



City of Wilmington

Loretta Walsh
City Council Member At-Large

Louis L. Redding City/County Building
800 N. French
Street Wilmington, Delaware
19801-3537

phone (302) 576-2140
fax (302) 571-4071
www.WilmingtonDE.gov

Public Safety Committee

Loretta Walsh, Chair
Christofer C. Johnson, Vice Chair
Ciro Adams
Charles M. "Bud" Freel
Michelle Harlee
Yolanda McCoy
Dr. Hanifa Shabazz, Ex-Officio Member

REVISED NOTICE

Virtual Public Safety Committee Meeting

July 6, 2020 at 5:00 p.m.

Agenda

- **Ord. 20-032** Authorize the Wilmington Police Department to Publish a Public Version of the Wilmington Police Officer's Manual with Only Those Redactions Required by Law and Public Policy
- A Resolution Supporting Best Practices for Wilmington Police Department Application Process and Academy Training
- An Ordinance to Amend Chapter 2 of the City Code Prohibiting the Use of Neck Restraints
- A Resolution Strongly Urging the Delaware General Assembly to Permanently Suspend the Use of "No Knock" Warrants and/or Those Warrants without Immediate Prior Notification of the Residents
- A Resolution Encouraging the Delaware General Assembly to Repeal the Law Enforcement Bill of Rights (LEBOR)
- General Public Safety Matters (**3-minutes per speaker**)

The public can access the meeting by clicking the following link:

<https://zoom.us/j/94805945693> or by Telephone by dialing: (929) 205-6099 or (301) 715-8592

Webinar ID: 948 0594 5693

You will be asked for the **Webinar ID: 948 0594 5693**. Please enter and then #. You can press # again when prompted to immediately enter the meeting.

Posted on City Council website www.wilmingtoncitycouncil.com Rev. 1, 7/02/2020 (order of business revised)

If public comment is permitted during this committee meeting, any member of the public who wishes to speak during the committee meeting will be limited to three minutes per agenda item. If the public's permission to comment is abused, the Chair may exercise greater discretion in limiting public comment

AN ORDINANCE TO AUTHORIZE THE WILMINGTON POLICE DEPARTMENT TO PUBLISH A PUBLIC VERSION OF THE WILMINGTON POLICE OFFICER'S MANUAL WITH ONLY THOSE REDACTIONS REQUIRED BY LAW AND PUBLIC POLICY

#4832

Sponsor:

**Council
Member
Johnson**

WHEREAS, on May 25, 2020, George Floyd, an African American man in Minneapolis, Minnesota died after Caucasian police officer Derek Chauvin used his knee to pin down a handcuffed Floyd for nearly nine minutes until Floyd was no longer breathing, despite Floyd pleading that he was in pain and couldn't breathe, pleading from bystanders, as well as the presence of other police officers on the scene who could have provided aid to Floyd; and

WHEREAS, peaceful protests and demonstrations are occurring across the United States in response to the unlawful killing of Floyd, the unlawful killing of black men and women at the hands of law enforcement across the United States, and systemic and institutional racism inherent in American life today; and

WHEREAS, peaceful protests and demonstrations pursuant to the First Amendment have occurred in the City of Wilmington in response to the aforementioned events over the past weeks; and

WHEREAS, because of these peaceful protests and demonstrations a vital conversation is occurring regarding the current role of police departments and what improvements can be instituted to better ensure that City residents feel safe in their own communities; and

WHEREAS, it is Standard Police Policy for Law Enforcement Agencies or Departments to have and periodically update their Policies and Procedures Manuals; and

WHEREAS, the Policy and Procedures Manuals of U.S. City Police Departments have been developed and updated to provide to Police Officers and Personnel the Ethics, Mission, Goals, and Objectives of their City Police Departments; and

WHEREAS, the Policy and Procedures Manuals of U.S. City Police Departments identify the functions of Police Officers and Police Personnel and all the duties and operations of Police Officers in both their department responsibilities and functions and interactions with the public they are sworn to serve; and

WHEREAS, the Policy and Procedures Manuals of U.S. City Police Departments are

effective tools that augment and update Police Academy Training and provide police policies with ongoing functional requirements for the safety and professionalism of police officers and their organizations; and

WHEREAS, the Policy and Procedures Manuals of U.S. City Police Departments reflect the departments' missions, the principles behind what the organizations do, procedures and instructions for carrying out particular law enforcement and peace keeping tasks, and understanding the moral and legal obligations of policing; and

WHEREAS, U.S. City Police Departments often include information and policies and procedures for their Police Officers relevant to specific U.S. Constitutional Amendments to ensure proper understanding and compliance of their Police Officers conduct relevant to the Constitutional Rights of U.S. Citizens in their interactions with members of the public; and

WHEREAS, approximately thirty-five (35) U. S. Police Departments have provided the public they serve access to their Policies and Procedures Manuals online beginning in 2007; and

WHEREAS, City Police Policies and Procedures Manuals from U.S. Cities in Seattle, Washington; Craig, Colorado; Fair Lawn, New Jersey; Beaverton, Oregon; Garden Grove, California; Bremerton, Washington; Brunswick, Georgia; Newark, New Jersey; and Lower Marion Township, Pennsylvania, to name a few, provide public access to their Policies and Procedures with only limited and necessary redactions; and

WHEREAS, Mayor Michael S. Purzycki and City Administration, Chief of Police Robert J. Tracy, and City Council agree that a necessary step to ensure greater transparency is for the Wilmington Police Department's Police Officer's Manual to be published on the City's official website; and

WHEREAS, advocacy groups for police reform in Delaware, such as Delaware for Police Oversight, have expressed that providing public access to the Wilmington Police Department's Police Officer's Manual would improve relationships between Wilmington police officers and City residents, as public access to it would permit residents to understand their rights when it comes to police-civilian interactions as well as provide further oversight for such interactions; and

WHEREAS, the Wilmington Police Department's Police Officer's Manual is currently not public because certain provisions contain sensitive information regarding police procedure or information that could be used by those intent on harming men and women currently serving in the Wilmington Police Department, or those intent on avoiding or subverting lawful law

enforcement efforts; and

WHEREAS, pursuant to §1-102 and §2-200 of the Wilmington City Charter related to City Council authority and procedure, and §1-103 and §5-200 regarding the Wilmington Police Department's authority and functions to preserve the public peace, prevent and detect crime, and supervise and discipline Wilmington police officers:

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. Chapter 2 ("Administration") of the City Code is hereby amended by adding the following to Article V ("Departments & Agencies Created by Ordinance"), Division 1 ("Generally"):

Sec. 2-236. – Online Publication of Police Department's Police Officer's Manual.

- (a) On behalf of the Wilmington Police Department, the Chief of Police, or his or her designee, is authorized to create a public version of the Wilmington Police Department's Police Officer's Manual (the "Manual").
- (b) The Manual will be published on the City of Wilmington's official website, with an additional hyperlink on the frontpage of the Wilmington Police Department's official webpage for public ease of access.
- (c) The Manual will only be redacted in accordance with the Delaware Freedom of Information Act, 29 Del. C. §10001 *et seq.*, and necessary public policy considerations in order to prevent endangering the life and safety of citizens or law enforcement officers as well as to avoid undermining lawful law enforcement efforts by allowing those intent on subverting such efforts the ability to avoid detection and hinder criminal investigations.
- (d) The Wilmington Police Department will work in conjunction with the Law Department and/or other appropriate departments or entities to ensure that the redactions to the Manual are limited to redactions founded in the aforementioned Delaware law or public policy considerations.
- (e) The Wilmington Police Department will submit the final version of the Manual to the Law Department prior to its publication on the City's official website. The City Solicitor, or his or her Law Department designee, must approve the Manual prior to it being placed on the City's official website.
- (f) The first Manual published under this ordinance must be published on the City of Wilmington's official website no later than January 1, 2021. The

Manual shall be updated as necessary, but not less than every four (4) years.

SECTION 2. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....June 18, 2020

Second Reading.....June 18, 2020

Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this _____ day of _____, 2020

Mayor

SYNOPSIS: This ordinance amends Chapter 2 of the City Code with an additional section that authorizes and directs the Wilmington Police Department to provide the residents of Wilmington access to the Wilmington Police Department's Police Officer's Manual in an on-line format, which is only redacted pursuant to the requirements of Delaware law and necessary public policy considerations, through the City of Wilmington's official website.

Wilmington, Delaware
July 9, 2020

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Sponsor:

**Council
Member
Oliver**

WHEREAS, the Delaware Council on Police Training has outlined 801 Rules and Regulations relating to the qualifications and admission into the Police Academy of Police Officers and potential officers in the State of Delaware; and

WHEREAS, requirements and regulations include being a citizen of the United States of America, a high school graduate, and declared psychologically sound by a licensed psychologist or psychiatrist, and applicants with felonies or any criminal history are rejected. In addition, applicants are disqualified if they have been dishonorably discharged from military service; and

WHEREAS, applicants need only pass competency exams related to general law enforcement knowledge after acceptance and training at 70% to qualify; and

WHEREAS, these regulations also require the hiring department to complete a thorough background and character investigation of any applicant; however, there are no details regarding the extent of this character investigation, or the criteria utilized to determine eligibility; and

WHEREAS, social media is a strong determinant of character, and should be investigated thoroughly in the case of individuals applying to protect and serve a diverse community in order to identify persons with any affiliations or memberships with hate groups, such as Alt-Right, Neo-Nazis, KKK , or gang affiliations with drug related criminal activities symbolized through various skin tattoos, or hyper visible hate symbols or gang signs posted on social media pages ; and

WHEREAS, the Wilmington Police Department is not required to engage in implicit bias or sensitivity trainings to improve the unconscious attitudes or stereotypes of its members in community understanding, interaction, and policing; and

WHEREAS, a study by the Harvard Business Review in July 2019 revealed that diversity and sensitivity trainings helped employees “acknowledge their own racial biases, provide informal mentorship to racial minorities, and recognize the excellent work of their peers who were racial minorities;” and

WHEREAS, unconscious, or implicit, bias can be defined as “prejudice or unsupported judgments in favor of or against one thing, person, or group as compared to another, in a way that is usually considered unfair” from research conducted by Vanderbilt University; and

WHEREAS, given the increasing diversity of our country evident in nearly every City, Town, County, and State, Police officers need ongoing, cutting-edge training in both identifying and managing unconscious and implicit biases they may bring with them to the police force; and

WHEREAS, it is necessary to rid public servants of such biases in order to improve their interactions with, and ensure they serve equally, all those in their communities they take an oath to protect; and

WHEREAS, training in racial literacy and cultural sensitivity would allow officers to better understand and value the diversity of American lifestyles, situations, and communication styles; and

WHEREAS, such diversity in the U.S. is present across all ages, races, genders, abilities, and nations of origin; and

WHEREAS, individuals unable to eliminate such biases should not be incorporated into the police force; and

WHEREAS, Forbes reports that, for unconscious bias and sensitivity training to be effective, it must be ongoing and long-term; and

WHEREAS, the Wilmington City Council is committed to a transparent and well-represented Wilmington, as well as a safe and secure Wilmington.

BE IT THEREFORE RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that we encourage the Wilmington Police Department to immediately and permanently incorporate Unconscious Bias and Sensitivity trainings into their workplace curriculums and standards, beginning with trainings at the Police Academy. In addition, the Council strongly recommends that the Wilmington Police Department identify racist or gang related tattoos as immediate grounds for disqualification of potential applicants, and thoroughly investigate all applicant's social media channels for hyper visible hate symbols as major disqualifying elements of an applicant's character background checks.

Passed by City Council,

Attest: _____

City Clerk

SYNOPSIS: Those who serve and protect our communities should be familiar with, and value equally, all members of the community, regardless of gender, race, color, national origin, religion, or sexual orientation. Incorporating implicit bias, sensitivity, and diversity trainings and programs long-term is essential so that the Wilmington Police Department may identify and correct dangerous biases within officers and other employees. The Department needs to also become familiar with racist and gang-related symbology so that they can reject applicants with ties to such organizations. The Wilmington City Council encourages the immediate and permanent introduction and use of such programs and standards.

Wilmington, Delaware
July 9, 2020

#XXXX

Sponsor:

Council
Member
Oliver

WHEREAS, across the United States, all but a few States allow that judges may issue warrants such that law enforcement may enter a property without immediate prior notification to the residents, such as knocking or ringing a doorbell. In most cases, law enforcement will identify themselves verbally just before forcefully entering the property. These special-case operations are called “No Knock Warrants,” and are permissible in the State of Delaware; and

WHEREAS, according to the United States Department of Justice, Federal judges and magistrates may lawfully and constitutionally issue "no-knock" warrants where circumstances justify a no-knock entry, and federal law enforcement officers may lawfully apply for such warrants under such circumstances; and

WHEREAS, the surprise nature of these raids, which are usually executed during late-night or early-morning hours, is meant to help law enforcement disrupt criminal activity without giving a perpetrator time to react — either by using force against a police officer, evading arrest or disposing of evidence, and

WHEREAS, according to PBS.org and Peter Kraska, a professor with the School of Justice Studies at Eastern Kentucky University, municipal police and sheriffs’ departments used no-knock...warrants about 1,500 times in the early 1980s, but that number rose to about 40,000 times per year by 2000. And in 2010, Kraska estimated 60,000-70,000 no-knock or quick-knock raids were conducted by local police annually. The majority of those raids were looking for marijuana; and

WHEREAS, over time, No Knock warrants have skirted the line, established by the Fourth Amendment, which protects people in the United States from “unreasonable searches and seizures,” and has often resulted in sloppy execution of warrants, bodily harm and even death; and

WHEREAS, in 2020, Breonna Taylor, a 26 year-old, Black EMT, was murdered in her sleep by Louisville police officers, who had entered her apartment after midnight on a poorly executed no-knock search warrant. Taylor was shot eight times by plainclothes detectives March 13 while they were conducting a narcotics investigation. Court records show police obtained a no-knock warrant before using a battering ram to enter Taylor's apartment around 1 a.m. The warrant showed Taylor was not the main subject of the narcotics investigation, and no narcotics were found in her apartment.; and

WHEREAS, Taylor's death prompted Louisville's Mayor, Greg Fischer, to suspend the use of "No Knock" warrants, and the City of Louisville is planning to ban the practice altogether; and

WHEREAS, Senator Rand Paul of Kentucky introduced his legislation that would "effectively end no-knock raids" in the United States, after the increased use of these types of warrants proliferated since the war on drugs in the 1980s, when the aim was cracking down on recreational drug use. This legislation is titled the "Justice for Breonna Taylor Act." Under the bill, federal law enforcement officers would be required to provide notice of their authority and purpose before they could execute a warrant and would require the same of any state or local law enforcement agency that receives funds from the U.S. Department of Justice.

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Wilmington, Delaware strongly urges the Delaware General Assembly to reform police practices and judicial code to remove the option for law enforcement to request and for judges to grant the use of No Knock Warrants in the pursuit of all forms of suspect apprehension and evidence collection against Delawareans. We further urge these decision-making entities to do so in the spirit of justice for and solidarity to Justice for Breonna Taylor, agreement with the Justice for Breonna Taylor Act and in the interests of Delawareans who are needlessly put in harms way when these practices are employed.

Passed by City Council,

Attest: _____
City Clerk

SYNOPSIS: This Resolution makes formal Wilmington City Council's request for the Delaware General Assembly to reform police practices and statewide code such that No Knock Warrants are suspended and then banned, statewide.

DRAFT

Wilmington, Delaware
July 9, 2020

#XXXX

WHEREAS, 53 years ago American police officers successfully gained a special layer of employee due process protections when faced with investigations for official misconduct. This special layer of protection is commonly referred to as the Law Enforcement Officers Bill of Rights; and

Sponsor:

**Council
Member
Johnson**

WHEREAS, these protections exist within sixteen states, including the State of Delaware, each with some different statutes; and

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, the protections granted to police officers are more specific than those provided to other public employees in federal, state, or local civil service laws; and

WHEREAS, the Law Enforcement Bill of Rights is intended to protect American law enforcement personnel from investigation and prosecution arising from conduct during official performance of their duties, and provides them with privileges based on due process additional to those normally provided to other citizens; and

WHEREAS, the history of the Law Enforcement Bill of Rights began in the 1960s following the result of rulings by the U. S. Supreme Court in two cases 1) Garrity v. New Jersey (1967), and, 2) Gardner v. Broderick (1968) where police officers were placed under investigation in Garrity et.al. for fixing traffic tickets and for bribery in Gardner et.al.; and

WHEREAS, officers in each case during their interrogations by police supervisors were told and warned that if they didn't answer questions regarding the actions brought against them in the Garrity case or sign a waiver of immunity in the Gardner case the officers would be charged with a crime, possibly convicted, and lose their jobs which did happen; and

WHEREAS, when each of these cases were appealed to the U. S. Supreme Court the rulings of the Court in each case found that threatening to fire someone for refusing to answer questions or sign a waiver of immunity when that person claimed the 5th in fact violated the Fifth Amendment protection in the U.S. Constitution against self-incrimination and thus those statements should not have been admissible in a criminal proceeding causing the Court to overturn the convictions and subsequent actions taken including loss of jobs; and

WHEREAS, these cases and rulings by the U.S. Supreme Court spurred a number of states in the U.S. to incorporate Law Enforcement Officers' Bill of Rights into their state Codes or in a number of other states similar provisions have been incorporated into their contracts with police unions; and

WHEREAS, the Delaware General Assembly passed legislation entitled Title 11: Crimes and Criminal Procedure, Victims of Crimes, Chapter 92. Law Enforcement Officers' Bill of Rights, in 1974 incorporating the Law into the Delaware State Code; and

WHEREAS, due to a number of provisions in the Delaware Law Enforcement Officers Bill of Rights for Police Departments in municipalities and towns throughout the State including the largest City of Wilmington, issues of transparency and accountability between law enforcement Departments, the negative actions of some law enforcement officers with the communities they take an oath to serve and protect have become problematic, untrustworthy, racially suspect and ethically questionable; and

WHEREAS, the Delaware LEBOR includes provisions that prevent public access to Officer and Police Department reports on deadly use of force incidents including when guns are fired, prevents access by legal counsel of defendants to receive internal affairs investigation records of law enforcement officers accused of wrongdoing, all records compiled as a result of an investigation or contractual disciplinary grievance procedure remain confidential and "shall not be released to the public", complaints made by other citizens on police actions are all confidential and are not to be released to the public; and, Police Departments cannot publicly acknowledge that an officer is under investigation or that charges are dropped nor publicly acknowledge that the investigation ever took place or reveal the nature of the complaint; and

WHEREAS, in Delaware based on a report conducted by WHYY from 2005 to the present, Delaware police have shot 56 people, with officers killing 30 of them, including an innocent robbery victim, with nearly half of those shot being Black people who only comprise 22 percent of the state's population, there are compelling reasons based on police shootings of Black men and women, such as most recently the Atlanta police officer shooting of Rayshard Brooks, as he was running away from the officers who approached him in the drive through at a Wendy's Restaurant, to be concerned that the Law Officers Bill of Rights may be providing protections that are not warranted in a democratic society that is based on the rule of law that provides omissions to the rule of law to those who are charged and take an oath to adhere to the law, serve and protect the citizenry of the State and nation as law enforcement peace officers.

THEREFORE, BE IT RESOLVED BY THE WILMINGTON CITY COUNCIL that this Council strongly recommends that the Delaware General Assembly repeal the Delaware Law Enforcement Officers' Bill of Rights in order to establish greater transparency, accountability and trust between Police Officers and Police Departments with All the people in the state of Delaware regardless of race, ethnicity, religion, gender, income and/or prior criminal records in order to have equitable and just police protections for All.

Passed by City Council,

Attest: _____
City Clerk

Synopsis: The Wilmington City Council strongly recommends the Delaware General Assembly to repeal the Delaware Law Enforcement Bill of Rights due to the major issues of lack of transparency, accountability and trust many of its provisions have fostered between law enforcement officers, Police Departments and their fellow citizens due to the actions of some police officers involved in questionable, seemingly racially oriented shootings that according to a WHYY study from 2005 to the present have taken the lives of 56 people statewide, with nearly half of those lives lost being Black people, as well as, provisions in the LEBOR that prevent access to lawyers representing accused persons of police internal records relevant to files on the arresting officer(s), and lack of public access to reports filed by police officers use of force incidents.