



Loretta C. Scott, President  
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Councilmember  
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LaShay D. Harris  
Councilmember  
South District

Jacklyn Ortiz  
Councilmember At-Large

Michael A. Patterson  
Councilmember  
Northeast District

Elaine M. Spaul  
Councilmember  
East District

May 16, 2019

**TO THE COUNCIL**

Ladies and Gentlemen:

Re: Local Law to Create a Police  
Accountability Board

Transmitted herewith for your approval is a local law establishing a Police Accountability Board (PAB) in the City of Rochester. The newly created authority will ultimately replace the Civilian Review Board (CRB) that was established in Rochester in 1992 (Resolution 1992-4), and all subsequent legislation amending that resolution.

In 1963, Rochester City Council voted to establish a Police Advisory Board. This was the first time a civilian led body would be given the opportunity to review allegations of police misconduct. Over the years the function and concept of an oversight or advisory board has been changed and modified, including its dissolution in 1970 and reconstitution in 1977 as the Complaint Investigation Committee (CIC).

The model that was put in place in 1992, the Civilian Review Board (CRB), is still in existence today and is operated under contract with the Center for Dispute Settlement. Modifications to the CRB have been made throughout the years. One of the most significant change was the addition of a community advocate through an amendment in 2012.

Today, the City Council is proposing a PAB to replace the CRB, an independent board that will be civilian led and controlled. The PAB will be transparent and accountable to the community, a direct request of the citizens of our City. In response to the community the Council has authored this legislation that will create a Police Accountability Board. This Board will be representative of the community and must have community support through a referendum vote in order to be put in place.

The PAB legislation once passed by the Council calls for a referendum vote on Election Day, November 5, 2019, ultimately giving the City of Rochester electorate the final say on whether the PAB gets established.

If the referendum passes, the PAB will be housed and staffed outside of the Rochester Police Department (RPD), and will consist of 9 community members serving 3 years terms, of which 1 member will be nominated by the Mayor, 4 members will be nominated by the Council, and 4 members will be nominated by the Police Accountability Board Alliance.

The PAB will impartially investigate and adjudicate complaints of misconduct involving officer(s) of the RPD. The PAB will be empowered to utilize independent counsel and conduct independent investigations as they deem necessary and will be provided any information gathered from RPD's internal investigations. The PAB will be granted the power of subpoena by a majority vote of its members for information related to its investigations and deliberations.

The PAB will work with the City of Rochester, the RPD, and the Locust Club to establish a disciplinary matrix that will provide a range of disciplinary actions for RPD sworn employees who are found to be in violation of RPD policies with regard to force, procedure, courtesy, or conduct. The Chief of Police will be compelled to discipline any RPD sworn officer for whom a complaint was sustained by the PAB, using the ranges outlined in the disciplinary matrix.

The PAB will be responsible for reviewing and assessing RPD patterns, practices, policies, and procedures, and make recommendations for changes it deems necessary. In addition to these functions, the PAB shall publish monthly dispositions of complaints and quarterly and annual reports accessible on the City's website.

Respectfully Submitted,



Loretta C. Scott  
President  
At-Large Member



Willie J. Lightfoot  
Vice-President  
South District



Elaine M. Spaul  
East District



Jacklyn Ortiz  
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Michael A. Patterson  
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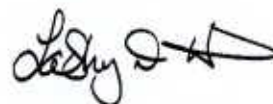
Molly Clifford  
Northwest District



Malik D. Evans  
At-Large Member



Mitch Gruber  
At-Large Member



LaShay D. Harris  
South District

Local Law No.

**Amending the City Charter with respect to establishing the Rochester Police Accountability Board, as amended**

Be IT ENACTED, by the Council of the City of Rochester as follows:

Section 1. Chapter 755 of the Laws of 1907, entitled "An Act Constituting the Charter of the City of Rochester", as amended, is hereby further amended by adding the following new Article XVIII Police Accountability Board:

**Article XVIII Police Accountability Board**

**§ 18-1. Purpose.**

The Rochester City Council hereby intends to establish a civilian-controlled process to fairly investigate and make determinations respecting complaints of misconduct involving ~~employees~~ sworn officers of the Rochester Police Department. The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Rochester Police Department patterns, practices, policies, and procedures. The Police Accountability Board shall ensure public accountability and transparency over the powers exercised by ~~employees~~ sworn officers of the Rochester Police Department. The Police Accountability Board shall provide a non-exclusive alternative to civil litigation.

**§ 18-2. Definitions.**

The following terms are defined, for purposes of this Article, as follows:

**Alliance**

The Police Accountability Board Alliance, a group of community organizations that nominate community members to be appointed by City Council to the Police Accountability Board.

**Chief**

The Chief of Police of the Rochester Police Department.

**City**

The City of Rochester, New York.

**Complaint**

A written or oral report regarding police misconduct made by any individual or group of individuals.

**Council**

The Rochester City Council.

**Day(s)**

Sequential days according to the calendar unless otherwise specified as "business days."

**Disciplinary Matrix**

A written, consistent, progressive, and transparent tool or rubric to determine discipline for misconduct. The disciplinary matrix shall determine a range of disciplinary action options for misconduct. The Chief will be required to impose discipline utilizing the disciplinary matrix based on the Board's findings and determination.

**Executive Director**

The highest-ranking staff hired by the Police Accountability Board, with ultimate responsibility for making managerial decisions.

**Immediate Family**

A parent, sibling, spouse or child of a person or any members of a person's immediate household.

**Misconduct**

Any acts or omissions by an ~~employee~~ Officer of the Rochester Police Department that are unlawful, contrary to Rochester Police Department policy, or otherwise inappropriate.

**Officers**

The sworn officers of the RPD, including but not limited to the Chief, deputies, captains, lieutenants, commanders, and all other sworn law enforcement professionals.

**PSS**

Professional Standards Section, which is the internal affairs department of the Rochester Police Department.

**RPD**

Rochester Police Department of the City of Rochester, New York.

**Sanction**

Disciplinary action for RPD ~~employee~~ Officer misconduct.

**The Board**

The Police Accountability Board; such Board is a public agency within the meaning of New York Civil Rights Law Section 50-a.

**Use of They, Their, Them**

A plural term or pronoun that shall be construed to mean the singular and vice versa where appropriate.

**§ 18-3. Establishment and Jurisdiction.**

- A. The Civilian Review Board, established by Rochester City Council Resolution 92-40 and expanded by Resolution 95-08, will be abolished after and only after the PAB is established and fully functional for sixty (60) days. The PAB shall be



deemed to be fully functional as soon as the first Executive Director assumes office and the Board has adopted rules and procedures in accordance with § 18-6.

- B. There is hereby established an independent office of municipal government to be known as the Police Accountability Board. It shall be an autonomous office of the City separate from the Rochester Police Department and other local, state, and federal law enforcement agencies. The members of the Board, regardless of the original appointee of each member, shall be appointed through legislation approved by the City Council.
- C. The Board shall be independent of the RPD and shall investigate and adjudicate complaints of misconduct against ~~the RPD Officers or any of its officers, staff, administrative and executive professionals, including but not limited to the Chief, deputies, captains, lieutenants, commanders, and all other law enforcement professionals.~~ the RPD Officers.
- D. As a condition of employment with the RPD, ~~all employees and personnel~~ Officers, including but not limited to the Chief, shall fully cooperate with the Board and this Article. In cases where ~~employees~~ Officers do not cooperate, the Board shall send a recommendation to City Council to invoke its power under City Charter § 2-19 to remove the ~~RPD employee~~ Officer. This shall not in any way limit the Board's right to invoke other remedies including judicial enforcement of the Article.
- E. The Board shall have the power to conduct independent investigations as further outlined in Section 1-5(G) below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD ~~employee(s)~~ Officer(s) if a complaint of misconduct is sustained.
- F. Based on information and belief that an investigation is warranted the Board shall have the power to conduct an investigation, even in the absence of a civilian complaint.
- G. The Board in conjunction with the Chief of the Rochester Police Department and Locust Club President shall establish a disciplinary matrix. The Board shall request input from the Chief, the Community Justice Advisory Board, the Police Accountability Board Alliance, and the President of the Rochester Police Locust Club when developing the matrix.
- H. The RPD and the City shall provide to the Board, as requested: access to all documents and evidence, including but not limited to RPD personnel files, IA Pro database, all other RPD databases, PSS investigative files, criminal and civil case files, disciplinary hearing records, video and audio recordings from body cameras or other sources, all RPD policies, procedures, and practices, the General Manual, and any other documents that pertain to policies, tactics, complaints, or charges against ~~RPD employees~~ Officers and their subsequent investigation and adjudication, or other sources of information deemed appropriate by the Board.
- I. The Board shall have the power to investigate any and all conduct, acts, or omissions by any ~~RPD employee~~ Officer.

- J. The Board shall have the power to review and recommend changes to RPD regarding RPD policies, procedures, patterns, practices and training.

**§ 18-4. Board Composition, Appointment, Vacancy, and Removal.**

- A. The Police Accountability Board shall consist of nine (9) members.
- B. Members of the Board shall serve terms of three (3) years except for the initial Board, which shall serve staggered terms, pursuant to Section 1-4 (J).
- C. Members of the Board shall be residents of the City of Rochester for a minimum of 12 months at the time of appointment to the Board.
- D. Members of the Board shall reflect the City's diverse community, including, but not limited to: age, race, creed, color, national origin, gender, gender identity or expression, sexual orientation, disability, marital status and source of income.
- E. Members of the Board and their immediate family shall not be currently or formerly employed by the RPD ~~or any other local, state, or federal law enforcement agencies.~~ At the discretion of the nominating and appointing authorities, no more than one (1) member of the Board at a time may be a former law enforcement employee with an agency other than the RPD or an immediate family member of a person formerly employed in non-RPD law enforcement, provided that such employment was three (3) or more years prior to the member's appointment.
- F. Board members shall not be current (or within the immediately preceding three (3) year period) City elected officials or immediate family of any incumbent elected official representing/serving any district or municipality in the State of New York.
- No practicing attorney or their immediate family who represents or has represented a plaintiff or defendant in a police misconduct lawsuit initiated against the RPD, the Chief or the Rochester Police Locust Club shall be a member of the Board. Board members may not represent a complainant or an RPD-employee Officer at Board hearings.
- ~~The provisions of Article 23-a of New York State Correction Law shall apply to any appointment to the Board.~~
- G. The provisions of Article 2, Section 5 and Article 3, Section 30 of the Public Officers Law of the State of New York, regarding vacancies, shall apply to all members of the Board.
- H. Appointments to the initial Board shall be made within sixty (60) days from the effective date of this Local Law as follows:
- 1) The Mayor shall appoint one (1) members.
  - 2) Council shall appoint four (4) members; one (1) appointee from each of the four Council Districts: East District, Northeast District, Northwest District, and South District.
  - 3) The Alliance shall nominate twelve (12) individuals, three (3) for each of its four (4) ~~Board-members~~ seats, within thirty (30) days from the effective date of this local law, from which Council shall confirm and appoint one (1) such individual for each of the four (4) member-seats at Council's discretion. If all

three (3) nominees for any one member-seat are rejected by Council, then the Alliance will nominate replacement(s) within fifteen (15) days until all four (4) members are confirmed. If necessary this process will repeat until Council has deemed a candidate qualified and capable of serving the Board.

All appointments will be approved through legislation passed by a majority of Council.

I. Police Accountability Board Alliance Nomination Process

The initial Alliance shall include no more than two (2) representatives from each organization listed in Appendix A. The process used by the Alliance to make initial Board appointments shall be as follows:

- 1) The first Alliance Executive Committee shall consist of five (5) individuals selected by the Alliance.
- 2) The Executive Committee will call for applications for nominees to fill four (4) positions on the Board;
- 3) Each organization represented in the Alliance as well as City residents may submit applications to nominate individuals;
- 4) The Executive Committee shall screen nominee submissions and narrow the field to finalists, then call a meeting of the Alliance to seek input regarding the qualifications of the finalists;
- 5) The Executive Committee shall determine the final twelve (12) names for the four (4) nominees and submit them to Council for confirmation and appointment;
- 6) Should Council reject a nominee, a written rejection will be submitted to the Alliance and the Alliance will resume the nominating process to select a replacement;
- 7) The final list of community appointments shall not be published until all four (4) nominees are confirmed by Council for the initial Board;
- 8) Future Board appointments to fill term-ended and mid-term vacancies shall follow a process determined by ~~Alliance~~ Board by-laws based on the initial selection process.

J. Terms

- 1) The first term of the initial Board commences when all nine (9) Board members are appointed and ends on the following June 30th.
- 2) Except for the initial Board, members shall serve staggered three (3) year terms and may be reappointed for another three (3) year term, for a total of six (6) years, after which, the member shall not be reappointed for at least three (3) years.
- 3) Except for the initial Board, each term shall commence on July 1st and end on June 30th. If a person is appointed to complete the unexpired term of a former Board member, they shall complete the term. The members shall be appointed for terms of three (3) years, except the first nine (9) members appointed. Of the first nine (9) members appointed:



- a) three (3) members shall be appointed for terms of one (1) year, of whom one (1) shall have been designated by Council, and two (2) shall have been designated by the Alliance;
- b) three (3) members shall be appointed for terms of two (2) years, of whom two (2) shall have been designated by the Council, and one (1) shall have been designated by the Alliance;
- c) three (3) members shall be appointed for terms of three (3) years, of whom one (1) shall have been designated by the Mayor one (1) shall have been designated by the Alliance, and one (1) shall have been designated by Council.

K. Vacancies

After the initial nine (9) member Board has been established, when any member vacates the Board, the Board shall notify the Mayor, Council, and the Alliance. The vacant position shall be filled in the same manner by which it was initially filled, within sixty (60) days of the vacancy.

L. Removal

- 1) A Board member seeking public office shall resign their seat at the time they announce their candidacy or file their petitions, whichever happens first.
- 2) A Board member who no longer resides in the City shall resign immediately.
- 3) By a majority vote, the Board may request that Council remove a Board member for good cause.

**§ 18-5. Powers and Duties.**

- A. The Board shall have the power to conduct independent investigations as further outlined in Section 1-5(G) below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD ~~employees~~ Officers if a complaint of misconduct is sustained.
- B. The Board shall establish a disciplinary matrix in conjunction with the Chief of the Rochester Police Department and Locust Club President. The Board shall request input from the Chief, the Alliance and the President of the Rochester Police Locust Club with respect to the disciplinary matrix. The disciplinary matrix shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints. The Board, in consultation with the Chief and the President of the Rochester Police Locust Club, shall review the disciplinary matrix annually, and consider any recommended changes. The Board shall decide the final version of the disciplinary matrix to be used.
- C. The Board shall review and assess RPD policies, procedures, patterns, practices and training and recommend changes to the RPD. Written acknowledgment of receipt of recommendations will be sent to the Executive Director from the Chief of Police within sixty (60) days with a detail listing of what items are and are not being implemented.
- D. The Board and the Chief shall establish a cooperative relationship to ensure the



orderly and efficient flow of information.

E. Accessibility

- 1) The Board shall provide language access for limited or non-English proficient complainants and witnesses at all stages of the investigative and adjudicative process. Language access shall be available during all operating hours of the Board.
- 2) The Board shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities at all stages of the investigative and adjudicative process. Such accommodations shall be available during all operating hours of the Board and shall include but not be limited to: accessible means of egress, accessible means of communication via auxiliary aids or services giving primary consideration to preferences of the individual deserving such services, and access to ASL interpreters.

F. Initiation of Complaints

- 1) Complaints may be received directly by the Board, or upon referral from PSS, the Mayor, the Council, any Councilmember, or the Chief. Any complaint received and accepted by the Board shall be transmitted to PSS, and any complaint received and accepted by PSS shall be transmitted to the Board.
- 2) The Board shall receive complaints by telephone, in person, by mail, email or web form. Complaints shall be received and considered whether submitted under signature or anonymous. Efforts to simplify the procedure shall be made to encourage filing. Professional standards of confidentiality with regard to the written release of information and informed consent will apply to all complaints filed. With respect to the confidentiality of all interested parties, the Board shall comply with all local, state, and federal law, including Civil Rights Law Section 50-a.
- 3) Before proceeding with the complaint process, the complainant shall be made aware of and referred to organizations that advocate for people who have experienced police misconduct and can explain the process of the Board and other options that exist beyond the jurisdiction of the Board.
- 4) Complainants shall be apprised by the Board of legal assistance options and the procedure for filing a Notice of Claim with the Corporation Counsel against the City, pursuant to Article IX of the City Charter.

G. Board Investigation of Complaints

- 1) A City employee assigned to the Police Accountability Board shall interview complainants, witnesses and RPD-employees Officers, and gather relevant evidence. PSS shall provide the Board with written notice of the commencement of any investigation and likewise, the Board shall provide PSS with written notice of the commencement of any investigation.
- 2) The Board shall have the power to investigate any and all conduct, acts or omissions by any RPD-employee Officer independent of any investigation conducted by PSS.
- 3) Subpoenas may be issued upon the affirmative vote of a majority of the Board at any time during the review and adjudication processes. Such

subpoenas may compel the attendance of witnesses, RPD Officers, RPD employees, and/or persons, and require the production of records and other materials, including records of the RPD, other persons or other agencies. A copy of any subpoena served upon an RPD Officer or employee shall also be delivered to the Chief. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules. The Chief will use the authority granted by Article VIIIA, Section 8A-1 of the City Charter, to promulgate new rules or utilize existing rules regarding discipline and administration of RPD ~~employees~~ Officers to ensure compliance with Board procedure and applicable law. RPD Officers and employees shall be notified of their rights against self-incrimination under *Garrity v. New Jersey*, 385 U.S. 493 (1967), before any testimony is taken from them.

- 4) Upon receipt of a complaint, within the timeframe allotted in accordance with the police bargaining agreement, PSS shall provide to the Board its entire investigative case file related to the complaint. Thereafter, PSS shall send any newly acquired evidence to the Board within five (5) business days of the acquisition of the evidence. If PSS makes any findings with respect to the complaint, they shall send all such findings to the Board within five (5) business days.
- 5) One (1) police officer holding the rank of Captain or higher, shall be made available by the Chief to the Board at the Board's request to serve as a consultant or advisor should questions arise from members of the Board regarding specific police practices, policies, or general orders. The officer so assigned shall be neither from PSS nor the Commanding Officer of the Officer(s) involved in the case being reviewed.
- 5)6) A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board. Such declination must be made in writing by the complainant, and shall be forwarded to the Chief by the Board.
- 6)7) Statements made by complainants, RPD Officers or employees, or witnesses are subject to the panel's determinations of weight and credibility. Participation or lack of participation in the hearing process may be considered by the Board as one factor in their determination of credibility.
- 7)8) The Chief shall take no action on a complaint, whether received directly by the RPD or by the Board, until receipt of the Board findings and decision, or notice that the Board has determined no disciplinary action is appropriate. Nonetheless, the Chief shall retain the authority to suspend an RPD ~~employee~~ Officer during the investigation and adjudication of a complaint against the RPD-employee Officer.

#### H. Reasonable Cause Determination

- 1) Upon completion of the review of the material from the PSS investigation and/or the Board investigation, the Executive Director shall present a report

and recommendation to Board members as to whether there is reasonable cause to proceed to a Board hearing on the allegations of misconduct in a complaint.

- 2) Upon review of the report and recommendations from the Executive Director, the Board members may either affirm or reverse the recommendation as to whether or not there is reasonable cause to proceed to a hearing. If there is reasonable cause to proceed, the Board shall direct the Executive Director to schedule a hearing and notify the complainant and the Chief. If there is not reasonable cause, the Executive Director shall notify the complainant and the Chief of this determination.

#### I. Hearing Process

- 1) As described in Section 1-6 (A)(3), the Board Chairperson shall establish a rotation of Board members to serve on hearing panels composed of three (3) members. Each panel shall include one (1) Alliance-appointed member, but shall not include more than two (2) Alliance- appointed members. Each panel shall select its own Chairperson on a case-by-case basis.
- 2) As described in Section 1-5 (G) (3), subpoenas may be issued during the hearing process.
- 3) Upon a majority vote of the Board membership in a duly published open meeting, the Board may determine to go into Executive Session so that the panel may conduct its hearing.
- 4) Panel hearings shall be recorded and transcribed by the Board. No other recordings or transcriptions are permitted.
- 5) Decisions made by the hearing panel will be documented in a Notice of Panel Decision delineating the findings of fact, and reasoning of the panel. If a panel member dissents from the majority's decision, the dissenter shall provide a written delineation of their findings of fact and reasoning.
- 6) Notice of Panel Decisions shall be provided to all parties with any confidential information redacted, pursuant to all local, state, and federal law.
- 7) Both complainant(s) and RPD-~~employee(s)~~ Officer(s) subject to a hearing shall have the right to obtain counsel or other representation and call witnesses on their own behalf. All due process rights delineated in NYS Civil Service Law Section 75 shall apply.
- 8) Complainants and RPD-~~employees~~ Officers subject to hearings may be questioned by the panel at the panel's discretion; relevant evidence pertaining to the case before the panel may also be entered into the hearing.
- 9) Statements made by complainants, RPD-~~employees~~ Officers, or witnesses are subject to the panel's determination of weight and credibility. Participation or lack of participation in the hearing process may be considered by the Board as one factor in their determination of credibility.
- 10) Decisions of the panel shall be made by a majority vote pursuant to the substantial evidence standard of proof. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisor(s). The decision shall include: (i) findings of



fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD ~~employee(s)~~ Officer(s) pursuant to the disciplinary matrix described in Section 1- 5 (B).

- a) If the panel finds that the RPD-~~employee(s)~~ Officer(s) may have engaged in criminal conduct, it shall refer the matter to the Monroe County District Attorney's Office or the New York State Attorney General's Office and request that their office initiate an investigation.
- b) The Board shall notify the complainant, ~~the RPD employee(s) who were the subject(s) of the complaint,~~ and the Chief, in writing within five (5) business days of the panel's findings and decision. It shall be the responsibility of the Chief to notify the RPD Officer(s) who were the subject(s) of the panel's findings and decision.
- c) If a Notice of Panel Decision contains a dissenting opinion, the complainant may appeal to the Board for review of the panel's findings. The complainant's appeal requesting Board review must be in writing and received by the Board no more than 30 days after the Notice of Panel Decision was sent to the complainant. To adjudicate the appeal, all Board members shall review all evidence in the record, including the hearing transcript, and shall determine, by majority vote, whether the majority opinion in the Notice of Panel Decision shall be:
  - (i) Reversed, if the Board decides that the Decision of the panel was wrong, the Board vacates (cancels) the Decision of the panel; or
  - (ii) Modified, if the Board changes part of the panel's Decisions, e.g., the Board decides that the appropriate sanction shall be termination rather than suspension; or
  - (iii) Affirmed, if the Board decides that the panel made the right Decision; the panel Decision remains in effect.
- d) If there is an appeal by the complainant, the Board shall provide a written Notice of Board Decision to the complainant, ~~RPD employee(s) who were the subject(s) of the complaint,~~ and the Chief. The Notice of Board Decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD-~~employee(s)~~ Officer(s) pursuant to the disciplinary matrix described in Section 1-5 (B).
- e) ~~RPD employees~~ Officers shall have the right to appeal pursuant to Section 76 of NYS Civil Service Law.
- f) Panel Decisions may include disciplinary sanctions including but not limited to counseling, reprimand, retraining, suspension,



demotion, or dismissal.

- 11) The panel shall report its findings and decisions to the Board at its next scheduled meeting.
- 12) The actions of the Board shall not preclude action by the criminal or civil justice system.
- 13) Responses from the Chief of Police

Within thirty (30) days of the receipt of a Notice of Panel Decision or Notice of Board Decision, the Chief shall provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix.

#### J. Discipline

- 1) Before conducting any hearings, the Board shall establish a disciplinary matrix per Section 1-5 (B).
- 2) This Article shall not limit the Chief's ability to impose any additional discipline for an RPD ~~employee~~ Officer above and beyond that recommended by the Board.
- ~~3) After the Board receives a written response from the Chief, or after thirty (30) days, whichever comes first, the Board shall make a final decision of discipline per the disciplinary matrix described in Section 1-5 (B).~~
- 4) 3) The Board shall notify the complainant, ~~the RPD employee(s) who were the subject(s) of the complaint,~~ and the Chief, in writing within five (5) business days of the Board's final decision of discipline.
- ~~5)~~ 4) The Board's ~~final~~ determination of discipline shall be binding on the Chief, who shall ~~be compelled to~~ impose the discipline determined by the Board in accordance with the matrix within five (5) days of receipt of the Board's ~~final determination of discipline decision.~~ The Chief will provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix within thirty (30) days.
- ~~6) The disciplinary matrix shall determine a range of sanctions within which the Board shall determine the specific sanction to impose on the RPD employee(s). The Board may consider mitigating and aggravating circumstances when making a final determination of discipline.~~

#### K) Policy Assessment

- 1) At least annually, the Board shall review and assess RPD policies, procedures, patterns and practices and recommend changes with input from the community.
- 2) The Board shall send its policy recommendations to the Chief, the Mayor, and City Council. The Board shall publish its policy recommendations on the Board website.
- 3) The Board's recommendations may address, but are not limited to: conduct and policies exhibiting bias against individuals based on race, gender, sexual orientation, perceived sexual orientation, gender identity, disability and perceived disability; use of force both lethal and non-lethal; de-escalation policies; vehicle and foot pursuits; use of canines; failure to acknowledge and/or accommodate the needs of people with disabilities including but not limited to physical

disabilities, intellectual and developmental disabilities, psychiatric disabilities, traumatic brain injuries; and human rights issues.

- 4) Within thirty (30) days of receiving the recommendations, the Chief shall provide the Board, the Mayor, and Council with a written explanation of why the Chief agrees or disagrees with the policy recommendations.
- 5) If the Chief agrees with the policy recommendation(s), then the Chief shall provide a timeline to the Board indicating implementation of each recommendation.
- 6) The Board shall publish on its website whether or not the policy recommendation(s) have been implemented.

#### **§ 18-6. Officers and Staff.**

- A. At the initial Board's first meeting, the Board shall elect a Chairperson and Vice-Chairperson, by majority vote. Subsequently, the Board shall elect a Chairperson and Vice-Chairperson by majority vote, at the first meeting after July 1 of each year. Each Chairperson and Vice-Chairperson shall serve until the June 30 following their election. No Board member shall serve as Chairperson or Vice-Chairperson for more than three (3) consecutive years. The initial Board shall convene a search committee for an Executive Director and a committee to establish rules of procedure not provided for herein. The search for a new Executive Director shall take place in the first year and whenever there is a vacancy. The Chairperson will also be responsible to:
  - 1) facilitate and preside over meetings of the Board;
  - 2) establish committees of Board members as needed; and
  - 3) establish a regular rotation of Board members to serve on hearing panels.
- B. A quorum of five (5) Board members must be present to conduct Board business, regardless of vacancies. No business shall be transacted by the Board without a quorum being present. Board action shall be decided by a simple majority of Board members present.
- C. Police Accountability Board Executive Director
  - 1) The PAB shall conduct a search process to hire a full-time Police Accountability Board Executive Director in accordance with the City of Rochester hiring practices. The Executive Director is subject to a Council Confirmation. The Executive Director will report to the Board and shall serve at the discretion of the Board.
  - 2) The Executive Director shall be a resident of the City within twelve (12) months of hiring and shall remain a City resident for the duration of their tenure.
  - 3) The Executive Director shall not be currently or formerly employed by the RPD or any other local, state, or federal law enforcement agency, nor shall any of their immediate family be employed by the RPD. Neither shall the Executive Director be a member of the immediate family of any incumbent elected official of the City, or have litigation pending against the City involving a claim of police misconduct, or be a member of the immediate family of a person, or be an attorney representing a person

with such pending litigation.

- 4) The Council, through the annual budgetary process as set forth in Article VI of the City Charter, as amended, shall provide for the compensation and benefits of the Executive Director.
- 5) The Board shall conduct an annual review of the performance of the Executive Director and may remove the Executive Director for good cause.
- 6) The Board shall be responsible, through the Executive Director and staff, for the daily administrative work of the Board.
- 7) The Executive Director shall be responsible for hiring and supervising staff in accordance with the City Charter and the Municipal Code. All such persons and their immediate family shall be free of any conflict of interest, including but not limited to current or former employment with the RPD or any other local, state, or federal law enforcement agency.

#### **§ 18-7. Training and Outreach.**

##### **A. Board and Executive Director Training**

The Board and staff shall seek and participate in a broad range of training annually. Training resources will be selected by the Board and may include individuals and organizations such as law enforcement entities, attorneys, and any national, state, or local resources with expertise and experience in civilian complaints, investigation, police policies, auditing/monitoring, and other appropriate skills and knowledge. The Board and staff orientation and ongoing training shall include but not be limited to, the following:

- 1) All relevant local, state, and federal law
- 2) implicit bias and anti-racism;
- 3) gender identity and sexuality;
- 4) disability rights, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities and traumatic brain injuries;
- 5) classism, poverty and homelessness;
- 6) trauma-informed policing and crisis intervention, including RPD-employee Officer well-being;
- 7) patterns, practices, policies, and procedures of the RPD;
- 8) Police Accountability Board Local Law;
- 9) civilian oversight history, models, trends, theories, standards and best practices;
- 10) how to conduct independent and objective civilian complaint investigations, e.g. interviewing, collection and preservation of evidence;
- 11) community outreach to inform how the ~~Police Accountability~~ Board functions and serves the community and public reporting;
- 12) discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance;
- 13) RPD ride alongs;

- 14) access to RPD training; and
- 15) access to RPD manuals.

B) Community Outreach

- 1) The Board shall conduct outreach to community members, groups, and nonprofit organizations. The Board shall provide language access for limited and non-English proficient individuals. The Board shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities.
- 2) Complaint forms and instructions shall be made available by RPD Officers and employees and at the Board office, at Board meetings, libraries, recreation centers, PSS office, police stations, public safety building, courts, and all other government buildings, and on the City, RPD, and Board websites.
- 3) In addition to regular monthly business meetings that include review of complaints, the Board shall hold public meetings in each City district a minimum of at least once annually, to invite public input or comment, and to provide information education about the Board process and its work.
- 4) The Board shall, through a standing Board committee, be dedicated to youth and community engagement, establish and pursue ways to interact with and solicit input from youth, present educational programs designed to promote public awareness of the Board process, give the public information about their rights and responsibilities regarding encounters with law enforcement employees, and publicize the procedure for filing a complaint with the Board.
- 5) The City shall provide the Board with a website on which the Board shall post information, including but not limited to: educational materials, links, videos, reports, and forms related to the operation of the Board and its mission.
- 6) The Board shall survey complainants and the public to assess satisfaction and identify concerns with the Board's investigative and adjudicative processes.

**§ 18-8. Retaliation Prohibited.**

Retaliation by RPD Officers and employees against complainants, witnesses, the Board and its staff, and other RPD Officers and employees, shall be prohibited. Retaliation includes but is not limited to: harassment, intimidation, stalking, threats and assaults. If a complaint of retaliation is sustained by the Board, action will be taken based upon the disciplinary matrix. ~~A formal complaint does not need to be filed with the Board for an investigation of retaliation to occur.~~ The chief will also be notified of the misconduct.

**§ 18-9. Conflict of Interest.**

- A. No Board member or Board employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest. Any conflict



of interest prohibited by Article 18 of the General Municipal Law or by the ~~City's Code of Ethics~~ shall disqualify a member. A conflict of interest shall include, but is not limited to: if they have reason to believe or expect that they will derive a direct monetary gain or suffer a direct monetary loss, by reason of their official activity; or if any benefit or detriment accrues to them as a member of a business, profession, occupation, or group to a greater extent than any other member of the business, profession, occupation, or group. Board members may not represent a complainant or an RPD-sworn member Officer before PSS or the Board.

- B. If a Board member has a personal, business or other relationship or association with a party to or a witness in a matter before the Board, the member shall disclose the situation to the Chairperson, and shall recuse themselves from deliberations or action in connection with that case.
- C. Board members and employees shall be subject to the City of Rochester's Code of Ethics.

#### **§ 18-10. Legal Representation.**

- A. The Corporation Counsel shall advise and represent the Board as it would other public boards in accordance with the Law Department's duties under Article IX of the City Charter. ~~Provided, however, that upon the determination by the Corporation Counsel that a conflict of interest exists, depending on the facts and circumstances of a particular matter, Corporation Counsel will advise the Board to obtain outside counsel if such counsel is deemed necessary by the Board. The Board may then seek and retain independent legal counsel, provided, however, that compensation for such legal services shall be established through the City's annual budgetary process as set forth in Article VI of the Rochester City Charter for any purpose and may also utilize the City's Corporation Counsel at its discretion.~~
- B. All contracts for outside services (legal or other) shall be procured in accordance with the City of Rochester purchasing requirements and are subject to City Council approval when over \$10,000 or the Police Accountability Board does not have adequate funds in their annual budget to cover the cost of an agreement less than \$10,000.

#### **§ 18-11. Police Accountability Board Reports.**

- A. The Board shall publish on its website monthly data on the receipt and dispositions of complaints.
- B. All complaints shall be issued a public tracking number, which shall be included in the quarterly and annual reports.
- C. The Board shall publish on its website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor public quarterly and annual reports that shall document:
  - 1) The total number and type of complaints and the City districts in which they happened;
  - 2) The categories of each complaint as defined in Section Three of the local law;

- 3) The public tracking number of each complaint;
  - 4) Detailing information that is legally available to the Board, including but not limited to: the date, time, and location of each incident, whether there is video of the incident or not, age, race, and gender of adult complainant(s), rank(s), gender(s), section(s), and race(s) of the RPD-~~employee(s)~~ Officer(s) and if there were witnesses, how many, and whether they are employed by any local, state, or federal law enforcement agency and which agency; the Board shall comply with local, state, and federal law and redact any information that may not be disclosed publicly. The number of previous complaints against the RPD-~~employee(s)~~ Officer(s) within ten (10) years of the incident and whether or not those complaints were sustained.
  - 5) The number of times and the types of use of force used per complaint and the total number of times and types of use of force used;
  - 6) The number of times pepper spray was deployed per complaint and the total number of times pepper spray was deployed;
  - 7) The number of times and types of pain compliance tactics used per complaint and the totals for each use of pain compliance tactic;
  - 8) The number of times and types of use where a Taser was deployed;
  - 9) Complaint and sustain rates for each RPD section;
  - 10) in the event where an RPD-~~employee~~ Officer uses their firearm:
    - a) the type of weapon used (firearm, brand, type);
    - b) number of shots fired;
    - c) the range from which the firearm was fired;
    - d) injuries sustained by the complainant, animal(s), RPD-~~employee(s)~~ Officer(s), and/or any bystanders;
    - e) any medical care provided and what type; whether the person or animal was killed.
    - f) the number of cases where the panel's disciplinary decision was enforced by the ~~e~~Chief
    - g) the number of cases where the Chief disputed the disciplinary decision of the panel;
    - h) the type of sanctions imposed;
    - i) the type of sanctions decided upon;
    - j) the number of cases reviewed by the Board;
    - k) the number of complaints found not to have reasonable cause to be heard;
    - l) the number of complainants contacting the Board but not following through with a formal signed complaint;
    - m) the length of time each case was pending before the Board;
    - n) the number of complainants who filed a notice of claim against the City while their complaint was being considered by the Board.
- D. The annual report published on the Board's website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor and shall contain:

- 1) The recommendations related to changes in RPD patterns, practices, policies, and procedures;
  - 2) Whether the prior year's recommended changes have been implemented;
  - 3) A summary of complainant and public survey data with an assessment of if and how Board policies should change to accommodate concerns.
- E. Quarterly and annual reports shall be publicly available on the Board's website.
- F. Any video associated with the Complaint that can be made public, shall be made publicly available.
- G. The Board shall comply with all local, state, and federal law, including Civil Rights Law Section 50-a concerning the release of personnel information.

**§ 18-12. Audit and Evaluation.**

- A. The Board may, by majority vote, perform an audit, or direct that an audit be performed, to assess the investigation and adjudication of civilian complaints.
- B. An independent organization of Council's choosing shall conduct a formal annual evaluation of the functions, processes, and outcomes of the Police Accountability Board. The evaluator will make specific recommendations to the Council regarding changes to the Board's functions, processes and outcomes.

**§ 18-13. Budget.**

- A. The annual proposed budget of the Police Accountability Board shall provide for sufficient funding to carry out the powers and duties set forth in the Police Accountability Board Article, including the funding of staff and all necessary operating expenses for the purpose of resolving all complaints within ninety (90) days. The Board shall be funded through the budgetary process of the City, pursuant to Article VI of the City Charter. The Board budget shall be separate from, and independent of, the RPD budget.
- B. The Board shall annually prepare a budget in accordance with the Budget Allocation Level that it deemed appropriate from the Office of Management and Budget. The Board shall submit the proposed budget, along with appropriate financial documentation, to the Mayor and Council, during the City's annual budgetary process.
- C. The Board's first year budget shall include appropriate start-up costs, such as office furnishings, equipment, training for all Board and staff, and a national search for the Executive Director.

**§ 18-14. Severability.**

The invalidity of any provision or provisions of this chapter shall not affect the validity of the remaining provisions thereof, but such remaining provisions shall continue in full force and effect.

Section 2. This local law shall ~~take effect upon its filing in the Office of the Secretary of State as provided by Section 27 of the NYS Municipal Home Rule Law~~ be submitted for the approval of the electors at the general election to be held on November 5, 2019 and shall take effect only if and when it is certified as having been approved by the affirmative vote of a majority of the qualified electors voting on

said proposition.

Strikeout indicates deleted text, new text is underlined



## **APPENDIX A**

### **Police Accountability Board Supporting Organization \*\***

19th Ward Community Association  
Action for a Better Community  
Action Together Rochester  
African American Health Association &  
Latino Health Coalition  
American Baptist Churches of the  
Rochester/Genesee Region  
Antioch Missionary Baptist Church  
Baber AME Church  
Beechwood Neighborhood Association  
Center for Disability Rights  
Citizen Action of Western New York  
Colgate Rochester Crozer Divinity  
School  
Compeer  
Delta Sigma Theta Sorority Alumna  
Dimitri House  
Empire Justice  
Enough Is Enough  
Facing Race, Embracing Equity  
(FR=EE)  
First Unitarian Church  
First Universalist Church  
Flower City Noir  
Flying Squirrel Community Space  
Greater Rochester Community of  
Churches  
Green Party of Monroe County  
Ibero American Action League  
Inner Faith Gospel Tabernacle  
Justice For All

MK Gandhi Institute  
National Lawyers Guild of Rochester  
Native American Cultural Center  
North East Area Development  
Omega Psi Phi  
Open Arms Christian Fellowship  
Out Alliance  
Ministry  
PLEX Neighborhood Association  
Re-entry & Community Development  
Center  
Roc/ACTS  
Rochester Black Authors  
Rochester Democratic Socialists of  
America  
ROCitizen  
Safer Monroe Area Reentry Team  
(SMART)  
Shades of Sisterhood  
Showing Up for Racial Justice (SURJ)  
Sisters of Mercy  
Social Welfare Action Alliance  
South West Area Neighborhood Assoc.  
Spiritus Christi Anti-Racism Coalition  
St. Joseph's House of Hospitality  
Table 23  
Teen Empowerment  
Trinity Emmanuel Presbyterian Church  
Turning Points  
Urban League of Rochester  
Rochester Chapter of VOCAL-NY

**\*\* Organization list is subject to  
change**