

Adopted _____, 2018

CITY OF ROCHESTER
POLICE ACCOUNTABILITY BOARD
RULES AND PROCEDURES

I. PURPOSE

The following Rules and Procedures shall govern the conduct of the Police Accountability Board (“Board”), established under City Council Ordinance 2018- (the “Ordinance”) as it investigates all allegations made against sworn members of the Rochester Police Department (RPD) in executing their police duties and as it makes findings and determinations for the disposition of each such allegation. In addition, these Rules and Procedures set forth procedures for the authority, under the Charter, of the Board to elect a Chairperson and Vice-Chairperson; and for the Board to conduct a search for an Executive Director and appoint an Executive Director.

II. MEETINGS

- A. All meetings shall be open to the public, as required by the Open Meetings Law, New York Public Officers Law Article 7. The Board, by a vote in open session, may elect to enter into a private executive session for a particular matter, including panel hearings, when consistent with the requirements for the conduct of executive sessions set forth in New York Open Meetings Law, including of Section 105 of New York Public Officers Law, subdivision (f), allowing for executive sessions upon majority vote of the Board’s total membership taken in an open meeting for the purpose of addressing matters that may lead to demotion, discipline, suspension, dismissal or removal of a particular person.
- B. **Regular Meetings.** At least one regular meeting of the Board shall be held each month, with appropriate public notice as required by the Open Meetings Law (New York Public Officers Law Article 7).
- C. **Special Meetings.** Special meetings may be called by the Chairperson, the Vice-Chairperson in the absence of the Chair, by the Chief of Police of RPD (the Appointing Authority), or at the request of any two members of the Board. Written notice of such meetings shall be communicated via email or regular mail to each Board member at least five (5) business days prior to the meeting.
- D. **Notification of Meetings.** The Executive Director shall notify, by email or regular mail, the complainant and any sworn member of RPD who is the subject of the complaint at least five (5) business days prior to the meeting at which a complaint is to be addressed.
- E. **Disclosure of Documents.** Disclosure of documents submitted to the Board or prepared by the

Board shall be governed by applicable law, including but not limited to the Freedom of Information Law (New York Public Officers Law Article 6) and New York Civil Rights Law Section 50-a.

III. MEMBERSHIP AND OFFICERS

- A. **Members.** The Board shall consist of nine (9) members appointed and replaced in accordance with Section 1-4 of the Ordinance.
- B. **Chairperson and Vice-Chairperson.** The Board shall have a Chairperson, who shall preside over Board meetings and undertake all other duties and responsibilities pursuant to Section 1-6(A) of the Ordinance. The Board shall have a Vice-Chairperson, who shall, in the Chairperson's absence, preside over Board meetings. In the absence of the Chairperson and Vice-Chairperson, the Board members present shall designate a Chairperson Pro Tem to preside. At the first regular meeting after July 1 each year, the Board shall elect a Chairperson and Vice-Chairperson pursuant to Section 1-6(A) of the Ordinance.
- C. **Executive Director.** The Board shall have an Executive Director who shall be hired by the Board and serve at the pleasure of the Board pursuant to Sections 1-6(A) and (C) of the Ordinance.
- D. **Secretary to the Board.** The Executive Director of the Board shall serve as Secretary to the Board and shall, in that capacity, shall be the designated contact for all correspondence with and inquiries to the Board. Correspondence should be sent to:

Executive Director
City of Rochester Police Accountability
Board
City Hall
30 Church Street
Rochester, NY 14614

- E. **Independent Legal Representation.** The Police Accountability Board shall retain or employ independent legal counsel on a contractual basis to advise and represent the Board pursuant to Section 1-10 of the Ordinance.

IV. QUORUM AND VOTING

- A. **Quorum.** The presence of five (5) members shall constitute a quorum in all instances, pursuant to Section 1-6(B) of the Ordinance.
- B. **Voting.** The affirmative vote of at least five (5) Board members shall be required for the adoption of any motion. For the Board to vote, all members voting must be present at the

meeting at the time the vote is taken, except with respect to decisions authorized by these Rules to be taken by unanimous written consent.

- C. **Abstentions.** No member of the Board shall receive information about a matter, nor shall he or she participate in the deliberations on a matter, nor vote on a matter when the member believes he or she may have a conflict of interest. In such circumstance, the member shall abstain from receiving information, deliberating, and voting on the matter. Any member who abstains from voting on a matter, for reasons of conflict of interest or any other reason, shall state for the record the reason for the abstention.

V. CONFLICTS OF INTEREST

- A. **Conflicts of Interest.** Pursuant to Section 1-9 of the Ordinance, no member of the Board shall participate in the consideration or disposition of any matter in which he or she has a conflict of interest that would impair his or her independence of judgment or action in the performance of his or her official duties. Board members are encouraged to consult with legal counsel concerning the identification of potential conflicts of interest.
- B. **Perceived Conflicts of Interest.** If a Board member is concerned about the potential for a perceived conflict of interest, where the member's interest does not appear to rise to the level of tangible economic benefit or advantage as identified in the Code, and his or her interest is believed to be a minimal interest in the matter before the Board, the Board member should describe the minimal interest to the Board. The Board's legal counsel will determine whether the minimal interest should be disclosed at the hearing or whether the interest is sufficient to warrant an abstention.

VI. AGENDA AND MINUTES

- A. **Agenda.** The Executive Director shall be responsible for preparing the agenda for each regular meeting, at the direction of the Chairperson. The Chairperson may delegate the responsibility for the agenda to the Vice-Chairperson.
- B. **Minutes.** The Executive Director shall be responsible for the preparation of minutes of meetings, which shall be circulated to the Board and made available to the public in accordance with New York Open Meetings Law, Section 106 of New York Public Officers Law.

VII. RESPONSIBILITIES

A. **Jurisdiction.**

- 1. **Duty to Investigate and Make Findings and Adjudicate Complaints.** Pursuant to section 8-4 of the Charter of the City of Rochester and Sections 1-3 and 1-5 of the

Ordinance, the Board shall investigate allegations of use of excessive force and other complaints alleging impropriety by sworn members of RPD in executing their police duties and recommend disciplinary action to the Appointing Authority in accordance with the disciplinary matrix described in Section 1-5(B) of the Ordinance.

2. **Definition of Excessive Force.** The term “excessive force,” as used in these Rules and Procedures, shall mean any physical force, considered within the totality of the circumstances at the moment the force is used, that exceeds the physical force necessary in the performance of the duties of sworn members of RPD, within the limits established by Article 35 of the New York State Penal Law and consistent with the training and policies of RPD.
3. **Duty to Investigate and Make Findings and Adjudicate Complaints Pertaining to Other Allegations of Misconduct or Incompetence.** Pursuant to section 8-4 of the Charter of the City of Rochester, the Board shall also investigate all other allegations of misconduct or incompetence pertaining to potential violations of New York State Penal Law, RPD Rules and Regulations, training, policies, and procedures made against sworn members of RPD in executing their police duties and recommend disciplinary action to the Appointing Authority in accordance with the disciplinary matrix described in Section 1-5(B) of the Ordinance.

B. Intake of Complaints. The Board shall be responsible for processing all complaints received, as follows.

1. **Intake Procedure.** Irrespective of jurisdiction, upon the Board’s receipt of a complaint regarding a sworn member of RPD, the Board shall assign the complaint a number in the format of “PAB No. [YEAR]-[NUMBER]”, beginning with PAB No. 2018-0001.
2. **Complaints Received by the Board.** The Board shall receive and process complaints from civilians, or complaints referred to the Board by the Professional Standards Section of RPD (PSS), the Mayor, the Council, any Councilmember, or the Appointing Authority, or otherwise from the public in accordance with Section 1-5(F) of the Ordinance.
3. **Form of Complaint.** The Board shall receive complaints by telephone, in person, via e-mail, web form or otherwise electronically, or in writing. Complaints received by telephone or in person shall be documented by the staff of the Board.

C. Investigative Procedures.

1. **Investigation Ordered by Appointing Authority.** The Appointing Authority may refer a matter to the Board to initiate an investigation upon notification to the Executive Director from the Appointing Authority or his or her designee that emergent

circumstances, including but not limited to officer-involved shootings and the use of deadly force, require immediate investigation. Upon such notification, the Executive Director, or his or her designee, shall immediately inform PSS and undertake investigative measures reasonable under the circumstances, including by responding to the scene of the incident. The Executive Director shall inform the Board of the circumstances and investigative measures taken as soon as practicable after such notification. The Board shall thereafter continue the investigation as set forth in these Rules and Procedures.

2. **Vote to Initiate Investigation.** Upon intake of a complaint made against a sworn member or members of RPD, or notification by the Appointing Authority of a complaint that may be subject to the Board's jurisdiction other than as described in VII(C)(1), the Board shall immediately provide the complaint to PSS and, at its next meeting after receipt of the complaint or by unanimous written consent in emergent circumstances, vote on whether the allegations state a plausible claim against a sworn member or members of RPD, and vote on whether the allegations provide sufficient factual information for the Board to investigate. The Board shall decline to investigate any complaint that fails to set forth a plausible claim or that fails to provide sufficient factual information to investigate the allegations.
 - a. If the Board votes that the allegations in the complaint state a plausible claim, Board jurisdiction applies, and the Board will notify the complainant of the investigation, review any and all relevant material from PSS, and conduct any further investigation pursuant to Section 1-5(G).
 - b. If the Board votes that the allegations in the complaint do not state a plausible claim, Board jurisdiction does not apply. In such instance, the Board shall notify the complainant and shall inform the Appointing Authority in writing of that determination.
 - c. If the Board votes that the complaint fails to provide sufficient factual information to investigate the allegations, Board jurisdiction does not apply. In such instance, the Board shall request additional information from complainant and reconsider the complaint at its next meeting. If the Board does not receive such additional information and there remains insufficient factual information to investigate the allegations, the Board shall notify the complainant and the Appointing Authority in writing that Board jurisdiction does not apply.
3. **Investigation of Complaints.** After review of any relevant material from PSS, should the Board determine that relevant material is missing, then the Board, by its staff, shall conduct investigations in accordance with these Rules and Procedures, as follows:

- a. **Interviews.** The Board shall conduct interviews of the complainant, witnesses, and sworn members of RPD whom the Board believes may have information relevant to the investigation.
 - b. **Evidence.** The Board shall obtain and analyze all available and relevant evidence relating to the allegations set forth in the complaint, including written documentation, photographs, audio recordings, video recordings, and other relevant records.
 - c. **RPD Records.** Subject to the limitations of New York Criminal Procedure Law Section 160.50 with respect to sealed records, and limitations of other applicable laws, the Board may receive, upon written request to RPD, access to records and evidence relevant to an investigation, including but not limited to RPD personnel and disciplinary records, RPD reports concerning the allegations, video and audio recordings, RPD Rules and Regulations, RPD General Orders, and other relevant policy documents.
4. **Right of Complainant to Decline Investigation.** A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board pursuant to Section 1-5(G)(5) of the Ordinance. The Board may nonetheless continue its investigation without cooperation of the complainant if the Board has sufficient factual information to investigate the allegations.
 5. **Subpoenas.** When necessary to obtain information the Board has identified as relevant to an investigation, the Board may issue subpoenas, administer oaths, and take affidavits and testimony with respect to allegations made against a sworn member of RPD pursuant to Section 1-5(G)(3) of the Ordinance.
 6. **Interviews of Persons Other Than Sworn Members of RPD.** To the extent not already completed by PSS, the Board shall interview in an investigation the complainant(s) and may interview any witness or other person who is not a sworn member of RPD and whose testimony the Board determines may be relevant to the investigation. Whenever the Board interviews a complainant or witness other than a sworn member of RPD, the following shall apply:
 - a. **Personnel Conducting Interviews.** Board interviews of complainants and witnesses shall be conducted by at least two Board personnel, which may include the Executive Director.
 - b. **Transcription and Recording of Interviews.** Board interviews of complainants and witnesses shall be transcribed by the Board. Any complainant or any witness being interviewed may elect to have his or her interview to be videotaped on a voluntary basis.

- c. **Right to Representation.** A complainant or witness who is not a sworn member of RPD may be accompanied by an attorney of his or her choice or other representative or advocate, at the complainant's or witness' expense, unless that person has a conflict of interest in the investigation. This representation shall extend to allowing the attorney or the representative to pose questions to the complainant or witness at the conclusion of the questioning being done by the Board. The complainant or witness may also make a statement to the Board at the conclusion of the Board's questioning. The attorney or representative shall not interfere with or impede the investigation.
 - d. **Right to Copy of Statement.** A complainant or witness who is not a sworn member of RPD shall have the right upon request to a copy of the transcription of any statement he or she shall make to the Board, free of charge.
 - e. **Right to Record Statements.** A complainant or witness who is not a sworn member of RPD may record, electronically or otherwise, any and all statements he or she gives to the Board during an investigation.
 - f. **Interviews of Other City Employees.** Interviews of City employees who are not sworn members of RPD shall be subject to all applicable federal, New York State, and local laws and regulations, all applicable City policies and procedures, and any applicable collective bargaining agreement for the collective bargaining unit of which the employee being interviewed is a member.
7. **Interviews of Sworn Members of RPD.** To the extent not already completed by PSS, the Board shall interview in an investigation any sworn member(s) of RPD whom the complaint alleges were involved in the conduct that is the subject of the complaint and may interview any sworn member(s) of RPD whose testimony the Board determines may be relevant to the investigation. Whenever the Board investigates or interviews a sworn member of RPD, the following shall apply:
- a. **Personnel Conducting Interviews.** Board interviews of sworn members of RPD shall be conducted by at least two Board personnel, which may include the Executive Director.
 - b. **Transcription and Recording of Interviews.** Board interviews of sworn members of RPD shall be transcribed by the Board. Stenographic statements. Any sworn member being interviewed may elect to have his or her interview to be videotaped on a voluntary basis.

- c. **Garrity Rights.** RPD employees shall be notified of their rights under *Garrity v. New Jersey*, 385 U.S. 493 (1967) (rights against self-incrimination) before any testimony is taken from them.

- d. **Collective Bargaining Agreement Rights of Sworn Members.**
 1. **Timing of Interview.** The interview of any sworn member of RPD shall be at a reasonable hour, preferably when the member is on duty, and during daylight hours, unless the exigency of the investigation dictates otherwise. Board interviews of employees assigned to RPD's third (3rd) platoon shall be scheduled to begin no later than 2:00 PM unless the exigency of the investigation dictates otherwise.
 2. **Location of Interview.** The interview shall be conducted at a location in the City of Rochester designated by the Board.
 3. **Identification of Interviewer(s) and Interview Attendees.** The sworn member of RPD being interviewed shall be informed of the title and name of the investigator in charge of the investigation as well as the name and title of the officer conducting the interview, and the identity of all persons present during the interview.
 4. **Provision of Reports.** A sworn member of RPD shall have made available to him or her at his or her request all reports which he has submitted regarding said investigation.
 5. **Notice of Nature of Investigation and Allegations.** The sworn member of RPD who is to be interviewed shall be informed of the nature of the investigation before any interview commences. Sufficient information to reasonably apprise the sworn member of the allegations made against him or her shall be provided prior to any interview.
 6. **Right to Representation.** A sworn member of RPD shall have the right to have present, as a representative, at the member's own interview an attorney of his or her choice, or a representative designated by the member's collective bargaining unit, except that the member may not be represented by any other unit member who is identified as a target or witness of the investigation at the time the member is interviewed by the Board, or may waive such right to representation. The designation of a particular representative shall not unduly delay the process. This representation shall extend to allowing the attorney or the representative to pose questions to the sworn member of RPD at the conclusion of the questioning being done by the Board, or if the member is unrepresented,

he shall have the right to make a statement. The attorney or collective bargaining unit representative shall not interfere with or impede the investigation. The Board will communicate regarding complaints only with the attorney selected by the sworn member of RPD who is the subject of the complaint, or a representative of the sworn member's collective bargaining unit, where the member has elected such representation. The Board shall allow representation of the sworn member of RPD being interviewed by a representative of the member's collective bargaining unit only when the member of such bargaining unit is not represented by counsel or is not representing himself or herself.

7. **Right to Copy of Statement.** A sworn member of RPD subject to such investigation by the Board shall have the right upon request to a copy of any statement he or she shall make to the Board, free of charge, within 30 days of its production, provided such statement is reduced to writing and may have a copy released directly to an authorized representative of his or her collective bargaining unit upon signed release of the member.
8. **Limitation on Interrogation Regarding Conversations with Collective Bargaining Agreement Representatives.** The Board will not interrogate sworn members of RPD in Board interviews regarding conversations between the members and their collective bargaining unit representatives that occur as a result of the collective bargaining unit's statutory duty to represent its members.
9. **Right to Record Statements.** A sworn member of RPD shall have the right to electronically or otherwise record any and all statements he or she gives to the Board during such investigation.
10. **Prohibition on Interviewers' Use of Offensive Language or Threats; Prohibition on Inducement to Answer.** A sworn member of RPD subject to such investigation by the Board shall not be subject to any offensive language nor, except as otherwise permitted by the collective bargaining agreement between the City and the sworn member's collective bargaining unit, shall he or she be threatened with transfer, dismissal, or any other disciplinary punishment. No promise or reward shall be made as an inducement to answering questions. Nothing contained in these Rules and Procedures shall be construed as to prohibit RPD from instructing the member that his failure or refusal to answer any questions can become the subject of disciplinary action itself, resulting in disciplinary punishment.
11. **Prohibition on Use of Lie Detector and Polygraph Tests.** In no event shall a sworn member of RPD be ordered or requested to submit to a lie

detector or polygraph test.

12. **Opportunity to be Heard.** Prior to charges resulting from an excessive force complaint against a sworn member of RPD being referred pursuant to Section 75 of New York Civil Service Law, the sworn member shall be afforded an opportunity to be heard.
13. **Prohibition on Reprisals for Sworn Member Exercising Rights.** A sworn member of RPD subject to such investigation by the Board shall suffer no reprisals, directly or indirectly, for exercising his or her rights under these Rules and Procedures or Article 20 of the Agreement between The City of Rochester, New York and Rochester Police Locust Club, Inc., dated July 1, 2013 to June 30, 2016.

Notice of Interview. Unless the nature of the investigation requires immediate attention, the sworn member of RPD shall be given at least 48 hours advance notice of any interview conducted by the Board.

VIII. PUBLIC REPORTS

- A. **Annual and Quarterly Reports.** The Board shall issue annual and quarterly public reports of the Board's findings and recommendations on an aggregate, anonymized basis, and shall make the reports publicly available on the Board's website pursuant to Section 1-11 of the Ordinance.
- B. **Complaint Reporting.** The annual and quarterly reports shall document data on the Board's receipt and dispositions of complaints. Data about complaints shall be reported anonymously by complaint number, assigned as set forth in these Rules and Procedures. The reports shall document information pursuant to Section 1-11(C) of the Ordinance, subject to the limitation of applicable laws and regulations as set forth in these Rules and Procedures or otherwise, including Freedom of Information Law (New York Public Officers Law Article 6) and New York Civil Rights Law Section 50-a.
- C. **Board Process Reporting.** The annual report shall contain a summary of feedback from complainants and public survey data, if any, with an assessment of whether and how Board policies and procedures should change to address such feedback.

IX. COMMITTEES

- A. **Standing Committees.** The Chairperson, upon the affirmative vote of a majority of the membership of the entire Board, may appoint standing committees, which shall include only members of the Board, for the purpose of aiding in the performance of the Board's responsibilities. The standing committees shall be chaired by a member of the Board.

B. **Advisory Committees.** The Chairperson, upon the affirmative vote of a majority of the membership of the entire Board, may appoint advisory committees, which may include persons who are not members of the Board, but the majority of which must be made up by members of the Board, for the purpose of aiding in the performance of the Board's responsibilities. The advisory committees shall be chaired by a member of the Board.

X. AMENDMENTS

These Rules and Procedures may be amended at any regular meeting or special meeting by an affirmative vote of not less than five (5) members of the Board.