



Council Report

To: The Honorable Mayor and City Council

From: Jeff P. H. Cazeau, City Attorney

Date: July 14, 2020

RE **AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI, ENTITLED “ADMINISTRATION”, ARTICLE III, ENTITLED “BOARDS, COMMITTEES, COMMISSIONS”, TO ESTABLISH THE CITIZENS’ INVESTIGATIVE BOARD; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND FOR AN EFFECTIVE DATE.**

The accompanying Ordinance was prepared and placed on the agenda at the request of Vice-Mayor Alix Desulme.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI, ENTITLED “ADMINISTRATION”, ARTICLE III, ENTITLED “BOARDS, COMMITTEES, COMMISSIONS”, TO ESTABLISH THE CITIZENS’ INVESTIGATIVE BOARD; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Council of the City of North Miami (“City”) believe public safety is a top priority for the City in order to attract growth, encourage economic development, and maintain a high quality of life for all citizens and residents; and,

WHEREAS, the City of North Miami and its residents depend for their peace and protection upon the services of a professional municipal police department; and

WHEREAS, it is the unique power and privilege of police officers acting within the scope and course of their employment in the police department to use force, only when necessary; and

WHEREAS, the various police powers granted to local police officers to are extensive and are securely anchored in state and federal law; and

WHEREAS, the City of North Miami Police Department’s mission includes building community trust through transparency and respecting the sanctity of life; and

WHEREAS, that for the Mayor and City Council it is important to have a Citizens’ Investigative Board that will be diverse and fully representative of the North Miami Community with certain autonomous powers, clearly defined responsibilities and relationship to the officer review process; and,

WHEREAS, the Mayor and City Council of the City of North Miami have determined that the proposed amendments to Chapter 2, Article III of the Code of Ordinances is in the best interest of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. Amendment of Chapter 2, Article III, Division 1. Chapter 2 of the City Code of Ordinances, entitled “Administration”, Article III, entitled “Boards, Committees, Commissions,” is amended as follows:

CITY OF NORTH MIAMI CODE OF ORDINANCES

CHAPTER 2. ADMINISTRATION

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ARTICLE III. BOARDS, COMMITTEES, COMMISSIONS

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DIVISION 12. CITIZENS’ INVESTIGATIVE BOARD

Sec. 2-259. Legislative Intent; purpose.

The purpose of this division is to create a mechanism for external community fact-finding and dispute resolution. It is the intent of the Mayor and City Council that the impartial review panel created by this article conduct independent reviews and hold public hearings concerning complaints or grievances made against sworn officers of the North Miami Police Department. The provisions of this article shall be liberally construed to accomplish these legislative objectives.

Sec. 2-260. Creation of the Citizens’ Investigative Board.

The Citizens’ Investigative Board ("CIB") is hereby created and established to investigate and conduct hearings on matters occurring subsequent to the creation of the CIB. The CIB shall be operated on annual budget not exceeding 1.5% of the police department budget, as established by the Mayor and City Council. Budget allocations shall be designated for personnel, services, equipment, supplies, and facilities to ensure its ability to maintain its independence and perform its mandated functions. The purpose, powers and duties of the CIB are to:

- (1) Act as independent civilian oversight of the sworn officers of the city's police department with the authority to monitor and review civilian complaints of police misconduct by police officers empowered to act with municipal police powers in the City of North Miami.
- (2) Conduct fair and timely independent investigations, dispute resolution proceedings, public hearings and fact-findings concerning complaints of behavior by law enforcement officers, filed by any member of the public or of the CIB itself.
- (3) Conduct fair and timely evaluations, public hearings and fact-findings concerning reviews of law enforcement policies, procedures, practices and patterns of behavior.

- (4) Make written recommendations requests, and reports to the Mayor and City Council in connection with the CIB investigations, reviews and evaluations.

Sec. 2-261. Composition; Appointment; Qualifications; Terms.

- (1) Composition. Persons appointed to the CIB ("members") are volunteers and shall receive no compensation. However, members shall be reimbursed for necessary expenses incurred in the performance of their official duties as shall be determined and approved by the Mayor and City Council. The CIB shall be composed of seven (7) members. To the extent possible, the membership of the Board shall reflect the racial, ethnic, and cultural diversity of the City of North Miami.
- (2) Appointment. Members shall be selected and appointed from a pool of nominees as follows: Each City Councilmember shall appoint one (1) member, one (1) member to be appointed by the Mayor and Council at-large, and one (1) member appointed by the Chief of Police.
- (3) Nominating Committee. The initial members of the CIB shall be comprised of members appointed by a nominating committee. The CIB nominating committee shall be composed of five (5) members appointed by each member of the City Council. After the nominating committee is empaneled, the City Clerk shall advertise the open seats through public notices, which may include, but not be limited to social media, print media, and on the City's website and provide applications for same. After considering all applicants, the nominating committee shall provide each City Councilmember with the names of at least two (2) applicants from his or her District. The District Councilmember shall select his or her appointment to the CIB from the applicants submitted by the nominating committee. In the event the nominating committee does not receive applications from at least two (2) qualified candidates or the candidates do not meet the District Councilmember's minimum expectations, the nominating committee shall re-advertise the open seats and repeat the process until the seat is filled. For vacancies occurring after the appointment of the initial panel, the City Clerk shall be responsible for compiling a list of nominees eligible for appointment by the respective district councilmember or the City Council.
- (4) Qualifications. All members of the CIB shall be qualified electors of the City of North Miami and possesses a reputation for civic pride, integrity, responsibility and have demonstrated an active interest in public affairs and service. Members should have diverse professional backgrounds. However, consideration should be given to appointing a retired law enforcement officer and retired member of the judiciary, judge or magistrate, and retired or active professionals in the following fields: (1) human resources; (2) faith-based; (3) social justice; and (4) civil rights law. All members of the CIB shall have good reputations for integrity and community service and shall have no record of a felony conviction or any crime involving moral turpitude. No appointee to the CIB, nor any

member of the appointee's immediate family shall be currently employed by the city nor be a sworn former employee of the city's police department. No person who is currently, or has been previously, a party or party's legal representative in litigation against the city may serve on the CIB.

- (5) Training. All members of the CIB, except the appointee of the police chief, shall also commit to complete approved training through NACOLE (National Association of Citizens' Oversight of Law Enforcement) or equivalent programs.
- (6) Terms of office. The term of office for those members appointed by the individual city council members shall be coterminous with the appointing elected official's term of office. Members shall serve at the pleasure of the appointing councilmember. The terms of those board members appointed by the city council as a whole and the police chief shall be coterminous with the mayor's term of office.
- (7) The CIB members shall annually elect a chairperson and other officers it deems necessary from its voting membership. The member appointed by the police chief shall not be eligible to serve as Chairperson.

Sec. 2-262. Meetings.

- (1) The CIB shall meet at a minimum on a quarterly basis.
- (2) All meetings of the CIB shall be open to the public in accordance with the requirements of the Government-in-the-Sunshine Law.
- (3) The actions of the CIB shall not conflict with the provisions of F.S. §§ 112.532 and 112.533, known as the police officer's Bill of Rights or any other rights afforded pursuant to Florida law or collective bargaining agreements.
- (4) The CIB may adopt rules by majority vote to govern procedure 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.

Sec. 2-263. Executive Director, staff, and physical facilities.

- (1) Executive Director. The CIB shall be under the supervision and direction of a full-time Executive Director, who shall have an educational background or professional work experience in fields including, but not limited to social work, social justice, and criminal justice. The Executive Director's salary and benefits shall be consistent with established Personnel Department policies and salary ranges. The Executive Director shall be exempt from the classified service and shall be selected utilizing an open competitive selection process.
- (2) Staff. The Executive Director may hire, terminate, and administer the necessary staff, subject to budgetary allocation by the City Council. At a minimum, subject to budgetary allocation by the City Council, staff shall consist of a minimum of two (2) employees including the Executive Director.

(3) Legal counsel. The CIB shall be represented by an independent legal counsel selected by the City Attorney and confirmed by the City Council. (4) Physical Facilities. The City shall provide the CIB with appropriately located office space and public hearing facilities together with necessary office supplies, equipment and furnishings.

Sec. 2-264. Procedures.

The following procedures shall be followed:

(1) Directly filed cases. Complaints concerning allegations of police misconduct, police use of force, or other matters pertaining to repeated issues of police misconduct may be directly filed with the CIB by anyone, including a member of the CIB or its staff.

a. All complaints shall be reduced to writing using a form approved by the CIB for that purpose;

b. The police department shall be notified of complaints received by the CIB within two (2) working days;

c. All complaints must be submitted within a year of the date of the incident or event, or within one (1) year of the complainant becoming aware of the systemic problem, giving rise to the complaint. Complaints filed more than one (1) year thereafter may, however, be accepted by the CIB only if approved by a majority vote of its members.

(2) Investigation or review of CIB cases.

a. Investigation of directly filed cases. Investigation of complaints directly filed with the CIB shall proceed as follows:

1. Upon determination by the executive director, that a directly filed complaint does not involve potentially criminal conduct by a police officer and will not interfere with any pending or potential criminal investigation or prosecution, the CIB may proceed with an independent investigation of the complaint in accordance with the time frames specified herein.

b. Police use of force involving death or great bodily harm to a person. Upon a written determination by the executive director that an investigation will not interfere with any pending or potential criminal investigation, and without waiting for the conclusion of any internal affairs' investigation, and, further, regardless of whether any allegation of misconduct is made, the CIB must automatically commence an independent investigation into any incident in which a police shooting or other uses of force resulted in death of a person and may commence an independent investigation into any use of force resulting in great bodily harm to a person.

c. Investigation and review of internal affairs closed cases. The close-out reports of all investigations of police misconduct conducted by internal affairs of the city's police department shall be transmitted to the CIB within three (3) working days of the police chief's final decision and after the police officer about whom the complaint was made has been informed of the recommendation of the police chief. Thereupon, internal affairs shall make its entire investigative file available to CIB staff for inspection and copying, unless otherwise determined to be confidential by law.

d. Notice of commencement. Affected officers, and complainants shall be notified of the commencement of the CIB's investigation or review.

(3) Timeframes for investigations and reviews. The following timeframes shall govern the investigation or review process:

a. Upon determination that a directly filed complaint does not involve potentially criminal conduct by a police officer, the CIB's investigation must commence within ten (10) working days of the filing of the complaint and must be completed and presented to the members of the CIB for their final consideration at a regular or special meeting within one hundred eighty (180) days of the investigation's commencement.

b. With respect to internal affairs' closed cases, the following timeframes shall apply: The CIB shall make its recommendation within thirty-five (35) working days of the date the police officer is notified by the chief of police of his/her recommendation.

c. If the CIB fails to complete its investigation or review within these timeframes, the CIB's file on the complaint shall be closed as out-of-time. However, in the case of a directly filed complaint, the CIB may extend the timeframe for the investigation to be completed and presented to the CIB for its final consideration by sixty (60) days after receipt of the internal affairs' investigative file.

(4) Review of police policies, procedures, and practices.

The CIB may, at any time, review and make written recommendations to the police chief as to current city police department policies, procedures, and practices concerning but not limited to training, recruitment, and disciplinary procedures to which the police chief must respond to the CIB in writing within forty-five (45) days explaining why the CIB's recommendations were or were not accepted.

(6) Issuance of final reports. The CIB shall publish a final report with regard to each matter reviewed. Said final report shall be transmitted simultaneously to the Mayor and City Council. Within forty-five (45) days of receipt of the CIB's final report, the Mayor or Mayor's designee shall transmit a report to the Mayor and City Council, which shall provide all actions taken in response to the CIB's final report and any recommendations made therein and the Mayor or Mayor's designee shall place such report on an agenda of the Mayor and City Council. If the CIB has reason to believe that any public official, employee or other person warrants criminal or disciplinary proceedings, it shall refer the matter to the appropriate governmental authorities.

Sec. 2-265. Subpoena powers.

. The CIB shall be empowered to subpoena witnesses, documents, and other potential evidence for all matters within its jurisdiction, in accordance with applicable law

Sec. 2-266. Standard of Review; disposition of cases.

(1) Standard of review. the CIB's proceedings shall be as informal as is compatible with the essential requirements of law, and shall not be governed by courtroom rules and procedures. Further, strict rules of evidence, as in courts of law, shall not apply and evidence is to be admitted

at the discretion of the chairperson. However, fundamental due process shall be observed and shall govern the proceedings and pertinent information shall be considered for the purposes of providing substantial justice for all parties.

(2) Results of investigation or review. Upon presentation to the CIB of the results of an investigation or review, the CIB shall render one (1) of the following decisions by majority vote:

(1) Sustained. The investigation produced a preponderance of evidence to substantiate the allegation of an act which was determined to be misconduct.

(2) Not sustained. The investigation failed to produce a preponderance of the evidence to either prove or disprove the allegation.

(3) Exonerate. The allegation did in fact occur, but the actions of the employee were legal, justified, proper, and in conformance with city policy and procedure.

(4) Unfounded. The allegation concerned an act by an employee which did not occur.

(5) Policy Failure. A finding or conclusion that current policies, procedures, rules, or regulations covering the situation were non-existent or inadequate; or the employee followed policy, but the investigation reveals that policy changes are recommended.

(6) In addition, the CIB shall formulate recommendations to the Mayor and City Council as to disposition, including recommendations as to training of police officers, revision of city police department policies or procedures, or where a complaint has been sustained, consequences for the subject officer(s).

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Section 2. Repeal. All ordinances or parts of ordinances in conflict or inconsistent are hereby repealed.

Section 3. Conflict. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Codification. It is the intention of the City Council of the City of North Miami and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of this Ordinance

may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this _____ day of _____, 2020.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2020.

PHILLIPE BIEN-AIME
MAYOR

ATTEST:

VANESSA JOSEPH, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: VICE MAYOR ALIX DESULME, ED.D.

Moved by: _____

Seconded by: _____

Vote:

Mayor Philippe Bien-Aime	_____ (Yes)	_____ (No)
Vice Mayor Alix Desulme, Ed.D.	_____ (Yes)	_____ (No)
Councilman Scott Galvin	_____ (Yes)	_____ (No)
Councilwoman Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilwoman Mary Estimé-Irvin	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.