



**OFFICE OF THE COMMISSION AUDITOR
MIAMI-DADE BOARD OF COUNTY COMMISSIONERS**

**COMMISSION AUDITOR'S
INFORMATIONAL RESEARCH**

**BOARD OF COUNTY COMMISSIONERS
SPECIAL MEETING
July 30, 2020
9:30 A.M.
Virtual Meeting**

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Commission Auditor

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File No. 201390**

Researchers: JFP & VW Reviewer: PGE

ORDINANCE RELATING TO THE INDEPENDENT REVIEW PANEL (“PANEL”); AMENDING ARTICLE IC OF CHAPTER 2 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; CHANGING THE NAME OF THE PANEL; AMENDING THE COMPOSITION, AUTHORITY, POWERS, AND STAFFING OF THE PANEL; PROVIDING TERMS OF MEMBERS APPOINTED TO THE PANEL NOTWITHSTANDING OTHER PROVISIONS OF THE CODE; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO IDENTIFY A FUNDING SOURCE FOR THE OPERATION OF THE PANEL DURING THE CURRENT FISCAL YEAR AND INCLUDE SUCH FUNDING IN FUTURE ANNUAL BUDGETS; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

ISSUE/REQUESTED ACTION

Whether the Board should amend Chapter 2, Article IC of the County Code to change the name of the Independent Review Panel (Panel) to the Independent Civilian Panel and amend the composition, authority, powers and staffing of the Panel.

PROCEDURAL HISTORY

**Prime Sponsor: Commissioner Barbara J. Jordan, District 1
Department/Requester: None**

Ordinance No. 20-65, which relates to the Independent Review Panel, was vetoed by the Mayor on July 17, 2020. In the Mayor’s veto message, he mentions his support for Independent Review Panel legislation that provides a clear exemption for County employees and elected officials from being subpoenaed. Since Ordinance No. 20-65 was vetoed, the subject item, which was heard on first reading at the July 21, 2020 Board meeting, revises the legislation accordingly.

At the July 21, 2020 Board meeting, mayoral veto items relating to the panel, 2A1 ([File No. 201454](#)) and 2A2 ([File No. 201455](#)), were heard. Item 2A1 concerned the Mayor’s veto of a resolution calling for a countywide special election for the purpose of submitting to the electors the question of whether to amend the Home Rule Charter to establish an Independent Civilian Panel as set forth by ordinance, and item 2A2 concerned the Mayor’s veto of Ordinance No. 20-65, which established an Independent Civilian Panel with broad subpoena authority. Both items failed to receive the 2/3 votes necessary to override the veto. The following is the discussion that transpired regarding the veto override.

- Mayor Gimenez remarked that he vetoed both items because he rejects the panel possessing subpoena power over police officers and elected officials as such authority would inject politics in a process that should be apolitical.
- Prime Sponsor Commissioner Jordan implored her fellow commissioners to override the mayoral veto on both items as she claimed that the revised proposed ordinance on first reading with reduced subpoena power does not express the true wishes of the community.
- Commissioner Jordan requested to have a special meeting set on July 30, 2020 to hear the proposed revised ordinance on second reading as well as to consider the charter amendment resolution.

The revised Independent Review Panel ordinance (the subject item) was adopted on first reading.

The key differences between the subject item (File No. 201390) and Ordinance No. 20-65 (File No. 201451) passed by the Board on July 8, 2020 are outlined below, with additions delineated with an underline.

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File No.	201451 (Ordinance No. 20-65)	201390 (Proposed Ordinance)
Subpoena Power	<p>Sec. 2-11.45. - Authority and powers generally.</p> <p>m. Upon a majority vote, the Panel shall have the authority to request the issuance of subpoenas for witnesses, documents, and other potential evidence for all matters within its jurisdiction, except as may be prohibited by applicable law or if notified by representatives identified in subsection (l) above that the Panel’s investigation would be interfering in an investigation. Said subpoenas shall be signed, served, and enforced pursuant to applicable law. Ten days prior to the issuance of any subpoena, the Executive Director shall notify the State Attorney, Miami-Dade County Commission on Ethics and Public Trust, Miami-Dade County Office of Inspector General, or Miami-Dade Police Department of the Panel’s intention to issue the subpoena.</p>	<p>Sec. 2-11.45. - Authority and powers generally.</p> <p>m. Upon a majority vote, the Panel shall have the authority to request the issuance of subpoenas for witnesses, documents, and other potential evidence for all matters within its jurisdiction, except as may be prohibited by applicable law or if notified by representatives identified in subsection (l) above that the Panel’s investigation would be interfering in an investigation. <u>Notwithstanding the above, no such subpoena shall be issued to: (i) a County Commissioner, (ii) the County Mayor, or (iii) a County employee to appear as a witness.</u> Said subpoenas shall be signed, served, and enforced pursuant to applicable law. Ten days prior to the issuance of any subpoena, the Executive Director shall notify the State Attorney, Miami-Dade County Commission on Ethics and Public Trust, Miami-Dade County Office of Inspector General, or Miami-Dade Police Department of the Panel’s intention to issue the subpoena.</p>

Sunshine Meetings

Independent Review Panel legislation was the subject of a June 15, 2020 Sunshine Meeting between Chairwoman Edmonson, Commissioner Bovo, Commissioner Sosa, and Commissioner Jordan wherein the following discussion took place.

- Commissioner Bovo asked for clarification as to who is considered a sworn officer since the legislation appears to exempt the Director of Police and the warden from subpoena and expressed his hope that that could be addressed in the legislation if this is in fact the case. Commissioner Jordan, the sponsor of the legislation, stated her preference for relying on the state definition regarding who is exempt from subpoena, hence the director and warden would not be exempt.

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- The Assistant County Attorney clarified that as written the Panel may not subpoena police officers, but may subpoena records, etc. as long as there is no pending investigation. If there is a pending investigation, the Panel would have to wait until the investigation is closed until they can subpoena records, etc.
- Commissioner Bovo had a separate concern with the make-up of the Panel and who would be able to serve. He recommended a training certification so that those serving on the panel would get a better understanding of practices and protocols of MDPD being written into the legislation. Commissioner Jordan responded that a training component would be in the Implementing Order.
- Commissioner Jordan further stated that a substitute item is being presented affecting the selection of the Panel. Commissioner Edmonson expressed a concern with the nominating committee as outlined in the substitute item. Commissioner Jordan explained that in the amended process, Advocacy Boards will be the nominating council, i.e. one representative from the Community Relations Board, Commission for Women, Black Affairs Advisory Board, Asian-American Advisory Board, Hispanic Affairs Advisory Board, Military Affairs Advisory Board, Elderly Affairs Advisory Board, LGBTQ Advisory Board, and Interfaith Advisory Board. The nominating council will be screening the applicants. Commissioner Sosa voiced her concern that people will be hesitant to serve and would not apply and expressed her preference for the Commissioners appointing the Panel members. Commissioner Jordan added that Commissioners will be making the appointments; there will simply be a further screening process facilitated by the Advisory Boards. Each district will be reviewed separately. Two names will be provided to each Commissioner for selection. If the Commissioner is not satisfied with those options, then the Commissioner is able to request two more, and so on until the position is filled. Commissioner Sosa wanted to know about the involvement of the different Boards in District 6 to see how they were qualified to select someone to represent District 6. Commissioner Edmonson voiced concern with the possibility that a certain group may be unfairly represented on the Panel as a result of the nominating process and suggested placing a backstop in the legislation if this were the case.
- Commissioner Sosa asked if all County employees are under the jurisdiction of this Panel, to which Commissioner Jordan responded that the substitute item limits the scope to only review of police officers.

Independent Review Panel legislation was also the subject of a June 23, 2020 Sunshine Meeting between Commissioner Jordan, Commissioner Bovo, and Commissioner Levine Cava wherein amendments to the Miami-Dade County Home Rule Charter establishing the Independent Civilian Panel were discussed. The proposed changes to the Charter with regards to the Independent Civilian Panel proffered were as follows:

- The Executive Director appointed by the Independent Civilian Panel was redefined as an *independent* Executive Director;
- The word *adequate* was added before the word *budget*;
- Additional duties of the Independent Civilian Panel were to include *reviewing County law enforcement policies, patterns, practices and closed internal investigations* as well as *issuing written fact-findings*; and
- The phrase *Miami-Dade County Police Department* was changed to *the County's Police Department*.

ANALYSIS

The proposed ordinance seeks to implement changes to the already existing Independent Review Panel, which was created in 1980 and last funded in FY 2008-2009. The Panel was initially created as a mechanism for community fact-finding and dispute resolution. The amendments alter the composition and jurisdiction of the Panel, as well as expand

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its authority to include limited subpoena power. The proposed Board-appointed, 13-member Panel, renamed the Independent Civilian Panel, will be limited in jurisdiction to review and investigation of cases related to sworn officers of the Miami-Dade Police Department or any other law enforcement agency established by the Board. The Panel's authority is expanded to include: authority to make recommendations regarding current and proposed police department policies, practices and procedures; conduct alternative dispute resolution; and, upon a majority vote by the Panel, subpoena witnesses, documents and other potential evidence for all matters within its jurisdiction, except as may be prohibited by applicable law. Applicable law includes Section 112.532, Florida Statutes, which outlines law enforcement officers' and correctional officers' rights, as well as a related Florida Supreme Court ruling from June 22, 2017 stating that the City of Miami's Civilian Investigative Panel's invocation of its subpoena power as applied to police officers is unconstitutional because compelled interrogation of police officers in investigations that could lead to their discipline is preempted by this Florida law, more commonly known as the Police Officer's Bill of Rights. In addition to sworn police officers, the Panel's subpoena power also precludes subpoena of the County Mayor, County Commissioners, or County employees to appear as witnesses, distinguishing it from the ordinance regarding the Independent Review Panel passed by the Board on July 8, 2020 (Ordinance No. 20-65, File No. 201451).

The Panel has authority to investigate or review allegations of misconduct; use of force incidents resulting in death, permanent disability, permanent disfigurement, or other great bodily harm to a person; all files that have been closed by MDPD's Professional Compliance Bureau, Internal Affairs Section (or successor entity); all documents and records in any medium supporting or relating to an investigation conducted by the Professional Compliance Bureau, Internal Affairs Section (or successor entity); and other matters related to policing.

Each County Commissioner is to appoint one person to serve on the Panel based on the candidates provided by the nominating committee. Appointees may be, but are not required to be, chosen from candidates recommended by the nominating committee. The committee is a nine member body comprised of one member selected by each of the following advisory boards: Community Relations Board, Commissioner for Women, Black Affairs Advisory Board, Asian-American Advisory Board, Hispanic Affairs Advisory Board, Military Affairs Advisory Board, Elderly Affairs Advisory Board, LGBTQ Advisory Board, and Interfaith Advisory Board. The nominating committee is to advertise and provide applications through public notices. Once applications have been received and all applicants have been considered, the nominating committee shall provide each County Commissioner with the names of two applicants from the Commissioner's district.

The panel is to be limited to two members with the same or similar professions or backgrounds. Consideration should be given to appointing a retired law enforcement officer and retired member of the judiciary, judge, or magistrate, and retired or active individuals in the fields of human resources, faith-based, social justice, and civil rights law. Current sworn officers or applicants who are family members of sworn police officers will not be considered, as no Panel member or any Panel member's immediate family shall be a sworn law enforcement officer per the ordinance. With the exception of the initial Panel where some terms will be shortened to accommodate the staggering of terms, Panel members will serve three-year terms.

The proposed ordinance prescribes that all staff and Panel members are to receive Ethics Training from the Miami-Dade County Commission on Ethics and Public Trust and Police-Based Perception Training or other civilian police training that simulates police encounters, as well as training on police policies, procedures, and practices prior to investigating or reviewing any matter. While exempted from subpoena authority, County employees are to cooperate with requests from and participate in investigations conducted by the Panel to the extent permitted by law. Under the proposed ordinance, the County Mayor, within 45 days of receipt of the Panel's final report with regard to a matter

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reviewed or investigated, shall transmit a report to the Board and the Panel providing all actions taken in response to the Panel's final report and any related recommendations made therein.

The legislation allows for flexibility in the funding source for the operation of the Panel. Section 2 of the ordinance directs that funding is to be established during the current fiscal year and included in the FY 2020-21 budget and future annual budgets. A fiscal impact statement was completed by the Administration, estimating the Panel as having an annual fiscal impact of \$738,000 based on factoring in a one-time startup cost of \$100,000 in addition to personnel and operating expenses, and annual increases thereafter of 5% and 3% of recurring personnel expenses and other operating expenses, respectively.

The Panel is in addition to the County's internal review process and established measures to address complaints of misconduct by government employees, as facilitated by the Commission on Ethics and Public Trust, the Office of the Inspector General, and the Office of Human Rights and Fair Employment Practices. More measures exist at the departmental level. For example, the Miami-Dade Police Department (MDPD) has an internal investigative entity in place to investigate police officers and address misconduct. The MDPD's Professional Compliance Bureau (PCB) reports only to the MDPD Director and has the power to investigate allegations of police misconduct via its Internal Affairs Section (IAS) and the Criminal Conspiracy Section (CCS). Specifically:

- The Public Corruption and Criminal Conspiracy Sections (PCS) (CCS) of the Miami-Dade Police Department is responsible for investigating acts of criminal misconduct involving public officials, County employees, police officers, lobbyists, and private vendors conducting business with Miami-Dade County.
- The Digital Forensic Unit provides a variety of digital forensic laboratory and crime scene support services to the greater municipal, state, and federal law enforcement agencies of Miami-Dade County.
- The Body-Worn Camera Unit was implemented to improve police services, increase accountability for individual interactions, and enhance public safety.

Civilian oversight boards—defined as agencies staffed with civilians, not sworn officers, charged with investigating civilian complaints of misconduct by government employees, particularly police and corrections officers—exist in varying forms in more than 100 jurisdictions throughout the nation. The concept of civil oversight has been broadly recognized as a way for community interests to independently check police conduct. A survey of entities in the 100 most populous U.S. cities indicates that civilian oversight has become sufficiently prevalent among them as to now be considered a normative element within the police accountability infrastructure. That survey identified such entities as providing one or more of the following seven oversight functions—investigative, review, audit, adjudicative, appeals, supervisory and advisory. More populous cities are more likely to have entities providing the investigative and review oversight functions.

In many jurisdictions, the structure and powers of oversight entities are the product of compromise among local stakeholders. Independence is recognized by some as both a core principle and an essential element of effective civilian oversight. Several components of independence can profoundly affect an oversight entity's ability to hold officers accountable, and certain powers and capabilities are considered by certain stakeholders to be essential to independence: subpoena power, access to law enforcement information and internal department documents and evidentiary material and financial resources.

Based on the Office of the Commission Auditor's research findings, civilian oversight boards generally fall into two categories: they are either external or internal to a law enforcement agency. A third, hybrid model incorporates aspects

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of both the external and internal models. Below are a few examples of civilian oversight boards created in various jurisdictions of the United States.

City of Miami

The Civilian Investigative Panel (CIP), created by City of Miami Ordinance No. 12188 in 2002, provides for independent and impartial citizens oversight of the Miami Police Department. The powers and duties of the panel are:

- To conduct investigations, inquiries and evidentiary hearings into allegations of police misconduct.
- To make factual determinations, facilitate resolutions and propose recommendations to the City Manager and Chief of Police.
- To review and make recommendations regarding the Miami Police Department's existing policies and procedures, including training, recruitment and discipline and provide input to the Chief of Police prior to implementation of new or revised policies and procedures.
- To request issuance of subpoenas for the purpose of obtaining evidence from witnesses, production of documents etc., after consultation with the State Attorney and CIP Independent Counsel.
- To issue reports to the Mayor, City Commission, City Attorney, City Manager, Chief of Police and the public.
- The CIP conducts public meetings on every third Tuesday of each month in addition to special and emergency meetings and public hearings.

Atlanta

The Atlanta Citizen Review Board (ACRB) was established by ordinance as an independent agency in 2007 and amended to include subpoena power in May 2010. It is designed to provide citizen oversight of misconduct accusations against sworn members of the police and corrections departments in the City of Atlanta. It is also designed to help prevent future incidents of police or corrections misconduct and abuse of civil rights and to reduce the amount of money needed to satisfy judgments and settlements based on allegations of police or corrections misconduct. The ACRB promotes public confidence in law enforcement.

The 13 members of the ACRB are appointed as follows and confirmed by the City Council:

- One member is appointed by the Mayor;
- One member is appointed by the City Council;
- One member is appointed by the President of the Council with previous experience as a law enforcement professional;
- Four members are appointed by the Neighborhood Planning Units;
- One member is appointed from the Gate City Bar Association;
- One member is appointed by the Atlanta Bar Association;
- One member is appointed by the League of Women Voters of Atlanta;
- One member is appointed by the Atlanta Business League;
- One member is appointed by the Georgia Coalition for the People's Agenda; and
- One member is appointed by the Urban League of Greater Atlanta.

Chicago

On October 5, 2016, the Chicago City Council passed an ordinance establishing the Civilian Office of Police Accountability (COPA), which replaced the Independent Police Review Authority as the civilian oversight agency of the Chicago Police Department. COPA is comprised of a diverse staff with many years of investigative and legal

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experience. Under the direction of the Chief Administrator, COPA has the power and authority to conduct investigations into:

- Complaints against members of the police department alleging domestic violence, excessive force, coercion, or verbal abuse;
- All incidents in which a member of the police department discharges (i) a firearm in a manner that potentially could strike another individual, (ii) a stun gun or taser in a manner that results in death or serious bodily injury, or (iii) other weapons discharges and other use of police department issued equipment as a weapon that results in death or serious bodily injury;
- Incidents where a person dies or sustains serious bodily injury while detained or in police custody;
- Incidents of an officer-involved death; and
- Complaints against members of the police department alleging improper search or seizure of either individuals or property.

New York City

The New York City Police Department established the Civilian Complaint Review Board (CCRB) in 1953 as a committee of three deputy police commissioners to investigate civilian complaints. In 1987, in accordance with legislation passed in 1986 by the City Council, the board was restructured to include private citizens in addition to police officers (the Mayor appointed six members and the Police Commissioner appointed six). In 1993, after extensive debate and public comment, Mayor David Dinkins and the New York City Council created the CCRB in its current, all-civilian form.

The CCRB was established to receive, investigate, mediate, hear, make findings, and recommend action on complaints against New York City police officers alleging the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language. The Board's investigative staff is composed entirely of civilian employees. The Board forwards its findings to the police commissioner.

The CCRB's membership consists of 13 individuals appointed by the Mayor, who are residents of New York City and reflect the diversity of the city's population. The members of the board are appointed as follows: (i) five members, one from each of the five boroughs, are designated by the City Council; (ii) three members with experience as law enforcement professionals are designated by the police commissioner; and (iii) the remaining five members are selected by the Mayor, who also selects one of the members to serve as Chair. No member of the board may have a law enforcement background, other than those designated by the police commissioner, and none may be public employees or serve in public office.

Detailed below is a summary of select Citizen Review Boards nationwide, by jurisdiction.

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Summary Table of Citizen Review Boards in the United States

Public Entity	Board Name and Composition	Date of Creation	Subpoena Authority	Discipline Authority	Authority to Review Policies, Practices and Procedures
Atlanta	Atlanta Citizen Review Board; the 13 members of the ACRB are appointed by different entities	2007	Yes	No	Yes
Baltimore	Civilian Review Board of Baltimore City; Voting members: 9 (from each police precinct), 5 non-voting members	1999	Yes	No	No
Chicago	Civilian Office of Police Accountability; City department comprised of 145 employees	2016	Yes	Yes	Yes
Detroit	Board of Police Commissioners; Members: 11 (7 from each police district and 4 appointed by mayor).	1974	Yes	Yes	Yes
City of Miami	Civilian Investigative Panel (CIP); Members: 13 (2 members per district, 2 appointed by the mayor, and one by the police chief)	2002	Yes	No	Yes
Newark	Newark Civilian Complaint Review Board; the 11 members are appointed by different entities	2016	Yes	Power to recommend discipline	Yes
New York City	Civilian Complaint Review Board; Members: 13 (5, i.e., one from each borough designated by the City Council; 3 members with law enforcement experience designated by police commissioner; the remaining 5 are selected by the Mayor, who also selects one to serve as Chair)	1953	Yes	Power to recommend discipline	No

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APPLICABLE LEGISLATION/POLICY

Miami-Dade County Code, Chapter 2, Article IC, governs the Independent Review Panel, its creation, composition, organization and procedures, authority and powers generally, and reporting requirements.

http://miamidade.fl.elaws.us/code/coordptiii_ch2_artic

Resolution No. R-1075-16, adopted by the Board on November 1, 2016, created the Miami-Dade Independent Review Panel Working Group; provided its membership, organization, procedures and staffing; and set forth its purpose, functions, responsibilities and Sunset provision.

<http://intra/gia/matter.asp?matter=162943&file=false&yearFolder=Y2016>

Section 112.532, Florida Statutes outlines law enforcement officers' and correctional officers' rights.

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0112/Sections/0112.532.html

SOURCES

D'Agastino et al. v. City of Miami et al., 220 So. 3d 410 (Fla.2017)

OCA's report on the Composition of Civilian Oversight Boards across various jurisdictions

<https://www.miamidade.gov/auditor/library/composition-of-civilian-oversight-boards-across-various-jurisdictions.pdf>

Survey Says?: U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy

<http://cardozolawreview.com/survey-says-u-s-cities-double-down-on-civilian-oversight-of-police-despite-challenges-and-controversy/>

CONTRIBUTORS

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The Office of the Commission Auditor, Miami-Dade Board of County Commissioners

The Office of the Commission Auditor (OCA) was established in September 2002 by Ordinance 03-2 to provide support and professional analysis of the policy, service, budgetary and operational issues before the Miami-Dade Board of County Commissioners. The Commission Auditor's duties include reporting to the Board of County Commissioners on the fiscal operations of County departments, as well as whether the fiscal and legislative policy directions of the Commission are being efficiently and effectively implemented

These research notes, prepared in collaboration with the Miami Dade County departments as subject matter experts, is substantially less detailed in scope than an audit in accordance with the Generally Accepted Auditing Standards (GAAS). The OCA plans and performs the review to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on its objectives; accordingly, the OCA does not express an opinion on the data gathered by the subject matter expert(s).