

No. \_\_\_\_\_

## **AN ORDINANCE**

An ordinance of the County of Allegheny, Commonwealth of Pennsylvania, directing that a referendum question regarding the establishment of a Countywide independent police review board to investigate allegations of officer misconduct, subject to voluntary opt-in by municipalities, be placed on the November 2, 2021 General Election ballot.

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

**SECTION 1.        Ballot Question.**

Pursuant to the Second Class County Charter Law and the Home Rule Charter and Optional Plans Law, the Allegheny County Board of Elections is hereby directed to place the following question on the November 2, 2021 General Election Ballot for consideration and approval by the registered electors of the County:

Shall the Allegheny County Code of Ordinances be amended in order to establish a Countywide independent police review board, vested with the power and duty to investigate allegations of police misconduct, subject to voluntary municipal opt-in to the board's jurisdiction?

**SECTION 2.        Conditional Amendment of the Code.**

If the Board of Elections certifies that the ballot question set forth in Section 1 above has been approved by the registered electors of the County, then the Allegheny County Code of Ordinances shall be amended thirty (30) days following the Board of Elections' certification to add a new Division 9 entitled "Conduct" and the following Chapter 905:

**Chapter 905**  
**Independent Police Review Board**

***Section 905.1. – Short Title.***

This Ordinance shall be referred to as the Allegheny County Independent Police Review Board Ordinance.

***Section 905.2. - Legislative Intent; Purpose.***

The purpose of this Ordinance is to create a mechanism for external independent fact-finding and dispute resolution concerning allegations of misconduct filed by an individual against: (i) Police Officers employed by Allegheny County; and (ii) Police Officers employed by a Municipality in Allegheny County when that Municipality has enacted an ordinance as provided in Section 905.16 below agreeing to become subject to the provisions of this Ordinance. The provisions of this Ordinance shall be liberally construed to accomplish these objectives.

***Section 905.03. - Definitions and Rules of Construction.***

a. Definitions

The following words, terms and phrases, where used or referred to in this Ordinance, shall have the meanings ascribed to them in this section, except in those instances where the content clearly indicates a different meaning:

“Appointing Authority” means the elected officials within County government who select an individual to serve on the Board. Depending on the context, the “Appointing Authority” shall refer either to County Council or the County Chief Executive.

“Board” shall mean the William Russell Robinson Allegheny County Independent Police Review Board established under this Ordinance.

“County” shall mean the County of Allegheny, a home rule county and political subdivision of the Commonwealth of Pennsylvania.

“Clear and Convincing” shall mean such evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.

“Day(s)” shall mean calendar day(s).

“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.

“Interested Party” shall mean the person submitting the complaint of misconduct against a Police Officer, the Police Chief and the Police Officer against whom a complaint alleging misconduct has been filed.

“Misconduct” shall mean the following:

- a. The use of unnecessary and excessive force.
- b. The improper use of police powers to threaten, intimidate, or otherwise mistreat a person, including stops, searches, seizures, and detentions.
- c. A pattern of discourteous conduct toward a member of the public, including rude, offensive or profane gestures or language, slurs or derogatory references to a person's race, national origin, color, religion, gender, creed, age, or disability.
- d. Violation of a material Police Department rule, regulation, or procedure.
- e. Retaliation for filing a complaint alleging misconduct with the Board.

“Municipality” shall mean any unit of local government within the County that has enacted an ordinance under which that unit of local government voluntarily agrees that the Board shall have jurisdiction over allegations of misconduct filed by the public against police officers employed by that unit of local government.

“Ordinance” shall mean this ordinance.

“Police Chief” (or “Chief of Police”) shall mean either the Superintendent of the County Police Department or the person authorized to act in this capacity or the chief of police of a Municipality or the person authorized to act in this capacity.

“Police Officer” shall mean an individual employed on a full or part-time as a police officer within the County Police Department or a Police Department operated by a Municipality.

“Police Department” shall mean either the County Police Department or a Municipality’s police department.

“Substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

“Training” shall mean the training for Board members required under subsection (b) of Section 905.05 of this Ordinance.

b. Rules of Construction

- (1) When used in both the “Definition” subsection a above as well as the body of this Ordinance, the singular includes the plural and the plural includes the singular.
- (2) “Shall” is mandatory and “may” is permissive.
- (3) Words used in the past or present tense include the future.
- (4) Any word not specifically defined shall be construed according to its common usage unless the context or the manifest intent clearly indicates otherwise.

***Section 905.04. - Establishment of Board.***

An independent review board to be known as the William Russell Robinson Allegheny County Independent Police Review Board is hereby created and established to receive and review allegations of misconduct filed by a person against a Police Officer.

***Section 905.05. - Composition; Qualifications; Appointment; Terms; Compensation.***

- a. The Board shall consist of nine (9) members.
- b. Members must be lawful residents of the United States and must have been a resident of the County for at least one (1) year prior to a member’s appointment. All members of the Board must remain residents of the County throughout the member’s term. To the greatest extent possible, the membership of the Board shall reflect the diversity of the County. No Board member shall be an elected official or employee of the County, the U.S. Government, the Commonwealth of Pennsylvania or any municipality. A member must resign if the member becomes a candidate for any elected political office. Prior to performing any functions as a member of the Board, each voting member shall complete Training consisting of, but not limited to following subjects: use of force; stop, search and arrest; traffic enforcement; bias-based policing; internal affairs process; discipline procedures (including the disciplinary provisions of collective bargaining agreements covering County and Municipal Police Departments, and administrative processes, administrative proceedings, and burdens of proof); Police Department rules and regulations applicable to its Department’s Police Officers; and constitutional law. The County, on behalf of the Board, shall at its cost and expense, retain such contractors having knowledge of such subjects to provide the Training.
- c. The members of the Board shall be appointed as follows:
  - (1) Four (4) members of the Board shall be appointed by Council following

nominations received from individual members of County Council. The four (4) members of the Board appointed by Council shall be subject to confirmation by a majority of the "seated members" of Council as that term is defined in the County's Home Rule Charter and Administrative Code.

(2) Four (4) members of the Board shall be appointed by the Allegheny County Chief Executive. The four members of the Board appointed by the Allegheny County Chief Executive shall not be subject to confirmation by County Council.

(3) One (1) member shall be appointed jointly by County Council and the Allegheny County Chief Executive. The one (1) member of the Board appointed jointly by County Council and the Allegheny County Chief Executive shall be subject to confirmation by a majority of the "seated members" of Council as that term is defined in the County's Home Rule Charter and Administrative Code.

d. The members of the Board who are first appointed shall serve the following terms of office: The four (4) members selected by Council shall serve terms of one, two, three and four years as shall be designated by Council and the four (4) members selected by the County Chief Executive shall serve terms of one, two, three and four years as shall be designated by the County Chief Executive. The one (1) member selected jointly by County Council and the County Chief Executive shall serve a term of four years. The term of all persons who are the initial appointees to the Board shall be deemed to commence on January 1, 2022. No member shall remain in office once the member's term has expired. Following the appointment of the initial members of the Board, all other appointments to the Board shall be for a term of four (4) years and shall follow the process and procedure in subsection (c). No Board member may serve more than two consecutive four year terms; provided however, that the initial appointment of a member for a term less than three years shall not be counted as one term for purposes of limiting members to serving only two consecutive four year terms.

e. A vacancy shall occur on the happening of any of the following events before the expiration of a member's term:

(1) The member's death.

(2) The member's resignation.

(3) The member's ceasing to be a resident of the County.

(4) The member's unexcused absence from three (3) consecutive meetings of the Board.

(5) The Member's failure to satisfactorily complete the Training required under subsection (b) of Section 905.05 of this Ordinance within six (6) months of the beginning of the member's term or of the member's appointment to fill a vacancy.

When a vacancy occurs, the appointing authority shall be notified of the vacancy. The appointing authority shall act to fill any vacancy on the Board shall within forty-five days of the

occurrence of the vacancy. Vacancies shall be filled in the same manner as the position was originally filled in accordance with subsection (c) above. All vacancies shall be filled for the balance of the remainder of the unexpired term. Appointment to fill a vacancy to fill an unexpired term less than three years shall not constitute appointment for one term for purposes of subsection (d) above.

f. Members of the Board shall serve at the pleasure of the respective Appointing Authority. A member of the Board may be removed from the Board at any time by request of the County Chief Executive when the County Chief Executive is the Appointing Authority for that member. A member of the Board may be removed from the Board by a majority vote of the "seated members" of Council as that term is defined in the County's Home Rule Charter and Administrative Code when County Council is the Appointing Authority of that member.

g. Members shall receive no compensation for their service. However, members shall be reimbursed for necessary expenses incurred in the performance of their official duties.

***Section 905.06. - Organization and Operation of the Board.***

a. The initial members of the Board shall meet for the purpose of organizing itself upon taking office and shall select from among themselves a chair, a vice-chair and such other officers as the Board shall deem to be necessary. Thereafter, the Board shall organize itself on an annual basis.

b. The Board shall meet at a minimum on a quarterly basis to conduct business. All Board shall give public notice of the time and place of meetings. Meetings shall be open to the public in accordance with the requirements of the Pennsylvania "Sunshine Law."

c. The Board may adopt by-laws and rules by majority vote to govern procedures relating to its operation and the conduct of its meetings. The latest edition of Robert's Rules of Order Newly Revised shall govern the proceedings in all cases not provided for.

d. Five (5) members of the Board shall constitute a quorum for its meetings. Five (5) votes shall be required to carry any motion or action of the Board.

e. The Board shall keep written minutes of its meetings, a copy of which shall be filed with the County Council Clerk and posted on the County's website.

***Section 905.07. - Staff, Legal Counsel and Physical Facilities.***

a. The County, on behalf of the Board, may retain the services of such agents and contractors, permanent or temporary, as may be requested from time-to-time by the Board to serve as staff to assist the Board in the performance of Board's responsibilities under this Ordinance. The County shall determine the qualifications and necessity of such agents and contractors.

b. The County, on behalf of the Board, also shall provide the services of a solicitor for the Board to be selected by the Board and paid by the County. The County shall have the authority to place a reasonable limit on the amount allowed each year for the services of the Board solicitor.

c. The County shall provide the Board with appropriately located office space and public hearing facilities together with necessary office supplies, equipment and furnishings.

***Section 905.08. - Member Responsibilities.***

Board members shall:

a. Maintain absolute confidentiality with respect to confidential or privileged information they receive and maintain a thorough knowledge of the legal protection accorded to police records, including the penalties imposed for violations.

b. Obey all laws respecting individuals' rights of privacy and confidentiality of records.

c. Not remove any Police Department personnel or other confidential files, records or tapes from Board offices.

d. Excuse themselves from participating in the review of any complaint alleging misconduct in which the member has a personal, professional or financial conflict of interest.

e. Conduct themselves at all times in a manner that will maintain public confidence in the fairness, impartiality and integrity of the Board and refrain from making any prejudicial comments with respect to the Board and any Interested Party.

f. Participate in Training in accordance with the requirements in subsection (b) of Section 905.05 of this Ordinance.

***Section 905.09. - Duties of the Board.***

The Board shall have the authority to:

a. Receive and review allegations of misconduct filed by a person against (i) Police Officers employed by Allegheny County; and (ii) Police Officers employed by a Municipality in Allegheny County when the Municipality has by ordinance decided to become subject to the provisions of this Ordinance as provided in Section 905.16 below.

b. Prepare reports, including the Chiefs of Police of the County and Municipal Police Departments on the results of any investigations conducted by the Board regarding a complaint of misconduct filed against a Police Officer, including recommendations relating to the complaint, including the facts relied on in making such recommendations, and recommendations relating to any patterns of conduct regarding a Police Officer against whom a

complaint of alleged misconduct has been filed. The Board shall have no power or authority whatsoever to determine criminal guilt or innocence of a Police Officer against whom a complaint of misconduct has been filed.

c. Prepare an annual report to the County Council and the County Chief Executive and to the officials of the Municipality summarizing the activities and recommendations of the Board including the tracking and identification of trends in respect to all complaints received and handled during the reporting period.

d. Notify in writing any person having filed a complaint alleging misconduct with the Board of the disposition of his or her complaint. The County Council and County Chief Executive and the officials of the Municipality also shall receive appropriate notification of the disposition of all complaints.

***Section 905.10. - Initial Complaint Procedures.***

a. Filing of Complaint

(1) A person desiring to file a complaint alleging misconduct against a Police Officer may do so by requesting a complaint form from the Board in person, in writing or electronically via the County's website. Complaints shall be lodged using the complaint form approved by the Board.

(2) The Board shall receive written complaints from any person whatsoever without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant.

(3) All complaints shall be in writing and the truth thereof shall be verified by the person submitting the complaint in accordance with 18 Pa. CSA § 4904.

(4) The Board shall have jurisdiction in respect to all complaints arising out of incidents of alleged misconduct occurring on or after January 1, 2022.

(5) The Board shall not have jurisdiction to take any action in respect to any complaint received more than 180 days after the date of the alleged misconduct giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the 180 day period for filing the complaint has expired.

b. Procedures Following Receipt of Complaint

(1) After a verified complaint is filed either in writing or electronically, the Board will notify the person submitting the complaint within five (5) days of receiving the complaint that the Board is in receipt of the complaint. The Board also shall notify the Chief of Police and the Police Officer against whom a complaint alleging misconduct



has been filed of the Board's receipt of the complaint.

(2) If the person submitting the complaint agrees, the Board Chair will arrange a meeting with the person submitting the complaint, the Police Chief, the Police Officer against whom a complaint alleging misconduct has been filed and an assigned member of the Board for the purposes of reaching an informal resolution of the complaint. If the complaint is informally resolved during this meeting, the matter will be closed. If not, the complaint will be processed in compliance with the procedure described in Sections 905.11 – 905.13 below.

(3) Notwithstanding the above, if criminal proceedings have been filed in a court of competent jurisdiction against any Police Officer who is the subject of a complaint filed with the Board alleging misconduct against that Police Officer, then the Board shall defer all action on the complaint until the criminal proceedings have been withdrawn or received final adjudication by a court of competent jurisdiction, 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 any procedures relating to the complaint under this Ordinance. 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.

(4) If civil proceedings have been filed in a court of competent jurisdiction against any Police Officer or a Police Department that is based upon same allegations that are the subject of a complaint filed with the Board alleging misconduct against that Police Officer, the Board may, at its discretion and upon request by any Interested Party, defer all action until such time as the Board elects to resume such action(s).

***Section 905.11. - Preliminary Inquiry.***

a. If a complaint cannot be informally resolved as provided in subsection b of Section 905.10 above, then the Board shall conduct a preliminary inquiry into the complaint.

b. The Board shall complete its preliminary inquiry within thirty (30) days of its initiation; provided however, that the Board may in its discretion extend its preliminary inquiry for up to an additional thirty (30) days upon written notice to all Interested Parties. Under no circumstances, however, may the Board complete its preliminary inquiry without allowing the Interested Parties at least two opportunities scheduled at reasonable times, dates and locations to present information relevant to the inquiry to the Board.

c. If the preliminary inquiry fails to establish that any misconduct occurred, the Board will terminate its inquiry and issue the appropriate written notice to the Interested Parties that the complaint has been dismissed and the matter closed.

d. If the Board determines that the preliminary inquiry has discovered evidence of misconduct, then the Board shall proceed to an investigation in accordance with Section 905.12.

***Section 905.12. - Formal Investigation.***

a. If the preliminary inquiry has established evidence of misconduct and the complaint cannot be informally resolved as provided in subsection b of Section 905.10 above, then Board shall conduct a formal investigation into the misconduct alleged in the complaint.

b. The Board shall complete its formal investigation within thirty (30) days of its initiation; provided however, that the Board may in its discretion extend its formal investigation for up to an additional thirty (30) days upon written notice to all Interested Parties. Under no circumstances shall any formal investigation be conducted without providing the Interested Parties with at least two opportunities scheduled at reasonable times, dates and locations to present information relevant to the formal investigation to the Board.

c. If the formal investigation fails to establish by substantial evidence that any misconduct occurred, the Board will terminate its inquiry and issue the appropriate written notice to the Interested Parties that the complaint has been dismissed and the matter closed.

d. If the Board determines that substantial evidence exists that misconduct has occurred, it shall notify the Interested Parties of its intention to convene a hearing on the complaint.

***Section 905.13. - Fact-Finding Hearing.***

a. If a complaint is not satisfactorily resolved as part of a Preliminary Inquiry or Formal Investigation and if the complaint cannot be informally resolved as provided in subsection b of Section 905.10 above, the Board shall hold a fact-finding hearing on the complaint.

b. The Board shall invite the Police Officer against whom the complaint has been filed to attend the fact-finding hearing. The Police Officer's presence neither is required for the Board to hold the fact-finding hearing nor to render a decision and to make a recommendation(s) regarding the complaint.

c. A. Board fact-finding hearings shall be informal, and strict rules of evidence shall not apply. However, fundamental due process shall be observed and shall govern the fact-finding hearings and pertinent information shall be considered for the purposes of providing substantial justice for all parties. Testimony under oath shall be received from all persons who appear and who purport to have information that is material to the complaint. A stenographic record shall be kept and shall be made available, under payment of costs, to any person requesting the same. All hearings shall be open to the public, except when, in the opinion of the Board or as required by law, executive sessions are required or permitted.

d. At the fact-finding hearing, the person alleging the misconduct and the accused Police Officer may be represented by counsel of his or her own choosing at his or her own cost.

e. The standard of proof used by the Board for making fact-finding determinations

shall be clear and convincing evidence.

***Section 905.14. - Final Disposition; Recommendations.***

a. Upon completion of the fact-finding hearing, the Board shall, by majority vote, make one of the following findings on the complaint:

(1) Sustained: Where the Board determines that there are sufficient facts to prove the allegations of misconduct made in the complaint by clear and convincing evidence.

(2) Not Sustained: Where the Board determines that there are insufficient facts to prove the allegations of misconduct made in the complaint by clear and convincing evidence.

(3) Exonerated: Where the Board determines that the facts alleging misconduct did in fact occur, but the actions of the police officer were legal, justified, proper, and in conformance with County or Municipal Police Department policy and procedure.

(4) Unfounded: Where the Board determines that the act or acts complained of as misconduct did not occur or were misconstrued.

(5) Withdrawn: Where the complaint was withdrawn or settled prior to final disposition.

b. The Board shall have the power to recommend that the County Chief Executive, the Municipality, the Police Chiefs and Police Departments take remedial action(s) only when a finding of "Sustained" is made.

c. 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.

d. Notwithstanding any recommendation(s) made by the Board pursuant to this Section, the relevant County officials and the officials of the Municipality and their Police Departments shall retain full and final authority to set disciplinary policies or take other lawful actions they deem appropriate relative to Police Officers within their supervision. Nothing in this section shall be construed to limit the rights of any Police Officer 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 or Police Department policy or regulation.

e. The provisions of this Section shall not be construed to prevent or hinder the investigation or prosecution of any person in the Police Departments of the County or of the

Municipality for violations of law in any court of competent jurisdiction by a federal or state grand jury, the United States Attorney for the Western District of Pennsylvania, the Allegheny County District Attorney, or other authorized officer, agency, or body.

***Section 905.15. - Written Response to Board Recommendations.***

Within thirty (30) days of submission of a recommendation for action by the Board to any Police Department pursuant to Section 905.14, the Police Department 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 Police Department 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.

***Section 905.16. - Voluntary Municipality Opt-In to Board Jurisdiction Option.***

a. Any municipality within Allegheny County voluntarily may agree to submit its Police Department to the Allegheny County Police Review Board's jurisdiction over allegations of misconduct filed by the public against police officers employed by that municipality upon the passage of an ordinance under the requirements of the Pennsylvania Intergovernmental Cooperation Act and execution of an intergovernmental cooperation agreement with the County signed by the County Manager approving the municipality's submission to the jurisdiction of the Board. Upon the enactment of such ordinance and accompanying execution of an intergovernmental cooperation agreement, the municipality, its Police Department and its Police Officers shall be bound by the terms of this Ordinance in exactly the same fashion as the County Police Department and its Police Officers.

b. A municipality that has voluntarily agreed to submit its Police Department to the Allegheny County Police Review Board's jurisdiction over allegations of misconduct filed by the public against police officers employed by that municipality may withdraw from the Board's jurisdiction and the intergovernmental cooperation agreement at any time by the enactment of a repealing ordinance, provided however, that withdrawal in such fashion shall not alter the conduct of any investigation in progress prior to the effective date of withdrawal from the Board's jurisdiction.

***Section 905.17. - Records.***

Any personnel records, complaints alleging misconduct against County or municipal police officer, and information obtained from these records, which are in the possession of the Board or its staff, shall be confidential and shall not be disclosed to any member of the public, except in accordance with applicable law.

***Section 905.18. - Cooperation with Board; Power to Seek Court Intervention.***

a. Subject to applicable laws, the County and Municipality Police Departments shall cooperate fully with Preliminary Inquiries undertaken by the Board pursuant to Section 905.11,

Formal Investigations undertaken by the Board pursuant to Section 905.12 and Formal Fact-Finding Hearing conducted by the Board pursuant to Section 905.13.

b. Subject to applicable laws, the County and Municipality Police Departments shall provide to the Board upon reasonable request such records, personnel, witnesses and other materials that the Board determines are necessary to conduct a Preliminary Inquiry, a Formal Investigation or a Formal Fact-Finding Hearing. Upon a finding by the Board that such necessary records, personnel, witnesses and other materials have not been provided, the Board may petition the Court of Common Pleas for an order compelling the production of such records, personnel, witnesses and other materials.

***Section 905.19. - No Other Rights or Benefits Conferred.***

Nothing in this Ordinance shall be construed to impair or otherwise affect the authority granted by law to any County or municipal executive department, agency, or the head thereof. This Ordinance is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the County or any Municipality, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

***SECTION 3. Effective Date.***

The provisions of this Ordinance shall become effective immediately upon final approval.

***SECTION 4. Severability. 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 5. Repealer. 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 MEMBER FUTULES***

***CO-SPONSOR:***

*Enacted in Council, this \_\_\_\_\_ day of \_\_\_\_\_, 2021*

*Council Agenda No. \_\_\_\_\_*

\_\_\_\_\_  
**Patrick Catena**  
**President of Council**

*Attest:* \_\_\_\_\_

**Jared E. Barker**  
**Chief Clerk of Council**

*Chief Executive Office \_\_\_\_\_, 2021*

*Approved:* \_\_\_\_\_

**Rich Fitzgerald**  
**Chief Executive**

*Attest:* \_\_\_\_\_

**Sonya Dietz**  
**Executive's Secretary**