



## STAFF REPORT ON PROPOSED LEGISLATION

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To: Mayor Gavin Buckley

From: David Jarrell, City Manager

Date: April 12, 2021

Subject: O-12-21: Police Enhancement and Community Engagement (PEACE)

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This ordinance will establish a variety of new procedures, requirements and prohibitions for the Annapolis Police Department. The State Legislature has just recently passed new legislation in the subject areas of this bill. The State law will preempt many actions by the City. It is recommended that the City Council consider waiting until the City better understands the new State law before moving forward with this legislation.

A number of the changes in this legislation have financial and operational impacts, as well as legal concerns. The financial impacts will be addressed in the Fiscal Note prepared by the Finance Director. We look forward to discussing the impacts and concerns with the City Council in order to make this legislation the best it can be. Following is a summary of these issues for each City Code Section in the PEACE legislation:

### **SECTION 2.36.090 –DATA COLLECTION, PUBLICATION, ANALYSIS, AND REPORTING.**

#### **2.36.090(A) - No-Knock Warrant - Reporting Requirements**

**Legal Concern:** Requires reporting on the number of no-knock warrants that are ISSUED, not executed. Not all warrants are executed.

**Operational Impact:** Requires APD to report on no-knock warrants issued on behalf of any other agency, which may not inform APD. This would require a MOU with all law enforcement agencies throughout the state along with federal agencies to voluntarily provide this information to APD on an annual basis. Without the MOU, the department would have to confirm this provision of the legislation agency by agency. There are over 100 state and local agencies in Maryland. A key concern of this provision is the word “issued”. Numerous search warrants are issued each year; however, not all are served. APD should not be committed to providing information from other agencies, since they are not bound to give us the information, nor should it be assumed that federal and state agencies would coordinate with APD in the execution of a No-Knock Warrant.

#### **2.36.090(B) - Community Policing - Reporting Requirements**

**Operational Impact:** Strategic Community Policing Plans are historically multi-year complex plans that require plan stages. Plan stages are historically linked to an agency's funding and staffing allocations which provide resources to achieve strategic goals. Requiring a tri-annual submission of a strategic plan is more logical, along with annual reporting on the status of plan stages, goals, and objectives to be submitted within the APD budget. Submitting the reports within the budget can provide an effective method for the Council to better assess programming as it relates to funding allocations.

### **2.36.090(C) – Reporting**

**Legal Concern:** Certain terms are ambiguous ((C)(5) and (C)(9)) and, therefore, are legally insufficient.

**Operational Impacts:**

1. Paragraph 6. – There is no way to reliably report the number of times officers draw their guns without technology (sensor in holster).

2. Paragraph 6. - Officers draw their guns for several reasons (e.g., investigating report of a closed business being burglarized) - is the intent to report every time an officer draws their gun or every time a gun is drawn as a show of force?

3. Paragraphs 4. and 15. - There are a lot of calls for service unrelated to substance abuse/mental health that subsequently evolve into a substance abuse/mental health investigation

4. Paragraph 7., 8. and 9. - To accurately report on these provisions, body-worn cameras would need to be continuously monitored to ensure all complaints are captured. The provisions would also require changes to the collective bargaining agreement, changes to BWC policies, and the creation of new policies and standards for monitoring.

### **2.36.090(D) - Gun Violence Prevention - Data Gathering Requirements**

**Legal Concern:** The City Council is prescribing an executive procedure in requiring that APD submit a report to the City Manager.

**Operational Impact:** There is no way to conclusively know what residents have registered firearms in Annapolis. People move to the city from other areas of the state and may have a legally registered firearm. Unless a subsequent ordinance is passed to require any current or new residents to register a firearm with APD, this reporting cannot be accomplished. The registration of Regulated firearms is not an operation of the Annapolis Police Department. All firearms registrations are handled by the Maryland State Police Licensing Division.

### **2.36.090(E) - City-Owned Armored Vehicles - Reporting Requirements**

**Legal Concern:** The City Council is prescribing an executive procedure in requiring that APD submit a report to the City Manager.

**Operational Impact:** This provision is vague and ambiguous. The vehicle is routinely deployed for maintenance, training and community events. Does the council wish to have a report written for these types of deployments? The creation of a new report for deployment of the vehicle is redundant, as an incident action plan, describing the vehicle deployment, is completed and given to the City Manager in line with the Incident Command System (ICS). The ICS is a national best-practice protocol for emergency management, which is used by FEMA, MEMA and the DOJ. APD members have been trained by FEMA to document within ICS and has operated within the system for critical incidents requiring the use of the armored vehicle for many years.

### **2.36.090(F) - Gun and Pawn Shop - Reporting Requirements**

**Operational Impact:** This provision is vague and ambiguous. It is not clear if the Council wants APD to report on firearms sales, or pawn and gun shop owners to report them.

## **SECTION 2.36.100 – COMMUNITY POLICING.**

### **2.36.100(B) - Community Policing Guidelines**

**Operational Impact:** These guidelines are taken from current General Orders, which can appropriately change more quickly. Changing the City Code is not a nimble process and legislation won't be able to keep up.

1. Paragraph 1. - Some wording of this provision is vague and broad. What does the Council consider to be positive non-enforcement activities? To accomplish this provision, new policies and standard procedures would need to be created, with officers entering this information into a database.

2. Paragraph 5. - To accomplish this provision, APD would need to increase the Community Relations budget. This would require other city agencies to allocate resources as well. The Council would need to identify what agencies APD is mandated to partner with. APD would need to know which community-based organizations it would need to partner with.

## **SECTION 2.36.110 – TRAINING – REQUIREMENTS.**

### **Legal Concern:**

1. If, due to lack of funding, training requirements are not met by APD, then there is a municipal liability risk because the City Council mandated the training, then failed to provide appropriate funding.

2. "Police officers" is not defined - could be interpreted to apply to officers with other agencies operating in the city

3. Violates City Charter as it seeks to regulate officers'/departmental actions - which is an executive function only.

**Operational Impact:** These guidelines are taken from current General Orders, which can appropriately change more quickly. Changing the City Code is not a nimble process and legislation won't be able to keep up.

## **SECTION 2.36.120 - CONSENT SEARCHES**

### **2.36.120(A) – Restrictions**

### **Legal Concern:**

1. Potentially conflicts with state and federal law which is already binding on a court in determining the parameters of a consent search and may expose the City to additional liability or legal sanction if carried out incorrectly.

2. Violates City Charter as it seeks to regulate officers'/departmental actions - which is an executive function only.

**Operational Impact:** To fulfill provisions for Consent Search restrictions, the department would need to amend the BWC policy and change procedures to record these interactions. This maybe become troublesome as some citizens who may call the department to request a search when

they suspect narcotics or firearms are being hidden within the home but do not want to be recorded.

## **SECTION 2.36.130 - USE OF FORCE**

### **2.36.130(A) - In General**

**Legal Concern:** May be overcome by events in that the Maryland General Assembly has passed legislation to address this concern.

### **2.36.130(B) - Equipment and Crowd Control – Restrictions**

**Legal Concern:**

1. Violates City Charter as it seeks to regulate officers'/departmental actions and the deployment of equipment - exclusively executive function.
2. As written it applies to "any law enforcement agency operating in Annapolis" and as a result conflicts with state or federal law enforcement mandates, regulations and laws.
3. The city cannot regulate the state police or federal law enforcement agencies actions, as they have full authority to enforce state and federal laws within the jurisdiction of Annapolis.

**Operational Impact:**

1. These guidelines are taken from current General Orders, which can appropriately change more quickly. Changing the City Code is not a nimble process and legislation won't be able to keep up.
2. Needing authorization from the Police Chief is not practical in fluid situations
3. Legislation prohibits the use of drones, which are currently used for aerial mapping/surveillance and are not weaponized. In light of recent events in the nation's capital and credible intelligence of domestic terror cells, restricting the use of drone technology in a city like Annapolis, which is densely populated with tight traffic patterns, could have dire consequences in an emergency situation where alternative egress options from the city must be known immediately. The Council should consider natural disasters and terrorism in weighing a decision to restrict this technology.
4. Certain equipment that is capable of launching explosives or pyrotechnics (gas launchers and flash bangs) are used by ASET to peacefully end barricade/hostage situations without physical confrontation. For example, flashbangs have been used in hostage barricade situations to disorient a suspect so force can be avoided. Banning the use of percussions completely as opposed to bans on their use in certain circumstances, could have the unintended consequence of causing a higher form of force to be used.
5. APD is not equipped with bayonets, mufflers, or suppressors. There is a concern that this language may make the public believe that APD does have them, and cause unnecessary confusion.

### **2.36.130(C) – Firearms**

**Legal Concern:**

1. Use of vague terms such as "whenever it appears likely..." - to whom? Causes the provision to be legally insufficient.
2. Violates City Charter in that it seeks to regulate officers'/departmental actions - exclusively executive function.

**Operational Impact:** These guidelines are taken from current General Orders, which can appropriately change more quickly. Changing the City Code is not a nimble process and legislation

won't be able to keep up.

### **2.36.130(D) - Oleoresin Capsicum or Counter-Assault Pepper- Mace**

**Legal Concern:** Violates City Charter by seeking to regulate officers'/departmental actions - exclusively executive function.

**Operational Impact:**

1. These guidelines are taken from current General Orders, which can appropriately change more quickly. Changing the City Code is not a nimble process and legislation won't be able to keep up.

2. Use authorization from the Police Chief is not practical in fluid situations. For example, if the Chief is indisposed and an event turns violent, like the Jan 6 protest in Washington, taking away the officers ability to use the OC spray would force the officer to go up to the next level of force, which could include batons and firearms, potentially resulting in serious to fatal injuries.

### **2.36.130(E) - Neck Restraints**

**Legal Concern:**

1. Violates City Charter by seeking to regulate officers'/departmental actions - exclusively executive function.

2. May be overcome by events in that the Maryland General Assembly has passed legislation to address this concern.

**Operational Impact:**

1. Chokeholds are currently considered a lethal use of force, just below the discharge of a firearm on the continuum. There are limited circumstances where a neck restraint would be a justifiable use of force in order to save a citizen or the officer's life, or when an officer cannot fire a handgun without injuring others. A common example is situations of domestic violence in which there are children present in a small space. For example, if a suspect is strangling a victim and baton strikes are ineffective in breaking the hold, neck restraint may be the only practical option. Banning neck restraints without an exception for an extreme circumstance could have dire consequences for a victim of an aggravated assault.

### **2.36.130(F) - Duty to Intervene**

**Legal Concern:**

1. Violates City Charter by seeking to regulate officers'/department actions - exclusively executive function.

**Operational Impact:** These guidelines are taken from current General Orders, which can appropriately change more quickly. Changing the City Code is not a nimble process and legislation won't be able to keep up.

### **SECTION 2.36.140 – FIRST AMENDMENT ASSEMBLIES.**

**Legal Concern:**

1. Violates City Charter by seeking to regulate officers'/department actions - executive function.

2. This Section is not restricted to City of Annapolis police officers only. As written, it applies to law enforcement officers from other agencies who may be in Annapolis.

**Operational Impact:** Credible intelligence from federal and state intelligence agencies may provide information that domestic terrorists are seeking to target First Amendment assemblies. Undercover plain clothes officers are deployed as a first line of defense for large scale gatherings. They are used in large public social events like the Boston Marathon, where swift actions are needed to engage armed persons, bombers, etc. Requiring plain clothes officers to reveal themselves defeats the purpose of the plain clothes deployment objective. Intelligence on credible terrorist activities and plain clothes deployment is explained in the incident action report using the ICS protocol.

### **SECTION 2.36.150 – PROFILING - DISCRIMINATORY POLICING PRACTICES - PROHIBITED.**

**Legal Concern:**

1. Violates City Charter by seeking to regulate officers'/department actions - executive function.
2. The legislation has no mechanism for determining what is a "discriminatory" post on social media as the legislation lacks a valid definition of "discriminatory." Could be considered unconstitutional because it is overly broad.
3. Complaints about social media posts are to be referred to the Human Relations Commission (HRC). Due to LEOBR, the HRC lacks authority to investigate individual complaints.

**Operational Impact:** The Council cannot regulate the actions of another agency's personnel. Additionally, because this will be law, does banning social media post violate the First Amendment? This is an area where policy should not be codified.

### **SECTION 2.36.160 - NO-KNOCK WARRANTS**

**Legal Concern:**

1. Violates City Charter by seeking to regulate officers' actions - executive function
2. Maryland General Assembly has passed legislation with differences. The House Bill has certain specified hours and "clear and convincing" standard over "reasonable suspicion".
3. Ambiguous wording in Paragraph A. needs to be clarified and made unambiguous - are ASET officers the only ones who can participate in the execution of no knock warrants, even if the warrant is issued for another agency?
4. Ambiguous wording in Paragraph B.1. needs to be clarified and made unambiguous - who determines that other methods would pose a risk or be futile?
5. Judges determine whether a warrant can be a no-knock warrant, so passage of this legislation would bind judges, whom the City has no authority over.

**Operational Impact:** APD uses other officers (i.e., patrol) during the execution of warrants. ASET officers are the only ones making entry, but other officers provide assistance. Additionally, there may be multiple locations that must be searched simultaneously. Investigations are never the same, each one is unique where unusual events sometimes occur. Consideration should be given that the need to execute a No-Knock warrant at multiple locations is likely, given the current climate of extremism.

### **SECTION 2.36.170 - DOMESTIC ABUSE PROCEDURES**

**Legal Concern:**

1. Violates City Charter by seeking to regulate officers' actions - executive function
2. Ambiguous wording in Paragraph A.3. needs to be clarified and made unambiguous. It is

not clear who qualifies as a domestic violence investigator for the purposes of receiving the report.

**Operational Impact:** Codifying the investigation of specific crimes may send an unintended message that certain crimes outweigh victimizations of others. Sexual assault and child abuse advocates and victims may feel that their cause is being ignored.

## **Chapter 2.48 - BOARDS, COMMISSIONS AND COMMITTEES**

### **Article V - Human Relations Commission**

#### **SECTION 2.48.160 - POWERS - DUTIES**

**Legal Concern:** Human Relations Commission lacks the authority under state law to develop a procedure for PROCESSING complaints of discrimination or profiling in police activities or officer conduct - Conflicts with LEOBR and may conflict with newly passed legislation before the General Assembly that addresses review and investigation of complaints.

## **Chapter 7.36 - PAWNBROKERS**

#### **SECTION 7.36.075 - FIREARMS AND AMMUNITION—REGISTER OF PURCHASERS.**

**Legal Concern:** It is not clear what “Police” may make an inspection of the register? City of Annapolis Police Officers only?

#### **General Legal Concern:**

Another legal concern arises with there being no penalty stated for violations of the City Code Sections in this Ordinance. Section 1.20.010 of the City Code states that whenever there is a violation of a provision that does not mention a specific penalty, the penalty is a misdemeanor. So any violation of this Ordinance could result in a misdemeanor conviction against officers and, technically (though not practical), the Department.

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