

**RECOMMENDED CITY OF ROCHESTER  
ORDINANCE ESTABLISHING  
THE 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 adjudicate complaints of misconduct involving employees of the Rochester Police Department. The Police Accountability Board shall be the mechanism to investigate and adjudicate 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 is 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 §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, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD employee(s) if a complaint of misconduct is sustained.
- F. The Board shall establish a disciplinary matrix.
- G. The Board shall review and assess RPD policies, procedures, patterns, practices and training and recommend changes to Council and the RPD.
- H. 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.
- I. 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.
- J. The Board shall have the power to investigate any and all conduct, acts, or omissions by any RPD employee.

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

- A. The Police Accountability Board shall consist of 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 § 1-4 (O).
- 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: race, gender, disability, age, ethnicity, geography, language, religion, and sexual orientation.
- E. Members of the Board or their immediate family shall not be currently or formerly employed by the RPD or any other local, state, or federal law enforcement agencies.
- F. Board members shall not be City elected officials, candidates for elected office, or immediate family of any incumbent elected official.
- G. 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 at Board hearings.

- H. The provisions of Article 23-a of New York State Correction Law shall apply to any appointment to the Board.
- I. 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.
- J. 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 one (1) member.
  - 2) Council shall appoint four (4) members; one (1) appointee from each of the four districts of the City: East District, Northeast District, Northwest District, and South District.
  - 3) The Alliance shall nominate six (6) members, within thirty (30) days from the effective date of this ordinance, to be confirmed and appointed at Council's discretion. If any of the six (6) nominees are rejected by Council, then the Alliance will nominate replacement(s) within fifteen (15) days until six (6) 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.
- K. 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, 2017. 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 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 six nominees and submit them to Council for confirmation and appointment;
- 6) Should Council reject a nominee, a written reason(s) 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 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 bylaws based on the initial selection process.

#### L. Terms

- 1) The first term of the initial Board commences when all 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 1<sup>st</sup> and end on June 30<sup>th</sup>. 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 eleven (11) members appointed. Of the first eleven (11) members appointed:
  - a) three (3) members shall be appointed for terms of one (1) year, of whom one shall have been designated by Council and two (2) shall have been designated by the Alliance;
  - b) four (4) members shall be appointed for terms of two (2) years, of whom two (2) shall have been designated by the Council, and two (2) shall have been designated by the Alliance;
  - c) four (4) members shall be appointed for terms of three (3) years, of whom one (1) shall have been designated by Council, one (1) shall have been designated by the Mayor, and two (2) shall have been designated by the Alliance.

#### M. Vacancies

After the initial 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.

#### N. Removal

- 1) A Board member elected to public office shall resign immediately.
- 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, the power to use subpoenas to compel testimony and the production of evidence, and the power to 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 shall review and assess RPD policies, procedures, patterns, practices and training and recommend changes to Council and the RPD.
- 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, or upon referral from PSS. 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 webform. Complaints shall be taken whether signed 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 §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 shall interview complainants, witnesses and RPD employees, and gather relevant evidence.

- 2) The Board shall have the power to investigate any and all conduct, acts or omissions by any RPD employee independent of and concurrently with any investigation conducted by PSS.
- 3) Subpoenas may be issued at any time during the investigation 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 under *Garrity v. New Jersey* (1967) before any testimony is taken from them.
- 4) Within thirty (30) days from receipt of a complaint, PSS shall provide to the Board their 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 decline to cooperate with a PSS investigation and may seek review directly from the Board. 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 recommendations, or notice that the Board will be taking no action. 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 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 § 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 at least one (1) Alliance-appointed member. Each panel shall select its own Chairperson on a case-by-case basis.
- 2) As described in § 1-5 (G)(3), subpoenas may be issued during the hearing process.
- 3) Panel hearings shall be closed to the public.
- 4) Panel hearings shall be recorded and transcribed by the Board. No other recordings or transcriptions are permitted.
- 5) Decisions 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) 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 §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) 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 findings of fact, a determination as to whether there is substantial evidence of misconduct, and recommended disciplinary action against the RPD employee(s) pursuant to the disciplinary matrix described in § 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.
  - b) 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.
  - c) 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 recommendations.

- d) If a Notice of Panel Decision contains a dissenting opinion, the complainant may appeal to the Board for review of the panel's findings and recommendations. 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 Hearing 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 decision, 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.
- e) 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 findings of fact, a determination as to whether there is substantial evidence of misconduct, and recommended disciplinary action against the RPD employee(s) pursuant to the disciplinary matrix described in § 1-5 (B).
- f) RPD employees shall have the right to appeal pursuant to § 76 of NYS Civil Service Law.
- g) The Board's findings of fact shall be binding on the RPD for the purposes of discipline.
- h) Board recommendations may include disciplinary sanctions including but not limited to counseling, reprimand, retraining, suspension, demotion, or dismissal.
- i) 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 Decision or Notice of Board Decision, the Chief shall provide the Board with a written explanation of why the Chief agrees or disagrees with the disciplinary recommendations of the Board.

## J. Discipline

1) Before conducting any hearings, the Board shall establish a disciplinary matrix per § 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 determination of discipline per the disciplinary matrix described in § 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 determination of discipline.
- 5) 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, Council, 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 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) If the Chief disagrees with or does not respond to the policy recommendation(s) within thirty (30) days, then Council shall vote, within ninety (90) days of receiving the recommendation, on whether the policy recommendation(s) shall be implemented.
- 7) If Council does not vote on the policy recommendations within ninety (90) days, then the policy recommendation(s) shall be binding on the Chief and the RPD and shall be implemented.
- 8) 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, by majority vote. Subsequently, the Board shall elect a Chairperson by majority vote, at the first meeting after July 1 of each year. No Board member shall serve as 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 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 seven Board members must be present to conduct Board business. 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 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 such as Investigators, Policy Analyst, Community Liaison, Administrative Assistant, and Transcriptionist. 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. 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.
  - 5) 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.
  - 6) 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;
  - 7) the number of times pepper spray was deployed per complaint and the total number of times pepper spray was deployed;
  - 8) the number of times and types of pain compliance tactics used per complaint and the totals for each use of pain compliance tactic;
  - 9) the number of times and types of use where a Taser was deployed;

10) 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 disciplinary sanctions were recommended;
- l) the type of sanctions recommended;
- m) the number of cases where sanctions were imposed;
- n) the number of cases reviewed by the Board;
- o) the number of complaints found not to have reasonable cause to be heard;
- p) the number of complainants contacting the Board but not following through with a formal signed complaint;
- q) the length of time each case was pending before the Board;
- r) the number of complaints in which the Board recommended that the City provide restitution to the complainant and what type of restitution was recommended; and
- s) 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, 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. Every three years, an independent organization of Council's choosing shall conduct a formal 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 equal to at least 1% of the RPD's budget. 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	Metro Justice
Action for a Better Community	Mt. Hope Family Center
Action Together Rochester	Mt. Hope Neighborhood Association
African American Health Coalition	National Coalition Building Institute
American Baptist Churches of Rochester	National Lawyers Guild of NJ/DE
Antioch Missionary Baptist Church	National Organization for Women, Rochester, NY
Baber AME Church	North East Area Development
Beechwood Neighborhood Association	Partners in Restorative Initiatives
Black Student Leadership	Peace of Christ Parish
Catholic Family Center	Rochester ACTS
Changing of the Scenes Neighborhood Assn.	Rochester Committee on Latin America
Christians Witnessing for Palestine	Rochester Democratic Socialists of America
Church of the Assumption	Rochester Zen Center
Church of the Epiphany	ROCitizen
Church Women United	Rowe Photo
Citizen Action of New York	Shades of Sisterhood
Coalition for Police Reform	Showing Up for Racial Justice
Colgate Rochester Crozier Divinity School	Sisters of St. Joseph
Dimitri House	Sisters of Mercy
Downtown United Presbyterian Church	Social Welfare Action Alliance
DUPC Justice Team	South West Common Council
Empire Justice	Spiritus Christi Church
Enough Is Enough	St. Frances Xavier Cabrini Parish
Facing Race, Embracing Equity	St. Joseph's House of Hospitality
First Unitarian Church	St. Monica's Church
First Universalist Church	Sufi Order of Rochester
Flower City Parents Network	Table 23
Flying Squirrel Community Space	Take Back the Land
Greater Rochester Community of Churches	Teen Empowerment
Hillside Children's Center	The Children's Agenda
Ibero American Action League	The Interfaith Alliance of Rochester
Incarinate Word Lutheran Church	Turning Points
Inner Faith Gospel Tabernacle	United Christian Leadership Ministry
International Socialists Organization	UR Students for a Democratic Society
Judicial Process Commission	Urban League of Rochester
Latino Health Coalition	Women's Initiative Supporting Healing
Light the Way	
M.K. Gandhi Institute	

## **APPENDIX B**

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

The Executive Director shall be responsible for hiring and supervising staff such as Investigators, Policy Analyst, Community Liaison, Administrative Assistant, and Transcriptionist. 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; 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 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 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

<b>POLICE ACCOUNTABILITY BOARD PROPOSED BUDGET</b>		
	<b>First Year</b>	<b>Second Year</b>
<b>Personnel Expenses</b>		
Executive Director	\$75,000	\$75,000
In-House Legal Counsel	\$70,000	\$70,000
Policy Analyst	\$65,000	\$65,000
Community Liaison	\$55,000	\$55,000
Investigators - 6 @ \$55,000	\$330,000	\$330,000
Administrative Assistants	\$35,000	\$35,000
Transcriber	\$35,000	\$35,000
Personnel Subtotal	\$665,000	\$665,000
Fringe Benefits @ 30%	\$199,500	\$199,500
<b>Personnel Total</b>	<b>\$864,500</b>	<b>\$864,500</b>
<b>Program Expenses</b>		
Legal Consultation	\$15,000	\$15,000
Community Engagement	\$10,000	\$10,000
Training & Travel	\$50,000	\$40,000
<b>Program Total</b>	<b>\$75,000</b>	<b>\$65,000</b>
<b>Operations Expenses</b>		
Office Space & Utilities	\$15,000	\$15,000
Furnishings	\$10,000	
Database	\$10,000	\$10,000
Printing & Postage	\$4,000	\$4,000
Equipment & Maintenance	\$8,000	\$4,000
Office Supplies	\$3,000	\$3,000
Executive Director Search	\$5,000	
<b>Operations Total</b>	<b>\$55,000</b>	<b>\$36,000</b>
<b>Grand Total</b>	<b>\$994,500</b>	<b>\$965,500</b>