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By Email and U.S. Mail

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Re: Community Police Commission Recommendations concerning Bias-free policing and Community Police Review Board

Dear Matthew and Matt,

The ACLU of Ohio has provided input to the Community Police Commission (CPC) with regard to two of its projects: (1) the Community Police Review Board (CPRB) ordinance drafted by the CPC and (2) the City Council's Bias-free policing ordinance—on which the CPC is to make recommendations.

Attending the City Council Safety Committee's meeting this week, it came to my attention that the channels for information flow among the entities in this new undertaking are still being established, so I feel it might be helpful to share our input on these items with the Monitoring Team and the City Council Safety Committee Chair.

1. Comments Relating to the CPC's Draft Recommended CPRB Ordinance

The drafting process for the CPRB Ordinance has been "reset." Here are our comments on what we understand to be the CPC's current draft:

- a. Although reviewing complaints and "incidents" is the core duty of most civilian police boards, consideration should be given to empowering the CPRB to examine, not just particular complaints, but also policy questions or areas of concern.
- b. The "new" CPRB, just like its predecessor, will possess subpoena power. We wish to point out that (according to documents that we received pursuant to a public records request and shared with the CPC), the CPRB exercised its subpoena power only once in the six year period 2010-2015.



So beyond intoning the same language granting this power, which of course we agree with, the reasons for this should be explored.

- c. Under the current draft ordinance, if the Chief of Police refuses a CPRB recommendation for discipline, the CPRB has power to impose the discipline anyhow. Some experts say that the final decision should reside with the Chief, because the Chief is accountable to the Mayor, who is ultimately accountable to the voters. Also, if the Chief does not have the final say, this could undermine his/her authority with the rank-and-file.

2. Bias Free Policing Ordinance

We understand that the deadline for the CPC's recommendations has been extended to March

7. We provided the CPC this set of comments on the City Council's initial proposal, and we supply them to you for your information as well:

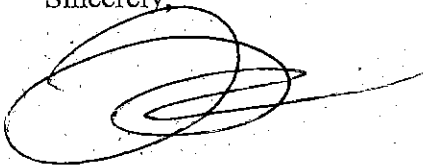
- a. The proposed ordinance defines "biased-based profiling" as "stopping and detaining an individual "based *solely* on the individual's actual or perceived race [or other characteristics]" But the inclusion of the word "solely" makes the ordinance close to meaningless. Profile characteristics, such as race, appear almost always as one in a cluster of factors that could result in a stop or non-consensual search. "Race-plus," as opposed to solely race, is a more likely input to police-decision making because a prospective detainee's location, posture, clothing, and other factors, including time of day, inevitably also enter into the arresting officer's awareness. We therefore propose that the ordinance should forbid police actions that are based "to any degree" on the enumerated profile characteristics.
- b. The ordinance requires an officer to record the "actual or perceived" characteristics of the detainee. This is problematic because the actual characteristics of the detainee are irrelevant. What the ordinance is intended to address (and what is actually necessary to eliminate) is officer bias—i.e., how an officer perceives a potential detainee. Therefore, we recommend that the term "actual" be removed.
- c. Rather than using the term "bias-based profiling," we urge that the term "bias-free policing" be substituted. It more accurately labels the issue, is the term that is used in the Consent Decree, and is used commonly in the community.
- d. Sections 3(H) and (J) require members of the police force to provide a "brief description" of the facts that led to a stop and/or non-consensual search. But in order to obtain a useful understanding of such facts, we recommend that the ordinance require a "brief *narrative* description." Otherwise, experts tell us, officers tend to report by selecting from a "checklist" of common facts, which leads to overly formulaic and imprecise reporting.
- e. Referring to Section 4 of the Ordinance, in addition to the data analysis performed by the Director and Chief's designee(s), we recommend an analysis by an independent, non-governmental body, such as a university or think tank. To build a culture of bias-free

policing and community trust, it's crucial that analytics not only be performed objectively—but that the process is perceived to be objective as well.

- f. Finally, we are troubled by Section (b)(2), which requires remedial action to be taken if the data reveals a “pattern of biased-based profiling.” Because the provision does not provide any guidance—in the form of metrics or a definition—to inform city officials of what may constitute a “pattern,” it is vague and has the potential for weak or arbitrary enforcement. We strongly urge the addition of a definition that details precisely what constitutes a “pattern.”

As always, please feel free to contact me to discuss any of this.

Sincerely,



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cc:

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