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**[CITY OF ROCHESTER ORDINANCE ESTABLISHING]**

**THE ROCHESTER POLICE ACCOUNTABILITY BOARD**

**Article 1: General Provisions**

**§ 1-1. 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 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 of the Rochester Police Department. The Police Accountability Board shall provide a non-exclusive alternative to civil litigation.

**§ 1-2. Definitions.**

The following terms are defined, for purposes of this ordinance, 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.

**Executive Director**

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

**Immediate Family**

A spouse, sibling, parent, child, stepchild, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, half-brother, half-sister, first cousin, domestic partner, and partner to a civil union, whether by blood, marriage, or adoption.

**Misconduct**

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

**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 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.

**§ 1-3. Establishment and Jurisdiction.**

A. The Civilian Review Board, established by Rochester City Council Resolution 92-40 and expanded by Resolution 95-08, is hereby abolished.

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 Board shall report to the Rochester City Council.

C. The Board shall be independent of the RPD and shall investigate and adjudicate complaints of misconduct against the RPD 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.

D. As a condition of employment with the RPD, all employees and personnel, including but not limited to the Chief, shall fully cooperate with the Board and this ordinance.

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 **recommend discipline action to the Chief for an** RPD employee(s) if a complaint of misconduct is sustained.

F. Based on information and belief that an investigation is warranted following review of a PSS file, the Board shall have the power to conduct an investigation, even in the absence of a civilian complaint.

G. The Board shall establish a disciplinary matrix. **The Board shall request input from the Chief 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 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.

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

#### **§ 1-4. Board Composition, Appointment, Vacancy, and Removal.**

A. The Police Accountability Board shall consist of ~~nine (9)~~ **eleven (11)** 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 and must be able to show proof of residency in the City for at least twelve (12) months prior to being appointed 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 (**within the immediately preceding three (3) year period**) employed by the RPD or any other local, state, or federal law enforcement agencies.

F. Board members shall not be current (or within the immediately preceding three (3) year period) City elected officials, candidates for elected office within Monroe County, or immediate family of any incumbent elected official.

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 **within the immediately preceding three (3) year period**, shall be a member of the Board. Board members may not represent a complainant or an RPD employee 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. ~~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 ordinance as follows:

1. The Mayor shall appoint ~~two (2)~~ **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 ~~nine (9)~~ **6** individuals, **three (3) for each of its three (3) member-seats**, within thirty (30) days from the effective date of this ordinance, from which Council shall confirm and appoint **one (1) such individual for each of the three (3) member-seats** at Council's discretion. **No more than two (2) of these nominees shall be a part of the same type of sector, profession, or organization.** 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 three (3) members are confirmed. **If council fails to confirm or reject any nominee within thirty (30) days, then the nominee shall be deemed appointed to the Board.**

## 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. Each initial member organization shall have endorsed the ordinance recommended by the Police Accountability Board Organizing Committee by December 31, 2019. 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 ~~three (3)~~ six (6) 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 ~~nine (9)~~ six (6) names for the three (3) 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 ~~three (3)~~ six (6) nominees are confirmed by Council;
8. Future Board appointments to fill term-ended and mid-term vacancies shall follow a process determined by Alliance by-laws based on the initial selection process.

## J. Terms

- 1) The first term of the initial Board commences when all ~~nine (9)~~ eleven (11) 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)~~ eleven (11) members appointed. Of the first ~~nine (9)~~ eleven (11) 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 **two (2)** shall have been designated by the Mayor, and one (1) shall have been designated by Council.

#### K. Vacancies

After the initial ~~nine (9)~~ **eleven (11)** 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. **If a Board vacancy is not filled by the Mayor or Council within sixty (60) days, then the alliance shall nominate a member to be confirmed and appointed at Council's discretion. If council fails to confirm or reject any nominee within thirty (30) days, then the nominee shall be deemed appointed to the Board.**

#### L. Removal

- 1) A Board member seeking public office shall resign their seat at the time he or she announces his or her intent to seek public office.
- 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.

#### **§ 1-5. 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 ~~recommend disciplinary action be taken against~~ **discipline** RPD employees if a complaint of misconduct is sustained.

B. The Board shall establish a disciplinary matrix. The Board shall request input from the Chief 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 ~~can~~ **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. The Board shall accommodate non-native English speakers and persons with disabilities.

#### F. Initiation of Complaints

1) Complaints may be received directly by the Board **from civilians**, 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 Rochester City Charter, 1834, as amended.

#### G. Board Investigation of Complaints

1) An investigator **from the PSS of the RPD** shall interview complainants, witnesses and RPD employees, and gather relevant evidence. **PSS shall provide the Board 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 independent of any investigation conducted by PSS. **Any investigation done by the Board will only be commenced after all PSS material has been reviewed and the Board has reason to believe that any relevant material, details, or information is missing from the PSS report. The Board shall advise PSS, in writing, of its determination to conduct any such investigation.**

3) Subpoenas may be issued at any time during the review and adjudication processes. Such subpoenas may compel the attendance of witnesses, 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 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 VIII A, Section 8A-1 of the Rochester City Charter, 1834, as amended, to promulgate new rules or utilize existing rules regarding discipline and administration of RPD employees to ensure compliance with Board procedure and applicable law. RPD 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) Within thirty (30) days from receipt of a complaint, 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) 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) Statements made by complainants, RPD 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) 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 recommendation, or notice that the Board has determined no disciplinary action is appropriate. Nonetheless, the Chief shall retain the authority to suspend an RPD employee during the investigation and adjudication of a complaint against the RPD employee.

#### H. Reasonable Cause Determination

1) Upon completion of the ~~review of the material from the PSS investigation~~ **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) **Recommendations Decisions** made by the hearing panel will be documented in a Notice of Panel **Recommendation Decision** delineating the findings of fact, and reasoning of the panel. If a panel member dissents from the majority's recommendation, the dissenter shall provide a written delineation of their findings of fact and reasoning.

6) Notice of Panel **Recommendations 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) 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 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, 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) **Recommendations 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 recommendation shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action recommended in reference to the RPD employee(s) pursuant to the disciplinary matrix described in Section 1- 5 (B).

a) If the panel finds that the RPD employee(s) may have engaged in criminal conduct, it shall refer the matter to the Monroe County District Attorney's Office and request that their office initiate an investigation. **If the panel finds that the RPD employee(s) may have engaged in criminal conduct, it shall refer the matter directly to the New York State Attorney General's**

Office and request that their office assign a special prosecutor to 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 recommendation.

c) If a Notice of Panel Recommendation Decision contains a dissenting opinion, the complainant may appeal to the Board for review of the panel's findings and recommendation. 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 Recommendation 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 Recommendation Decision shall be:

i) Reversed, if the Board decides that the Recommendation Decision of the panel was wrong, the Board vacates (cancels) the Recommendation Decision of the panel; or ii) Modified, if the Board changes part of the panel's Recommendations Decisions, e.g., the Board decides that the appropriate recommended sanction shall be termination rather than suspension; or iii) Affirmed, if the Board decides that the panel made the right Recommendation Decision; the panel Recommendation Decision remains in effect.

d) If there is an appeal by the complainant, the Board shall provide a written Notice of Board Recommendation to the complainant, RPD employee(s) who were the subject(s) of the complaint, and the Chief. The Notice of Board Recommendation Decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action recommended in reference to the RPD employee(s) pursuant to the disciplinary matrix described in Section 1-5 (B).

e) RPD employees shall have the right to appeal pursuant to Section 76 of NYS Civil Service Law.

f) The Board's findings of fact shall be binding on the RPD for the purposes of discipline

g) Board recommendations may include disciplinary sanctions including but not limited to counseling, reprimand, retraining, suspension, demotion, or dismissal.

h) The panel may recommend that restitution be paid to the complainant by the City for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident

11) The panel shall report its findings and recommendations 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 Recommendation or Notice of Board Recommendation, the Chief shall provide the Board with a written explanation of why the Chief agrees or disagrees with the disciplinary recommendation of the Board.

#### J. Discipline

1) Before conducting any hearings, the Board shall establish a disciplinary matrix per Section 1-5 (B).

2) This ordinance shall not limit the Chief's ability to impose any additional discipline for an RPD employee 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 recommendation of discipline per the disciplinary matrix described in Section 1-5 (B).

4) 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 ~~recommendation~~ decision of discipline.

5) ~~Within ten (10) business days following receipt of the Board's final determination of discipline, the Chief shall provide the Board with a written explanation of whether the Chief will enforce the Board's final determination and if not, what discipline or sanction will be imposed, if any.~~ 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 within five (5) days of receipt of the Board's final determination of discipline.

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 and the Mayor and the Board shall publish them on the Board website.

3) The Board's recommendations may address, but are not limited to: racial bias issues, gender bias issues, LGBTQ bias issues, disability bias issues, use of force both lethal and non-lethal, de-escalation policies, vehicle and foot pursuits, use of canines, issues concerning individuals

with mental health problems, 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 they shall be implemented within ninety (90) days of receiving the recommendation(s).

6) The Board shall publish on its website whether or not the policy recommendation(s) have been implemented.

### **§ 1-6. 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)~~ **seven (7)** 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 Board shall conduct a search process and hire a full-time Police Accountability Board Executive Director who 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)~~ **six (6)** 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 Rochester City Charter, 1834, 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 Charter and the 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. (See Appendix B for proposed Executive Director job description.)

#### **§ 1-7. 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, both physical and mental disabilities or illnesses;
- 5) classism, poverty and homelessness;
- 6) trauma-informed policing and crisis intervention, including RPD employee well-being;
- 7) patterns, practices, policies, and procedures of the RPD;
- 8) Police Accountability Board Ordinance;
- 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 and public reporting;
- 12) discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance

#### B. Community Outreach

- 1) The Board shall conduct outreach to community members, groups, and nonprofit organizations. The Board shall accommodate non-native English speakers and persons with disabilities.
- 2) Complaint forms and instructions shall be made available by RPD 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.

#### **§ 1-8. Retaliation Prohibited.**

Retaliation by RPD employees against complainants, witnesses, the Board and its staff, and other RPD 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, then the RPD employee shall be terminated.

#### **§ 1-9. 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 Code 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.

B. If a Board member has a personal, business or other relationship or association with a party to or a witness in a case before the panel to which such member has been assigned, the member shall disclose this situation to the Chairperson, and shall request that the case be transferred to another panel. If a Board member has such relationship in a case before the Board, the member shall recuse themselves from deliberations or action in connection with that case.

#### **§ 1-10. Independent Legal Representation.**

The Police Accountability Board shall retain or employ independent legal counsel on a contractual basis to advise and represent the Board. If so retained, the Board's legal counsel shall represent the Board in the courts, shall advise the Board as to any legal matters relating to the ordinance and the Board's duties, responsibilities, and procedures, except for personnel matters, which shall remain under the authority of the City's Corporation Counsel. The Board's attorney shall not in the regular course of their legal practice defend law enforcement employees. The Board's attorney shall not participate in, nor serve as counsel to the City or any of its Council members or employees in defense of any lawsuit arising from the incident that is before the Board. The Board's attorney and their immediate family shall not be currently or formerly employed or contracted by the RPD or any other local, state, or federal law enforcement agencies

and immediate family of any incumbent elected official of the City, nor have any financial ties with either members of the RPD or any incumbent elected official of the City. Compensation for such legal services shall be established through the annual budgetary process as set forth in Article VI of the Rochester City Charter, 1834, as amended. The City shall fully indemnify the Board for all legal expenses it incurs. Such legal expenses include but are not limited to the cost of interpreting, enforcing, and carrying out the powers and duties specified in this ordinance.

**§ 1-11. Police Accountability Board Reports.**

A. The Board shall publish 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 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) the date, time, and location of each incident, whether there is video of the incident or not, the name, age, race, and gender of the complainant(s), [the name\(s\), rank\(s\), serial number\(s\), age\(s\), gender\(s\), and race\(s\) of the RPD employee\(s\)](#) 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 named RPD employee\(s\) 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) in the event where an RPD employee 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), and/or any bystanders;
- e) any medical care provided and what type; whether the person or animal was killed.
- k) the number of cases where the Board's disciplinary **recommendations were enforced by the Chief**;
- l) the type of sanctions imposed; **the type of sanctions recommended**
- m) the number of cases reviewed by the Board;
- n) the number of complaints found not to have reasonable cause to be heard;
- o) the number of complainants contacting the Board but not following through with a formal signed complaint;
- p) the length of time each case was pending before the Board;
- q) the number of complaints in which the Board imposed a recommendation that the City provide restitution to the complainant and what type of restitution was imposed; and
- r) 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 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. After the Board makes a final determination on a complaint, any video associated with the Complaint **that can be made public**, shall be made publicly available on the Board's website.

### **§ 1-12. 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 s e m i - a n n u a l 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.

**§ 1-13. 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 ordinance, 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 Rochester City Charter, 1834, as amended. 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.~~ Equal to at least 1% of the RPD budget To create a level of parity, the annual budget will not be decreased by a percentage more than that of the RPD. This provision shall ensure that adequate costs for the Board will be met based on the size of the RPD. (See proposed budget, Appendix C.)

C. The Board shall submit the proposed budget, along with appropriate financial documentation, to the Mayor and Council, during the City's annual budgetary process.

D. 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.

**§ 1-14. 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. If any portion of this ordinance conflicts with the RPD employees' respective current Collective Bargaining Unit Agreements, RPD Rules and Regulations, and/or the RPD General Orders, the applicable sections of this ordinance shall prevail.

**§ 1-15. Effective Date.**

This local law, as amended, shall take effect immediately subject to the provisions of the Municipal Home Rule of the State of New York.

## **APPENDIX A**

### **Police Accountability Board Supporting Organizations**

19th Ward Neighborhood Association Action for a Better Community Action Together  
Rochester African American Health Coalition American Baptist Churches of Rochester Antioch  
Missionary Baptist Church Baber AME Church Beechwood Neighborhood Association Black  
Student Leadership Catholic Family Center Changing of the Scenes Neighborhood Assn.  
Christians Witnessing for Palestine Church of the Assumption Church of the Epiphany Church  
Women United Citizen Action of New York Coalition for Police Reform Colgate Rochester  
Crozier Divinity School Dimitri House Downtown United Presbyterian Church DUPC Justice  
Team Empire Justice Enough Is Enough Facing Race, Embracing Equity First Unitarian Church  
First Universalist Church Flower City Parents Network Flying Squirrel Community Space  
Greater Rochester Community of Churches Hillside Children's Center Ibero American Action  
League Incarnate Word Lutheran Church Inner Faith Gospel Tabernacle International Socialists  
Organization Judicial Process Commission Latino Health Coalition Light the Way M.K. Gandhi  
Institute

Metro Justice Mt. Hope Family Center Mt. Hope Neighborhood Association National Coalition  
Building Institute National Lawyers Guild of NJ/DE National Organization for Women,

Rochester, NY North East Area Development Partners in Restorative Initiatives Peace of  
Christ Parish Rochester ACTS Rochester Committee on Latin America Rochester Democratic  
Socialists of

America Rochester Zen Center ROCitizen Rowe Photo Shades of Sisterhood Showing Up for  
Racial Justice Sisters of St. Joseph Sisters of Mercy Social Welfare Action Alliance South West  
Common Council Spiritus Christi Church St. Frances Xavier Cabrini Parish St. Joseph's House  
of Hospitality St. Monica's Church Sufi Order of Rochester Table 23 Take Back the Land Teen  
Empowerment The Children's Agenda The Interfaith Alliance of Rochester Turning Points  
United Christian Leadership Ministry UR Students for a Democratic Society Urban League of  
Rochester Women's Initiative Supporting Healing

## **APPENDIX B**

### **Police Accountability Board Sample Executive Director Job Description**

The Executive Director shall be responsible for hiring and supervising staff. 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. Duties shall include:

- maintain secure files of Board records, compliant with all applicable local, state, and federal laws;
- develop an ongoing account and statistics of Board business, including all data required for reports;
- refer complainants to service or advocacy agencies as appropriate;
- represent the Board as appropriate;
- assist complainants to file and present their cases to the Board including: interviewing witnesses, taking statements; advising on matters such as requests for subpoenas;
- oversee and conduct investigations or portions of investigations of complaints when it is determined that the PSS file is missing relevant material; create and maintain such forms and processes as may be necessary to document and summarize a complaint and any subsequent investigation, to present a complaint to the Board, to track the processing and determination of a complaint, and to identify statistics and trends related to complaints and in reference to the categories of misconduct and the demographics of residents of the City of Rochester, including but not limited to race, ethnicity, sex, gender, gender identity and/or expression, sexual orientation, religion, disability, primary or secondary language other than English, immigration or refugee status, and the location in which an incident occurred;
- evaluate information in each complaint, summarizing key facts for presentation to the Board;
- make recommendations to the Board as to whether there is a reasonable basis on which a complaint should proceed to a hearing;
- provide written notice to complainants regarding the disposition and status of a complaint and the basis for this determination at least every 30 days;
- assist the Board in pursuing community and youth engagement;
- keep regular working and office hours consistent with other City departments;
- research and develop ongoing training for the Board to assist it in developing further competence;
- assist the Board to design and deliver appropriate public education programs;

- track Board expenses, prepare periodic written and oral reports;
- facilitate communication and scheduling for Board meetings and hearings;
- assist the Board to study patterns, practices, policies and procedures within the RPD, make recommendations for policy changes to City Council, and publish them at least annually;
- assist the Board in the review of PSS files, and the initiation and establishment of investigations into the conduct of individual RPD employees, even in the absence of a civilian complaint, when based on information and belief that relevant material is missing and an investigation is warranted;
- provide written notice to the City Council and the Mayor of vacancies within five (5) business days of a resignation or removal of a Board member by action of the Council, and at least sixty (60) days prior to the end of a term; and

- other tasks as needed or as directed by the Board and its Chairperson within the jurisdiction of the Board.

## APPENDIX C

### SAMPLE POLICE ACCOUNTABILITY BOARD BUDGET - BASED ON OTHER CITIES

#### Personnel:

##### Suggested Bracket

Salary Range\* Fringe Range Total Range Administrator/Executive Director 28 \$71,010 \$93,708 \$33,132 \$38,353  
\$104,142 \$132,061 30 \$77,160 \$101,740 \$34,547 \$40,200 \$111,707 \$141,940  
Executive Staff Assistant 18 \$45,376 \$59,223 27236 30421.3 \$72,612 \$89,644 Clerk III w/Typing Part Time 7 16,519  
20,651 1,264 1,580 17,783 22,231  
Total Cost of Personnel \$202,102 \$253,815 ED bracket 30  
\$194,537 \$243,936 ED bracket 28

#### Facility:

Off-site lease - should include board room to conduct meetings 36,000 Heat, light & power 2,300 Office  
Maintenance/Cleaning 5,700 Phone 1,200 Total Facility 45,200

#### Miscellaneous Supplies & Services

Copier - toner, paper, etc. 2,500 Dues/Membership 300 Printing/Promotional 2,000 Cellular Phone (2) 2,300  
Stenographer (?) 8,000 Training (for staff and PAB members) 10,000 Professional Services (legal and investigative)  
50,000 Refreshments for Meetings 2,000 Mileage reimbursement 2,000 Office supplies 2,000 Total Miscellaneous  
81,100

#### One-time Start-Up

Furniture & Fixtures 15,000 Computers 4,000 Total One-time Start-up Costs 19,000  
Total Cost Range of PAB - Year 1 \$347,402 \$399,115 Bracket  
30 \*Represents wage rates in effect July 1, 2018 \$339,837 389,236 bracket 28