

Local Law No.

Amending the City Charter with respect to the creation of a Police Accountability Board

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

Section 1. Chapter 755 of the Laws of 1907, entitled “An Act Constituting the Charter of the City of Rochester”, as amended, is hereby further amended by adding to the end of Article XII, Part C, the following new section:

§ 12-43. Police Accountability Board.

A. General Provisions.

(1) Purpose

Rochester City Council hereby intends to establish a civilian-controlled process to fairly review complaints of excessive force involving sworn members of the Rochester Police Department while maintaining procedural due process safeguards to protect the rights of sworn members of the Rochester Police Department and the individuals who come in contact with them. The Police Accountability Board shall be a mechanism to investigate and recommend charges and discipline for excessive force complaints and to review and assess Rochester Police Department patterns, practices, policies, and procedures. The Police Accountability Board shall ensure public accountability of the Rochester Police Department while preserving the integrity of the agency.

(2) Definitions.

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

Alliance

The Police Accountability Board Alliance, a group of community organizations that recommends community members to be appointed to the Board. The list of members of the Alliance is attached hereto and made a part hereof as Appendix A.

Board

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

Chief

The Chief of Police of RPD.

City

The City of Rochester, New York.

Complaint

A written or oral report alleging RPD excessive force made by any individual or

group of individuals.

Council

The Rochester City Council.

Day(s)

Sequential day(s) according to the calendar unless otherwise specified as “business day(s).”

Disciplinary Matrix

A written, consistent, progressive, and transparent tool or rubric to recommend discipline for excessive force.

Executive Director

The highest-ranking staff hired by the 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.

PSS

Professional Standards Section, which is the internal affairs department of RPD.

RPD

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

Sanction

Disciplinary action for RPD sworn member excessive force.

Use of They, Their, Them

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

(3) Establishment and Jurisdiction.

- (a) The Civilian Review Board, established by 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 RPD and other local, state, and federal law enforcement agencies.
- (c) The Board shall be independent of RPD and shall review Complaints of excessive force against RPD or any of its officers.
- (d) As a condition of appointment and/or employment with the Police Accountability Board, all potential Board members and employees

shall be subject to a complete background investigation analogous to that required of RPD sworn members assigned to PSS.

- (e) PSS shall provide to the Board a complete copy of the investigative file and findings report for each investigation of an excessive force allegation that is completed by PSS. The Board shall have the power to conduct a supplemental investigation and investigate matters not addressed in the PSS investigative case file or in the PSS findings report. During its investigation, the Board shall have the power to issue subpoenas to compel testimony and the production of evidence, and the power to recommend to the Chief charges and discipline for an RPD sworn member(s).
- (f) The Board shall establish a Disciplinary Matrix.
- (g) The Board shall review and assess RPD policies, procedures, patterns, practices and training pertaining to the use of force, and recommend changes to Council and RPD.
- (h) The Board shall maintain the confidentiality of any RPD personnel files, other records and information that are subject to New York State Civil Rights Law § 50-a.

(4) Board Composition, Appointment, Vacancy, and Removal.

- (a) The Police Accountability Board shall consist of nine members.
- (b) Members of the Board shall serve terms of three years except for the initial Board, which shall serve staggered terms, pursuant to Subsection A(4)(i)(iii) herein.
- (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 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 former (within the immediately preceding three year period) employed by RPD or any other local, state, or federal law enforcement agency.
- (f) Board members shall not be current or former (within the immediately preceding three year period) City elected officials, elected officials of Monroe County and of any town or village located within Monroe County, candidates for elected office within Monroe County, including any town or village located within Monroe County, 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 against RPD, the Chief or the Rochester Police Locust Club within the immediately preceding three year period, shall be a member of the Board.
- (h) Appointments to the Board shall be made by the Mayor, subject to Council confirmation, as follows:
 - i. Three of the members shall be recommended to the Mayor by the Alliance. If the Mayor does not appoint or Council does not confirm any one or more of the Alliance-recommended members, the Alliance shall recommend additional members until three Alliance-recommended members are appointed and confirmed.
 - ii. Three of the members shall be recommended to the Mayor by Council. If the Mayor does not appoint any of the Council-recommended members, the Council shall recommend additional members until three Council-recommended members are appointed.
 - iii. Three of the members shall be appointed directly by the Mayor and confirmed by Council.
- (i) Terms.
 - i. The first term of the initial Board commences when all nine Board members are appointed and its first year ends on the following June 30th.
 - ii. Members shall serve staggered three year terms and may be reappointed for another three year term, for a total of six years, after which, the member shall not be reappointed for at least three years.
 - iii. Except for the initial year, 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 years, except the first nine members appointed. Of the first nine members appointed:
 - 1. One Alliance designee, one Council designee and one Mayoral designee shall be appointed for terms of one year;
 - 2. One Alliance designee, one Council designee and one Mayoral designee shall be appointed for terms of two years; and

3. One Alliance designee, one Council designee and one Mayoral designee shall be appointed for terms of three years.

(j) Vacancies.

After the initial nine-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 designated, appointed and confirmed by the same parties and in the same manner by which it was initially filled.

(k) Removal.

- i. A Board member seeking public office shall resign their seat at the time they announce their intent to seek public office.
- ii. A Board member who no longer resides in the City shall resign immediately.
- iii. The Mayor may remove any board member in accordance with Subsection 3-3(G) of the City Charter.

(5) Powers and Duties.

- (a) Following completion of a PSS investigation into allegations of the use of excessive force, the Board shall have the power to investigate matters not addressed in the PSS investigative case file or in the PSS findings report, if any. In exercising this supplemental investigative authority, the Board shall have the power to issue subpoenas to compel testimony and the production of evidence, and the power to recommend charges and discipline to the Chief for RPD sworn members.
- (b) The Board shall establish its Disciplinary Matrix for the purpose of making recommendations to the Chief. 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 excessive force and the number of prior sustained excessive force allegations. 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 pertaining to the use of force, and recommend changes to Council and 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 limited English proficiency persons and persons with disabilities.
- (f) Initiation of Complaints.
 - i. Complaints may be accepted directly by both PSS and the Board. Notice of any Complaint received by either entity shall timely be provided to the other entity.
 - ii. The Board shall accept Complaints by telephone, in person, by mail, email or webform, whether signed or anonymous.
 - iii. Professional standards of confidentiality with regard to the written release of information and informed consent shall 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.
 - iv. The Board may advise a complainant of 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.
 - v. Complainants shall be apprised by the Board of the procedure for filing a Notice of Claim with the Corporation Counsel.
- (g) The Board shall have the limited power to investigate any and all conduct, acts or omissions by any RPD sworn member related to an excessive use of force Complaint after the conclusion of an investigation conducted by PSS, as follows.
 - i. Within five business days following completion of its investigation, 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 business days of the acquisition of the evidence. If PSS makes any findings with respect to the Complaint, it shall send all such findings to the Board within five (5) business days.
 - ii. Following the receipt of the investigative case file and/or findings from PSS, the Board shall review the Complaint, the PSS investigative case file and, to the extent PSS made any findings, a PSS findings report.
 - iii. The Board's investigative power is supplemental and limited to those matters that the Board determines are not addressed in the PSS investigative case file or in the PSS findings report.
 - iv. The Board may issue subpoenas pertaining to a specific Complaint, as limited by Subsection A(5)(g)(iii) herein, at any time during its investigation of that Complaint. Such subpoenas may

compel the attendance of witnesses, RPD officials and employees, and/or other persons, and require the production of records and other materials, including records of 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 shall be enforced in accordance with Article 23 of the New York State Civil Practice Law and Rules. RPD sworn members shall be notified of their rights in accordance with the U.S. Supreme Court decision in *Garrity v. New Jersey* (1967) before any testimony is taken from them.

- v. 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.
- vi. All sworn members of RPD shall retain their rights as set forth in that section of the collective bargaining agreement between the City and the Rochester Police Locust Club concerning Department Investigations.
- vii. Within thirty days of the receipt of the PSS investigative file, the Board shall complete its review of all materials, conduct its supplemental investigation, if any, and issue its findings and recommendations to the Chief.
- viii. Unless, with regard to a specific Complaint, the statute of limitations as set forth in Civil Service Law § 75 is set to expire, the Chief shall take no action on a Complaint, whether received directly by RPD or by the Board, until receipt of the Board findings and recommendations, or notice that the Board has recommended that no charges or disciplinary action is appropriate. Nevertheless, the Chief shall retain the authority to suspend an RPD sworn member during the investigation and adjudication of a Complaint against RPD sworn member.

(h) Board Recommendations.

- i. Upon completion of the Board's review and supplementary investigation, if any, the Board shall make recommendations to the Chief as to charges and discipline, if any.
- ii. The Chief shall review the Board's recommendation of charges and discipline, and notify the Board, in writing, within ten business days as to whether or not the Chief is accepting and adopting the Board's recommendation. A copy of this written notice shall be provided to the Mayor and to Council. In the event the Chief does not accept the Board's recommendations, this notice shall set forth the rationale for rejecting the recommendation.

(i) Policy Assessment.

- i. At least annually, the Board shall review and assess RPD's policies, procedures, patterns and practices regarding use of force and recommend changes with input from the community.
- ii. The Board shall send its policy recommendations to the Chief, Council, and the Mayor and the Board shall publish them on the Board website.

(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 consecutive years. The Chairperson shall be responsible to:
 - i. facilitate meetings of the Board; and
 - ii. establish committees of Board members as needed.
- (b) A quorum of seven Board members must be present to conduct Board business.
- (c) Board action shall be decided by a simple majority of all Board members.
- (d) 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.
- (e) Executive Director.
 - i. The Executive Director shall be a City employee upon appointment, who is appointed by the Board and whose appointment shall be subject to confirmation by Council.
 - ii. The Executive Director shall not be currently or formerly employed by RPD or any other local, state, or federal law enforcement agency, nor shall any of their Immediate Family be employed by 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 with such pending litigation, or be an attorney representing a person with such pending litigation.
 - iii. The Council, through the annual budgetary process as set forth in Article VI of the City Charter, as amended, shall provide for the compensation and benefits of the Executive Director.

- iv. The Board shall conduct an annual review of the performance of the Executive Director and may remove the Executive Director for good cause.
- v. The Board shall be responsible, through the Executive Director and staff, for the daily administrative work of the Board.
- vi. 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 RPD or any other local, state, or federal law enforcement agency.

(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:

- i. All relevant local, state, and federal laws;
- ii. implicit bias and anti-racism;
- iii. gender identity and sexuality;
- iv. disability rights, both physical and mental disabilities or illnesses;
- v. classism, poverty and homelessness;
- vi. trauma-informed policing and crisis intervention, including RPD employee well-being;
- vii. patterns, practices, policies, and procedures of RPD;
- viii. Police Accountability Board Law;
- ix. civilian oversight history, models, trends, theories, standards and best practices;
- x. how to conduct independent and objective civilian complaint investigations, e.g. interviewing, collection and preservation of evidence;

- xi. community outreach and public reporting;
- xii. discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance.

(b) Community Outreach.

- i. The Board shall conduct outreach to community members, groups, and nonprofit organizations. The Board shall accommodate limited English proficiency persons and persons with disabilities.
- ii. 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 other government buildings, and on the City, RPD, and Board websites.
- iii. 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 about the Board process and its work.
- iv. 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 sworn members, and publicize the procedure for filing a Complaint with the Board.
- v. 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.
- vi. The Board shall survey complainants and the public to assess satisfaction and identify concerns with the Board's investigative and adjudicative processes.

(8) Retaliation Prohibited.

Retaliation against complainants, witnesses, the Board and its staff, and RPD employees, shall be prohibited. Retaliation includes but is not limited to: harassment, intimidation, stalking, threats and assaults.

(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. Board members may not represent a complainant or an RPD sworn member before PSS or the Board.

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

(10) Legal Representation.

The Corporation Counsel shall advise and represent the Board as it would other public boards in accordance with the Law Department's duties under Article IX of the City Charter. Provided, however, that upon the determination by the Corporation Counsel that a conflict of interest exists, depending on the facts and circumstances of a particular matter, Corporation Counsel will advise the Board to obtain outside counsel if such counsel is deemed necessary by the Board. The Board may then seek and retain independent legal counsel, provided, however, that compensation for such legal services shall be established through the City's annual budgetary process as set forth in Article VI of the Rochester City Charter, as amended.

(11) Police Accountability Board Reports.

- (a) Findings of the Police Accountability Board shall be made available to the public on a monthly basis in statistical form related to three categories: Complaints, supplemental investigations, and recommendations made.
- (b) The Police Accountability Board shall not include in reports or otherwise release the names or other identifying information about complainants, victims, witnesses, RPD sworn members, or any other information that is subject to New York State Civil Rights Law § 50-a.
- (c) The Police Accountability Board shall publish an annual report that shall contain:
 - i. The recommendations related to changes in RPD patterns, practices, policies, and procedures;
 - ii. Whether the prior year's recommended changes have been implemented; and

iii. A summary of complainant and public survey data with an assessment of if and how Board policies should change to accommodate concerns.

(d) The monthly and annual reports shall be publicly available on the City's website.

(12) Audit and Evaluation.

(a) The Board may, by majority vote, perform an audit, or direct that an audit be performed, to assess its investigation and adjudication of 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.

(13) Budget.

(a) The annual proposed budget of the Police Accountability Board shall provide for sufficient funding to carry out its powers and duties. The Board shall be funded through the budgetary process of the City, pursuant to Article VI of the Rochester City Charter, as amended. The Board budget shall be separate from, and independent of, the RPD budget.

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

(c) The Board's first year budget shall include appropriate start-up costs.

(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.

(15) The Mayor or Council may promulgate by-laws, rules, regulations, policies and procedures to carry out and give full effect to the provisions of this local law. Any such rules, regulations, policies and procedures shall be filed with the City Clerk.

Section 2. This local law shall take effect upon its filing in the Office of the Secretary of State as provided by Section 27 of the NYS Municipal Home Rule Law.

APPENDIX A

Police Accountability Board Alliance Members

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

Any additional organization approved to join the Alliance by a duly adopted City Council Resolution; a list of such additional organizations shall be kept on file in the Office of the City Clerk