

Quarterly Report of the Police Accountability Board (Draft RWH)

June 31, 2020

Introduction

The Police Accountability Board (PAB) was formed in January 2020. The initial charge to the board was to begin the process of identifying an Executive Director and agree on a set of governing bylaws. The bylaws have been approved and applications for the position of Executive Director are on hand.

Board Members

- Vacant, PABA Seat 1
- Dr. Robert Harrison III, Council East
- Rev. Dr. Rickey B. Harvey, Mayoral appointee
- Dr. Celia McIntosh, PABA Seat 4
- Rev. Matthew Nickoloff, Council South
- Ida Perez, Council Northeast
- Miquel Powell, PABA Seat 2
- Rabbi Drorah Setel, Council Northwest
- Shani Wilson, PABA Seat 3

Board Staff

BJ Scanlon, Chief Of Staff-City Council, Elizabeth Sieber, Staff Support, Stephanie Prince, Legal Counsel to the PAB

Executive Director Search

As of July 2, the department of Human Resources had received 53 valid applications for the position. The PAB is in the process of evaluating them and arranging interviews.

Bylaws

At its March 5, 2020 meeting, the PAB approved its bylaws (Appendix A) and elected Shani Wilson chairperson and Celia McIntosh vice-chairperson.

RPD Communication

On June 25, the PAB had its first meeting with Chief Singletary who responded to questions posed by the board. Future meetings are planned but not yet scheduled.

Complaint Reporting

As of this report, the PAB has not reviewed any citizen complainants while awaiting recruitment of the Executive Director.

Board Process Reporting

PAB members have, upon invitation participated in community meetings as panelists or speakers. PAB members also regularly attend meetings of the PAB Alliance.

Actions Pending

- Interview Executive Director applicants
- Continue communication with RPD

Respectfully Submitted,

Shani Wilson, PAB Chairperson (For the Board)

Appendix A

Adopted March 5, 2020

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 Local Law No. 2019-2 (the “Local Law”) 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 shall be called by the Chairperson, the Vice-Chairperson in the absence of the Chair, or may be called at the request of any two members of the Board or the Chief of Police of RPD (the “Chief”). 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 the Office of the Chief on behalf of 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 18-4 of the Local Law.
- 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 18-6(A) of the Local Law. 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 18-6(A) of the Local Law.
- C. **Executive Director.** The Board shall have an Executive Director who shall be hired by the Board and serve at the pleasure of City Council pursuant to Sections 18-6(A) and (C) of the Local Law.
- D. **Secretary to the Board.** The Executive Director of the Board shall serve as Secretary to the Board and shall, in that capacity, 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 Corporation Counsel shall advise and represent the Board as it would other public boards in accordance with Article IX of the City Charter. The Police Accountability Board may also retain or employ independent legal counsel on a contractual basis to advise and represent the Board pursuant to Section 18-10 of the Local Law.

IV. QUORUM AND VOTING

- A. **Quorum.** The presence of five (5) members shall constitute a quorum in all instances, pursuant to Section 18-6(B) of the Local Law.
- B. **Voting.** The affirmative vote of at least five (5) Board members shall be required for the adoption of any motion, except motions regarding the hiring or termination of an Executive Director, which shall require the affirmative vote of at least six (6) Board members. Motions regarding amendments to these Bylaws shall be governed by Section XII. 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 they participate in the deliberations on a matter, nor vote on a matter when the member believes they 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 18-9 of the Local Law, no member of the Board shall participate in the consideration or disposition of any matter in which they have a conflict of interest that would impair their independence of judgment or action in the performance of their 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 their 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 or to any other Board member.
- 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 Respecting Complaints.** Pursuant to Sections 18-3 and 18-5 of the Local Law, the Board shall investigate and adjudicate complaints of misconduct against RPD Officers and direct the Chief to implement discipline in accordance with the disciplinary matrix described in Section 18-5(B) of the Local Law.
2. **Disciplinary Matrix.** Pursuant to Section 18-5(B) of the Local Law, the Board shall establish a disciplinary matrix in conjunction with the Chief and the President of the Rochester Police Locust Club (the "Locust Club"), with input from the Chief, the Police Accountability Board Alliance (the "Alliance"). The Board, in consultation with the Chief and Locust Club President, shall review the disciplinary matrix annually, and consider recommended changes.
3. **Board Disciplinary Determinations.** Pursuant to Section 18-5(J)(4), the Board's disciplinary determinations shall be binding on the Chief, who shall impose discipline within five (5) days of receipt of the Board's decision.

- 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. 202_-0001. The Board shall promptly transmit a copy of the complaint, with the PAB number, to the Professional Standards Section of RPD (PSS).
2. **Complaints Received by the Board.** The Executive Director shall, on behalf of the Board, receive and process complaints from civilians, or complaints referred to the Board by PSS, the Mayor, the Council, any Councilmember, or the Chief, or otherwise from the public in accordance with Section 18-5(F) of the Local Law. Upon receipt of complaints, the Executive Director shall notify the Board.
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.
4. **Confidentiality.** Professional standards of confidentiality with regard to the written release of information and informed consent will apply to all complaints filed. With respect to the confidentiality of all interested parties, the Board shall comply with all local, state, and federal law, including Civil Rights Law Section 50-a.

C. Investigative Procedures.

1. **Investigation of Complaints.** The Board, by its staff, shall conduct investigations in accordance with these Rules and Procedures, as follows:
 - a. **Interviews.** The Board may 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, the limitations of New York Civil Rights Law Section 50-a concerning the release of personnel information, and limitations of other applicable laws, including the Freedom of Information Law, 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.
2. **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 18-5(G)(5) of the Local Law. The Board may nonetheless continue its investigation without cooperation of the complainant if the Board has sufficient factual

information to investigate the allegations.

3. **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 18-5(G)(3) of the Local Law. Board subpoenas shall follow the relevant provisions of the New York Civil Practice Law and Rules, including but not limited to Article 3 and Article 23 thereof.
4. **Interviews of Persons Other Than Sworn Members of RPD.** 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 a City employee assigned to the Board pursuant to Section 18-5(G) of the Local Law.
 - 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 their 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 their choice or other representative or advocate, at the complainant's or witness' expense, unless that person has a conflict of interest in the investigation, in which event the Executive Director shall review the conflict and report to the Board. 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 they 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 they give 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.

5. **Interviews of Sworn Members of RPD.** 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. Any sworn member being interviewed may elect to have their 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 person 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 them at their request all reports which they have 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 them 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 their 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

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 they 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 their 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 they give 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 they 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 their 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 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 their 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, 2016 to June 30, 2019.
14. **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. REASONABLE CAUSE DETERMINATION

- A. **Executive Director's Report.** Upon completion of the Board investigation and review of material from the PSS 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 pursuant to Section 18-5(H) of the Local Law.
- B. **Reasonable Cause Defined.** In accordance with the definition set forth at Section 70.10 of the New York Criminal Procedure Law, reasonable cause to believe that an officer has committed the misconduct alleged exists "when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it."
- C. **Board Review of the Report and Determination.** The Board shall review the report from the Executive Director and shall either affirm or reverse the recommendation as to whether there is reasonable cause to proceed to a hearing.

IX. HEARING PROCESS

- A. **Scheduling a Hearing.** All hearings shall be scheduled upon at least thirty (30) days' notice to the Chief and the complainant. Should the Board determine that subpoenas are to be issued in advance of a hearing, then the hearing shall be scheduled upon at least sixty (60) days' notice to the Chief and the complainant.
- B. **Adjournment of a Hearing.** The Chief, the complainant, or any party subpoenaed to appear at a hearing shall be entitled to one automatic adjournment of a hearing or a portion thereof, upon written notice to the Board. Upon receipt of such written notice, the hearing or a portion thereof shall be adjourned to a reasonable date acceptable to all parties, but no more than sixty (60) days from the original date of the hearing, unless circumstances require a longer

adjournment. The Executive Director shall send all parties written notice of the adjourned date. The Board may consider later requests for adjournment, and shall not unreasonably withhold consent for such adjournment requests.

C. Establishing Hearing Panels. The Board Chairperson shall establish a rotation of Board members to serve on hearing panels pursuant to Section 18-5(I)(1) of the Local Law.

D. Conduct of Board Hearings. Board hearings shall be conducted in Executive Session pursuant to the provisions of Section 18-5(I) of the Local Law. Board hearings shall continue on consecutive days following the first day of the hearing unless a schedule is otherwise set by the hearing panel, and written notice sent to all parties by the Executive Director.

E. Confidentiality of Board Hearings. All testimony and other information exchanged in a hearing shall be maintained confidentially by the Board. Panel hearings shall be recorded and transcribed by the Board and kept confidential. No other recordings or transcriptions shall be permitted.

F. Right to Counsel. Complainants, RPD sworn members, and any party subpoenaed to appear at a panel hearing shall have the right to obtain counsel or other representation and call witnesses pursuant to Section 18-5(I)(7) of the Local Law and following those due process rights set forth in NYS Civil Service Law Section 75.

G. Notice of Panel Decisions. Following completion of a panel hearing, the panel shall issue a written decision in a Notice of Panel Decision pursuant to Section 18-5(I)(5) and 18-5(I)(10) of the Local Law. The panel's decision shall be made by majority vote and pursuant to the substantial evidence standard of proof. The decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action to be imposed, if any.

H. Substantial Evidence Defined. The substantial evidence standard of proof applied by each hearing panel shall be that applied in New York jurisprudence: such relevant proof found in the whole record as a reasonable, fair and detached fact finder may accept as adequate to support a conclusion.

I. Hearing Rules and Procedures. Prior to convening the first hearing panel, the Board shall establish such additional rules and procedures as may be required for conduct of each hearing.

X. PUBLIC REPORTS

A. Annual and Quarterly Reports. The Board shall issue annual and quarterly public reports of the Board's findings and determinations on an aggregate, anonymized basis, and shall make the reports publicly available on the Board's website pursuant to Section 18-11 of the Local Law.

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 18-11(C) of the Local Law, 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.

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

XII. AMENDMENTS

These Rules and Procedures may be amended at any regular meeting or special meeting by an affirmative vote of no fewer than six (6) members of the Board.

