ORDINANCE G-6851

AN ORDINANCE ESTABLISHING THE GOVERNING LANGUAGE FOR OFFICE OF ACCOUNTABILITY AND TRANSPARENCY BY CREATING A NEW CHAPTER 20 OF THE PHOENIX CITY CODE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the mission of the Office of Accountability and Transparency (the "OAT") is to provide for independent review of the Phoenix Police Department; and,

WHEREAS, the OAT is hereby created as a new City administrative office under the City Manager; and,

WHEREAS, the City is responsive to community requests for registration of a complaint against a sworn member of the Department; and,

WHEREAS, the OAT will ensure that a complaint is fairly and objectively resolved either through mutually acceptable mediation or as a result of a thorough and fair investigation. The OAT shall meet these objectives by monitoring or investigating use of force, in custody deaths, and other matters of public interest, and by making suggestions regarding discipline; and,

WHEREAS, the OAT shall research, analyze, and share information with the Police Chief, City Manager, and community designed to improve the policies, practices, procedures, training, and community engagement activities of the Phoenix Police Department; and,

WHEREAS, the OAT shall prepare and provide transparent reports to the public to help educate and inform the community; and,

WHEREAS, the OAT will create a team of competent, dedicated, and independent staff to function as a conduit that shall encourage an environment where the broader community can have increased accountability and transparency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX AS FOLLOWS:

SECTION 1. CHAPTER 20, OFFICE OF ACCOUNTABILITY AND TRANSPARENCY, IS ADDED AS FOLLOWS:

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Chapter 20. OFFICE OF ACCOUNTABILITY AND TRANSPARENCY

Article I. Creation of Civilian Review

Sec. 20-1. Office of Accountability and Transparency Created.

A. The Office of Accountability and Transparency (the "OAT" or "Director" - see definitions) for the City of Phoenix shall consist of a full-time Director with appropriate professional and support staff.

B. The Director shall have such staff and budget as the City Council may prescribe. The Director shall appoint all other staff of the OAT. The appropriations to pay for the expenses of the OAT during each fiscal year shall be determined by the City Council as part of the annual City budget process.

C. The OAT shall take community complaints or commendations, establish procedures for receiving anonymous complaints, conduct outreach with the community, support services to impacted community members, monitor Department investigations or conduct investigations; make recommendations to the Police Chief regarding administrative action, including possible discipline for the Department; make recommendations regarding policy issues; assist with mediation to resolve disputes; administer a youth outreach program; and address other issues of concern to the community. The scope of all OAT actions must relate to the Department, as outlined in this Chapter.

D. The OAT shall establish standards of professional conduct and a comprehensive training program for its staff to monitor or investigate allegations or inquiries received against the Department.

Sec. 20-2. Reserved.

Sec. 20-3. Reserved.

Article II. Office of Accountability and Transparency

Sec. 20-4. Appointment, Qualification, and Removal of Director.

A. The City Manager shall direct the recruitment for the Director with the assistance of Human Resources or other entity designated by the City Manager.

B. The Director shall serve at the pleasure of the City Manager. The City Manager may take any personnel action, including administrative leave or termination, if determined in the best interests of the City, in the City Manager's sole discretion.

Sec. 20-5. OAT Staff

A. The Director and all staff shall be committed to implementing the provisions of this chapter in an honest, independent and impartial fashion and to upholding public confidence in the integrity of the OAT.

B. The Director shall hire OAT staff who shall work under the Director's supervision.

C. OAT staff are employees of the City of Phoenix and must follow the City personnel rules.

D. Neither the Director nor any employees in the OAT's office, nor their immediate family members, shall have formerly been employees of any law enforcement agency.

E. The Director will hire one or more attorneys as staff to advise and represent the OAT with respect to its work, provided:
   1. any such attorney is admitted to the bar of the State of Arizona; and
   2. any such attorney must not provide legal advice or representation to any department or function of the City of Phoenix other than the OAT; and
   3. all financial, personnel and administrative functions of any such attorney shall be under the jurisdiction of the City Manager or Director and shall not be under the jurisdiction of the City Attorney.

F. To retain outside legal counsel to advise and represent the OAT with respect to its work, provided:
   1. counsel is retained pursuant to the standard terms of engagement then used by the City Attorney, including any limitations on fees or costs; and
   2. the costs of such representation are paid from the budget of the OAT and not from the budget of the City Attorney; and
   3. the Director provides the City Attorney with notice of the engagement, including the firm selected and a copy of the engagement agreement; and
   4. in no situation may the OAT use staff counsel or outside counsel in litigation by the Director or OAT against the City.

G. Nothing in the preceding provisions shall be construed to alter the authority of the City Council or the City Attorney with regard to the defense of claims against the City or individual City defendants, the settlement of monetary or other claims against the City or individual City defendants, or any other powers or duties of the City Attorney.

Sec. 20-6. Mandatory Oversight by the OAT

A. The OAT shall monitor or investigate incidents set forth below when the investigation is conducted by the Department. The OAT will not participate in criminal investigations or investigate matters while a criminal investigation is pending.

B. The OAT shall monitor Department investigations or investigate:

   1. any shooting involving uniformed personnel, whether duty related or not;

   2. any in-custody death;

3. Any duty-related incident during which, or as a result of which, anyone dies or suffers serious bodily injury as that term is defined in A.R.S. § 13-105(39), as it may be amended from time to time; and

4. The OAT shall also monitor or participate in Department investigations concerning the following incidents. However, if no criminal charges are filed subsequent to an investigation, or such criminal charges are dismissed, the OAT shall have the discretion to monitor or investigate the following incidents:

    a. any incident, whether or not duty-related, in which police department uniformed personnel is under investigation for, or charged with, any crime set forth in A.R.S. tit. 13, Chapters 11, 12, 13 and 14 (offenses against the person, which includes homicide, assault, kidnapping, and unlawful sexual behavior) as they may be amended from time to time; or

    b. any incident, whether or not duty-related, in which police department uniformed personnel is under investigation for, or charged by, any jurisdiction with a misdemeanor or local law violation in which a use of force (defined as assaulting, beating, striking, fighting, or inflicting violence on a person) or threatened use of force is an element of the offense.

C. In addition, the OAT shall monitor investigations or investigate possible misconduct by uniformed personnel when requested to do so by the City Manager. The Board or City Manager shall advise the OAT of the reasons why the Board or the City Manager believes the OAT should monitor or investigate.

D. The OAT may also make any recommendations to the City Manager or Police Chief regarding the sufficiency of any investigation, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any.

E. The Department shall as soon as practicable, notify the OAT upon becoming aware of:

1. an incident described in subsection B, or

2. an incident, whether or not duty-related, in which a police department uniformed personnel is under investigation for, or charged by, a jurisdiction with a misdemeanor or felony.

F. OAT shall immediately notify the following parties regarding whether it will monitor, participate in an investigation, or investigate an incident under this section:

1. the Board,

2. the Police Chief, and

3. the City Manager.

Sec. 20-7. Discretionary Oversight by the OAT

A. The OAT shall have the discretion to monitor any Department investigation or investigate any civilian or employee complaint.

B. The OAT shall also have the discretion to monitor or participate in any internal investigation by the Department which the OAT, the City Manager or the Board recommends as in the City's best interest for the OAT to be involved.

C. The OAT shall have the discretion to monitor or participate in any Department investigation of any incident, whether or not duty-related, in which police department uniformed personnel is accused of a crime or policy violation.

D. Upon exercising discretion to monitor or participate in an investigation or investigate anything authorized in subsection A, B, or C, the OAT shall immediately notify the following parties of the investigation:

   1. the Board,
   2. the Police Chief, and
   3. the City Manager.

Sec. 20-8. Public Reporting by the OAT

A. No later than March 15 of each year, the OAT shall submit an annual public report to the City Manager and the Board:

   1. setting forth the work of the OAT during the prior calendar year;
   2. identifying trends regarding complaints, investigations, and discipline of police including, but without identifying specific persons:
      a. information regarding uniformed personnel who were the subject of multiple complaints,
      b. complainants who filed multiple complaints, and
      c. issues that were raised by multiple complaints; and
      d. making recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any
   3. recommendations for changes to policies, rules, and training, and
   4. policy rules or training revisions implemented by the Department.

B. The report shall present information in statistical and summary form, without identifying specific persons, except to the extent that incidents involving specific persons have otherwise been made public by the City of Phoenix.

C. In addition to the annual report, the OAT shall publish a quarterly status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations and determinations as to whether department rules and policies have been violated.

D. Based upon an analysis of reports and other information available to the OAT, the OAT shall make timely recommendations to the Police Chief and the City Manager.

E. The OAT has the discretion to publish additional public reports throughout the year about matters within the duties of the OAT.

Sec.20-9. Confidentiality

A. The OAT, its staff, the Board, and all consultants and experts hired by the OAT shall treat all documents and information regarding specific investigations or officers as confidential except to the extent needed to carry out their duties.

B. The Director shall not discuss with any person or group, including the members of the Board, confidential employee information not already public.

C. The Director, the Board, and all persons who participate in the Police's investigative and disciplinary processes are part of the City's deliberative process regarding investigative and disciplinary procedures for personnel. Furthermore, all deliberations and recommendations learned by any of those persons or groups during the exercise of their duties shall be protected from disclosure to the extent allowable by law.

Sec. 20-10. Internal Investigations

A. The Department shall cooperate with the OAT in monitoring internal investigations or investigating, including being present to monitor or participate in interviews of witnesses and persons under internal investigation. The Department and OAT shall establish departmental policies regarding that cooperation. The policies shall ensure that the Department provides the OAT with reasonable notice of and opportunity to attend interviews, the opportunity to make recommendations regarding investigations, and reasonable timeframes to complete the steps in the internal investigatory process.

B. For any investigation that it monitors, participates, or it conducts, the OAT shall review the investigation to ensure that it is thorough and complete.

C. If the OAT cannot certify that a Department investigation is thorough and complete, the OAT may recommend that the Department conduct additional investigation. The OAT must be specific in outlining issues it has with the investigation.

D. If the Department does not complete the additional investigation to the satisfaction of the OAT, the OAT may write a separate recommendation to the Police Chief and City Manager.

Sec. 20-11. Role of the OAT in the Disciplinary Process.

A. The Department shall cooperate with the OAT in monitoring the disciplinary process. The Department shall establish departmental policies regarding that cooperation. The policies shall ensure that the Department provide the OAT with reasonable notice and opportunity to:

1. Receive notice and opportunity to comment prior to entering agreements, whether written or oral, resulting in the closure of internal investigations or the disciplinary process;
2. Make recommendations regarding determinations as to whether department rules or policies have been violated;
3. Make recommendations regarding the appropriateness of disciplinary sanctions, if any;
4. Furthermore, the policies shall provide for reasonable time frames to complete the steps in the disciplinary process consistent with Arizona law.

Sec. 20-12. OAT Access to Records and Other Items

A. The Department and all City employees shall fully cooperate with the OAT by providing the OAT, within a reasonable amount of time, complete access to records, information, documents, files, reports, evidence, databases, and all other items, whether in paper, electronic, or other form, that the OAT requests in order to perform its duties set forth in the provisions of this Chapter, but not including documents subject to a claim of privilege or confidential under applicable law.

B. If, in response to a request from the OAT, records, and information cannot be produced at all or produced within a reasonable amount of time, a written explanation, sufficiently detailed for an understanding of why the records or documents cannot be produced, shall be promptly provided. The OAT shall not be required to pay for copies of the materials set forth in this section, including copies of documents previously supplied by the departments, provided that the OAT may not use those departments as a printing service to make multiple copies of individual documents.

C. The Department shall provide the OAT with an opportunity to participate in any committee or working groups involving external stakeholders convened to draft or revise policies or practices concerning matters within the OAT's authority.

D. The Department shall provide the OAT with reasonable notice and an opportunity to make recommendations before implementing an existing or adopting a new substantive policy or practice concerning matters within the OAT's authority. When a policy or practice necessitates an immediate revision or implementation due to a change in the law, the OAT will be notified as soon as practicable about the change.

E. If the OAT receives or is in possession of evidence or vital information pertaining to a case under investigation, it must give or communicate that evidence or information to the Department promptly. Evidence must be in the exact same condition that it was received.

Sec. 20-13. Response to OAT Recommendations.

A. The OAT shall make recommendations to the Department about matters within the OAT's authority. If requested by the OAT in writing, the Department shall respond in writing within thirty days and shall specify:

1. Either agreement with recommendations or specific reasons for disagreement with recommendations;
2. Plans for implementing solutions to issues identified; and
3. A timetable to complete such activities.

B. Recommendations made by the OAT and any responses shall be open to inspection except as otherwise not subject to disclosure under state, federal, or local law or regulation.

C. The City Manager may act as an arbiter between the OAT and Department.

Article III. RESERVED

Sec. 20-14 to Sec. 20-24 – RESERVED.

Article IV. Miscellaneous

Sec. 20-25. Definitions.

A. *City Manager* means the City of Phoenix City Manager or designee.

B. *Director* means the head of the Office of Accountability and Transparency, or designee.

C. *OAT* means the Office of Accountability and Transparency and its staff.

D. *Police Chief* means the Chief of the City of Phoenix Police Department, or designee

E. *Department* means the City of Phoenix Police Department and any police department uniformed personnel.

Sec. 20-26. Retaliation prohibited

A. No person shall retaliate against, punish, intimidate, discourage, threaten or penalize any other person for reporting misconduct, making a misconduct complaint, conducting an investigation, complaining to officials, providing information, testimony or documents in an investigation or cooperating with or assisting the OAT in the performance of its powers and duties as set forth in this chapter.

B. Any employee who violates this provision shall be subject to appropriate disciplinary action, up to and including termination from employment.

C. The remedies specified herein are cumulative and the City Manager, or the City Attorney, may proceed under these or any other remedies authorized by law. In addition to any other authorized remedies, a person who violates any provision of

this section shall be guilty of a misdemeanor. Each day of violation may be a separate offense.

D. The OAT shall develop specialized processes to intake and investigate complaints made by officers within the Department that prefer to remain anonymous. The OAT shall recommend to the City Manager processes to protect potential whistleblowers or informers.

SECTION 2. The provisions of this Ordinance shall be effective thirty days from approval by the City Council.

PASSED by the City Council of the City of Phoenix this 19th day of May 2021.

MAYOR

ATTEST:

Denise Archibald, City Clerk

APPROVED AS TO FORM:

Cris Meyer, City Attorney

REVIEWED BY:

Ed Zuercher, City Manager

JMK: dh: 2258091 (LF21-1165) 5-19-21