and all employees and officers of the boards, commissions, authorities, and agencies established by The City of Morgantown, excluding the appointed members of such boards, commissions, authorities, and agencies who serve without compensation.

Chief means the Chief of the Morgantown Police Department.

~~*Misconduct* means inappropriate behavior or actions by a police officer, including but not limited to excessive use of force; abuse of authority; harassment; unlawful arrest, stop, or search; arrest, stop, or search motivated to any degree by bias based on race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness, disability, familial status, or veteran status; or use of unprofessional, demeaning, or offensive language or conduct relating to race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness, disability, familial status, or veteran status.~~

Section 178.03. Membership and Terms.

- (a) Members. The Board shall consist of nine members appointed by City Council.
- (b) Qualifications.
- (1) Each member shall be a resident of the City or an active member of an organization that works within the City to promote purposes consistent with the purpose of the Board. If a member ceases to meet this qualification, the member shall immediately notify City Council, but the member shall remain in office until a successor is appointed unless he or she resigns or is removed from the Board. Each member shall be at least 18 years of age.
 - (2) No member shall hold any other office or employment with the City while a member of the Board.
 - (3) No member of the Board shall be a former employee of the Morgantown Police Department.
 - (4) No member of the Board shall be an immediate family member of any member of the Morgantown City Administration, City Council, or Morgantown Police Department.
 - (5) Three members shall come from historically disadvantaged communities that have traditionally experienced disparate policing or shall be residents of publicly subsidized housing. Three additional members shall be nominated by organizations that seek racial or social justice on behalf of historically disadvantaged communities or persons with disabilities.

(6) Openings on the Board should be filled based on The City of Morgantown Diversity, Equity, and Inclusion Plan adopted by Resolution 2020-05 of the Morgantown City Council on March 3, 2020, as amended.. In the event of a conflict between the membership qualifications and appointment procedures of this Article and the provisions of the City’s diversity, equity, and inclusion plan, the provisions of this Article shall control.

(7) In the event that no applicant meets the requirements of subparagraph(b)(5), a position may be filled by seeking applicants according to the process identified by The City of Morgantown Diversity, Equity, and Inclusion Plan.

(c) Terms of office. The Board shall initially consist of nine members appointed to the following terms: (i) three members appointed for a term of 1 year, (ii) three members appointed for a term of two years, and (iii) three members appointed for a term of 3 years. Each term thereafter shall be a 3-year term. Members shall continue in office until a successor is appointed, unless the member resigns or is removed from office. Vacancies shall be filled in the same manner as an initial appointment, and the member appointed shall be appointed for the remainder of the vacant term. Any member may resign by delivering a written notice to the City Clerk stating the effective date of the resignation.

Section 178.04. Officers; Meetings; Bylaws.

(a) Officers. The Board shall elect a chair, vice- chair, and secretary annually at its first regular meeting in each calendar year. The Board may elect such additional officers as it deems prudent or as required by its bylaws.

(b) Regular meetings. The Board shall conduct regular meetings no less than monthly, on a schedule established by the Board. The Board may conduct special meetings on the call of the chair or a majority of the members. Meetings will be conducted in accordance with the West Virginia Open Governmental Proceedings Act. The City Clerk shall assist the Board in convening and conducting its meetings.

(c) Bylaws. The Board may adopt bylaws for the conduct of its business. Any bylaws adopted must be consistent with the purpose of this Article and may not contravene any specific provision of this Article. The bylaws shall be delivered to the City Clerk and City Council upon adoption, and upon any revision.

(d) Orientation and Training. In order to effectively promote the purposes of the Board, each member should attend a public meeting of the Board prior to beginning the member’s term, shall participate in a board orientation that includes a Morgantown Police Department ride along, and shall participate in ongoing training endorsed by the National Association for Civilian Oversight of Law Enforcement (NACOLE) or similar organizations. The board shall establish in its bylaws the training requirements for its members.

Section 178.05. Powers and duties.

The Board shall have the following powers and duties:

(a) Develop and administer a process to conduct initial, periodic, and complaint-based compliance auditing for existing policies and procedures of the Morgantown Police Department and to make recommendations regarding the findings, the audit process, and the compliance by the Morgantown Police Department with established policies and procedures.

(b) Develop and administer a process to conduct initial, periodic, and complaint-based review of existing policies and procedures of the Morgantown Police Department and make recommendations on the review findings as to the policies and procedures and any recommended revisions, modifications, or additions.

(c) Develop and administer a process to receive, review, and advise upon materials and practices related to the recruitment, hiring, and training of the Morgantown Police Department, with the goals of increasing diversity, furthering community cooperation, and eliminating misconduct.

(d) Develop and administer a process to receive public suggestions for recruitment, hiring, and training to be offered to the Morgantown Police Department; to review the suggestions; and to advise the Morgantown Police Department as to the recommendations of the Board upon the suggestions.

~~(e) — Develop and administer a process to receive civilian complaints about misconduct of the Morgantown Police Department or its officers, to forward such complaints to the Chief of Police and the City Manager, to review the findings and recommendations of the Chief after his internal investigation, and to notify the Chief of the results of the Board's review before the Chief's findings and recommendations are made public, as provided in section 181.06 of this Article.~~

~~— (f) — Review internal investigations into misconduct conducted by the Morgantown Police Department, as provided in Section 181.06 of this Article.~~

~~(g)~~ (e) Organize and conduct community outreach related to the Board's purposes and activities. The Board should hold public meetings to report to community members on its activities, summarize its findings and recommendations, and allow residents to ask questions and raise concerns. The Board should establish goals and measurements of progress toward those goals, provide regular reports on its activity and progress toward the goals, and provide means for recognition of officers who contribute to positive policing practices.

~~(h)~~ (f) Provide policy recommendations to the City Council, City Manager, Morgantown Police Civil Service Commission, and Morgantown Police Department. Review and provide input on recruitment methods and whether the City is meeting its diversity goals and engaging in sufficient recruitment methods to promote diversity.

(†) (g) Enter into contracts necessary and helpful to the conduct of its business, subject to the availability of funds allocated for such purpose. Such contracts may include, but shall not be limited to, retention of such persons or entities as may be necessary or helpful to assist the Board in the conduct of its functions.

(†) (h) Request, and receive information, documents, reports, and assistance from the Morgantown Police Department through the Chief of Police and from city agencies through the City Manager's Office. The Morgantown Police Department shall render assistance to the board in order to provide insight into policies, procedures, and officer experience.

~~Section 181.06. Complaint and Investigation Process; Hearings; Findings.~~

(a) — ~~*Scope and authority.*~~ The Board shall have the duty and the responsibility to receive complaints relating to the Morgantown Police Department, to forward such complaints to the City Manager and to the Chief of Police for investigation, and to review the proposed findings of the Chief, in accordance with the provisions of this article and pursuant to the procedures established in this section.

(b) — ~~*Complaints.*~~

(1) — ~~A complaint should be filed in writing by the complainant with the Board by mailing or personal delivery to the Office of the City Manager, c/o Morgantown Civilian Police Review and Advisory Board, 389 Spruce Street, Morgantown, West Virginia 26505, or by an e-mail address to be established by the City and published by the Board. A complaint may be filed orally or by the Board or any member of the Board based on information received by the Board or member, in which case it will be reduced to writing by a Board member appointed by the Chair and signed by the complainant.~~

(2) — ~~When the complaint is received, it is filed with the Board and the date of filing is recorded.~~

(3) — ~~Upon receipt of a complaint, the Board shall forward it to the Chief of Police and to the City Manager for investigation.~~

(c) — ~~*Review of Police Department investigations and recommendations.*~~

(1) — ~~This Section 180.5.06(c) shall apply to all complaints received by the Board pursuant to Section 180.5.06(b), and also to all complaints of police misconduct received by the City Manager, Police Department or any other agency of the City of Morgantown, and also to all Police Department internal investigations of misconduct.~~

(2) — ~~Upon the completion of the Police Department's investigation of the complaint or other internal investigation of misconduct, the Chief shall prepare proposed findings and, if appropriate, recommendations for change of policy or discipline of officers. It is understood that this process will typically be completed within 30 days. However, this time period may be extended in extraordinary circumstances with written notification by the Chief to the Board.~~

(3) — ~~Before the proposed findings and recommendations described in Section 180.5.06(c)(2) become final, the Chief shall transmit them in writing to the Board for its review.~~

(4) — ~~In the event of exigent circumstances requiring immediate disciplinary action, the Chief may take such action immediately. In such circumstances, the Chief will also transmit his findings and recommendations to the Board.~~

~~(5) — Along with his findings and recommendations, the Chief shall transmit to the Board all evidence relevant to his proposed findings and recommendations. Such evidence may include writings, video or other recordings, photographs, sketches, etc. However, in the event that the Chief has referred the matter to the Prosecuting Attorney of Monongalia County or other entity for possible criminal prosecution of an officer, the Chief shall transmit his proposed findings and recommendations to the Board but need not transmit the evidence to the Board until the criminal proceedings have been completed.~~

~~(6) — The Board shall keep the Chief's proposed findings and recommendations, and the evidence relevant to the proposed findings, confidential until after the Chief has issued his final findings and recommendations, as provided in Section 180.5.06(d).~~

~~(7) — Upon receipt of the Chief's proposed findings and recommendations, and the evidence relevant to the findings, the Board shall promptly initiate a review. The Chair of the Board may appoint a panel of three members of the Board to conduct the review.~~

~~(8) — As part of its review, the Board may propound questions about the proposed findings, recommendations or evidence to the Chief. If such questions are propounded, the Chief shall promptly answer them in writing or in person.~~

~~(9) — As part of its review, the Board may interview the complainant or witnesses, and may consult with people outside of the Board. Anyone consulted shall keep all matters confidential, as provided in Section 180.5.06(c)(6). However, the Board may not interview Morgantown Police Department officers.~~

~~(10) — After the conclusion of its review, the Board shall notify the Chief in writing whether it accepts the Chief's proposed findings and recommendations or whether it suggests any changes. Such changes shall be specified. If the Board has conducted interviews as provided in Section 180.5.06(c)(9), a summary of such interviews shall be provided to the Chief.~~

~~(11) — The Board shall provide this notification to the Chief within 30 days of receipt of the Chief's proposed findings and recommendations and the relevant evidence. However, this time period may be extended in extraordinary circumstances with the written agreement of the Chief.~~

~~(12) — Upon receiving the Board's notification of its review, the Chief shall issue his findings and recommendations, as originally proposed or as modified in light of the Board's review.~~

~~(d) — *Making public the Board's review of complaints.*~~

~~(1) — The Board may not disclose to the public any information about the Chief's proposed findings and recommendations, or about the Board's review of the findings and recommendations, until after the Chief has issued his final findings and recommendations, as provided in Section 180.5.06(c)(12).~~

~~(2) — In making public information about its review of a complaint, the Board shall keep confidential the identity of the complainant, witnesses and officers involved in the matter.~~

Section 178.076. Reports.

(a) Annual Report; Work Plan. On or before January 31 of each year, the Board shall file a report with the City Clerk setting forth the activities of the Board for the previous year and establishing a work plan for the Board for the current year. The City Clerk shall distribute the

report to City Council, the City Manager, the Chief of the Morgantown Police Department, and the President of the Morgantown Police Civil Service Commission.

(b) Statistical data and reporting. No less than annually, the Board shall collect and report statistical data relating to the operations of the Morgantown Police Department including calls for assistance, stops, arrests, charges, and convictions, which will include demographic data such as race, sex, age, and other relevant and available characteristics of involved persons. The Morgantown Police Department and the Board will work together to collect, maintain, and report the data while ensuring that all appropriate or required privacy and confidentiality protections are afforded to the individuals involved in the incidents underlying the reported data.

Section 178.087. Legislative intent; Severability.

It is the intention of the City Council of The City of Morgantown in enacting this Article to establish the Board with each power and authority described herein to promote the purposes identified in Section ~~17881~~.01 and this Article, and the City Council finds and determines that such legislative intent will best be served by giving effect to all valid provisions of the Article in the event that any other provision is determined invalid for any reason. To serve the expressed legislative purpose, in the event that a court or agency of competent jurisdiction holds that any federal or state law, rule, or regulation invalidates any provision of this Article or the application thereof to any person or circumstances, it is the intent of the City Council of The City of Morgantown that the court or agency sever such provision and that the remainder of this Article shall remain in effect and its validity and application to other persons or circumstances shall not be affected by the determination of invalidity.

This ordinance shall be effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____