



## Takoma Park City Council Meeting – July 10, 2024 Agenda Item 3

### **Voting Session**

Second Reading Ordinance Authorizing the amendment of the Takoma Park Code to remove provisions referring to the repealed Law Enforcement Officer's Bill of Rights (LEOBR) and add references to the Maryland Police Accountability Act (MPAA)

### **Recommended Council Action**

Approve the ordinance

### **Context with Key Issues**

In 2021, the General Assembly repealed the LEOBR and replaced it with the MPAA. The proposed City Code changes are required to reflect the changes in State Law. City Code changes are incorporated in Chapter 4 and consist of the removal of references to the LEOBR and replacement with the MPAA. The department has been operating under the new MPAA since it was enacted in 2021.

The MPAA governs the process for discipline for all police officers in the State of Maryland. While there are several changes to the disciplinary process with the change from the LEOBR to the MPAA, department disciplinary policies and how the department conducts internal investigations has not changed.

With the new implementation of the MPAA changes were made to how complaints from the public were received, reviewed, and to the administrative trail board process. The Takoma Park Police Department is required to follow these policies. The MPAA required all counties to create three police oversight boards, each of which serves a different function. The three police oversight boards include: Police Accountability Board, Administrative Charging Committee, and Trial Board process.

Information previously provided to Council regarding the structure and intent of each of the oversight boards is included as Attachment A.

### **Council Priority**

A Livable Community for All; Engaged, Responsive and Service-Oriented Government

### **Environmental Considerations**

There are no environmental impacts.

### **Fiscal Considerations**

There is no fiscal impact to the City.

### **Racial Equity Considerations**

The change to the Code will not disproportionately impact any particular group nor will the implementation of the MPAA process.

**Attachments and Links**

Attachment A: Oversight Board Overview

Attachment B: Draft Ordinance Authorizing the amendment of the Takoma Park Code to remove provisions referring to the repealed LEOBR and add references to the Maryland Police Accountability Act MPAA.

## **Attachment A: Accountability Board Overview**

### **Police Accountability Board**

The Police Accountability Board (PAB) is a nine-member board. All nine members are appointed by the County Executive. The PAB holds quarterly meetings with heads of law enforcement agencies and otherwise works with law enforcement agencies and the county government to improve matters of policing. The board also receives complaints of police misconduct filed by members of the public and on a quarterly basis, reviews outcomes of disciplinary matters considered by the charging committee.

Duties of the Police Accountability Board:

1. Hold quarterly meetings with the directors of one or more law enforcement agencies operating in the County who employ one or more police officers;
2. Appoint civilian members to the Administrative Charging Committee and trial boards;
3. Receive complaints of police misconduct filed by a member of the public;
4. Review the outcomes of disciplinary matters considered by the Administrative Charging Committee on a quarterly basis;
5. Advise the Executive and the Council on policing matters; and
6. Refer each complaint of police misconduct filed with the Board to the appropriate law enforcement agency within 3 days after receipt for investigation.

**\*\*\*Note- the Takoma Park Police Department investigative all complaints received from the public\*\*\***

### **Administrative Charging Committee**

The Administrative Charging Committee (ACC) is a five-member board. The County Executive appoints two people to the ACC, by state law the Chair of the PAB sits on the ACC and the remaining two positions are appointed by the PAB. The ACC reviews the findings of a law enforcement agency's investigation (as only a police agency investigates the complaint).

Considering the findings of the investigating agency, the Administrative Charging Committee makes a determination as to whether or not to administratively charge the police officer who is the subject of the investigation and if the police officer is charged, recommend discipline. The Administrative Charging Committee does not file criminal charges against a law enforcement officer.

### **Duties of the Administrative Charging Committee**

The Committee must:

1. Review the findings of each law enforcement agency's investigation forwarded by the agency to the Committee;
2. Review any body camera footage that may be relevant to the matters covered in the complaint of misconduct;
3. Authorize a police officer called before the Committee to be accompanied by a representative;

4. Determine if the police officer who is the subject of the investigation should be administratively charged or not administratively charged within 30 days after receipt of the law enforcement agency's investigatory file unless the Committee requests further review under subsections (j)(1) or (2);
5. If the Committee determines that a police officer should be administratively charged, recommend discipline pursuant to the disciplinary matrix;
6. If the Committee determines that a police officer should not be administratively charged, determine if:
  - a. The allegations against the police officer are unfounded, including situations where existing departmental policy fails to properly address the situation for which the officer was charged; or,
  - b. The police officer is exonerated;
7. Issue a written opinion for each complaint describing in detail the Committee's findings, determinations, and recommendations; and
8. Forward the written opinion to the director of the appropriate law enforcement agency, the accused police officer, and the complainant.

### **Duties of Law Enforcement Agencies**

The law enforcement agency must investigate and submit a written investigation report to the Administrative Charging Committee for each complaint received by the agency or referred to the agency by the Police Accountability Board. Each law enforcement agency must submit a monthly report to the Administrative Charging Committee detailing complaints received and the status of each investigation.

### **Trial Board Process**

A trial will be held if the involved officer contests the findings of the Police Department's internal investigation and the recommendations of the ACC.

The trial board is a three-member group selected to determine the final outcome of a disciplinary case. A trial board will be composed of an actively serving or retired administrative law judge appointed by the Chief Administrative Law Judge of the Maryland Office of Administrative Hearings; a civilian who is not a member of an Administrative Charging Committee or the Maryland Police Training and Standards Commission (MPTSC), appointed by the Police Accountability Board for the county where the alleged misconduct occurred; and an officer of equal rank to the officer who is accused of misconduct appointed by the Chief of Police.

**\*\*\*Note- under the old Law Enforcement Officers Bill of Rights (LEOBR) all members of a trial board were sworn officers\*\*\***

Introduced by: Councilmember Small

First Reading: July 1, 2024

Second Reading:

Effective Date:

**CITY OF TAKOMA PARK, MARYLAND  
ORDINANCE 2024-17**

**AMENDING THE CITY OF TAKOMA PARK CODE TO REMOVE PROVISIONS REFERRING TO THE REPEALED LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS AND ADD REFERENCES TO MARYLAND'S POLICE ACCOUNTABILITY ACT.**

**WHEREAS,** the Maryland Code, Local Government Article, Section 5-202, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort, and convenience of the citizens of the municipality;

**WHEREAS,** Section 401(a) of the City Charter states that the Council has the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland as it may deem necessary for the good government of the City, for the protection and preservation of the City's property, rights, and privileges, for the preservation of peace and good order, for securing persons and property from violence, danger or destruction, and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in the City;

**WHEREAS,** in 2021, the General Assembly repealed the Law Enforcement Officer's Bill of Rights and replaced it with the Police Accountability Act; and

**WHEREAS,** the City Code needs to be modified to reflect the changes in State law.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THAT** the City of Takoma Park Code is hereby amended as follows:

## **Title 4**

### **PERSONNEL**

#### **Chapters:**

- 4.04 Civil Service**
- 4.08 Collective Bargaining**
- 4.12 Alcohol and Drug Policy**
- 4.16 Employee Assistance Program**
- 4.20 Screening for Drugs and Alcohol**
- 4.24 Police Employees' Retirement Plan**

**Chapter 4.04**  
**CIVIL SERVICE**

Sections:

Article 1. Administration

- 4.04.010 Purpose.
- 4.04.020 *Repealed.*
- 4.04.030 Responsibilities of personnel officer.
- 4.04.040 Responsibilities of employee.
- 4.04.050 Applicability of regulations.
- 4.04.060 *Repealed.*
- 4.04.070 Merit principles.

Article 2. Definitions

- 4.04.080 Terms defined.

Article 3. Conduct of Employees

- 4.04.090 General policy.
- 4.04.100 Business activities and solicitation.
- 4.04.110 Outside employment.
- 4.04.120 Privileged information.
- 4.04.130 Political activity.

Article 4. Classified System

- 4.04.140 Overview of compensation.
- 4.04.150 Creation and abolition of positions.
- 4.04.160 Position classification plan.
- 4.04.170 Allocation of positions to classes.
- 4.04.180 Class specifications.
- 4.04.190 Amendments to position classification plan.
- 4.04.200 Reclassifications.
- 4.04.210 Assigning class to pay grade.
- 4.04.220 Contents, preparation and adoption of pay plan.
- 4.04.230 Pay period.
- 4.04.240 Determination of pay increases.
- 4.04.250 Salary rates for reallocations, promotions and demotions.
- 4.04.260 Salary rates for transfers.
- 4.04.270 Compensation for new employees.
- 4.04.280 Overtime.

Article 5. (Reserved)

Article 6. Attendance and Leave

- 4.04.290 Authorized leave.
- 4.04.300 Requests for leave.
- 4.04.310 Accounting responsibilities and procedures.
- 4.04.320 Holiday leave.
- 4.04.330 Annual leave.
- 4.04.340 Sick leave.
- 4.04.350 Compensatory leave.
- 4.04.360 Injury leave.
- 4.04.370 Military leave.
- 4.04.380 Maternity leave.
- 4.04.390 Bereavement leave.
- 4.04.400 Jury leave.
- 4.04.410 Civic duties.

Article 7. Selection and Appointment of Employees

- 4.04.420 Recruitment.
- 4.04.430 Qualification requirements.
- 4.04.440 Applications.
- 4.04.450 Examinations.
- 4.04.460 Appointment.

Article 8. Probationary Period

- 4.04.470 Purpose.
- 4.04.480 Duration.
- 4.04.490 Expiration.

Article 9. Promotions, Transfers, Resignations, Layoffs, Demotions

- 4.04.500 Seniority.
- 4.04.510 Break in employment.
- 4.04.520 Promotion policy.
- 4.04.530 Demotion.
- 4.04.540 Transfer.
- 4.04.550 Resignation.
- 4.04.560 Layoffs.

Article 10. Employee Performance Evaluation

- 4.04.570 Purpose.
- 4.04.580 Maintenance of system.
- 4.04.590 Procedure.
- 4.04.600 Evaluation results and consequences.



## Article 11. Disciplinary Actions and Dismissal

- 4.04.610 Responsibility—Applicability to police.
- 4.04.620 Types of disciplinary action—Severity.
- 4.04.630 Reasons for disciplinary action.
- 4.04.640 Reprimand procedures.
- 4.04.650 Disciplinary probation.
- 4.04.660 Expiration of disciplinary probation
- 4.04.670 Suspension.
- 4.04.680 Dismissal.

## Article 12. Employee Development

- 4.04.690 Purpose.
- 4.04.700 Responsibility.
- 4.04.710 Payment for non-city provided training programs.
- 4.04.720 Higher education program.
- 4.04.730 Salary adjustments.

## Article 13. Fringe Benefits

- 4.04.740 Hospitalization.
- 4.04.750 Life insurance.
- 4.04.760 Hours.
- 4.04.770 State retirement.

## Article 14. Grievance Procedure

- 4.04.780 Rights of employees.
- 4.04.790 Procedure.

## Article 15. Personnel Appeal Board

- 4.04.800 *Repealed.*
- 4.04.810 *Repealed.*
- 4.04.820 *Repealed.*

\* \* \*

## Article 11. Disciplinary Actions and Dismissal.

### **4.04.610 Responsibility—Applicability to police.**

A. All employees shall assume personal responsibility for adhering to the regulations necessary to effectively carry out the operations of the departments to which they are assigned. Abrogation of these regulations may be cause for disciplinary action, including dismissal.

B. Department heads shall assume full responsibility for enforcing these regulations and referring problem situations to the City Administrator's office.

C. Where sworn police personnel are concerned, disciplinary actions and dismissal procedures shall be conducted in accordance with the State of Maryland's Police Accountability Act. ~~Police~~

Officers Bill of Rights (Annotated Code of Maryland, Article 27, Sections 727 through 734.) (Prior code § 8B-162)

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## Chapter 4.20

### SCREENING FOR DRUGS AND ALCOHOL

Sections:

4.20.010 Purpose.

4.20.020 Screening for drugs and/or alcohol.

#### **4.20.010 Purpose.**

The purpose of this chapter is to provide policy and procedures for conducting drug and alcohol screening when there is reasonable suspicion that an employee, as defined in Chapter 4.12, is under the influence or intoxicated during working hours. (Prior code § 8B-215)

#### **4.20.020 Screening for drugs and/or alcohol.**

A. The City may require a current employee to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs and alcohol during work hours. Testing of police officers must conform to the provisions of the State of Maryland's ~~Law Enforcement Officer's Bill of Rights~~ Police Accountability Act.

B. "Reasonable suspicion" means an articulable belief based on specific objective facts and reasonable inference drawn from those facts. Reasonable suspicion may include, but is not limited to:

1. A pattern of abnormal or erratic behavior;
2. Information of recent drug or alcohol use provided by a reliable and credible source;
3. Direct observation of drug or alcohol use; or
4. Presence of the physical symptoms of drug or alcohol use (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes).

C. Consent. Before a drug and alcohol test is administered, employees will be asked to sign a consent form authorizing the testing and permitting release of test results to City officials with a need to know. The consent form shall provide space for employees to acknowledge that they have been notified of the City's drug testing policy. Employees and applicants may at this time provide a list of medications that they have recently used. The list of medications, if provided, shall be sealed and held as confidential until there has been a positive test result. In the event of a confirmed positive test result, the list of medications shall only be disclosed to the medical officer who will determine whether the positive result was due to lawful use of any of the listed medications. Employees may choose to provide such a list after being notified of a confirmed positive result. The consent form shall also include:

1. The procedure for confirming an initial positive test result;
2. The consequences of a confirmed positive test result;
3. The right to explain a confirmed positive test result and the appeal process available;

4. The consequences of refusing to undergo a drug and alcohol test.

D. Procedure. When, in the supervisor's judgment, there is reasonable suspicion to believe that an employee is under the influence of drugs or alcohol, the supervisor will immediately contact the department head, deputy, acting department head, Personnel Officer or Assistant City Administrator who will evaluate the supervisor's recommendation and, if appropriate, authorize the supervisor to request the employee to consent to testing. The employee and a representative of the employee's union will be notified that the City representatives suspect the employee is under the influence of drugs or alcohol and will list the reasons which document their suspicion. The employee, in the presence of his or her union representative, will be questioned about his or her behavior or other reasons that have caused the supervisor and City officer to suspect that the employee is under the influence of drugs or alcohol. If, after the employee's explanation, the supervisor and City officer still suspect that the employee is under the influence of drugs or alcohol, the City officer may request that the employee submit to a drug/alcohol detection test. Provided that the employee consents, the supervisor will escort the individual to the designated testing facility.

E. Documentation of Reasonable Suspicion. Supervisors and City officers shall detail in writing the specific facts, symptoms or observations which formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. This documentation shall be forwarded to the appropriate department head or designee and a copy shall be furnished to the employee. The facts underlying the determination of reasonable suspicion shall be disclosed to the employee at the the demand is made.

F. Drugs to be Tested For. When drug and alcohol screening is required under the provisions of this policy, a urinalysis test will be given to detect the presence of the following drugs:

1. Alcohol (ethyl);
2. Amphetamines (e.g., speed);
3. Barbituates (amobarbital, butabarbital, phenobarbital, secobarbital);
4. Cocaine;
5. Methaqualone (e.g., quaalude);
6. Opiates (e.g., codeine, heroin, morphine, hydromorphone, hydrocodone);
7. Phencyclidine (PCP);
8. THC (marijuana);
9. Drugs specified in the State of Maryland Schedule of Controlled Dangerous Substances.

G. Refusal to Consent. An employee who refuses to consent to a drug and alcohol test when reasonable suspicion of drug or alcohol use has been identified is subject to disciplinary action up to and including termination.

H. Laboratory testing requirements.

1. All drug and alcohol testing of employees shall be conducted at medical facilities or laboratories selected by the City. To be considered as a testing site, a medical facility or lab must submit, in writing, a description of the procedure that will be used to maintain test samples. The City shall not select a test facility that does not employ:

- a. Testing procedures that ensure privacy to employees consistent with the prevention of tampering;
- b. Methods of analysis that ensure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;
- c. Chain of custody procedures that ensure proper identification, labeling and handling of test samples;
- d. Retention and storage procedures that ensure reliable results on confirmatory tests of original samples.

2. All drug and alcohol testing will be performed by a laboratory which meets the standards recommended by the National Institute on Drug Abuse (NIDA).

I. Confidentiality of Test Results. All information from an employee's drug and alcohol test is confidential, and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee. The results of a positive test shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory.

J. Privacy in Drug Testing. Urine samples shall be provided in a private restroom stall or similar enclosure so that employees may not be viewed while providing the sample. Employees will be given hospital gowns to wear while they are providing test samples in order to ensure that there is no tampering. Street clothes, bags, briefcases, purses and other containers may not be carried into the test area. The water in the commode shall be colored with blue dye to protect against dilution of test samples.

K. Mandatory Employee Assistance Program Referral. Upon the first confirmed determination that an employee has been under the influence of drugs or alcohol, the City shall refer the employee to the Employee Assistance Program for assessment, counseling and rehabilitation, unless the employee's drug or alcohol use has resulted in an accident serious enough to warrant dismissal. Participation in the Employee Assistance Program is voluntary, and no disciplinary action may be taken against an employee for failure to begin or complete an Employee Assistance Program. Disciplinary action based on a violation of the City's Drug and Alcohol Policy is not automatically suspended by an employee's participation in an Employee Assistance Program and may be imposed when warranted.

Voluntary participation in an Employee Assistance Program prior to a confirmed positive test result is encouraged. No disciplinary action will be brought as a result of volunteering to participate in such a program. Employees who, prior to a positive test result, voluntarily identify themselves as drug or alcohol users and obtain counseling and rehabilitation through the City's Employee Assistance Program shall not be disciplined for their drug and/or alcohol use if they thereafter

refrain from violating the City’s Drug and Alcohol Policy. All employees, however, can be disciplined for any incidents resulting from their violation of the City’s Alcohol and Drug Policy.

L. Grievances and appeals. All appeals and grievances for actions under this policy will be in accord with the grievance procedures in the Charter and Code of the City of Takoma Park, City Regulations or an applicable collective bargaining contract. (Prior code § 8B-216)

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THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THIS \_\_\_\_ DAY OF July, 2024, BY ROLL-CALL VOTE AS FOLLOWS:

AYE:

NAY:

ABSTAIN:

ABSENT:

**Explanatory Note:**

1. Underlining indicates language being added to the Code.
2. ~~Strikethrough~~ indicates language being deleted from the Code.