Bill No. 10909-18

No. _____

AN ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending the Allegheny County Code of Ordinances through the establishment of a new Division 9, entitled "Conduct," and a new Chapter 905, entitled "Independent Police Review Board," in order to establish a mechanism for citizen review of allegations of misconduct undertaken by police officers within Allegheny County.

WHEREAS, from time to time, allegations of police misconduct are made by members of the general public; and

WHEREAS, these allegations are often subject to significant scrutiny by various media outlets and debate by the public, an issue highlighted by multiple recent events within the County; and

WHEREAS, this public discussion and debate over whether the actions of law enforcement officers, absent any formalized means of reviewing the allegations in a given case by citizens who are provided full information regarding the events in question, often leads to invalid assumptions and/or discussion of incorrect or partially correct factual information, and almost inevitably serves to undermine public confidence in law enforcement; and

WHEREAS, while the City of Pittsburgh established an Independent Citizen Police Review Board in 1997 as a result of a voter-approved referendum to the City Charter and specifically in order to restore public confidence in law enforcement to the extent possible, no such independent review board exists to perform a similar function on a Countywide basis; and

WHEREAS, it is the judgment of Council that the establishment of an independent Police Review Board is desirable as a means of improving public safety, fostering transparency in instances of alleged misconduct by law enforcement, and improving public confidence in law enforcement generally within the County;

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of the Preamble

The preamble to this Ordinance is hereby incorporated by reference in its entirety herein.

SECTION 2. Amendment of the Code.

The Allegheny County Code of Ordinances is hereby amended through the creation of a new Division 9, entitled "Conduct," and comprised as follows:

Chapter 905
Independent Police Review Board

§905.01. Definitions.

A. For the purposes of this Chapter, the following words shall have the definitions designated herein, unless the context clearly indicates otherwise:

1. MISCONDUCT shall mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a natural person by reason of:

   a. A violation of any general, standing or special orders or guidelines of any Law Enforcement Agency, department of public safety, or equivalent municipal agency with jurisdiction over a municipal or County police department; or

   b. A violation of any applicable federal, state or local law, including violations that deprive or abridge any individual's protected rights under the Pennsylvania or United States Constitution; or

   c. Any act otherwise evidencing improper or unbecoming conduct by a County Law Enforcement Professional within Allegheny County and which has a demonstrable relationship to specifically identifiable law enforcement activities undertaken by the officer(s) in question.

2. BOARD shall mean the William Russell Robinson Allegheny County Independent Police Review Board.

3. CONFIDENTIAL when used in reference to materials to be kept by the Board, shall indicate a practice of refraining from public disclosure of the contents of reports, written statements, testimony, statistics, recordings, or any other materials, evidence, or testimony provided to the Board to aid in its investigatory functions. The Board may, however, indicate that its findings are based on certain types of materials or the testimony of certain individuals or categories of individuals, and may provide plain language identification and/or summaries of documents or other evidence without disclosing any portion of the contents of the materials verbatim. Nothing contained herein shall in any way alter the Board's responsibilities under

applicable statutes governing public proceedings or documents, as delineated in §905-15.

4. COUNTY LAW ENFORCEMENT PROFESSIONAL shall mean any officer employed by the Allegheny County Police Department. Neither this term nor "LAW ENFORCEMENT PROFESSIONAL" shall be deemed to include any adult or juvenile probation officer for the purposes of this Chapter.

5. DAY(s) shall mean calendar day(s).

6. DIVERSITY shall mean the mixture of people who inhabit Allegheny County in terms of race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity, familial status, age, handicap, disability, and/or economic status.

7. LAW ENFORCEMENT PROFESSIONAL shall mean police officers employed by any local governmental entity, including municipal authorities.

8. VACANCY shall mean a condition deemed to exist upon written resignation, death, disqualification of residency, criminal conviction of a felony or misdemeanor, conviction of any domestic violence crime, or medically declared incapacity. For the purposes of this Chapter a term expiration shall not constitute a vacancy.

9. COUNTY AGENCY shall mean any County administrative department or subunit thereof, or office of any independently elected County officer, as defined in Article I, §3 of the Home Rule Charter of Allegheny County.

10. LAW ENFORCEMENT AGENCY shall mean any municipal or other police department operating within the boundaries of Allegheny County.

§905.02. Declaration of Policy.

A. It is hereby declared to be the policy of the County that it is paramount to the maintenance of public safety and public confidence in law enforcement to allow for allegations of police misconduct be thoroughly investigated and evaluated by an independent board which shall reflect to the greatest extent possible the County's diversity, particularly in instances in which neither civil nor criminal litigation ensues, and no evidence will be adduced as a result.

B. It is equally important to allow for falsely accused police officers to be evaluated by a credible, independent investigative board as it is for those properly accused to be investigated by a credible, independent, investigative board, particularly in instances in

which neither civil nor criminal litigation ensues, and no evidence will be adduced as a result.

C. The Independent Police Review Board shall strive to mitigate the potential for future incidents of police misconduct and abuses of civil rights, and strive to promote public confidence in law enforcement through its capacity to investigate, hold public hearings regarding and evaluate allegations of police misconduct and its capacity to make recommendations concerning patterns of such behavior if they are found.

D. It is not the intention of this legislation to undermine the disciplinary authority of any municipal Chief of Police in the exercise of his or her duties or to alter the executive authority of any municipal elected or appointed official, but to mandate independent, equitable procedures for both citizens and police personnel for investigating citizens' complaints of police misconduct.

E. This legislation is not intended to violate the right against self-incrimination of any individual, in particular any Law Enforcement Professional(s), nor is this legislation intended to violate any other rights of individuals protected under the Constitutions and laws of the Commonwealth of Pennsylvania and the United States of America. This legislation shall be interpreted consistently with this principle.

F. This legislation is not intended to eliminate the executive authority and obligation of any unit of government to thoroughly investigate all citizen complaints of police misconduct.

G. While the Board established pursuant to the terms of this Chapter shall be known as the "William Russell Robinson Allegheny County Independent Police Review Board," it shall be the policy of Allegheny County that only individuals who are lawful residents of Allegheny County may serve as Board members or employees tasked with assisting the Board in its activities.

§905.03. Establishment of Board.

The William Russell Robinson Allegheny County Independent Police Review Board is hereby established, with membership and duties as provided herein.

§905.04. Budget and Staff.

A. The Board's expenses, arising from the obligations imposed hereunder, including required training and the maintenance of an office which shall be located within the Allegheny County Courthouse, shall be evaluated at the sole discretion of Council and the Chief Executive during the annual budget process provided by the Home Rule Charter of Allegheny County and the Administrative Code of Allegheny County.

B. The Board shall receive reasonable funding for and shall hire and supervise a solicitor as authorized through the annual budget in order to provide legal advice as needed. Such solicitor's general retainer shall not exceed $1,500 per month, although billing additional amounts for atypical services rendered, including but not limited to in-court appearances, shall be permissible to the extent authorized by annual budgetary appropriations.

C. The Board shall receive reasonable funding for and shall hire and supervise an Executive Director as authorized by annual budgetary appropriations in order supervise the investigatory and other functions of the Board. The hiring of such Executive Director shall be contingent upon confirmation by County Council via the affirmative vote of at least a majority of the seated members of Council.

D. The hiring salary levels and supervision of any additional Board staff shall be subject to applicable County hiring policies and procedures, subject to appropriations for reasonable salaries for necessary staff adopted in each County annual operating budget. Nothing contained within this Section shall be deemed to empower the Board to establish a binding demand for funding beyond that required herein and appropriated in each annual budget.

§905.05. Board Membership.

A. The Board shall consist of nine (9) voting members reflecting Allegheny County's diversity, who shall be appointed pursuant to the provisions of this Section. Five (5) of the original members shall be appointed to four (4) year terms and four (4) shall be appointed to two (2) year terms, and all shall serve until the appointment of their successors. Persons appointed to fill vacancies shall serve for the balance of the terms for which their predecessors were appointed. All other appointments shall be for terms of four (4) years. No Board member may serve more than two consecutive four year terms.

B. All appointees and sitting board members shall have been lawful residents of the United States and Allegheny County for at least one (1) year prior to nomination and throughout their terms, and shall serve without compensation. Board members may, however, be reimbursed for reasonable expenses incurred in the direct implementation of the Board's responsibilities, subject to County reimbursement policies and the approval of the Allegheny County Controller. Persons appointed to the Board shall be fair minded and committed to the efficient and effective operation of the Board.

1. In the event an appointee is confirmed to be a member of the Board they shall maintain their County residency in order to maintain the ability to serve as a member of the board.

2. In the event that a member of the Board should no longer be a County resident, that member shall immediately convey written notice of their non-residency status and resulting ineligibility to serve to the Chair and Vice Chair of the board. Such notice shall be deemed a resignation from

the Board. If the Member sends notice in advance of their actual non-residency status they may serve until the date on which their County residency is actually lost.

3. In the event that the member fails to disclose a change in residency which would disqualify the member from serving as a member of the board and that disqualification is alleged by anyone, discovered or otherwise comes to the attention of the executive director or Chair of the board, the residency shall be verified by staff and conveyed to the Chair of the board. If the subject residency is found to disqualify the member, the seat will be deemed vacant.

4. Upon receipt of said notice, the Chair shall immediately take appropriate action to provide notice to all other board members, the Chief Executive and County Council.

5. Any Board member may be removed from office upon a finding of misconduct in office by a motion adopted by at least a two-thirds (2/3) vote of Council.

C. Initial appointment of individuals as voting members of the Board shall be made as follows:

1. Six (6) appointments shall be made via nomination by individual Council members, subject to confirmation by at least a majority vote of the seated members of Council. For initial appointments to the Board, three (3) shall be for initial four (4) year terms and three (3) for initial two (2) year terms. Initial appointments made under the terms of this Subsection shall be confirmed no later than thirty (30) days after the effective date of this Chapter, or nominations may be made by the Chief Executive under the terms of Subsection 2.

2. Three (3) appointments shall be made via nomination by the Chief Executive, subject to confirmation by at least a majority of the seated members of Council. Initial appointments under this Subsection shall be submitted to Council for confirmation no later than forty five (45) days after the effective date of this Chapter.

3. Any nomination for appointment to the Board made under the terms of Subsection C.1. or C.2. that remains pending 45 days after its introduction for Council confirmation shall be deemed confirmed.

D. After seating of the initial appointments, successive members to fill expired terms shall be selected in the following manner:

1. Ninety (90) days prior to any member's term expiration the board Chair shall cause the public to be notified of the pending expiration of the term of the member(s). Such public notice shall identify the member whose term is to expire, note whether the departing member was one of the three appointments specifically reserved to the Chief Executive under Subsection C.2., and/or whether the departing member had experience in law enforcement. Identical notice shall be provided to both the Chief Executive and County Council.

2. For any seat initially occupied by an appointee who may have been or was nominated by the Council, any individual member of Council may, within thirty (30) days of receipt of the notice required under Subsection 1 above, nominate a replacement Board member for Council confirmation. If a replacement Board member is not confirmed by Council in the time specified by this Subsection, nominations may be made by the Chief Executive, subject to Council approval.

3. For any seat initially occupied by an appointee reserved for nomination by the Chief Executive, the Executive shall nominate an appointee of his/her own choosing for Council Confirmation at least thirty (30) days before the date of expiration of the relevant Board Member's term.

4. All vacant seats shall be filled no later thirty (30) days after the date on which the vacancy arose.

5. In making such nominations and appointments to the Board, the Executive and Council shall use their best efforts to create and maintain a Board reflecting the diversity in the population of the County, and to maintain the following Board member characteristics:

    a. At no time shall the Board include more than two (2) voting members who are experienced as law enforcement professionals. However, no Board member shall be a sworn, currently employed, law enforcement officer. When a seat occupied by a law enforcement professional occurs, Council and the Executive shall select a replacement member with a law enforcement background to the extent practicable.

    b. The Board should, to the extent practicable, have one member with a background as an attorney with criminal prosecution or defense experience, as a former Judge of the Allegheny County Court of Common Pleas, or with audit experience.

    c. Voting Board members are prohibited from being an employee of Allegheny County or any other federal, state or local unit of government, and must resign their position on the Board if they become a candidate for any elected political office.

E. In the event of a vacancy for any reason other than the expiration of a Board member's term, the chair of the Board shall immediately notify the Executive and Council of the vacant seat, and the Executive shall submit a nominee to serve the remainder of the unexpired term within thirty (30) days of receipt of such notice subject to confirmation by Council.

F. Once appointed, all voting Board members shall, at a minimum, complete ongoing training according to the following schedule:

1. The course of Mandatory In-Service Training (MIST) offered by the Allegheny County Police Academy at least every other calendar year, beginning with the first full calendar year of service; and

2. Two Elective In-Service Training courses offered through the Allegheny County Police Academy each calendar year in which MIST training is not completed, beginning with the first full calendar year of service.

§905.06. Powers, Duties and Limitations of the Board.

A. The Board shall receive complaints alleging misconduct by County Law Enforcement Professionals, provided that such complaints are made in writing and in a form prescribed by the Board within 180 days of the alleged misconduct. As provided herein, the Board shall also have discretion to select appropriate individual incidents involving County Law Enforcement Professionals to investigate and broader issues to study regarding community and County Law Enforcement Professional relations. Subject to applicable law, all County agencies and independently elected County officials shall allow the Board access to all evidence obtained during the course of its investigations of incident(s) which are the subject of citizen complaint(s) filed with the Board. The Board and its staff shall keep all such evidence confidential. Subject to applicable law, the Board may allow limited access to evidence obtained during the course of its preliminary inquiries, investigations and hearings, solely when necessary to aid in the investigatory process and only when subject to an agreement that such evidence will be kept confidential by all parties to whom it is disclosed. The Board shall, to the extent possible, minimize any duplication of effort between the Board and any other existing County agencies which have jurisdiction over the same matter. However, the Board may carry on investigatory and other proceedings on a matter being examined at the same time by an existing County agency, subject to the restrictions contained within Subsections E and F of this Section.

B. The Board shall meet at least once each quarter to receive, review, evaluate and make recommendations concerning individual citizen allegations of County Law Enforcement misconduct. Except as otherwise provided within this Chapter, the Board shall not undertake any action without the affirmative vote of at least a majority of the seated members.

C. No Board finding, recommendation or decision shall be based solely upon an unsworn complaint or statement, nor shall unsubstantiated, unfounded or withdrawn complaints be the sole basis for any such finding or recommendation. All Board findings and recommendations shall be based upon a preponderance of the evidence presented to the Board, as delineated within this Chapter, and shall be accompanied by a written explanatory opinion clearly delineating the reason(s) for the Board's verdict(s), action(s) and/or recommendation(s), together with the evidentiary foundation upon which they were made, and signed by the Board members who agree to the contents of the opinion. Dissenting opinions by voting Board members shall also be signed by the members who agree to their content, and shall be issued together with and at the same time as any majority opinion on a given matter. The Board shall retain all records obtained or generated through its proceedings, together with all opinions issued, and all opinions issued shall be deemed discoverable in their entirety under the terms of the Commonwealth of Pennsylvania's Right to Know Law.

D. The Board shall respond in writing to all complaints filed by individuals alleging misconduct within fourteen (14) days of receiving any such complaint. Such response shall indicate whether, in the exercise of its discretion, the Board will conduct a preliminary inquiry into the allegations made, take no action, or request additional information to enable it to determine the most appropriate course of action.

E. If the District Attorney, Attorney General of the Commonwealth, or U.S. Attorney has initiated criminal proceedings before a court of competent jurisdiction against any County Law Enforcement Professional(s) or other Law Enforcement Professional(s) who are the subject(s) of a citizen complaint filed with the Board and relating to the subject matter that is before the Board, the Board shall defer all action until said criminal proceedings have been withdrawn or received final adjudication, and any appeal(s) have been finally decided. Only when such proceedings have been withdrawn and are not subject to any form of settlement agreement may the Board re-institute its proceedings. To the extent that any Board activities are undertaken contrary to the provisions of this Subsection, such actions shall be deemed to exceed of the statutory authority of the Board, all recommendations or other actions taken during those activities shall be deemed null and void, and the Board members shall not be considered to be acting within the scope of their County duties.

F. If any individual or other legally cognizable entity has initiated civil proceedings before a court of competent jurisdiction against any County Law Enforcement Professional(s) or other Law Enforcement Professional(s) who are the subject(s) of a citizen complaint filed with the Board and relating to the subject matter that is before the Board, the Board may, at its discretion and upon request by the Respondent(s), defer all action until such time as the Board elects to resume such action(s).

G. The Board may, at the sole discretion of the County Manager, utilize County owned facilities for its activities and/or utilize County employees for staff assistance.

§905.07. Complaints and Preliminary Inquiries.

A. The Board shall provide for submission of complaints via telephone, through electronic means such as the County website and e-mail, in writing, or in person at the Board's designated offices. All complaints, regardless of the form in which they are submitted, must be accompanied by a signed and notarized certifying the veracity of the contents to the best of the complainant's knowledge before the Board begins its preliminary inquiry. In the event that such a signed and notarized statement is not provided by the complainant in a fashion that allows the Board to complete its preliminary inquiry in the times specified by §905.07.B.1 and in accordance with the other requirements of this Chapter, the Board shall dismiss the complaint without prejudice.

B. Within fourteen (14) days of the filing of any complaint, signed under penalty of perjury and in a form prescribed by the Board by any individual, the Board may choose to dismiss the complaint without prejudice due to formal or factual defects or failure to state a cognizable claim, or conduct a preliminary inquiry into the allegations contained therein. The Board shall conduct a preliminary inquiry for every complaint received that is not dismissed under the terms of this Subsection.

1. The Board shall complete its preliminary inquiry within thirty (30) days of its initiation. Upon good cause specified via written opinion in accordance with the provisions of §905.06.C., the Board may extend its preliminary inquiry for up to an additional thirty (30) days upon written notice to the parties. Under no circumstances, however, may the Board complete its inquiry without allowing the individual(s) to whom the inquiry relates at least two opportunities scheduled at reasonable times, dates and locations to present information relevant to the inquiry to the Board.

2. If the preliminary inquiry fails to establish by a preponderance of the evidence reason to believe that any misconduct occurred, the Board will terminate its inquiry, issue the appropriate written opinion(s) under the terms of §905.06.C., and notify the complainant and the individual(s) who were the subject of the complaint and the individual(s) with administrative authority over the Law Enforcement Agency involved.

3. If the Board determines that the preliminary inquiry has established misconduct through a preponderance of the evidence, it shall proceed to an investigation under the terms of §905.08.

§905.08. Investigations.

If the Board determines that the preliminary inquiry has established misconduct by a preponderance of the evidence adduced, the Board shall conduct an investigation into the complaint. Under no circumstances shall any investigation be conducted without providing the

individual(s) to whom the investigation or hearing relates the opportunity to present information and testimony relevant to the proceedings to the Board.

A. The Board shall complete its investigation within thirty (30) days of its initiation. However, upon good cause specified via written opinion in accordance with the provisions of §905.06.C., the Board may extend its investigation for an additional thirty (30) days upon written notice to the parties. Under no circumstances, however, may the Board complete its investigation without allowing the individual(s) to whom the investigation relates at least two opportunities scheduled at reasonable times, dates and locations to present information relevant to the investigation to the Board.

B. If the Board does not determine upon completion of its investigation that misconduct was proven by a preponderance of the evidence, the Board will terminate its investigation, issue the appropriate verdict and opinion(s) under the terms of §905..06.C., and so notify the complainant(s) and the officer(s) who were the subject of the complaint and the individual(s) with administrative authority over any Law Enforcement Agency involved.

C. If the Board determines upon completion of its investigation that misconduct has been proven by a preponderance of the evidence based on the available evidence, it shall determine a recommended course of remedial action(s), issue the appropriate verdict and opinion(s) under the terms of §905.06.C., and so notify the complainant(s) and the officer(s) who were the subject of the complaint and the individual(s) with administrative authority over any Law Enforcement Agency involved.

§905.09. General Operational Parameters.

A. The Board necessarily relies upon the cooperation of Law Enforcement Professionals in order to fulfill its responsibilities as delineated herein. Therefore, the Board shall not forward any statements or testimony provided by any law enforcement officer, either under oath or otherwise, to any law enforcement agency, without the express written consent of the officer providing the statement.

B. The Board shall have the responsibility of informing the public about the Board and its duties, and shall develop and administer an ongoing program for the education of the public regarding the provisions of this Chapter.

C. The Board shall direct and supervise the operations of any staff with regard to receiving, investigating, and disposing of all citizens' complaints against any Law Enforcement Professional(s), in accordance with the procedures set forth herein and the best available investigatory practices. Complainants shall be notified in writing of the action taken, if any, by the individual or entity with administrative jurisdiction over the Law Enforcement Agency involved.

D. In order to accomplish its goals as set forth above, and consistent with the limitations above, the Board shall have the power to request the production of appropriate personnel for interviews, with which the affected law enforcement agency shall cooperate with and make a good faith effort to accommodate, and to request relevant documents which the Board agrees to keep confidential, including, but not limited to the following, for review:

1. Law enforcement agency files, management files, ethics and accountability files, and the files of any other internal investigative agency charged with investigating police misconduct incidents;

2. Paperwork produced by any law enforcement agency for the purpose of investigating suspects or to aid in their prosecution;

3. Personnel files of officers including annual performance evaluations, records documenting training or records documenting mandatory counseling;

4. Law enforcement agency directives;

5. All general summaries, statistical compilations and other internal reports on shootings, injuries, complaints of abuse, training and any other issues related to the work of the Board.

E. The Board, upon motion receiving an affirmative vote of at least six (6) voting members, may:

1. Initiate preliminary inquiries regarding incidents of police misconduct for which no complaint has been filed;

2. Initiate studies, investigations, hold public hearings and make recommendations on policy matters, including improvement of the relationship between the police department and the community and public education. The Board may not, however, initiate a review of any specific municipal or other police department's policies, procedures, training, or other operational guidelines in the absence of a limited opt-in request tendered pursuant to the terms of §905.14.D.

F. If at any time the Board or its staff determines that a complainant has issued a false accusation against any police personnel as manifested in his/her citizen complaint, the Board shall immediately forward a complete copy of the complaint together with a written recommendation to the District Attorney of Allegheny County to investigate the complainant for violation of applicable criminal statutes relating to sworn statements.

G. The Board shall not receive complaints containing allegations nor initiate investigations on its own motion pertaining to incidents which occurred over 180 days prior to the date of receipt of such complaint or initiation of an investigation by the Board.

H. Under no circumstances shall the Board or any member thereof conduct any *ex parte* discussion of the substance of any matter pending before the Board. Violation of this provision shall be deemed cause for immediate removal of any Board member(s) found to have participated in the prohibited discussion.

I. The Board may formulate its own bylaws, subject to approval by Council via duly enacted motion. Any amendment(s) to such bylaws shall also be subject to Council approval by motion.

J. The provisions of the Allegheny County Ethics Code, including whistleblower protections and annual financial interest disclosures, shall apply to the Board and all staff members employed by it, without limitation.

K. All testimony presented to the Board shall be sworn, and all testimony provided in writing shall be accompanied by a notarized statement that the contents are true to the best of the submitting party's knowledge.

L. There shall be no right to cross-examine witnesses in any Board proceeding; however, all parties must be given notice of and be afforded the opportunity to be present for all testimony given to the Board, and to receive copies of all testimony provided to the Board in writing in accordance with the provisions of §905.18.

M. The Board may consolidate complaints filed by multiple Complainants, provided that such complaints relate to substantially the same event or series of events and involve the same Respondent(s), and all of the Complainants involved consent to the consolidation.

N. Any complainant may withdraw his or her complaint at any time prior to the issuance of a final verdict and/or recommendation(s) by the Board by providing written notice of the withdrawal to the Board. The Board shall notify all Respondents of such withdrawal within three days of receipt of the withdrawal notice. Withdrawal of any complaint shall immediately and without additional process terminate all further proceedings by the Board.

O. During all proceedings undertaken pursuant to the terms of this Chapter, the Board shall keep all information, records and proceedings confidential, subject to the provisions of §905.14.

§905.10. Public Hearings.

A. To aid its information-gathering function, the Board may conduct public hearings, provided that such hearings are solely geared towards receiving public input regarding a matter or matters before the Board. Under no circumstances may a public hearing be conducted as a form of judicial or quasi-judicial proceeding, although all parties to the matter to be discussed shall be provided at least seven (7) days' notice of any public hearing(s) to be held.

B. Law enforcement agencies should cooperate with and make a good faith effort to accommodate the Board's request for law enforcement personnel to offer comment at such hearings regarding any specified matter under review, but the Board shall not require that any such comment be offered by any particular law enforcement agency, professional, or other individual(s) at a public hearing. If any Law Enforcement Professional is the subject of or witness in a related criminal or other investigation, such personnel may elect not to appear until the termination of such investigation. If such Law Enforcement Professionals are the subject of or a witness in a related investigation by a specially designated unit of any municipal police department or by any other municipal agency, they may elect not to appear until the termination of those proceedings, and the Board shall provide reasonable accommodation for such requests.

C. In order to fulfill the Board's responsibility for the accurate collection of truthful testimony in official proceedings, it shall have the power to record testimony by videotape, audiotape and/or stenographic transcription, subject to budgetary constraints.

§905.11. Finding of Necessity.

Subject to applicable law, it shall be the duty of law enforcement agencies to provide such assistance as the Board may reasonably request, to cooperate fully with investigations by the Board, and to provide to the Board upon request records, personnel and other materials which are necessary for the investigation of complaints submitted pursuant to this Chapter. Upon finding by the Board that documents or personnel requested have not been forthcoming or that necessity requires the production of witnesses and/or documents and subject to the limitation contained in §905-10.B. (relating to public hearings), the Board may petition the Court of Common Pleas for an order compelling the production of such witnesses or documents. However, no document or information obtained by the Board through formal or informal process shall be released to the public unless such document is deemed by the Board to be a public record under the Pennsylvania Right to Know Act.

§905.12. Form of Board Action, Advice and Recommendations.

A. During its deliberations regarding any matter pending before it, the Board may reach only the following verdicts:

1. "Dismissed" means that a complaint was dismissed by the Board due to a formal or factual defect or because it fails to state a cognizable claim of misconduct under the terms of this Chapter. All "dismissed" verdicts must be imposed without prejudice.

2. "Untimely" means that a complaint was not filed within the time limits specified by the terms of this Chapter. The Board shall not have the authority to extend

such time limitations; as a result, all "untimely" verdicts issued constitute a termination of the Board's activities.

3. "Sustained" means that a given allegation of misconduct is proven. This verdict shall be an adequate foundation for recommended action(s) by the Board in response to any complaint.

4. "Exonerated" means that the respondent(s) to whom the verdict applies were found by the Board to have acted properly.

5. "Unfounded" means that the act or acts complained of never took place or were misconstrued.

6. "Ineffective Policy or Training" means that the training provided by the Law Enforcement Agency involved was inadequate, and therefore renders questions of office culpability irrelevant. This verdict shall be an adequate foundation for recommended action(s) by the Board in response to any complaint.

7. "No Finding" means that the Board has declined to issue any verdict.

8. "Withdrawn" means that the matter was withdrawn.

B. The Board shall have the power to recommend that the Chief Executive, County Council, and/or Law Enforcement Agencies take remedial action(s) only when verdicts of "Sustained" or "Ineffective Policy or Training" are reached.

C. The Board may recommend general reforms or specific actions relating to individual County or other Law Enforcement Professionals;

D. With regard to any recommendation(s) made by the Board pursuant to this Section, the relevant municipal officials and law enforcement agency supervisory staff shall retain full and final authority to set disciplinary policies or take other lawful actions they deem appropriate relative to law enforcement professionals or agencies within their supervision. Nothing in this section shall be construed to limit the rights of members of any law enforcement agency with respect to disciplinary action, including but not limited to the right to notice and a hearing prior to the imposition of disciplinary action, which may be established by any provision of law, collective bargaining agreement, department policy, or otherwise.

§905.13. Written Response to Board Recommendations.

Within thirty (30) days of submission of a recommendation for action by the Board any entity, such entity shall respond in writing regarding which recommendations are accepted, rejected, or will be implemented with modifications. If the Board's recommendations are rejected or modified, the responding entity must provide a written explanation for its decision. Written

responses produced pursuant to this Section shall be retained by the Board as part of the record of the complaint and investigation to which they apply.

§905.14. Opt-In

A. Any municipality or municipal authority may, via validly enacted resolution or ordinance and notice to the Board, President of Council and the Chief Executive, opt into full participation in the activities undertaken by the Allegheny County Police Review Board, provided that it is not subject to the jurisdiction of another civilian review board as of the opt-in date. Upon the enactment of such legislative opt-in, the municipality, its Law Enforcement Professionals, and its Law Enforcement Agency or Agencies shall be bound by the terms of this Chapter in exactly the same fashion as County Law Enforcement Professionals and Agencies.

B. The Allegheny County Sheriff may opt in and out of full participation with written notice to the Board, the President of Council and the Chief Executive, provided that any such opt out shall not stay any activities relating to individuals employed within the Office of the Sheriff that are pending on the opt out date.

C. A municipality or other entity that has opted into full participation under the provisions of this Section may withdraw its opt in legislation at any time, provided however, that opting out in such fashion shall not alter the conduct of any investigation in progress on the effective date of the opt in withdrawal.

D. Any municipality may opt into limited participation via validly enacted resolution or ordinance and notice to the Board, President of Council and Chief Executive. Such limited participation shall consist only of a request to the Board to review the municipality's policies, procedures, training, budgeting practices, or other practices and procedures relating to general police activities in the municipality, and shall not relate to investigating any specific incident(s), Law Enforcement Professsional(s), or other staff.

    1. The Board shall grant limited opt-in requests at its discretion, subject to available resources. In limited opt-in reviews, all recommendations made by the Board shall be subject to the written opinion requirements established in §905.06.C. and transparency requirements established in §905-15.

    2. The Board may establish working groups comprised of individuals with relevant expertise from outside the Board's membership in order to assist with conducting limited opt-in reviews, but the Board itself must make any recommendations resulting from such reviews.

    3. Any municipality requesting a limited opt-in review shall make records and personnel available to the Board, provided that such records are reasonably related to the review. The Board may terminate a limited opt-in review at any time if access to records necessary to conduct an informed review is not provided.

4. In the event that funding, training, or other budgetary or in-kind assistance is provided to municipalities that opt into participation, municipalities that opt into only limited participation shall not be eligible for such assistance.

E. Municipalities participating in joint, regional or similar shared service arrangements for police services may only opt into full or limited participation upon enactment of an opt-in resolution or ordinance by all municipalities participating in the police service arrangement.

F. Municipalities that have previously opted into full participation may also make specific requests for Board review of policies, procedures, training, budgeting practices, or other practices and procedures relating to general police activities in the municipality in the fashion prescribed by Subsection D.

G. Municipalities that have opted into full participation shall notify the Board of all new police officer hires no later than ten (10) days after the officer's start date, and the Board shall provide a summary of any previous Board activities to which the new hire(s) were a party. Such information shall be utilized in whatever fashion the municipality deems appropriate.

§905-15. Transparency.

All activities undertaken pursuant to the terms of this Chapter shall be subject to applicable law governing transparency, including the Pennsylvania Sunshine Act (65 P.S. §701, *et. seq.*) and Right to Know Law (65 P.S. §67.101, *et. seq.*). The Board shall be deemed a local agency, and shall undertake all necessary actions to comply with applicable law, including but not limited to conforming to public notice and open meeting requirements to the extent required by such law, establishing a records retention policy, and designating a Board member or employee to serve as the Board's Open Records Officer.

§905-16. Notice and Right to Counsel.

Any individual against whom a complaint is made or against whom the Board initiates proceedings shall be provided with a complete, unredacted copy of the complaint and/or any accompanying exhibits or other documentation provided by the complainant(s) or relied upon by the Board within three (3) business days of submission to the Board or initiation of proceedings by the Board. Any individual(s) against whom complaints are made or proceedings otherwise are initiated, and any individual(s) asked to provide testimony or documentary or other evidence to the Board, shall be advised by the Board in writing of their absolute right to be represented by qualified legal counsel at all phases of the Board's activities. Individuals who are subject to collective bargaining agreements shall also have an absolute and unqualified right to be accompanied by any other personnel mandated by the collective bargaining agreement in question. Under no circumstances shall the Board require or request any response, testimony,

document, or other tangible evidence from any individual who has not been apprised of his or her right to representation by qualified counsel, and at no time shall the Board act in a fashion which functions to deprive any individual of any right(s) guaranteed by the United States or Commonwealth of Pennsylvania Constitutions, including the right to avoid self-incrimination.

§905.17. Rules of Evidence.

The Board shall follow the rules of evidence utilized by the Commonwealth of Pennsylvania's Unified Judicial System, and codified at Title 225 of the Pennsylvania Code, except to the extent that such Rules are expressly contradicted by this Chapter.

§905.18. Disclosure to Respondents.

A. The Board shall provide unredacted copies of all documentary evidence or information that it considers in the course of its deliberations to the Respondent(s), within 72 hours of its receipt by the Board and at least seven (7) days prior to any discussion of such evidence or information with Respondent(s).

B. In the event that the Board, through any of its activities, or any Board member through any formal or informal process obtains evidence, testimony, or other information that is in any fashion exculpatory in relation to any Respondent in a matter pending before the Board, the Board shall provide notice and unredacted copies of such evidence, testimony or other information to the Respondent(s) to whom it relates within 72 hours of obtaining the information.

§905.19. Appeal.

Any individual aggrieved by any verdict and/or recommendation made by the Board may, within 30 days of receiving notice of such verdict and/or recommendation(s), file an appeal to the Court of Common Pleas in accordance with applicable law. The filing of such an appeal shall automatically stay any additional action by the Board or on any recommendation made by the Board until such time as the appeal is finally adjudicated.

§905.20. Referral.

If, at any time, the Board determines that it has reason to believe that a criminal action has taken place, it shall forward information regarding such action(s) to the Allegheny County District Attorney, Commonwealth of Pennsylvania Attorney General, or other appropriate agency.

§905.21. Bi-annual Report.

The Board shall prepare a bi-annual report for the Chief Executive and County Council, making sufficient numbers of copies available to the public, summarizing the activities and recommendations of the Board, including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period.

§905.22. Review.

A working group comprised of a representative of the Chief Executive, the Chair of the Allegheny County Human Relations Commission and a representative of County Council, appointed by the Council President, shall periodically review the implementation and efficacy of this Chapter. The working group will gather statistics, public reaction and comments regarding the Citizen Police Review Board. At least once every three years, the working group will submit the findings to the Chief Executive and County Council, at which time Council will determine if this Chapter is effective or requires modification to more effectively implement the policies and goals articulated herein.

SECTION 2. Effective Date.

The provisions of this ordinance shall become effective on January 1, 2020.

SECTION 3. ***If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.***

SECTION 4. ***Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.***

PRIMARY SPONSOR: COUNCIL MEMBERS WALTON & KLEIN

CO-SPONSORS:

Enacted in Council, this _____ of_____, 2018,

Council Agenda No. _____.

_____
John DeFazio
President of Council

Attest: _____
Jared E. Barker, Chief Clerk
Allegheny County Council

Chief Executive Office _____, 2018.

Approved: _____
Rich Fitzgerald
Chief Executive

Attest: _____
Sonya Dietz
Executive's Secretary