Report and Recommendations to the East Lansing City Council on Community Oversight of Police

Part B: Recommendations

by the Study Committee on an Independent Police Oversight Commission

May 27, 2021
Report and Recommendations to the East Lansing City Council on Community Oversight of Police

**Part B: Recommendations for Ordinance to Create an Independent Police Oversight Commission**

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Item I:
Ordinance Establishing an Independent Community Police Oversight Commission

This document contains a draft ordinance to create an Independent Community Police Oversight Commission. This recommendation to the East Lansing City Council was unanimously approved by the Study Committee on an Independent Police Oversight Commission at its final meeting on May 24, 2021.

An introduction appears on pages 1-2, followed by an outline (on pages 3-4) of the 38 sections of the ordinance, grouped in four topics: Commission, Reports, Access to Information, and Complaints.

The text of the recommended ordinance creating an oversight commission, accompanied by relevant comments and references from the Study Committee, is on pages 5-37. The sections of the ordinance on these pages can be pulled out (excluding the comments and references) to use as a start of a draft ordinance for the Council to consider.

Pages 38-40 contain two supplemental recommendations: an Ordinance Establishing Policy on Criminal Charges and a Resolution to Explore a Partnership between the Police Oversight Commission and the Michigan State University College of Law.
Recommended Ordinances and Resolution

Introduction

It is a basic principle of democratic society that police are answerable to the public. There has been a continuing struggle to achieve accountability in American policing. The United States is deeply divided over policing. Economic trends in recent decades have accentuated class divisions. Escape from the underclass is extremely difficult. Drug abuse has flourished. Social service programs have been cut. Mental health services are eroded. Calls for service related to homelessness, poverty, and mental health have become an increasing part of a police officer’s work load.

Policing should be professional, respectful of all people, comply with the law, be responsive to the public and public officials, and enjoy the respect and trust of the people it serves. The special nature of policing poses difficult problems in holding law enforcement agencies accountable for the services they deliver and individual officers accountable for their conduct in dealing with people. Although the City Council is the city’s highest authority, this ordinance recognizes that the City Council can confer only limited authority upon an oversight commission for the following reasons:

(1) Employee rights, including the right to bargain collectively regarding the terms and conditions of employment, prevent the commission from directly engaging in police officer discipline.

(2) Statutes conferring confidentiality prevent the commission from accessing some police information. To the extent that the commission gains access to confidential information, the statutes prevent the commission from disclosing the information to others. To the extent that the commission cannot disclose information to others, the commission loses transparency and a measure of public trust.

(3) The organization of city government gives the City Manager supervisory power over departments and the Police Chief supervisory
power over the Police Department. Accordingly, a commission cannot engage in direct management.

Within those limits, creation of an oversight commission may prove a means toward greater police accountability. Essential functions of oversight include:

(1) Investigations of incidents such as uses of force and complaints to identify needed changes in policy, supervision, and training.

(2) Conducting rigorous research about the performance of the police and evaluating the performance of the oversight commission itself.

(3) Learning from the public about reforms that are needed in the criminal justice system, and advocating for those reforms.

(4) Making information about police performance available to the public.

(5) Keeping up with developments in the field of police accountability.

The City Council’s authority for the following recommended ordinances and resolution derives from the East Lansing City Charter, Section 4.11, which reads:

All powers of the City shall be vested in and all matters of policy of the City shall be exercised and determined by the City Council which shall be the legislative and governing body for all purposes required or permitted by law.
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Additional Recommended Ordinance:

Ordinance Establishing Policy on Criminal Charges

Additional Recommended Resolution:

Resolution to Explore a Partnership between the Police Oversight Commission and the MSU Law School
AN ORDINANCE TO ADD DIVISION 12 TO ARTICLE V - BOARDS AND COMMISSIONS - OF CHAPTER 2 - ADMINISTRATION - OF THE CODE OF THE CITY OF EAST LANSING TO ESTABLISH AN INDEPENDENT COMMUNITY POLICE OVERSIGHT COMMISSION

Section 1. Purpose

The purpose of this Commission is to increase accountability of the East Lansing Police Department and to strengthen conditions leading to trust in the police department by the community that it is pledged to serve. Because the City Council is committed to the goal of racial equity, the Commission will give priority to addressing racial inequities as well as use of force in policing. The Commission will enable members of the community to participate in reviewing and making recommendations about police department policies, practices, and procedures, and it will provide means for prompt, impartial, and fair review of complaints brought by individuals against police officers or the police department.

Section 2. Definitions

A. “Commission” means the Independent Community Police Oversight Commission.

B. “Complaint” means an allegation of excessive force, sexual abuse, racial, ethnic, religious, or gender discrimination, mishandling of evidence, or other abusive behavior, patterns or practices by the Police Department or a department employee.

C. “Confidential information” means records or information specifically described and exempted from disclosure by statute. For purposes of this ordinance, “confidential information” does
not include a permissible exemption that a public body is permitted to invoke under section 13 (1) of the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.243 (1). “Confidential information” only includes mandatory exemptions from public disclosure that a state or federal statute or rule requires a public body to invoke.

D. “Criminal justice system” means law enforcement, including the police, courts, prosecution and defense lawyers, as well as agencies for detaining and supervising people, such as prisons, jails, lockups, and probation agencies.

E. “Individual in crisis” means a person who exhibits symptoms of known, suspected, or perceived behavioral or mental health conditions, including, but not limited to, mental illness, intellectual or developmental disabilities, or substance use disorders.

F. “Investigation” or “investigate” means searching for and collecting information and records, regardless whether a complaint is involved or contemplated.

G. “Disciplinary complaint” means a complaint that alleges employee misconduct.

H. “Policy complaint” means a complaint that alleges a deficiency or problem with a Police Department policy or practice.

Comment: Item B. The phrase “pattern or practice” is a reference to the US Justice Department’s enforcement of the civil prohibition on a “pattern or practice” of policing that violates the US Constitution or other federal laws:

“Pattern-or-practice cases begin with investigations of allegations of systemic police misconduct and, when the allegations are substantiated, end with comprehensive agreements designed to
support constitutional and effective policing and restore trust between police and communities.” “The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present”, (Civil Rights Division, US Department of Justice, January 2017), \url{https://www.justice.gov/crt/file/922421/download}

Section 3. Commission Members

A. East Lansing City Code, section 2-241 et seq., governs the commission except to the extent modified in this ordinance.

B. The commission shall include eleven members.

C. Members shall serve three-year staggered terms. A member may serve no more than two consecutive full terms.

D. The City may remove a member who breaches the member’s promise to protect confidential information.

E. At least two commission members shall be licensed social workers or psychologists professionally engaged in helping people experiencing crisis, homelessness, mental illness, substance use disorders, or domestic abuse.

F. The City Council shall appoint people to the Commission who reflect the city’s diverse population and particularly segments of the community that are protected by the civil rights ordinance. These include diverse people based on race, ethnicity, national origin, income level, age, student status, gender, disability, sexual orientation, and gender identity or expression. People who are vulnerable and have been marginalized and who tend to have significant negative interactions with the police should be amply represented. Having an arrest or conviction record is not a disqualification for membership on the Commission. Up to two members of the Commission who contribute to the desired
composition of the Commission as described above may be persons who are not residents of East Lansing.

Comment: Item E. Alternative approaches to people in crisis, grounded in the helping professions, may be more effective than the law enforcement approach. People with social work or similar backgrounds can be useful on an oversight commission designed to explore alternative approaches.

Section 4. Independence

A. The commission’s staff and offices shall be separate from the Police Department to the extent feasible.

B. The City shall not appoint a person to the commission if the person has, in the past two years, held a job that requires licensure by the Michigan commission on law enforcement standards.

C. No member may hold a job that requires licensure by the Michigan Commission on Law Enforcement Standards.

D. No member may be a candidate or applicant for employment in the Police Department.

Section 5. Commission Duties

A. The scope of the Commission is the criminal justice system in East Lansing, both within the Police Department and relating to the Police Department. The Commission may investigate matters within its scope by collecting information from the City and other sources.

B. The Commission may conduct an investigation on its own initiative or in response to a request from the City Council or a member of the public.
C. If twenty residents of the city sign a petition on an issue of concern within the scope of the Commission, the Commission shall hold a special hearing for the purpose of inquiring into the petitioners’ concern.

D. The Commission will hold at least one meeting annually designed to receive input from the public.

E. The Commission and members of the Commission may participate in events, organize events, engage in public education, and listen to people in the Lansing metropolitan area concerning matters within the Commission’s scope.

F. The Commission may make recommendations, file disciplinary and policy complaints, and refer matters to the Michigan Commission on Law Enforcement Standards or other agencies.

G. The Commission may make recommendations to the City regarding policy and practice within the Police Department and relating to the Police Department.

H. The Commission may investigate the 911 dispatch system and the availability of unarmed emergency response service agencies, such as social work agencies, trained and able to alleviate dangerous or threatening situations. The Commission may make recommendations to the city and county regarding dispatch systems.

I. The Commission may recommend that the City Council make changes in policy regarding criminal charges under the city code.

J. The Commission may research and recommend grant opportunities to help improve the criminal justice system in East Lansing.
K. The Commission may investigate the training that police officers and supervisors receive or access. The Commission may investigate the training that is available to police officers and supervisors. The Commission may make recommendations regarding training.

L. The Commission may review the Police Department’s accreditation status and make recommendations about how to implement accreditation standards in a way that best benefits the community.

M. The Commission may investigate the Police Department’s early intervention system and make recommendations regarding maximizing the effectiveness of that system.

N. The Commission may collect and analyze data on matters within and relating to the Police Department. The Commission may contract with a professional researcher to design and carry out research. The Commission may issue reports and make policy recommendations based on research.

O. The Commission may communicate with insurance industry risk management services available to the Police Department.

P. Given the limited time and resources available to the Commission, and the enormity of its task, the Commission may prioritize its work and shall report its priorities to the City Council and the public.

Comment: This and other sections authorize the Commission to engage in a range of activities outside the employee disciplinary sphere. There are two reasons for this approach. First, individual officers are part of a larger system, and some of the problems we attribute to individuals have causes elsewhere. Second, workers in Michigan have strong employment rights which constrain the Commission’s ability to engage directly in the disciplinary and grievance process. For those reasons, it is advantageous
to give the Commission a range of tools outside the employee disciplinary sphere to pursue its mission.

Item C is drawn from City of Berkeley ordinance 4644, Section 8, [https://www.cityofberkeley.info/Police_Review_Commission/Home/Ordinance_4644.aspx](https://www.cityofberkeley.info/Police_Review_Commission/Home/Ordinance_4644.aspx), which allows fifty residents to compel a commission hearing. The required number of petition signers in East Lansing is reduced from 50 to 20 on account of East Lansing’s smaller population.

Item H. Comment: Under the Emergency 9-1-1 Service Enabling Act, MCL 484.1101 et seq, the 911 dispatch system is generally managed at the county level. Armed police officers may not be the most appropriate responders to some calls for service. Alternate agencies, such as a Community Mental Health agency, may be more appropriate first responders. Reducing the unnecessary or inappropriate dispatch of armed personnel in response to calls for service may reduce the risk of violence. This section allows the Commission to explore arrangements for dispatching alternate first responders.


Item M. Early intervention systems are described in Samuel E. Walker and Carol A. Archbold, *The New World of Police Accountability*, 3rd ed, Chapter 6, “Early Intervention Systems”, (Sage, 2020). An early intervention system is a management tool, and the Commission is not involved in operating it. But the Commission should play a role in encouraging the Police Department to adopt such a system and to assure that it is effective and fully funded.
Section 6. Staff

A. The City shall assign staff to perform functions for the Commission pursuant to Section 2-251 of the East Lansing City Code.

B. The City shall also assign staff to maintain a separate website and other social media platforms for the Commission.

C. Staff members assigned to the Commission shall not be employees of the Police Department.

Section 7. Panel of Investigators

The City Council or City Manager shall prepare a list of professional investigators, licensed under the professional investigator licensure act, MCL 338.821 et seq., or possessing equivalent qualifications, and available to conduct investigations for the Commission.

Comment: Albany, NY, has a volunteer board with the capacity to hire a professional investigator on a case-by-case basis. In the Albany ordinance, the panel of eligible investigators is organized by the local law school. This recommendation requires the City to organize the panel. Albany City Code, 42-343 (H), https://secureservercdn.net/198.71.233.109/3g2.f1a.myftpupload.com/wp-content/uploads/by-laws-and-rules/Albany-CPRB-Legislation.pdf

Section 8. Education of Commission Members

A. The Commission and members of the Commission shall keep informed as to the latest practices in the field of police accountability and inaugurate new Commission practices that appear to be of benefit to the Commission’s service and to the public.
B. The Commission may facilitate training and other activities for Commission members in cooperation with the Police Department. The Police Department shall allow members of the Commission to participate in suitable training and activities. Members may choose to participate in those trainings and activities.

C. Members of the Commission may join state or national organizations whose scope is similar to the Commission’s scope, pay dues and fees, and attend events and educational opportunities sponsored by those organizations.

Comment. Item A is based on East Lansing City Code, Section 2-65 (1).

Item C. The National Association of Civilian Oversight of Law Enforcement is the most likely organization that members will join. NACOLE offers group memberships.

Section 9. Free Speech

The City recognizes the right of the Commission and its members to speak freely on matters within the Commission’s scope, except for disclosure of protected confidential information. The City shall not retaliate against the Commission or a Commission member for exercising that right. Members of the Commission must not represent that they are speaking on behalf of the City Council, City Manager, or Police Department.

Section 10. Budget

The Commission shall prepare an itemized estimate of its expenditures for each coming year, pursuant to Section 10.2 of the East Lansing City Charter, and the City Manager shall include in the budget recommendation sufficient financial support for the Commission’s activities, including:
A. Investigations and complaints
B. Research and evaluations
C. Public outreach and recommendations
D. Publication production, website and social media
E. Commission member education

Comment: Estimate of budget numbers.

Albany, NY, uses about 0.14% of its city budget to fund its police review board. That percentage is normal among cities that maintain review boards and should be seen as a target for the Commission’s budget.

<table>
<thead>
<tr>
<th>City</th>
<th>Police Oversight as a Percentage of Total City Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany, NY</td>
<td>0.14%</td>
</tr>
<tr>
<td>Albuquerque, NM</td>
<td>0.12%</td>
</tr>
<tr>
<td>Berkeley, CA</td>
<td>0.18%</td>
</tr>
<tr>
<td>Madison, WI</td>
<td>0.13%</td>
</tr>
<tr>
<td>New Orleans, LA</td>
<td>0.16%</td>
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If East Lansing funds its commission at the rate of 0.14% of total city expenditures, then the commission budget will be about $56,000.

Coincidentally, $56,000 represents about 5.46% of East Lansing’s 2019 revenue from ordinance fines and costs.

Funding at the $56,000 level can be allocated to reflect the Commission’s relative priorities for work on (1) investigations and complaint processing, (2) publication, (3) public relations and advocacy, (4) research and program evaluation, and (5) Commission member education.

For example, if each function is allocated an equal – 20% -- share of the budget, the breakdown is:
Breakdown by Function

<table>
<thead>
<tr>
<th>Function</th>
<th>Weight</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigations and complaints</td>
<td>20%</td>
<td>$11,200</td>
</tr>
<tr>
<td>Research and evaluations</td>
<td>20%</td>
<td>$11,200</td>
</tr>
<tr>
<td>Public outreach and recommendations</td>
<td>20%</td>
<td>$11,200</td>
</tr>
<tr>
<td>Publication and social media</td>
<td>20%</td>
<td>$11,200</td>
</tr>
<tr>
<td>Commission member education</td>
<td>20%</td>
<td>$11,200</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$56,000</td>
</tr>
</tbody>
</table>

Section 11. Adjustment for Impact on the Police Department

If the Commission makes a recommendation to the Police Department which has financial implications, and the department chooses to accept the recommendation, then the department may propose to the City Manager a budget item to cover compliance with the recommendation.

Comment: This ordinance would require the police department engage in several reporting activities, some of which may be new, such as:

Prepare use-of-force summaries.
Prepare summaries of encounters with homeless people.
Prepare summaries of encounters with individuals in crisis.
Prepare summaries of police encounters with juveniles.
Prepare summaries of biased 911 calls.
Produce redaction logs.
Develop tracking reports for complaints.
Produce separate investigation protocols for disciplinary and policy complaints.
Section 12. Evaluations

Every 4 years, the City Council shall contract with a qualified agency, with experience in evaluating police oversight boards, to evaluate the Commission and its work.

Comment: The city normally issues requests for proposals which will explain what the evaluation will include. If evaluations are done periodically, each study will be different, based on past activity and outcomes. Normally an evaluator has input concerning the methodology and the standards used in the evaluation.

For comparison, see Albuquerque ordinance 9-4-1-11, which reads:

EVALUATION. Contingent upon funding, in the first six months of 2016 and at least every four years thereafter, from adoption of §§ 9-4-1-1 through 9-4-1-14, the City Council shall issue a Request for Proposal for an independent consultant to undertake a complete evaluation and analysis of the entire police oversight process, and recommend any necessary changes or amendments that would appropriately improve the process.


For examples of such evaluations see:

https://d3n8a8pro7vhmx.cloudfront.net/apdforward/pages/33/attachments/original/1406915128/Walker-Luna_Report.pdf?1406915128

“City of Albuquerque, New Mexico Evaluation of the Police Oversight Ordinance and the Police Oversight System”, (MGT, 2006),


Section 13. Disorderly Conduct and R&O Charges

A. The Commission may investigate police and court records and track criminal cases in which the City charges individuals with disorderly conduct under the East Lansing City Code, sec. 26-52.

B. The Commission may investigate and track criminal cases in which the Ingham County prosecutor charges individuals with assaulting, battering, wounding, resisting, obstructing, opposing or endangering a police officer or other state authorized person or public official, charges commonly referred to as “resisting and obstructing” or “R&O”, under MCL 750.81d.

C. When those disorderly conduct and R&O cases are finally adjudicated, the Commission may publish summaries of the underlying facts and case dispositions.

D. The summaries shall describe behavior but not include the names of individuals.

Comment: Criminal charges that allege disrespect or resistance to police authority -- sometimes called “contempt of cop” charges -- can cause direct harm to those arrested, violate their constitutional rights, alienate large segments of the population, and make policing less effective. See, Christy


Section 14. Use of Force Incident Summaries

A. The Police Department shall provide a monthly report to the Commission summarizing each incident involving use of force by a police officer against a person. The report shall include at a minimum, a brief description of the incident and the names and demographic data about the officers and members of the public involved in the incident. The Commission may choose to conduct additional investigation of an incident.

B. Annually, the Commission shall publish summaries of use-of-force incidents based on the Police Department reports and the Commission’s investigations. Published summaries shall describe behavior but not include the names of individuals.

Section 15: Encounters with People Experiencing Homelessness

A. Every six months, the Police Department shall provide a report to the Commission summarizing each incident where a Police Department employee transports, arrests, issues a citation to, or stops (based on reasonable suspicion) a person
who is or appears to be experiencing homelessness, including at a minimum, a brief description of the incident. In the case of a citation, arrest, or stop, the report shall include names and demographic data about the officers involved in the incident and demographic data about the other people involved in the incident. The Commission may choose to conduct additional investigation of an incident.

B. Annually, the Commission shall publish summaries of police encounters with people experiencing homelessness based on the Police Department reports and the Commission’s investigations. Published summaries shall describe behavior but not include the names of individuals.

Section 16. Encounters with Individuals in Crisis

A. Every six months, the Police Department shall provide a report to the Commission summarizing each incident in which a Police Department employee transports, arrests, issues a citation to, or stops (based on reasonable suspicion) an individual in crisis. The report shall include, at a minimum, a brief description of the incident. In the case of a citation, arrest, or stop, the report shall include the names and demographic data about the officers and demographic data about the other people involved in the incident. The Commission may choose to conduct additional investigation of an incident.

B. Annually, the Commission shall publish summaries of police encounters with individuals in crisis based on the Police Department’s reports and the Commission’s investigations. Published summaries shall describe behavior but not include the names of individuals.
Section 17. Encounters with Juveniles

A. Every six months, the Police Department shall provide a report to the Commission summarizing each incident in which a Police Department employee transports, arrests, issues a citation to, or stops (based on reasonable suspicion) a juvenile. The report shall include, at a minimum, a brief description of the incident. In the case of a citation, arrest, or stop, the report shall include the names and demographic data about the officers and demographic data about the other people involved in the incident. The Commission may choose to conduct additional investigation of an incident.

B. Annually, the Commission shall publish summaries of police encounters with juveniles based on the Police Department’s reports and the Commission’s investigations. Published summaries shall describe behavior but not include the names of individuals.

Section 18. Annual Reports

A. In its annual report to the City Council pursuant to Section 2-252 of the East Lansing City Code, the Commission shall include a summary of its work during the previous year and its work priorities for the coming year. The report shall be published or posted on the Commission’s website.

B. Annually, the Commission shall publish or post on its website any summaries of significant encounters between civilians and the police that the Commission has compiled in the past year regarding -

1. Use-of-force incidents.

2. Criminal cases involving charges of “disorderly conduct” and “resisting and obstructing”.

3. Incidents in which the Police Department transports, arrests, issues a citation to, or stops (based on reasonable suspicion) a person experiencing homelessness.

4. Incidents in which the Police Department transports, arrests, issues a citation to, or stops (based on reasonable suspicion) an individual in crisis.

5. Incidents in which the Police Department transports, arrests, issues a citation to, or stops (based on reasonable suspicion) a juvenile.

Comment: Item A, 3-7: Examples of case summaries are available in the Kansas Integrity Bulletin, [https://www.kscpost.org/integrity.html](https://www.kscpost.org/integrity.html).

Item B. Naming names in a public document should be avoided because it can be prejudicial, damage reputations, and lead to unintended adverse consequences.

Given the amount of work potentially involved, the City should consider asking help from MSU students, as happens in Albany. See appendix 2, a resolution to explore a partnership between the police oversight Commission and the MSU Law School.

Section 19. Brady Lists

A. The Commission may investigate “Brady” or “Do Not Call” or similar lists maintained by the police, prosecutors, criminal defenders, and courts.

B. If a Police Department employee appears on such a list, the Commission may refer that information to the Police Department or to the Michigan Commission on Law Enforcement Standards for their review.
Comment: Police, prosecutors, criminal defenders, and courts sometimes compile or exchange information about police officers who have credibility problems. These may be called “Brady Lists” or “Do Not Call Lists” – “Do Not Call” meaning prosecutors “do not call” those officers as witnesses in court because cross examination might hurt the prosecution’s case. If an officer is flagged on such a list, it may signal a job performance issue affecting members of the public. It may be appropriate for the Police Department to address the issue in its early intervention system or through disciplinary action.

Section 20. Summary of Biased 911 Calls

The Police Department shall provide to the Commission notice of any instances in which the department has referred a matter for prosecution for making a 911 call based in significant part on a person’s race, color or national origin, allegedly in violation of Section 22-36a of the East Lansing City code. The department shall file the notice with the Commission when it refers the matter to the City Attorney.

Section 21. Confidential Information

A. If the Commission asks for information from the Police Department and the information is confidential as described in subsection 2 or there is a compelling reason not to release the information to the public, then the Commission and the Department may agree to the procedure described in this section.

B. The police department may communicate the information to the commission. The commission will not keep a record of the information, except in summary, and the commission will not release the information to the public, except in summary. The summary shall include the following:
i. The statute or rule that renders the information confidential,

ii. The source of the information,

iii. The author or authors,

iv. The date or dates when the information was produced or compiled, and

v. A description of the information as detailed as possible without revealing privileged or confidential content.

C. In responding to a person’s request for information in the records of the commission, the City will not invoke any of the discretionary exemptions listed in section 13 (1) of the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.243 (1). For purposes of this section, a “discretionary exemption” is an exemption that a public body may invoke, but is not required to invoke.

Comment: To build a reputation for openness, the Commission should be free to share its information with the public to the extent possible. The ordinance is intended to maximize the amount of information that can be released to the public and limit the amount of information that can be withheld.

The procedure involving production of a summary is based on the procedure used in Vaughn v Rosen, 484 F2d 820 (US Court of Appeals, DC Circuit,1973) and Evening News Association v City of Troy, 417 Mich 481; 339 NW2d 421 (Michigan Supreme Court, 1983).

Section 22. Redactions

A. If, in the course of a Commission investigation, the Police Department or other department is obligated to disclose records to the Commission, but the records contain confidential information that the department cannot by law release, or the department can demonstrate a compelling reason not to release the information, then the department may redact the confidential information in compliance with subsection B. The Oversight Commission may appeal such a refusal to the City Council.

B. The department shall produce a log that describes each particular redaction, including:

i. The statute or rule that renders the information confidential,

ii. The source of the information,

iii. The author or authors,

iv. The date or dates when the information was produced or compiled, and

v. A description of the information as detailed as possible without revealing privileged or confidential content.

The Commission may disclose that log to people outside the Commission.

C. Staff planning in the Police Department with respect to multiple employees and job assignments in the Police Department shall not be treated as confidential personnel information.

Comment. Item C is drawn from MCL 423.501 (2) (c) (ii) which provides that “staff planning” and “job assignments” are not treated as confidential personnel records.
Section 23. Investigation Resources and Personnel

A. The Commission may subscribe to fee-based information or investigation services that the Commission deems necessary to investigate matters within its scope.

B. With the consent of the City Council, the Commission may retain a professional investigator to investigate a complaint alleging misconduct or unethical conduct, by the Police Department or a department employee, affecting a member of the public.

Item B is adapted from Albany Municipal Code 42-343 (h),

Section 24. Cooperation

A. City employees and departments shall cooperate with the information requests submitted by the Commission or a professional investigator retained by the Commission.

B. The Commission has the full force and authority of the City Council under section 4.9 of the East Lansing City Charter to conduct an investigation within the Commission’s scope.

C. City employees and departments shall provide the information requested by the Commission unless disclosure is prohibited by statute. In responding to the commission’s request for information directed to the Police Department, the City will not rely on any of the discretionary exemptions listed in MCL 15.243 (1) and will provide all information subject to a discretionary exemption unless there is a compelling reason for non-disclosure. The Oversight Commission may appeal such a refusal to the City Council.
D. For purposes of this section, “discretionary exemption” includes exemptions that a public body may invoke, but does not include exemptions that a public body is required to invoke.

E. The Police Department shall not require the Commission to file a freedom of information request as a prerequisite to disclosure of information, charge the Commission a fee, or assert a discretionary exemption under section 13 (1) of the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.243 (1) as justification for denying the Commission’s information request.

F. The Police Department shall respond to an information request from the Commission within 21 days unless the Commission and the Department agree to a different schedule.

G. The Police Department may not charge the Commission a fee for responding to the Commission’s information requests, but if the Commission’s information requests, overall, create a significant financial burden for the Department, the City shall provide financial resources to the Department to account for that burden.

Comment: Item B. Section 4.9 of the East Lansing City Charter describes the investigatory power of the City Council.
https://www.cityofeastlansing.com/DocumentCenter/View/139/City-Charter-PDF.

Item B is adapted from Albany Municipal Code 42-343 (G),
Section 25. City Council Resolution Resolving Information Conflicts

A. If a dispute arises between the Commission and a City employee, official, or department regarding the disclosure of information requested by the Commission, the City Council shall hear the dispute and decide the matter by passing a formal resolution.

B. The City Council shall give effect to statutes that render information confidential.

C. The City Council is not bound by discretionary exemptions listed in the Freedom of Information Act but may invoke a discretionary exemption when there is a compelling reason to withhold the information. For purposes of this section, “discretionary exemption” includes an exemption that a public body may invoke, but does not include an exemption that a public body is required to invoke.

Comment: Item A. Putting each of these decisions into a formal resolution will create an accessible record of decisions that may contribute to consistent treatment and prevent future disputes.

Section 26. Freedom of Information Acts

A. The Commission may file requests under the state or federal freedom of information acts to seek information from public bodies outside the city’s jurisdiction.

B. If the Commission deems it necessary, the Commission may recommend that the City Council pursue legal action to obtain the information under subsection A.

C. The City shall not charge a fee for responding to freedom of information act requests for records in the possession of the Commission.
Comment: The Commission’s use of the freedom of information act should be rare because most of the information the Commission seeks will be from within the city itself, and one part of a government does not typically use the FOIA to request information from another part. The FOIA will only be used for information requests directed to public bodies outside the city’s jurisdiction; even in those cases, litigation will be rare.

Section 27. Who May File a Complaint?

Any person may file a complaint, including, but not limited to, residents, non-residents, city employees, Police Department employees, Police Department supervisors, and the Commission.

Section 28. Places Where Complaints May Be Filed

A. The following offices and persons are approved to accept complaints from the public.

1. Commission website or office
2. City clerk
3. City Manager
4. Police Department
5. Director of Human Resources
6. Diversity, Equity, and Inclusion Administrator

B. The Commission may approve other offices or persons with whom complaints may be filed.

Comment: Giving members of the public multiple locations where they may file complaints will give members of the public an opportunity to file a complaint at a place that is convenient or trusted.
Section 29. Police Department Complaint Investigation

A. When a complaint is submitted at an approved location, the person accepting the complaint shall document receipt of the complaint, keep a copy of the complaint, and forward the complaint as soon as possible to the Police Department and the Commission.

B. The Police Department shall investigate each complaint. The department shall attempt to complete the investigation within 90 days. If the Police Department cannot complete an investigation within 90 days, the department shall notify the Commission and explain the circumstances.

C. If a complaint has taken longer than 90 days to complete, then every 30 days thereafter, the department shall send the Commission a tracking report together with an explanation of the progress of the investigation.

Comment: The 90-day time limit appears in East Lansing Police Department Policy and Procedure, Order Number 8-17, section 5.9 (E), “Complaint Against Employee”,
https://cityofeastlansing.com/DocumentCenter/View/5908/Complaint-Against-Employee-PDF. A similar quarterly time limit is used in the Albany, NY, Municipal Code, section 42-343 (A),

Section 30. Complaint Forms

A. The Commission may establish a standard complaint form for complaints submitted by members of the public. The form shall ask the complainant to explain what they want to see happen as a result of the complaint. If the complaint is based on an incident, the form shall ask the complainant to explain what happened.
B. An office or person authorized to accept complaints shall accept a complaint even if the complainant fails to complete a standard complaint form. If a complaint is verbal, the person who accepts the complaint shall give the complainant an opportunity to complete the standard complaint form. If a complaint is verbal, and the complainant does not put it in writing, the person who accepts the complaint shall make a written memorial of the complaint.

C. A complaint may be accepted even if it is anonymous.

Section 31. Classifying Complaints

A. The Police Department shall develop and publish separate protocols for investigating disciplinary complaints, policy complaints, and internal complaints. An “internal complaint” is a disciplinary action initiated by the department that does not involve employee behavior that affects a member of the public. The Commission may make recommendations regarding the protocols.

B. When the Police Department receives or initiates a complaint of any kind, the Police Chief shall determine whether to classify the complaint as a disciplinary, policy, or internal complaint, or a combination. The department shall initiate the appropriate protocol.

C. The Commission may inquire about complaints of any kind that are being investigated by the Police Department. The Commission may recommend that the department change the classification of a complaint or the protocol used to investigate it.

Comment: Item A. Some complaints are not against individual police officers but against Police Department patterns or practices. An investigation protocol that automatically triggers a personnel action can be
distracting if the real issue involves a pattern or practice. Under the current protocol in the Police Department, complaints are automatically sent to the supervisor of the officer who is the apparent target of the complaint. East Lansing Police Department Policy and Procedure, Order Number 8-17, sections 5.3, 5.4, and 5.5, “Complaint Against Employee”, https://cityofeastlansing.com/DocumentCenter/View/5908/Complaint-Against-Employee-PDF.

That protocol implicitly assumes that an individual employee is at fault. Framing the complaint as a disciplinary matter may be unwarranted. Rather than having the individual’s supervisor start the investigation, a high-level official, familiar with the department as a whole, like the Police Chief, should make a preliminary judgment as to whether the complaint is most productively treated as disciplinary matter or as a policy matter.

Section 32. Complaint Tracking

A. When the Police Department receives or initiates a complaint of any kind, the department shall assign a tracking number and develop a tracking report. The Commission may specify the information to be included in tracking reports.

B. At a minimum, tracking reports shall include a brief description of the complaint. If a complaint involves an incident in which a member of the public is involved, the tracking report shall contain, at a minimum, a brief description of the incident and the names and demographic data about the department employees and members of the public involved in the incident.

C. Quarterly, the Police Department shall submit a tracking report to the Commission for each pending complaint of any kind active in the department at any time during the quarter.

Section 33. Mediation of Disciplinary Complaints

A. The Commission may facilitate mediation of a disciplinary complaint.

B. If the Police Department and the involved individuals agree, investigation of the disciplinary complaint shall be suspended and the matter referred to mediation. When mediation is complete, the Police Department shall decide whether to close or resume investigation of the disciplinary complaint.

C. The Commission shall develop a procedure for mediation.

D. The City shall cover the cost of mediation services.

Comment: This is a simplification of the Albany procedure. See Albany Municipal Code, Section 42-346, https://3g2.f1a.myftpupload.com/wp-content/uploads/by-laws-and-rules/Albany-CPRB-Legislation.pdf. This recommendation delegates to the Commission the task of developing a mediation procedure, rather than prescribing the procedure.

Section 34. Police Department Investigation Findings

When the Police Department completes its investigation, but before the Police Department determines a disposition for the case, the investigator shall make one or more of the following findings with respect to each disciplinary or policy complaint:

A. Sustained - where the review discloses sufficient facts to prove the allegations made in the complaint.

B. Not Sustained - where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.
C. Exonerated - where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

D. Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued.

E. Policy or Practice - where there is a problem with department policy or practice. If this finding is made, the department shall produce a corrective action plan.

F. No Finding - where, for example, the complainant failed to produce information to further the investigation; or where the investigation revealed that another agency was responsible, and the complaint or complainant has been referred to that agency; or where the complainant withdrew the complaint; or where the officer is no longer employed by the City.

G. Mediated - where the complaint is resolved by mediation.

H. Criminal – where a criminal investigation has been opened.

I. Referred—where a complaint has been referred to another agency.

Comment: In the Albany ordinance, the Commission makes findings similar to the categorization given here. See: Albany Municipal Code 42-344,

Currently in East Lansing, findings similar to the categorization given here are made only when the complaint is closed. See: East Lansing Police Department Policy and Procedure, Order Number 8-17, section 5.10 (E), “Complaint Against Employee”,
https://cityofeastlansing.com/DocumentCenter/View/5908/Complaint-Against-Employee-PDF. Under the system recommended here, the categorization will be made by the department employees responsible for the investigation and before the Police Chief takes final action. This should insert the Commission’s recommendation earlier in the process, making it more likely to be considered.

Section 35. Commission Investigation and Recommendation

A. Within ten days after the Police Department completes an investigation of a policy complaint or a disciplinary complaint involving behavior affecting a member of the public, the department shall send the complete investigation record to the Commission, subject to any redactions of confidential information.

B. The Commission shall make the investigation record it receives available to the public on request, subject to any promises to protect confidential information.

C. The Commission shall give a complainant, a Police Department employee involved in a complaint, or other person who has information bearing on the complaint, an opportunity to provide information to the Commission during a meeting. At the person’s request, the meeting shall be in person if feasible.

D. The Police Department shall give the Commission enough time to review the investigation record and conduct any investigation of its own before the Police Department takes final action. The Commission shall complete its investigation as soon as possible, but no longer than 60 days, unless the Police Department agrees to a longer time.

E. The Commission may recommend particular action, additional investigation on a specific issue, a change in the
corrective action plan, or reclassification of the complaint and reinvestigation according to a different protocol.

F. The Commission shall not make a recommendation regarding any aspect of a disciplinary complaint if the complaint does not involve employee behavior that affects a member of the public.

G. If the Commission recommends additional investigation, and the Police Department does not agree with that recommendation, the Commission may, with the consent of the City Council, retain a professional investigator, who shall have the full force and authority of the City Council to conduct an investigation. The investigation shall be limited to the issue approved by the City Council.

H. The commission may refer a matter to the Michigan Commission on Law Enforcement Standards for its review.

Comment. Item E. The Commission will not be involved in the employee grievance process, which is triggered when the Police Chief decides to take disciplinary action against an employee. Under this ordinance, the Commission will not be involved in the employee grievance process because the Commission will have conducted its investigations and made its recommendations before the Police Chief makes a decision to take disciplinary action and thus before the grievance process is triggered.

Item G. Section 4.9 of the East Lansing City Charter provides:

Investigations and Requests for Information: The Council, or any Council member, may request information of any employee or officer of the City regarding the conduct of any department, office, or officer of the City. The Council may make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Failure on the part of any officer of the City to obey the subpoena or to produce books, papers, and other evidence pursuant to the subpoena shall constitute misconduct in office. If the failure is
on the part of any employee of the City, it shall constitute a misdemeanor.


Section 36. Police Chief Decision and Commission Appeal

A. Final disposition of the complaint on behalf of the Police Department shall be made by the Police Chief. The Police Chief shall issue a written opinion and send a copy to the Commission.

B. If the Commission disagrees with the findings of the Police Chief, the Commission may, within 30 days after receiving the Police Chief’s decision, recommend that the City Manager modify or reverse the Police Chief’s action. The City Manager shall issue a written opinion and send a copy to the Commission and the City Council.

Comment: Item B. Section 7.1 of the City Charter and section 2-62 of the City Code give the City Manager supervisory authority over the Police Department and the authority to set aside department decisions.

Section 37. Summaries of Final Action on Complaints

The Commission shall publish a summary of the facts, as known to the Commission, relating to each policy complaint and relating to each disciplinary complaint involving behavior affecting a member of the public. The summary shall include the underlying facts, a description of the steps and procedure used to decide the complaint, and the final decision. The Commission shall publish the summary on its website within 60 days after receiving the Police Chief’s opinion or the City Manager’s
opinion, whichever comes later. A published summary shall not include the names of individuals.

Comment: Compiling summaries of those incidents and how they are resolved may be useful in judging how well the complaint system works and in developing general policies for the future.

Examples of disciplinary case summaries are available in the Kansas Integrity Bulletin, https://www.kscpost.org/integrity.html.

Item B4. Naming names in a published document should be avoided as it can lead to unintended adverse consequences.

Section 38. Modification of Existing Policies

A. Police Department policies and procedures for processing mistreatment complaints shall not conflict with the procedures prescribed in this ordinance.

B. The Police Department shall modify its existing procedures as necessary to conform to this ordinance.

Ordinance Establishing Policy on Criminal Charges

Section 1. Grounds

A. Criminal charges can have lifetime debilitating consequences on people who are charged and their families out of proportion to the threat their behavior poses to the community.

B. Criminal charges damage a person’s reputation, impose cost, and deter defendants from speaking in public about their encounters with the police.


D. In some cases, the fair course of action may be to drop those charges. See: “Policy on Reviewing Resisting and Obstructing Warrant Requests”, (Ingham County Prosecutor’s Office, January 11, 2021).

E. The decision to refuse or drop criminal charges in any particular case is a decision within the professional discretion of the prosecutor or City Attorney.
Section 2. Authority

The City Council has the authority to set general policy for all purposes, pursuant to section 4.1 of the East Lansing City Charter and may set general policy for enforcing city laws.

Section 3. Review of Disorderly Conduct Charges

When charges alleging disorderly conduct under the East Lansing Code of Ordinances, sec. 26-52, or other charges involving resisting or obstructing the police, have been recommended to the City Attorney against a person, the City Attorney shall review the seriousness of the charges, the underlying behavior of the people involved in the encounter and arrest, and the alternative approaches available to the Police Department during the encounter. The City shall not file charges, or will dismiss charges already filed, if, after such review, the City Attorney finds that the interests of justice and fairness will be furthered by doing so.
Additional Recommended Resolution

Resolution to Explore a Partnership between the Police Oversight Commission and the MSU Law School

Whereas the ordinance creating the East Lansing Independent Community Police Oversight Commission is based on a similar ordinance in Albany, New York.

Whereas, in Albany, an all-volunteer police oversight board operates in partnership with the University of Albany Law School.

Whereas a partnership between the East Lansing commission and the Michigan State University Law School could provide useful help for East Lansing’s all-volunteer commission members and educational opportunities for MSU students.

Therefore, the City Manager is authorized to contact the Michigan State University Law School and ascertain whether they are interested in forming a partnership with the East Lansing commission.

[end]
Item II:

Legal Memorandum by Kathleen Boyle and Erick Williams, May 20, 2021

This memorandum was written by Kathleen Boyle and Erick Williams, two lawyers who are members of the Study Committee on an Independent Police Oversight Commission, in response to comments by the City Attorney and the City’s labor lawyer to a draft recommendations document sent to them by the Study Committee, as described on the first page of the memo. The memorandum took into account discussion at the Study Committee meeting of May 10.

The “Technical Discussion” section of the memorandum (beginning on page 3) contains the complete text of all comments made by the City Attorney and labor lawyer, with a response to each comment by Williams and Boyle. Some responses include revised or newly written text; this new text is also included in Item I, the draft ordinance that was updated after the memorandum was completed. Other responses contain explanations about issues raised by one or both of the City’s attorneys.
The Study Committee on an Independent Police Oversight Commission (the Study Committee) produced a draft ordinance, dated April 28, 2021. The City Manager asked attorneys representing the City of East Lansing to submit comments on the draft ordinance. Comments were submitted by --

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The Study Committee discussed the comments submitted by Ms. Genovich and Ms. Young and asked attorney members of the study committee to prepare this memorandum. This memorandum was prepared by --

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This memorandum proposes a redrafted ordinance based on the comments submitted by Ms. Genovich and Ms. Young. In the technical discussion below, we concur with some of their comments and incorporate those concerns into a redraft, subject to approval by the Study Committee.

**General Discussion**

We acknowledge that the City of East Lansing is bound by state law, including the Public Employment Relations Act, 1947 PA 346, as amended, MCL 432.201 *et seq.*, and the Bullard-Plawecki Employee Right to Know Act, 1978 PA 397, as amended, MCL 423.501 *et seq.*

We also acknowledge that the City is bound by its collective bargaining agreements with labor organizations representing police officers and command officers.

We acknowledge that the ordinance imposes extra duties -- including extra work -- on the Police Department. We don’t see that as necessarily creating a legal issue. But we agree that it’s a good idea to list in one place the significant extra duties the proposed ordinance would impose on the department.

Most of the duties imposed by the ordinance are imposed on the Oversight Commission. The proposed ordinance contains funding requirements and authorizes spending to support the Commission’s work. Adequate funding is essential if the Commission is to perform its mission. At the same time the proposed ordinance acknowledges that the City has a budget process, and budgeting decisions are made through the budget process.

Restorative justice techniques such as mediation can sometimes be an appropriate way to resolve complaints regarding the Police Department. The ordinance makes mediation one of the available tools. Mediation only takes place when all parties, including the Police Department, agree, when
mediation services are funded, and when the Police Department allows space for it to happen.

The draft ordinance refers to the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 et seq. However, the ordinance intends that City departments, including the Police Department, disclose information requested by the Commission freely and without the necessity of a FOIA request. The ordinance recognizes that certain information cannot, by law, be released, and it may be redacted. The FOIA contains several discretionary or permissive exemptions, and the ordinance provides that where those exemptions apply, the requested information should be provided unless there is a compelling reason for non-disclosure.

**Technical Discussion**

The comments discussed below were submitted by Elizabeth A. Young (her comments are marked BAY 1 through BAY 7) and Laura J. Genovich (her comments are marked LJG 1 through LJG 59). The discussion of each comment includes a Study Committee note and/or proposed changes in the draft ordinance.

**BAY1**

BAY1 refers to the Study Committee’s comments pertaining to Section 1, Item B, which states the definition of “confidential information.” The comment reads:

Personnel records are not *per se* confidential under the Bullard Plawecki Employee Right to Know Act. MCL 423.506 does not altogether prohibit release of information regarding employee disciplinary action to a third party. Rather, this section merely requires that notice be given to the employee prior to the release of
such information. Note, however, that MCL 423.507 does prohibit the release of disciplinary information that is more than four years old, with specified exceptions.

FOIA exemption of law enforcement personnel records is subject to a balancing test. The appropriate determination is whether the public interest in non-disclosure outweighs the public interest in disclosure. In any event, with exceptions for private personal information which would result in an unwarranted invasion of privacy, the City is not required to withhold police personnel records from disclosure even if they are deemed exempt. To the extent the City does not withhold police personnel records from disclosure, Bullard Plawecki does not on its own render personnel records confidential.

Michigan statute aside, the CBA between the City and the POAM addresses the content and confidentially of personnel records. Based on the language in Article 27.15 of the CBA, personnel records may be disclosed to a list of specified individuals, including "other persons acting in compliance with state, federal or local law." The Commission likely meets this definition.

The COAM CBA does not specifically address personnel records.

Study Committee Note: No change in the text.

BAY 2

BAY 2 refers to the comment to Section 5, Item H. BAY 2 reads:

Under the Public Employment Relations Act, work that has traditionally been assigned exclusively to members of a bargaining unit cannot, depending on the circumstances, be assigned to others outside of the bargaining unit without some negotiation. Thus, with regard to the recommendation that social workers respond to certain emergency calls, some consideration will need to be given to
determine whether responding to such calls has traditionally exclusively been the work of ELPD officers.

Study Committee Note: It is important to note that, as the comment to Item H provides, the 911 system is governed by state law, the Emergency 9-1-1 Service Enabling Act, MCL 484.1101 *et seq.* 911 assignments are not controlled, traditionally or otherwise, by collective bargaining agreements.

**BAY 3**

BAY 3 concerns Section 5, Item M. The comment reads:

See April 5, 2021 opinion letter dedicated to this issue.

Study Committee Note: We do not have a copy of the April 5, 2021 letter.

**BAY 4**

BAY 4 concerns the Study Committee’s comments following Section 24, Item D. The attorney comment reads:

The Bullard Plawecki Employee Right to Know Act does not make all personnel records confidential. See note 1, above. Contract language may apply for POAM employees, as described in comment 1, above.

Study Committee Note: No change to the draft ordinance.

**BAY 5**

BAY5 concerns Section 33, Item B [mediation]. The comment reads:
This section is extremely unclear as to the function of the mediation process. Is this recommendation meant to suggest mediation between the City and the employee subject to the complaint, or mediation between the City and the complaining individual? To the extent this is intended to suggest mediation between the City and the complainant, there are issues of timeliness in the imposition of discipline that may come in to play as it relates to the employee at issue. Generally, in order to comport with the requirements of just cause, discipline must be issued in a timely manner. To address this, deadlines may need to be added within the mediation process to ensure there is no unreasonable delay in the event discipline is issued.

In addition, it is not clear what types of resolutions are authorized if the mediation is between the City and the complaining individual. If the resolution were to involve discipline of an ELPD officer prior to a complete investigation, this could raise concern as to whether the discipline was based on just cause as contractually required.

To the extent this section suggests mediation of appropriate discipline between the Department and the employee who is subject to the complaint, there are collective bargaining considerations that must be made. Generally, modifications to an existing disciplinary process - such as the addition of a mediation step — need to be bargained with the union.

Proposed edit: Replace Section 33 with the following:

The Commission may facilitate mediation of a complaint. Mediation can only take place if all parties, including the complainant, the Police Department and the officer agree to mediation and to the mediation procedure. The City will bear the cost of mediation. When mediation is undertaken, the investigation of any disciplinary complaint will be suspended. When mediation is complete, the Police Department shall decide whether to close or resume investigation of the complaint.

BAY 6

BAY 6 concerns Section 35, Item D. The comment reads:

Article 24.1 of the CBA between the POAM and the City contains the following language: "Internal investigations, whenever practical, will be conducted by supervisory personnel." Some consideration will need to be given as to whether a Commission led investigation meets this language. The COAM CBA does not contain similar language addressing internal investigations.

In addition, the suggested 60-day additional Commission investigation timeline may interfere with the timely imposition of discipline, which is an element of just cause (see the prior note).

Finally, in the circumstance of an employee who is suspended with pay during the pendency of an investigation, this provision will increase the cost to the City by leaving the employee on paid suspension pending investigation for an additional 60 days before a determination can be made as to the appropriate discipline.

Study Committee Note: The Oversight Commission investigates many matters, and citizen complaints are only one type of investigation the Commission conducts. An Oversight Commission investigation of a citizen’s complaint is an oversight function, not an internal police department investigation. The department conducts its own internal investigations; the Commission is not involved in management or discipline. The Commission oversight investigation does not begin until after the police department has completed its internal investigation.
In our view, there is just cause for oversight of American police departments.

The Oversight Commission has no role in deciding whether an employee is suspended pending an investigation.

**BAY 7**

BAY 7 concerns the comment to Section 35, Item E. The attorney comment reads:

> The grievance process is not automatically triggered at the imposition of disciplinary action against an employee. Rather, an employee or the Union may, but is not required to, file a grievance in the event the employee alleges that the discipline violated the just cause discipline standard.

Study Committee Note: No change to the draft language is warranted. We agree that the grievance process, which is governed by the collective bargaining agreement, does not begin until after the police department imposes discipline and a grievance is filed.

**LJG1**

LJG 1 concerns the definition of confidential information in Section 2. The comment reads:

> A document can be exempt from disclosure (i.e., FOIA) without there necessarily being a legal duty to not disclose its contents."

Recommend striking the last clause so that "confidential information" includes all material exempt from disclosure, regardless of whether there is a special legal duty to not disclose it. The City should keep in
mind that LEIN information can only be disclosed in limited circumstances and likely cannot be turned over to the Commission.

Study Committee Note: Section 2 contains two paragraphs marked B. That should be corrected, and this paragraph will then become Section 2, Item C.

LJG 1 highlights a significant issue, that is the permissible (sometimes referred to as discretionary) exemptions that are found in the Freedom of Information Act. Although the proposed ordinance provides that the oversight commission will not need to file a FOIA request in order to obtain information from the City and its departments, it is anticipated that one or more FOIA exemption may be cited by the Police Department as the basis for refusing to release information.

First, we should clarify the intent of the draft ordinance. There are several exemptions listed in section 13 (1) of the Freedom of Information Act. Section 13 (1) begins with the phrase --

A public body **MAY** exempt from disclosure as a public record under this act any of the following ...

It is important to note that the FOIA says “may” -- not “shall”. Most of the exemptions subsequently listed after the “may” in section 13 (1) are discretionary. In the scheme of this ordinance, that is a significant distinction. This ordinance would have the city decline to invoke those discretionary exemptions, unless there is a compelling reason for non-disclosure of the information requested.

The ordinance does not intend to include discretionary exemptions in the definition of confidential information.

To the extent that LJG1 assumes that confidential information includes the discretionary exemptions listed in Section 13 (1), that is a drafting problem that needs to be addressed. We do not intend for such an assumption to operate. We do not want a future reader of the ordinance to read it in that way.
Proposed edit:

Amend the definition of confidential information to read as follows:

“Confidential information” means records or information specifically described and exempted from disclosure by statute. For purposes of this ordinance, “confidential information” does not include a permissible exemption that a public body is permitted to invoke under section 13 (1) of the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.243 (1). “Confidential information” only includes mandatory exemptions from public disclosure that a state or federal statute or rule requires a public body to invoke.

There are several references in the attorney comments regarding LEIN Information. The Study Committee recognizes the limits placed on the release of LEIN information by the CJIS Policy Council Act, at MCL 28.214, which creates a legal duty not to disclose certain LIEN information:

(1) The council shall do all of the following:

(a) Establish policy and promulgate rules governing access, use, and disclosure of information in criminal justice information systems, including the law enforcement information network, the automated fingerprint information system, and other information systems related to criminal justice or law enforcement....

Given the statute, there is no need to write a special exception into the ordinance for LEIN information.

Proposed Edit: Add the following to Section 24, Item C:

In responding to the commission’s request for information directed to the Police Department, the city will not rely on any of the discretionary exemptions listed in MCL 15.243 (1) and will provide all information subject to a discretionary exemption
unless there is a compelling reason for non-disclosure. For purposes of this section, “discretionary exemption” includes exemptions that a public body may invoke, but does not include exemptions that a public body is required to invoke. The Oversight Commission may appeal such a refusal to the City Council.

See the discussion of LJG 30, which contains a proposed edit to section 21.

**LJG 2**

LJG 2 concerns Section 3, Item C:

To do this, the City will likely need to appoint some of the first members to terms that are shorter than three years so that the term endings will be staggered.

Study Committee Note: No change.

**LJG 3**

LJG 3 concerns Section 3, Item D. The comment reads:

Is this the only basis for removal? The City may wish to provide other grounds (like failure to attend meetings) and create a section listing all grounds for removal.

Study Committee Note: In light of Section 3, Item A, the change proposed in LJG 3 is unnecessary.
LJG 4

LJG 4 concerns Section 3, Item E. The comment reads:

Consider rephrasing to "people experiencing homelessness" and "people experiencing mental illness" — emphasis on the people rather than the ailment.

Study Committee Note: The Study Committee adopted this recommendation and will use the phrase “people experiencing homelessness”. We have made similar changes to the section dealing with mental illness.

Proposed edit: Amend Section 3, Item E as follows:

E. At least two commission members shall be licensed social workers or psychologists professionally engaged in helping people experiencing crisis, homelessness, mental illness, substance abuse disorders, or domestic abuse.

LJG 5

LJG 5 addresses Section 3, Item F:

Remove commas to ensure that the only members who can be non-residents are those who contribute to the desired composition of the Commission.

Proposed edit to Section 3, Item F:

F. The City Council shall appoint people to the Commission who reflect the city’s diverse population and particularly segments of the community that are protected by the civil rights ordinance. These include diverse people based on race, ethnicity, national origin, income level, age, student status, gender, disability,
sexual orientation, and gender identity or expression. People who are vulnerable and have been marginalized and who tend to have significant negative interactions with the police should be amply represented. Having an arrest or conviction record is not a disqualification for membership on the Commission. **Up to two members of the Commission who contribute to the desired composition of the Commission as described above may be persons who are not residents of East Lansing.**

**LJG 6**

LJG 6 addresses Section 5, Item B:

Will the City investigate based on a single individual’s request, or does it require a petition under subsection (c)?

Study Committee Note: Yes. 5 (c) and 5 (b) are independent duties. The city may choose to investigate based on a single individual’s request. If 20 or more residents sign a petition on an issue within the scope of the Oversight Commission, a special hearing will be held.

**LJG 7**

LJG 7 addresses Section 5, Item C. The comment reads:

Does this also require an investigation?

Study Committee Note: No. The Oversight Commission is required to inquire into the group’s concern but is not ultimately required to conduct an investigation.
LJG 8

LJG 8 concerns Section 5, Item F:

I am concerned that the city could run afoul of the collective bargaining agreement by reporting an officer to MCOLES.

Study Committee Notes:


There’s nothing in the police officers’ contract that even arguably limits the power of the commission to communicate with other oversight bodies like Michigan Commission on Law Enforcement Standards (or the US Department of Justice, or the United Nations High Commissioner for Human Rights, for that matter).

The jurisdiction of MCOLES is not dependent on the terms of a collective bargaining agreement. It is a statutory body. MCL 28.610 (1) reads:

(1) The commission may investigate alleged violations of this act or rules promulgated under this act....

MCL 28.609 (13) (a) reads:

The commission shall initiate license revocation proceedings, including, but not limited to, the issuance of an order of summary suspension and notice of intent to revoke, upon obtaining notice of facts warranting license revocation.
LJG 9

LJG 9 concerns Section 5, Item K. The comment reads:

Would the Commission make these recommendations to the City Council or the Police Department?

Study Committee Note: Both, as appropriate.

LJG 10

LJG 10 concerns Section 5, Item L. The comment reads:

Rewording for clarity

Study Committee Note: We have adopted that change.

Proposed edit: Amend Section 5 (L) to read:

The Commission may review the Police Department’s accreditation status and make recommendations about how to implement accreditation standards in a way that best benefits the community.

LJG 11

LJG 11 refers to Section 5, Item O. The comment reads:

The City may wish to clarify the scope of this communication. The Commission would not, for example, be authorized to make policy/coverage changes.
Study Committee Note: The language is clear enough. No one is likely to read that language as allowing the commission to change an insurance contract.

LJG 12

LJG 12 concerns Section 8, Item A. The comment reads:

Perhaps say "recommend" as the Commission cannot implement practice changes.

Study Committee Note: The “new practices” referenced in this section are practices of the Oversight Commission itself. The following edit will be made.

Proposed Edit: Amend Section 8 to say:

A. The Commission and members of the Commission shall keep informed as to the latest practices in the field of police accountability and inaugurate new Commission practices that appear to be of benefit to the Commission’s service and to the public.

LJG 13

LJG 13 concerns Section 8, Item C. The comment reads:

Do members pay their own dues/fees, or is the City paying those dues/fees?

Study Committee note: As noted above, the Study Committee is cognizant of the City’s budget. Membership as a group in the National Association for
Civilian Oversight of Law Enforcement is not expensive and would provide extensive relevant resources to the Oversight Commission.

Proposed edit: In a comment to Section 8, Item C add:

Item C. The National Association of Civilian Oversight of Law Enforcement is the most likely organization that members will join. NACOLE offers group memberships.

LJG suggested change to the wording of Section 9
[unnumbered comment]

LJG suggests a wording change to Section 9:

Add: Members of the commission must not represent that they are speaking on behalf of the city.

Proposed edit: Add a sentence to section 9 that reads:

The City recognizes the right of the Commission and its members to speak freely on matters within the Commission’s scope, except for disclosure of protected confidential information. The City shall not retaliate against the Commission or a Commission member for exercising that right. Members of the commission must not represent that they are speaking on behalf of the City Council, City Manager, or Police Department.

LJG 14

LJG 14 concerns Section 10. The comment reads:

We have some concern about mandating the City Manager make a recommendation for specific financial support. (Omit that clause)
Study Committee Note: No change in language is proposed. The city has a budget process, and Section 10 is a reference to the city’s budget process.

**LJG 15**

LJG 15 concerns Section 12. The comment reads:

Does [the cost of evaluations] come out of the Commission's budget?

Study Committee Note: Yes. See Section 10, Item B.

**LJG 16**

LJG 16 concerns Section 12. The comment reads:

Does the City want to include [evaluation] standards that the Commission should be meeting? What will the outside agency be evaluating?

Proposed Edit: Add a comment to Section 12 as follows.

The city normally issues a request for proposals where a study or evaluation is sought. The proposal will explain what the evaluation will include. If evaluations are done periodically, each study will be different, based on past activity. Normally the evaluator has some input concerning the methodology and the standards used in the evaluation.

For comparison, see Albuquerque ordinance 9-4-1-11, which reads:
EVALUATION. Contingent upon funding, in the first six months of 2016 and at least every four years thereafter, from adoption of §§ 9-4-1-1 through 9-4-1-14, the City Council shall issue a Request for Proposal for an independent consultant to undertake a complete evaluation and analysis of the entire police oversight process, and recommend any necessary changes or amendments that would appropriately improve the process.


LJG 17

LJG 17 addresses Section 13, Item A. The comment reads:

What will [tracking disorderly conduct cases] entail? Will the Commission be interviewing witnesses while a criminal investigation/case is ongoing? Or will the Commission only be reviewing closed cases? This could result in interference with a criminal investigation.

Study Committee Note: The intent of the Study Committee regarding charges of disorderly conduct, resisting/obstructing and similar offenses is to enable the Oversight Commission to track East Lansing cases that charge those offenses throughout the court system, and to report summaries of the underlying facts and case dispositions without identifying individuals by name. Tracking disorderly conduct cases will involve looking at court records. The commission will not be involved in their litigation.

Proposed edit: In Section 13, Item A, after “investigate” add “police and court records to.”

A. The Commission may investigate police and court records to track criminal cases in which the City charges individuals with
disorderly conduct under the East Lansing City Code, sec. 26-52.

LJG 18

LJG 18 concerns Section 13, Item B. The comment reads:

Will [disorderly conduct summaries] be limited to arrests made in the City of East Lansing or anywhere in Ingham County?

Study Committee Note: No change in text. Should be limited to (1) people arrested by the East Lansing Police Department, (2) people arrested in East Lansing, and (3) people with East Lansing arrests. Leave it to the commission to specify such parameters.

LJG 19

LJG 19 concerns Section 13, Item C. The comment reads:

[Will summaries be published] in the newspaper? Online? Both?

Study Committee Note: No change in text. By “publish” the Study Committee intends that the oversight commission may make a report regarding the information. A report may appear on the Oversight Commission’s website or in another form the Commission deems appropriate.

LJG 20

LJG 20 concerns Section 14, Item A. The comment reads:
Flagging as this imposes an extra duty on the Police Department. The City may wish to prepare an appendix or ancillary document that identifies the duties imposed by this Ordinance on the police department. This will ensure that all parties are aware of changes to PD procedure that this Ordinance would require.

Proposed Edit: In response to LJG 20 and other similar comments, add a comment to Section 11 of the draft ordinance as follows:

This ordinance would require the police department engage in several reporting activities, some of which may be new, such as:

Prepare use of force summaries, section 14(a).

Prepare summaries of encounters with homeless people, section 15 (a).

Prepare summaries of encounters with individuals in crisis, Section 16 (a).

Prepare summaries of police encounters with juveniles, Section 17 (a).

Prepare summaries of biased 911 calls, Section 20.

Produce a redaction log (Vaughn index), Section 22 (c).

Produce separate protocols for disciplinary and policy complaints, Section 31.

Develop a tracking report for complaints, Section 32.
LJG 21

LJG 21 concerns Section 14, Item B. The comment reads:


Note: No change in text. The reports may appear on the Oversight Commission’s website or in another form the Commission deems appropriate.

LJG 22

LJG 22 concerns section 15. The comment reads:

Flagging as this imposes an extra duty on the Police Department.

Study Committee Note: See the Committee’s comments regarding LJG 20.

LJG proposed change to Section 15

[unnumbered comment]

LJG proposed a change to the wording of Section 15. The comment would change “homeless people” to “people experiencing homelessness.”

Proposed edit: Amend the title and text of Section 15 to read.

Section 15: Encounters with People Experiencing Homelessness

A. Every six months, the Police Department shall provide a report to the Commission summarizing each incident where a Police Department employee transports, arrests, issues a
citation to, or stops (based on reasonable suspicion) a person who is or appears to be experiencing homelessness, including at a minimum, a brief description of the incident. In the case of a citation, arrest, or stop, the report shall include names and demographic data about the officers involved in the incident and demographic data about the other people involved in the incident. The Commission may choose to conduct additional investigation of an incident.

B. Annually, the Commission shall publish summaries of police encounters with people experiencing homelessness based on the Police Department reports and the Commission’s investigations. Published summaries shall describe behavior but not include the names of individuals.

LJG 23

LJG 23 concerns Section 16, Item A. The comment reads:

Flag as this imposes an extra duty on the Police Department.

Study Committee Note: See the Committee’s note regarding LJG 20.

LJG 24

LJG 24 concerns Section 16, Item B. The comment reads:

How do we define mental illness? Does it include individuals under the influence of drugs? How will an officer know if someone is experiencing mental illness (i.e., depression, panic disorder — very broad possibilities)?
Study Committee Note: The Chicago consent decree contains the following explanation, which is instructive:

“CPD officers often serve as first responders to individuals experiencing a behavioral or mental health crisis. These individuals may exhibit symptoms of known, suspected, or perceived behavioral or mental health conditions, including, but not limited to, mental illness, intellectual or developmental disabilities, or co-occurring conditions such as substance use disorders. The Parties acknowledge that having a mental illness, an intellectual or developmental disability, or co-occurring condition does not mean an individual necessarily is in crisis, or that having a behavioral or mental health condition would necessarily be the reason for any crisis that requires police involvement. However, it may need to be considered or warrant heightened sensitivity to ensure an appropriate response. Therefore, individuals in the groups listed above will be collectively referred to as “individuals in crisis” for the purposes of this Agreement.” Consent Decree, Chicago Police (US District Court, Northern Illinois, 2019), https://www.chicago.gov/content/dam/city/depts/cpb/supp_info/ConsentDecreeComplete.pdf

Proposed edit: In Section 2, add a definition of “Individual in crisis”, as follows:

“Individual in crisis” means a person who exhibits symptoms of known, suspected, or perceived behavioral or mental health conditions, including, but not limited to, mental illness, intellectual or developmental disabilities, or substance use disorders.

LJG 25

LJG 25 concerns section 17 [encounters with juveniles]. The comment reads:
Flag as this imposes an extra duty on the Police Department.

Study Committee Note: See the Committee’s comment regarding LJG 20.

**LJG 26**

LJG 26 concerns section 19, Item A. [Brady lists]. The comment reads:

How will the Commission investigate lists maintained by private attorneys?

Study Committee Note: Ask them.

**LJG 27**

LJG 27 concerns Section 19, Item B. [Brady lists]. The comment reads:

I am concerned that the city could run afoul of the collective bargaining agreement by reporting an officer to MCOLES.

Study Committee Notes: MCOLES rules, at 2006 AACS R 28.14203, read in part:

A person selected to become a law enforcement officer under the act shall ...

(e) Possess good moral character as determined by a favorable comprehensive background investigation covering school and employment records, home environment, and personal traits and integrity....
It is doubtful that a collective bargaining agreement would (or should) restrain anyone from providing information to a regulatory agency concerning the moral character or integrity of a police officer.

**LJG 28**

LJG 28 concerns section 20 [biased 911 calls]. The comment reads:

Flag as this imposes an extra duty on the Police Department.

Study Committee Note: See the Committee comments regarding LJG 20.

**LJG 29**

LJG 29 addresses Section 21. The comment reads:

The Commission cannot receive LEIN information.

Study Committee Note: No change in the draft. The CJIS Policy Council Act governs the release of LEIN information.

MCL 28.214 reads:

(1) The council shall do all of the following:

(a) Establish policy and promulgate rules governing access, use, and disclosure of information in criminal justice information systems, including the law enforcement information network, the automated fingerprint information system, and other information systems related to criminal justice or law enforcement....

This is already covered by the definition of confidential information.
LJG 30

LJG 30 deals with Section 21, Item A. The comment reads:

This is problematic to the extent confidential information is defined above as information exempt from disclosure by statute. Michigan law does not shield information that someone simply promised to keep confidential.

Study Committee Note: Agree. The definition of confidential information in section 1 of this ordinance includes only information prevented from disclosure by statute. That definition applies to Section 21. Merely promising to keep information confidential does not make it confidential. What makes information confidential is a statute.

The intent of this Section is that the Oversight Commission will be allowed to view confidential information, as that term is defined in the ordinance, but that the Commission shall not make, keep or have any record of the confidential information other than the log described in Section 21, Item D.

Proposed edit: Replace section 21 with the following:

Section 21. Confidential Information

A. If the commission asks for information from the police department, the information is confidential as described in subsection 2, and there is a compelling reason not to release the information to the public, then the commission and the department may agree to the procedure described in this section.

B. The police department may communicate confidential information to the commission. The commission will not keep a record of the information, except in summary, and the commission will not release the information to the public, except in summary. The summary shall include the following:
i. The statute that renders the information confidential,

ii. The source of the information,

iii. The author or authors,

iv. The date or dates when the information was produced or compiled, and

v. A description of the information as detailed as possible without revealing privileged or confidential content.

C. In responding to a person’s request for information in the records of the commission, the city will not invoke any of the discretionary exemptions listed in section 13 (1) of the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.243 (1). For purposes of this section, a “discretionary exemption” is an exemption that a public body may invoke, but is not required to invoke.

LJG 31

LJG 31 concerns, Section 21 (b). The comment reads:

[Delete 21 (b).] A public body cannot make public information confidential simply by promising to keep it confidential — nor may a public body go into closed session just to keep information confidential.

Study Committee Note: See the discussion and edit under LJG 30.
LJG 32

LJG 32 addresses Section 21 (c). The comment reads:

[Delete Section 21 (c).]: The Commission may have confidential information (i.e., exempt from disclosure under statute) that is in writing or is electronic. The Commission cannot destroy public records.

Study Committee Note: See the discussion and edit under LJG 30.

LJG 33

LJG 33 addresses Section 21 (d). The comment reads:

Again, the City must keep in mind that much of the information the Commission receives (such as complaints) likely will not be confidential.

Study Committee Note: See the discussion of LJG 30.

LJG 34

LJG 34 addresses Section 21, Item F. The comment reads:

Consider putting all grounds for removal in one section.

Study Committee Note: No change.
LJG 35

LJG 35 addresses Section 22, Item A. [redactions]. The comment reads:

This raises the question of when the police department is obligated to provide information to the Commission. Is this meant to apply both to investigations and the various written reports described above?

Study Committee Note: Yes, it applies to both.

Proposed edit: Amend Section 22 to read as follows:

Section 22. Redactions

A. If, in the course of a Commission investigation, the Police Department or other department is obligated to disclose records to the Commission, but the records contain confidential information that the department cannot by law release, or if the department can demonstrate a compelling reason not to release the information, then the department may redact the information in compliance with subsection B. The Oversight Commission may appeal such a refusal to the City Council.

B. The department shall produce a log that describes each particular redaction, including author, date, and a description of the content as detailed as possible without revealing the particular confidential information and that statutory authority under which the redaction is made. The department shall disclose that log to the Commission. The Commission may disclose that log to people outside the Commission.

C. Staff planning in the Police Department with respect to multiple employees and job assignments in the Police Department shall not be treated as confidential personnel information.
LJG 36
LJG 36 addresses Section 22, Item B. The comment reads:

Whether particular staff information is a public record or not will be determined by law.

Study Committee Note: No change.

MCL 423.501 reads in part:

(c) ... A personnel record shall not include:

(ii) Materials relating to the employer's staff planning with respect to more than 1 employee, including salary increases, management bonus plans, promotions, and job assignments....

MCL 15.243 (1) (s) (ix) is a discretionary FOIA exemption which reads:

A public body may exempt from disclosure as a public record under this act any of the following: ... (s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would ... (ix) Disclose personnel records of law enforcement agencies.

See proposed edit under LJG 35.

LJG 37
LJG 37 addresses Section 22, Item C. The comment reads:

Flag as this imposes an extra duty on the Police Department.
Study Committee Note: See the Committee comments regarding LJG 20. See proposed edit under LJG 35.

**LJG 38**

LJG 38 addresses a comment regarding Section 22, Item B.

This relates to the Bullard-Plawecki Employee Right to Know Act, which involves an employee's access to his or her file. The scope of documents that are public records is determined by FOIA, not this statute.

Study Committee Note: See proposed edit under LJG 35.

**LJG 39**

LJG 39 addresses Section 24, Item B. [giving the Oversight Commission the full force of the City Council to conduct investigations]. The comment reads:

The City Council likely cannot delegate this authority because it is conferred by Charter on the Council. The Charter does not provide for delegation.

Study Committee Note: This section describes the scope of the Oversight Commission’s ability to get information from City departments and employees. We disagree with the theory that the council cannot give power to the Commission.

Michigan Constitution, Art. 7, Sec. 22,

... Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and
government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

MCL 117.4j (3)

Each city may in its charter provide: (3) For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

East Lansing City Charter, section 4.11, reads in part:

4.11 City Governing Body: All powers of the City shall be vested in and all matters of policy of the City shall be exercised and determined by the City Council which shall be the legislative and governing body for all purposes required or permitted by law.

East Lansing City Charter, section 2.22, reads in part:

2.22 Exercise of Powers: In exercising any power, the City may utilize any procedure provided by law. If alternate procedures are to be found in different statutes, then the Council shall select that procedure which it deems to be most expeditious and to the best advantage of the City and its inhabitants. Where no procedure for the exercise of any power of the City is set forth, either in this Charter or in any statute of the State of Michigan, the Council may prescribe by resolution or ordinance a procedure for the exercise of the power. T

East Lansing City Charter, section 5.11, reads in part:
5.11 General Responsibility and Authority: The Council shall provide for the public peace, health, safety, and welfare of persons and property. In fulfilling this obligation, the Council may upon the recommendation of the City Manager, create, combine, or re-organize departments, agencies, and administrative offices and officers of the City Government.

See discussion under LJG 41.

**LJG 40**

LJG 40 addresses Section 24, Item C. The comment reads:

Delete “specifically.” The statute may speak to the category and not a specific document or specific piece of information.

Study Committee Note: Delete “specifically”. See discussion under LJG 41.

**LJG 41**

LJG 41 addresses section 24, Item D. The comment reads:

This seems to read that the City will provide the Commission with documents that are exempt from disclosure under FOIA.

Study Committee Note: LJG41 doesn’t distinguish between permissive and mandatory exemptions. This draft ordinance makes that distinction; the distinction is critical in several places.

Proposed edit: Amend Section24 as follows:
Section 24. Cooperation

A. City employees and departments shall cooperate with the information requests submitted by the Commission or a professional investigator retained by the Commission.

B. The Commission has the full force and authority of the City Council under section 4.9 of the East Lansing City Charter to conduct an investigation with respect to an investigation within the Commission’s scope.

C. City employees and departments shall provide the information requested by the Commission unless disclosure is prohibited by statute. In responding to the commission’s request for information directed to the Police Department, the city will not rely on any of the discretionary exemptions listed in MCL 15.243 (1) and will provide all information subject to a discretionary exemption unless there is a compelling reason for non-disclosure. The Oversight Commission may appeal such a refusal to the City Council.

D. For purposes of this section, “discretionary exemption” includes exemptions that a public body may invoke, but does not include exemptions that a public body is required to invoke.

E. The Police Department shall not require the Commission to file a freedom of information request as a prerequisite to disclosure of information, charge the Commission a fee, or assert a discretionary exemption under section 13 (1) of the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.243 (1), as justification for denying the Commission’s information request.

F. The Police Department shall respond to an information request from the Commission within 21 days unless the Commission and the department agree to a different schedule.
G. The Police Department may not charge the Commission a fee for responding to the Commission’s information requests, but if the Commission’s information requests, overall, create a significant financial burden for the department, the City shall provide financial resources to the department to account for that burden.

LJG 42

LJG 42 addresses Section 24, Item F. The comment reads:

What amount is a significant financial burden?

Study Committee Note. No change on this point. The matter will be handled through the budget process.

LJG 43

LJG 43 addresses Section 24, Item F. The comment reads:

[promising to reimburse the police department for its financial burden] would bind a future Council's funding decisions, which likely is not enforceable.

Study Committee Note: No change on this point. The matter will be handled through the budget process.
LJG proposed change to Section 25 (C)
(Unnumbered comment)

LJG proposed a change to the language of Section 25, Item C. The comment reads:

Add: “The City Council may permit the withholding of public records that are exempt from disclosure under FOIA.”

Study Committee Note: LJG’s proposed edit to Section 25 (c) doesn’t distinguish between permissive and mandatory FOIA exemptions. The draft ordinance makes that distinction. Here, the ordinance is saying that the city council will give effect to mandatory FOIA exemptions.

Proposed edit: Amend Section 25, Item C to read:

C. The City Council is not bound by discretionary exemptions listed in the Freedom of Information Act but may invoke a discretionary exemption when there is a compelling reason to withhold the information. For purposes of this section, “discretionary exemption” includes an exemption that a public body may invoke, but does not include an exemption that a public body is required to invoke.

LJG 44

LJG 44 concerns Section 26, Item D. The comment reads:

The Commission is not a separate public body that can sue in its own name. Recommend striking.

Study committee note: See edit under LJG 45
LJG 45

LJG 45 addresses Section 26 (d) [City to pay for FOIA litigation]. The comment reads:

This is very broad. FOIA litigation can cost tens of thousands of dollars.

Proposed edit: Change section 26 to read as follows:

A. The Commission may file requests under the state or federal freedom of information acts to seek information from public bodies outside the city’s jurisdiction.

B. If the Commission deems it necessary, the Commission may recommend that the City Council pursue legal action to obtain the information under subsection A.

C. The City shall not charge a fee for responding to freedom of information act requests for records in the possession of the Commission.

LJG 46

LJG 46 concerns Section 26, Item E. [Commission will not charge a fee for responding to an FOIA request]. The comment reads:

Recommend striking because the Commission will not have its own FOIA coordinator. FOIA requests will be processed by the city clerk’s office.

Study Committee Note: No change.
LJG 47

LJG 46 concerns Section 28 Item A(4). The comment reads:

Will the PD be directed to pass along all complaints to the Commission?

Study Committee Note: Yes. See section 29, Item A.

LJG 48

LJG 48 concerns Section 29, Item B. [requires police department to investigate each complaint]. The comment reads:

Add: In accordance any applicable collective bargaining agreement?

Study Committee Note: No change.

LJG 49

LJG 49 deals with Section 30, Item B. The comment reads:

Decide whether the Commission will investigate anonymous complaints.

Study Committee Note: The Study Committee intends to allow the filing of anonymous complaints. Add a section 30, Item C, as follows:

C. A complaint may be accepted even if it is anonymous.
**LJG 50**

LJG 50 addresses Section 31, Item A. [requiring police to publish separate protocols for disciplinary and policy complaints]. The comment reads:

Flagged as imposing additional duties on the police department

Study Committee Note: See the Committee notes regarding LJG 20.

**LJG 51**

LJG 51 addresses Section 31, Item C. The comment reads:

How will this be decided and communicated?

Study Committee Note: No change

**LJG 52**

LJG 52 deals with Section 32 [complaint tracking]. The comment reads:

Imposes additional duties on police department

Study Committee Note: See the Committee notes regarding LJG 20.

**LJG 53**

LJG 53 deals with Section 33, Item B. The comment reads:

Is the City contemplating that the complainant will participate in the mediation, or just the officer and the department?
Study Committee Note: See BAY 5.

**LJG 54**

LJG 54 concerns Section 33, Item D. [city will pay for mediation services]. The comment reads:

Again, concern about mandatory funding.

Study Committee Note: See the Study Committee notes regarding BAY 5.

**LJG 55**

LJG 55 concerns Section 33, Item D. [mediation]. The comment reads:

Discipline in the police department will be covered by the union contract.

Study Committee Note: See the Committee notes regarding BAY 5.

**LJG 56**

LJG 56 concerns Section 35, Item D. [Commission does investigation after staff report and before police chief investigates]. The comment reads:

I believe the union contract requires at least some action by the police department within 10 days after the occurrence or after learning of the occurrence. The union contract does not contemplate a dual investigation.
Study Committee Note: No change.

**LJG 57**

LJG 57 concerns Section 35, Item G. The comment reads:

The CBA does not contemplate [hiring an investigator].

Study Committee Note: No change. The internal investigation by the police department and the commission’s investigation are different.

**LJG 58**

LJG 58 concerns Section 35, Item H. The comment reads:

Reporting employee discipline matter to MCOLES may implicate union contract.

Study Committee Note: No change. See the Committee comments regarding LJG 8 and LJG 27.

**LJG 59**

LJG 59 addresses Section 36, Item B [Review by city manager]. The comment reads:

Not contemplated by CBA.

Study Committee Note: No change in text.
Proposed edit: The comment to Section 36 (B) section, labeled “Item D”, should be relabeled “Item B”.

[end]
Item III:

Memorandum on Background Materials on Recommended Ordinance to Establish an Independent Community Police Oversight Commission

Items I and II of Part B contain the final, complete recommendation to the City Council by the Study Committee for an ordinance to create a police oversight commission (Item I), as well as all comments by the City Attorney and the Labor Attorney about an earlier draft recommendation, along with responses to those comments from two lawyers on the Study Committee (Item II). These two items contain all final materials about a draft ordinance for the Council’s consideration.

For those who wish to look in more detail at the steps in this process, here are links to the three previous documents:

Draft Recommended Ordinances and Resolution, dated April 28, 2021, sent to the City Attorney and Labor Attorney

This is the version of the draft recommendation on which the City Attorney and Labor Lawyer were asked to provide comments.


Comments on Draft Recommendations by East Lansing City Attorney, May 6, 2021

All comments in this document are copied into the Legal Memorandum in Item II.

https://cityofeastlansing.civicweb.net/document/54162/Police%20Oversight%20Commissio
n%20Ordinance%20Draft%20-%20FSCS.pdf?handle=53EC90E3FAC34227BCB62DB76B7962DF

Comments on Draft Recommendations by East Lansing Labor Lawyer, May 7, 2021

All comments in this document are copied into the Legal Memorandum in Item II.

https://cityofeastlansing.civicweb.net/document/54161/Labor%20Attorney%20comments%20Draft%20Recommendations%205.7..pdf?handle=90DE775C594E487E9BB80C025CC8068A