

**Additional Proposed Legislation for the  
December 20, 2022 City Council Meeting -  
Filed through December 20, 2022**

**\* \* Please Note \* \***

**For questions regarding the proposed legislation,  
call the City Clerk's Office at 585-428-7421**



**City of Rochester**

City Hall Room, 30 Church Street  
Rochester, New York 14614-1284  
[www.cityofrochester.gov](http://www.cityofrochester.gov)

**INTRODUCTORY NO.**

**461**

**Malik D. Evans**  
Mayor  
**Miguel A. Meléndez, Jr.**  
City Council President

December 20, 2022

TO THE COUNCIL

Ladies and Gentlemen:

Re: Message of Necessity –  
Police Accountability Board Charter  
Amendments

In order to address promptly some of the Police Accountability Board personnel policy reforms recommended in the November 16<sup>th</sup> investigation report of outside counsel, we are submitting this Message of Necessity so that action may be taken at the December 20<sup>th</sup> City Council meeting to amend the City Charter accordingly.

Respectfully submitted,

Miguel A. Meléndez, Jr.  
President

Malik D. Evans  
Mayor

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**City of Rochester, NY  
Rochester City Council**

City Hall Room 301A • 30 Church Street • Rochester, New York 14614-1290

**Miguel A. Meléndez, Jr.** Council President, Councilmember At-Large

December 20, 2022

TO THE COUNCIL

Ladies and Gentlemen:

Re: Charter Amendment – Office of Police  
Accountability

Transmitted herewith for your approval is a Local Law amending the City Charter with respect to the Police Accountability Board. This amendment will:

- Rename the administrative and staff functions that are currently under the Police Accountability Board (PAB) to be known as the Office of Police Accountability (OPA). This will eliminate confusion and draw a distinction between the City employees supporting this important function and the Police Accountability Board itself. The nine-member board will continue to be known as the PAB.
- Specify that the Department of Human Resource Management (DHRM) shall control and administer the personnel practices and policies applicable to the Office of Police Accountability, and that neither the Executive Director nor any other supervisor in the Office of Police Accountability shall stand in for or supersede the authority of the DHRM. This will allow DHRM, in relation to the PAB, to operate in an administrative manner similar to the way DHRM provides services to the City Clerk's Office, City Council Office and City Councilmember Aides.

In addition to the Local Law, attached is the current City Charter Article with the proposed changes outlined in red.

Respectfully submitted,

A handwritten signature in blue ink that reads "Miguel A. Meléndez Jr." with a stylized flourish at the end.

Miguel A. Meléndez, Jr.  
President

## Article XVIII

# POLICE ACCOUNTABILITY BOARD

### § 18-1 Purpose.

The Rochester City Council hereby intends to establish a civilian-controlled process to fairly investigate and make determinations respecting complaints of misconduct involving sworn officers of the Rochester Police Department. The Police Accountability Board, together with staff of an Office of Police Accountability acting on the Board's behalf, shall ~~be the mechanism to~~ investigate such complaints of police misconduct and ~~to~~ review and assess Rochester Police Department patterns, practices, policies, and procedures. The Police Accountability Board shall ensure public accountability and transparency over the powers exercised by sworn officers of the Rochester Police Department. The Police Accountability Board shall provide a nonexclusive alternative to civil litigation.

### § 18-2 Definitions.

The following terms are defined, for purposes of this article, 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. The disciplinary matrix shall determine a range of disciplinary action options for misconduct. The Chief will be required to impose discipline utilizing the disciplinary matrix based on the Board's findings and determination.

#### **EXECUTIVE DIRECTOR**

The highest-ranking staff member and director of the Office of Police Accountability, hired by the Police Accountability Board, with ultimate responsibility for making managerial decisions. The Executive Director is an employee of the City of Rochester.

#### **IMMEDIATE FAMILY**

A parent, sibling, spouse or child of a person or any members of a person's immediate household.

## MISCONDUCT

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

## OFFICERS

The sworn officers of the RPD, including but not limited to the Chief, deputies, captains, lieutenants, commanders, and all other sworn law enforcement professionals.

## 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 Officer misconduct.

## THE BOARD

The Police Accountability Board.

## THE OFFICE

The Office of Police Accountability; such Office serves as staff to the Board is a public agency within the meaning of New York Civil Rights Law § 50-a. Office staff are employees of the City of Rochester.

## USE OF THEY, THEIR, THEM

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

## § 18-3 Establishment and jurisdiction.

- A. The Civilian Review Board, established by Rochester City Council Resolution 92-40 and expanded by Resolution 95-08, will be abolished after and only after the PAB is established and fully functional for 60 days. The PAB shall be deemed to be fully functional as soon as the first Executive Director assumes office and the Board has adopted rules and procedures in accordance with § 18-6.
- B. There ~~isare~~ hereby established ~~an~~ independent ~~office~~agencies of municipal government to be known as the "Police Accountability Board."~~It~~ and the "Office of Police Accountability." The Office of Police Accountability shall consist of an Executive Director and other staff, to perform daily administrative functions on the Board's behalf. The Board together with its Office shall be an autonomous ~~office~~agency of the City separate from the Rochester Police Department and other local, state, and federal law enforcement agencies. The members of the Board, regardless of the original appointee of each member, shall be appointed through legislation approved by the City Council.
- C. The Board and Office shall be independent of the RPD and shall investigate and adjudicate complaints of misconduct against RPD officers.
- D. As a condition of employment with the RPD, all officers, including but not limited to the Chief, shall fully cooperate with the Board. The Office and this article. In cases where officers do not cooperate, the Board shall send a recommendation to City Council to invoke its power under City Charter § 2-19 to remove the officer. This shall not in any way limit the Board's right to invoke other remedies, including judicial enforcement of the article.



- E. The Board, and the Office on its behalf, shall have the power to conduct independent investigations as further outlined in § 18-5G below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD officers if a complaint of misconduct is sustained.
- F. Based on information and belief that an investigation is warranted, the Board shall have the power to conduct/initiate an investigation, even in the absence of a civilian complaint.
- G. The Board, in conjunction with the Chief of the Rochester Police Department and Locust Club President, shall establish a disciplinary matrix. The Board shall request input from the Chief, the Community Justice Advisory Board, the Police Accountability Board Alliance, and the President of the Rochester Police Locust Club when developing the matrix.
- H. The RPD and the City shall provide to the Board, as requested: access to all documents and evidence, including but not limited to RPD personnel files, IA Pro database, all other RPD databases, PSS investigative files, criminal and civil case files, disciplinary hearing records, video and audio recordings from body cameras or other sources, all RPD policies, procedures, and practices, the General Manual, and any other documents that pertain to policies, tactics, complaints, or charges against RPD officers and their subsequent investigation and adjudication, or other sources of information deemed appropriate by the Board.
- I. The Board shall have the power to investigate any and all conduct, acts, or omissions by any RPD officer.
- J. The Board shall have the power to review and recommend changes to RPD regarding RPD policies, procedures, patterns, practices and training.

§ 18-4 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 § 18-4J.
- C. Members of the Board shall be residents of the City of Rochester for a minimum of 12 months at the time of appointment to the Board.
- D. Members of the Board shall reflect the City's diverse community, including, but not limited to: age, race, creed, color, national origin, gender, gender identity or expression, sexual orientation, disability, marital status and source of income.
- E. Members of the Board and their immediate family shall not be currently or formerly employed by the RPD. At the discretion of the nominating and appointing authorities, no more than one member of the Board at a time may be a former law enforcement employee with an agency other than the RPD or an immediate family member of a person formerly employed in non-RPD law enforcement, provided that such employment was three or more years prior to the member's appointment.
- F. Board members shall not be current (or within the immediately preceding three-year period) City elected officials or immediate family of any incumbent elected official representing/serving any district or municipality in the State of New York. 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 officer at Board hearings.
- G. The provisions of Article 2, § 5, and Article 3, § 30, of the Public Officers Law of the State of New York, regarding vacancies, shall apply to all members of the Board.

H. Appointments to the initial Board shall be made within 60 days from the effective date of this local law as follows:

- 1) The Mayor shall appoint one member.
- 2) Council shall appoint four members; one appointee from each of the four Council Districts: East District, Northeast District, Northwest District, and South District.
- 3) The Alliance shall nominate 12 individuals, three for each of four Board seats, within 30 days from the effective date of this local law, from which Council shall confirm and appoint one such individual for each of the four member seats at Council's discretion. If all three nominees for any one member seat are rejected by Council, then the Alliance will nominate replacements within 15 days until all four members are confirmed. If necessary this process will repeat until Council has deemed a candidate qualified and capable of serving the Board.

All appointments will be approved through legislation passed by a majority of Council.

I. Police Accountability Board Alliance nomination process. The initial Alliance shall include no more than two representatives from each organization listed in Appendix A. 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 individuals selected by the Alliance.
- 2) The Executive Committee will call for applications for nominees to fill four 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 12 names for the four nominees and submit them to Council for confirmation and appointment;
- 6) Should Council reject a nominee, a written rejection will be submitted to the Alliance and the Alliance will resume the nominating process to select a replacement;
- 7) The final list of community appointments shall not be published until all four nominees are confirmed by Council for the initial Board;
- 8) Future Board appointments to fill term-ended and mid-term vacancies shall follow a process determined by Board bylaws based on the initial selection process.

J. Terms.

- 1) The first term of the initial Board commences when all nine Board members are appointed and ends on the following June 30.
- 2) Except for the initial Board, 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.
- 3) Except for the initial Board, each term shall commence on July 1 and end on June 30. 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:

- a) Three members shall be appointed for terms of one year, of whom one shall have been designated by Council, and two shall have been designated by the Alliance;
  - b) Three members shall be appointed for terms of two years, of whom two shall have been designated by the Council, and one shall have been designated by the Alliance;
  - c) Three members shall be appointed for terms of three years, of whom one shall have been designated by the Mayor, one shall have been designated by the Alliance, and one shall have been designated by Council.
- K. 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 filled in the same manner by which it was initially filled, within 60 days of the vacancy.
- L. Removal.
- 1) A Board member seeking public office shall resign their seat at the time they announce their candidacy or file their petitions, whichever happens first.
  - 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.

**§ 18-5 Powers and duties.**

- A. The Board shall have the power to conduct independent investigations as further outlined in § 18-5G below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD officers if a complaint of misconduct is sustained.
- B. The Board shall establish a disciplinary matrix in conjunction with the Chief of the Rochester Police Department and Locust Club President. The Board shall request input from the Chief, the Alliance 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 the RPD. Written acknowledgment of receipt of recommendations will be sent to the Executive Director from the Chief of Police within 60 days with a detailed listing of what items are and are not being implemented.
- D. The Board and the Chief shall establish a cooperative relationship to ensure the orderly and efficient flow of information.
- E. Accessibility.
  - 1) The Board shall provide language access for limited- or non-English-proficient complainants and witnesses at all stages of the investigative and adjudicative process. Language access shall be available during all operating hours of the Board.
  - 2) The Board shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities at all stages of the investigative and adjudicative process. Such



accommodations shall be available during all operating hours of the Board and shall include but not be limited to: accessible means of egress, accessible means of communication via auxiliary aids or services giving primary consideration to preferences of the individual deserving such services, and access to ASL interpreters.

F. Initiation of complaints.

- 1) Complaints may be received directly by the Board, or upon referral from PSS, the Mayor, the Council, any Councilmember, or the Chief. Any complaint received and accepted by the Board shall be transmitted to PSS, and any complaint received and accepted by PSS shall be transmitted to the Board.
- 2) The Board shall receive complaints by telephone, in person, by mail, email or web form. Complaints shall be received and considered whether submitted under signature or anonymous. Efforts to simplify the procedure shall be made to encourage filing. Professional standards of confidentiality with regard to the written release of information and informed consent will apply to all complaints filed. With respect to the confidentiality of all interested parties, the Board shall comply with all local, state, and federal law, ~~including Civil Rights Law § 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 City Charter.

G. ~~Board investigation~~Investigation of complaints.

- 1) ~~A City~~An employee ~~assigned to of~~ the ~~Police Accountability Board~~Office shall interview complainants, witnesses and RPD officers, and gather relevant evidence. PSS shall provide the Board and Office with written notice of the commencement of any investigation, and likewise, the Board shall provide PSS with written notice of the commencement of any investigation.
- 2) The Board and the Office acting on the Board's behalf shall have the power to investigate any and all conduct, acts or omissions by any RPD officer independent of any investigation conducted by PSS.
- 3) Subpoenas may be issued upon the affirmative vote of a majority of the Board at any time during the review and adjudication processes. Such subpoenas may compel the attendance of witnesses, RPD officers, 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 officer or 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 VIIIA, § 8A-1, of the City Charter to promulgate new rules or utilize existing rules regarding discipline and administration of RPD officers to ensure compliance with Board procedure and applicable law. RPD officers and employees shall be notified of their rights against self-incrimination under *Garrity v. New Jersey*, 385 U.S. 493 (1967), before any testimony is taken from them.
- 4) Upon receipt of a complaint, within the time frame allotted in accordance with the police bargaining agreement, 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, they shall send all such findings to the Board within five business days.

- 5) One police officer holding the rank of Captain or higher shall be made available by the Chief to the Board and Office at the Board's request to serve as a consultant or advisor should questions arise from members of the Board or Office staff regarding specific police practices, policies, or general orders. The officer so assigned shall be neither from PSS nor the Commanding officer of the officer(s) involved in the case being reviewed.
- 6) A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board and Office. Such declination must be made in writing by the complainant, and shall be forwarded to the Chief by the Board.
- 7) Statements made by complainants, RPD officers or 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.
- 8) 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 decision, or notice that the Board has determined no disciplinary action is appropriate. Nonetheless, the Chief shall retain the authority to suspend an RPD officer during the investigation and adjudication of a complaint against the RPD officer.

H. Reasonable cause determination.

- 1) Upon completion of the review of the material from the PSS investigation and/or the BoardOffice 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 § 18-6A(3), the Board Chairperson shall establish a rotation of Board members to serve on hearing panels composed of three members. Each panel shall include one Alliance-appointed member, but shall not include more than two Alliance-appointed members. Each panel shall select its own Chairperson on a case-by-case basis.
- 2) As described in § 18-5G(3), subpoenas may be issued during the hearing process.
- 3) Upon a majority vote of the Board membership in a duly published open meeting, the Board may determine to go into executive session so that the panel may conduct its hearing.
- 4) Panel hearings shall be recorded and transcribed by the Board. No other recordings or transcriptions are permitted.
- 5) Decisions made 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 complainants and RPD officers 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 officers 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, officers, 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: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD officer(s) pursuant to the disciplinary matrix described in § 18-5B.
  - a) If the panel finds that the RPD officer(s) may have engaged in criminal conduct, it shall refer the matter to the Monroe County District Attorney's Office or the New York State Attorney General's Office and request that their office initiate an investigation.
  - b) The Board shall notify the complainant and the Chief, in writing, within five business days of the panel's findings and decision. It shall be the responsibility of the Chief to notify the RPD officer(s) who were the subject(s) of the panel's findings and decision.
  - c) If a Notice of Panel Decision contains a dissenting opinion, the complainant may appeal to the Board for review of the panel's findings. The complainant's appeal requesting Board review must be in writing and received by the Board no more than 30 days after the Notice of Panel Decision 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 decisions, 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.
  - d) If there is an appeal by the complainant, the Board shall provide a written Notice of Board Decision to the complainant and the Chief. The Notice of Board Decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD officer(s) pursuant to the disciplinary matrix described in § 18-5B.
  - e) RPD officers shall have the right to appeal pursuant to § 76 of NYS Civil Service Law.
  - f) Panel decisions may include disciplinary sanctions, including but not limited to counseling, reprimand, retraining, suspension, demotion, or dismissal.
- 11) The panel shall report its findings and decisions 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 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 the exact discipline imposed in accordance with the matrix.

**J. Discipline.**

- 1) Before conducting any hearings, the Board shall establish a disciplinary matrix per § 18-5B.
- 2) This article shall not limit the Chief's ability to impose any additional discipline for an RPD officer above and beyond that recommended by the Board.
- 3) The Board shall notify the complainant and the Chief, in writing, within five business days of the Board's final decision of discipline.
- 4) The Board's determination of discipline shall be binding on the Chief, who shall impose the discipline determined by the Board in accordance with the matrix within five days of receipt of the Board's decision. The Chief will provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix within 30 days.

**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, the Mayor, and City Council. The Board shall publish its policy recommendations on the Board website.
- 3) The Board's recommendations may address, but are not limited to: conduct and policies exhibiting bias against individuals based on race, gender, sexual orientation, perceived sexual orientation, gender identity, disability and perceived disability; use of force both lethal and nonlethal; de-escalation policies; vehicle and foot pursuits; use of canines; failure to acknowledge and/or accommodate the needs of people with disabilities, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities, traumatic brain injuries; 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 recommendations, then the Chief shall provide a timeline to the Board indicating implementation of each recommendation.
- 6) The Board shall publish on its website whether or not the policy recommendations have been implemented.

**§ 18-6 Officers and staff.**

- A. At the initial Board's first meeting, the Board shall elect a Chairperson and Vice Chairperson, by majority vote. Subsequently, the Board shall elect a Chairperson and Vice Chairperson by majority vote, at the first meeting after July 1 of each year. Each Chairperson and Vice Chairperson shall serve until the June 30 following their election. No Board member shall serve as Chairperson or Vice Chairperson for more than three consecutive years. The initial Board shall convene a search committee for an Executive Director and a committee to establish rules of procedure not provided for herein. The search for a new Executive Director shall take place in the first year and whenever there is a vacancy. The Chairperson will also be responsible to:

- 1) Facilitate and preside over meetings of the Board;
  - 2) Establish committees of Board members as needed; and
  - 3) Establish a regular rotation of Board members to serve on hearing panels.
- B. A quorum of five Board members must be present to conduct Board business, regardless of vacancies. No business shall be transacted by the Board without a quorum being present. Board action shall be decided by a simple majority of Board members present.
- C. Police Accountability Board Executive Director.
- 1) The PAB shall conduct a search process to hire a full-time Police Accountability Board Executive Director in accordance with the City of Rochester hiring practices. The Executive Director is subject to a Council confirmation. The Executive Director 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 12 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 City Charter, 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~~the Office, for the daily administrative work of the Board.
  - 7) The Executive Director shall be responsible for hiring and supervising staff of the Office of Police Accountability in accordance with the City Charter and the Municipal Code. All such persons and their immediate family shall be free of any conflict of interest, including but not limited to current or former employment with the RPD or any other local, state, or federal law enforcement agency.
  - 8) The Executive Director and all employees of the Office of Police Accountability shall be subject to all personnel codes, practices and policies that are applicable to City employees (Personnel Policies), including but not limited to those pertaining to ethics, confidentiality, discrimination, disabilities, whistleblowers, sexual harassment, workplace violence, retaliation, vacations and leaves, civil service and training with regard to the other aforementioned policies. The Department of Human Resources Management (DHRM) shall communicate and administer the Personnel Policies for the Executive Director and all other Office staff. Neither the Executive Director nor any other supervising employee of the Office shall contradict or supersede DHRM's directions and authority over the Personnel Policies.

#### **§ 18-7 Training and outreach.**

- A. Board and ~~Executive Director~~Office training. The Board and ~~staff~~Office 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 the Office 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 antiracism;
- 3) Gender identity and sexuality;
- 4) Disability rights, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities and traumatic brain injuries;
- 5) Classism, poverty and homelessness;
- 6) Trauma-informed policing and crisis intervention, including RPD officer well-being;
- 7) Patterns, practices, policies, and procedures of the RPD;
- 8) Police Accountability Board Local Law;
- 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 to inform how the Board functions and serves the community and public reporting;
- 12) Discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance;
- 13) RPD ride-alongs;
- 14) Access to RPD training; and
- 15) Access to RPD manuals.

**B. Community outreach.**

- 1) The Board and the Office on its behalf shall conduct outreach to community members, groups, and nonprofit organizations. The Board and Office shall provide language access for limited- and non-English-proficient individuals. The Board and Office shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities.
- 2) Complaint forms and instructions shall be made available by RPD officers and 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 or the Office on its behalf shall survey complainants and the public to assess satisfaction and identify concerns with the Board's investigative and adjudicative processes.

#### § 18-8 Retaliation prohibited.

Retaliation by RPD officers and employees against complainants, witnesses, the Board, its Office and ~~its~~ staff, and other RPD officers and 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, action will be taken based upon the disciplinary matrix. The Chief will also be notified of the misconduct.

#### § 18-9 Conflict of interest.

- A. No Board member or ~~Board~~Office employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest. Any conflict of interest prohibited by Article 18 of the General Municipal Law or by the Code of Ethics shall disqualify a member. A conflict of interest shall include, but is not limited to: if they have reason to believe or expect that they will derive a direct monetary gain or suffer a direct monetary loss, by reason of their official activity; or if any benefit or detriment accrues to them as a member of a business, profession, occupation, or group to a greater extent than any other member of the business, profession, occupation, or group. Board members and Office employees may not represent a complainant or an RPD officer 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 the situation to the Chairperson, and shall recuse themselves from deliberations or action in connection with that case.
- C. Board members and Office employees shall be subject to the City of Rochester's Code of Ethics.

#### § 18-10 Legal representation.

- A. The Corporation Counsel shall advise and represent the Board and the Office as it would other public boards and agencies in accordance with the Law Department's duties under Article IX of the City Charter. The Board may then seek and retain independent legal counsel for any purpose and may also utilize the City's Corporation Counsel at its discretion.
- B. All contracts for outside services (legal or other) shall be procured in accordance with the City of Rochester purchasing requirements and are subject to City Council approval when over \$10,000 or the Police Accountability Board does not have adequate funds in their annual budget to cover the cost of an agreement less than \$10,000.

#### § 18-11 Police Accountability Board reports.

- A. The Board or the Office on its behalf shall publish on its website 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 on its website for the public and deliver hard copy to the Office of the City

Council and Office of the Mayor 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) Detailing information that is legally available to the Board, including but not limited to: the date, time, and location of each incident, whether there is video of the incident or not, age, race, and gender of adult complainant(s), rank(s), gender(s), section(s), and race(s) of the RPD officer(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 and Office shall comply with local, state, and federal law and redact any information that may not be disclosed publicly. The number of previous complaints against the RPD officer(s) within 10 years of the incident and whether or not those complaints were sustained.
- 5) The number of times and the types of use of force used per complaint and the total number of times and types of use of force used;
- 6) The number of times pepper spray was deployed per complaint and the total number of times pepper spray was deployed;
- 7) The number of times and types of pain compliance tactics used per complaint and the totals for each use of pain compliance tactic;
- 8) The number of times and types of use where a TASER<sup>®</sup> was deployed;
- 9) Complaint and sustain rates for each RPD section;
- 10) In the event where an RPD officer 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 officer(s), and/or any bystanders;
  - e) Any medical care provided and what type; whether the person or animal was killed;
  - f) The number of cases where the panel's disciplinary decision was enforced by the Chief;
  - g) The number of cases where the Chief disputed the disciplinary decision of the panel;
  - h) The type of sanctions imposed;
  - i) The type of sanctions decided upon;
  - j) The number of cases reviewed by the Board;
  - k) The number of complaints found not to have reasonable cause to be heard;
  - l) The number of complainants contacting the Board but not following through with a formal signed complaint;



- m) The length of time each case was pending before the Board;
- n) 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 published on the Board's website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor and 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. Any video associated with the complaint that can be made public shall be made publicly available.
- G. The Board and Office shall comply with all local, state, and federal law, ~~including Civil Rights Law §-50-a~~ concerning the release of personnel information.

**§ 18-12 Audit and evaluation.**

- A. The Board may, by majority vote, perform an audit, or direct that an audit be performed, to assess the investigation and adjudication of civilian complaints.
- B. An independent organization of Council's choosing shall conduct a formal annual evaluation of the functions, processes, and outcomes of the Police Accountability Board ~~and the Office of Police Accountability~~. The evaluator will make specific recommendations to the Council regarding changes to the Board's and Office's functions, processes and outcomes.

**§ 18-13 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 article, including the funding of staff and all necessary operating expenses for the purpose of resolving all complaints within 90 days. The Board shall be funded through the budgetary process of the City, pursuant to Article VI of the City Charter. The Board budget shall be separate from, and independent of, the RPD budget.
- B. The Board shall annually prepare a budget in accordance with the budget allocation level that ~~is~~ deemed appropriate ~~from~~ by the Office of Management and Budget. 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, such as office furnishings, equipment, training for all Board and staff, and a national search for the Executive Director.

**§ 18-14 Severability.**

The invalidity of any provision or provisions of this article shall not affect the validity of the remaining provisions thereof, but such remaining provisions shall continue in full force and effect.

**§ 18-15 Appendix A: Supporting Organizations**

**[Appendix A list  
left unchanged]**



# INTRODUCTORY NO.

461

Local Law No.

## Local Law amending the City Charter with respect to establishing the 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 amending the following sections of Article XVIII, Police Accountability Board, to read in their entirety as follows and leaving §§ 18-4, 18-14 and 18-15 unchanged:

### § 18-1 Purpose.

The Rochester City Council hereby intends to establish a civilian-controlled process to fairly investigate and make determinations respecting complaints of misconduct involving sworn officers of the Rochester Police Department. The Police Accountability Board, together with staff of an Office of Police Accountability acting on the Board's behalf, shall investigate such complaints of police misconduct and 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 sworn officers of the Rochester Police Department. The Police Accountability Board shall provide a nonexclusive alternative to civil litigation.

### § 18-2 Definitions.

The following terms are defined, for purposes of this article, 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. The disciplinary matrix shall determine a range of disciplinary action options for misconduct. The Chief will be required to impose discipline utilizing the disciplinary matrix based on the Board's findings and determination.

**EXECUTIVE DIRECTOR**

The highest-ranking staff member and director of the Office of Police Accountability, hired by the Police Accountability Board, with ultimate responsibility for making managerial decisions. The Executive Director is an employee of the City of Rochester.

**IMMEDIATE FAMILY**

A parent, sibling, spouse or child of a person or any members of a person's immediate household.

**MISCONDUCT**

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

**OFFICERS**

The sworn officers of the RPD, including but not limited to the Chief, deputies, captains, lieutenants, commanders, and all other sworn law enforcement professionals.

**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 Officer misconduct.

**THE BOARD**

The Police Accountability Board.

**THE OFFICE**

The Office of Police Accountability; such Office serves as staff to the Board. Office staff are employees of the City of Rochester.

**USE OF THEY, THEIR, THEM**

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

**§ 18-3 Establishment and jurisdiction.**

- A. The Civilian Review Board, established by Rochester City Council Resolution 92-40 and expanded by Resolution 95-08, will be abolished after and only after the PAB is established and fully functional for 60 days. The PAB shall be deemed to be fully functional as soon as the first Executive Director assumes office and the Board has adopted rules and procedures in accordance with § 18-6.
- B. There are hereby established independent agencies of municipal government to be known as the "Police Accountability Board" and the "Office of Police Accountability." The Office of Police Accountability shall consist of an Executive Director and other staff, to perform daily administrative functions on the Board's behalf. The Board together with its Office shall be an agency of the City separate from the Rochester Police Department and other local, state, and federal law enforcement agencies. The members of the Board, regardless of the original appointee of each member, shall be appointed through legislation approved by the City Council.

- C. The Board and Office shall be independent of the RPD and shall investigate and adjudicate complaints of misconduct against RPD officers.
- D. As a condition of employment with the RPD, all officers, including but not limited to the Chief, shall fully cooperate with the Board. The Office and this article. In cases where officers do not cooperate, the Board shall send a recommendation to City Council to invoke its power under City Charter § 2-19 to remove the officer. This shall not in any way limit the Board's right to invoke other remedies, including judicial enforcement of the article.
- E. The Board, and the Office on its behalf, shall have the power to conduct independent investigations as further outlined in § 18-5G below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD officers if a complaint of misconduct is sustained.
- F. Based on information and belief that an investigation is warranted, the Board shall have the power to initiate an investigation, even in the absence of a civilian complaint.
- G. The Board, in conjunction with the Chief of the Rochester Police Department and Locust Club President, shall establish a disciplinary matrix. The Board shall request input from the Chief, the Community Justice Advisory Board, the Police Accountability Board Alliance, and the President of the Rochester Police Locust Club when developing the matrix.
- H. The RPD and the City shall provide to the Board, as requested: access to all documents and evidence, including but not limited to RPD personnel files, IA Pro database, all other RPD databases, PSS investigative files, criminal and civil case files, disciplinary hearing records, video and audio recordings from body cameras or other sources, all RPD policies, procedures, and practices, the General Manual, and any other documents that pertain to policies, tactics, complaints, or charges against RPD officers and their subsequent investigation and adjudication, or other sources of information deemed appropriate by the Board.
- I. The Board shall have the power to investigate any and all conduct, acts, or omissions by any RPD officer.
- J. The Board shall have the power to review and recommend changes to RPD regarding RPD policies, procedures, patterns, practices and training.

**§ 18-5 Powers and duties.**

- A. The Board shall have the power to conduct independent investigations as further outlined in § 18-5G below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD officers if a complaint of misconduct is sustained.

- B. The Board shall establish a disciplinary matrix in conjunction with the Chief of the Rochester Police Department and Locust Club President. The Board shall request input from the Chief, the Alliance 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 the RPD. Written acknowledgment of receipt of recommendations will be sent to the Executive Director from the Chief of Police within 60 days with a detailed listing of what items are and are not being implemented.
- D. The Board and the Chief shall establish a cooperative relationship to ensure the orderly and efficient flow of information.
- E. Accessibility.
- 1) The Board shall provide language access for limited- or non-English-proficient complainants and witnesses at all stages of the investigative and adjudicative process. Language access shall be available during all operating hours of the Board.
  - 2) The Board shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities at all stages of the investigative and adjudicative process. Such accommodations shall be available during all operating hours of the Board and shall include but not be limited to: accessible means of egress, accessible means of communication via auxiliary aids or services giving primary consideration to preferences of the individual deserving such services, and access to ASL interpreters.
- F. Initiation of complaints.
- 1) Complaints may be received directly by the Board, or upon referral from PSS, the Mayor, the Council, any Councilmember, or the Chief. Any complaint received and accepted by the Board shall be transmitted to PSS, and any complaint received and accepted by PSS shall be transmitted to the Board.
  - 2) The Board shall receive complaints by telephone, in person, by mail, email or web form. Complaints shall be received and considered whether submitted under signature or anonymous. Efforts to simplify the procedure shall be made to encourage filing. Professional standards of confidentiality with regard to the written release of information and informed consent will apply to all complaints filed. With respect to the confidentiality of all interested parties, the Board shall comply with all local, state, and federal law.
  - 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 City Charter.

G. Investigation of complaints.

- 1) An employee of the Office shall interview complainants, witnesses and RPD officers, and gather relevant evidence. PSS shall provide the Board and Office with written notice of the commencement of any investigation, and likewise, the Board shall provide PSS with written notice of the commencement of any investigation.
- 2) The Board and the Office acting on the Board's behalf shall have the power to investigate any and all conduct, acts or omissions by any RPD officer independent of any investigation conducted by PSS.
- 3) Subpoenas may be issued upon the affirmative vote of a majority of the Board at any time during the review and adjudication processes. Such subpoenas may compel the attendance of witnesses, RPD officers, 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 officer or 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 VIIIA, § 8A-1, of the City Charter to promulgate new rules or utilize existing rules regarding discipline and administration of RPD officers to ensure compliance with Board procedure and applicable law. RPD officers and employees shall be notified of their rights against self-incrimination under *Garrity v. New Jersey*, 385 U.S. 493 (1967), before any testimony is taken from them.
- 4) Upon receipt of a complaint, within the time frame allotted in accordance with the police bargaining agreement, 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, they shall send all such findings to the Board within five business days.
- 5) One police officer holding the rank of Captain or higher shall be made available by the Chief to the Board and Office at the Board's request to serve as a consultant or advisor should questions arise from members of the Board or Office staff regarding specific police practices, policies, or general orders. The officer so assigned shall be neither from PSS nor the Commanding officer of the officer(s) involved in the case being reviewed.
- 6) A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board and Office. Such declination must be made in writing by the complainant, and shall be forwarded to the Chief by the Board.
- 7) Statements made by complainants, RPD officers or 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.
- 8) 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 decision, or notice that the Board has determined no disciplinary action is appropriate.



Nonetheless, the Chief shall retain the authority to suspend an RPD officer during the investigation and adjudication of a complaint against the RPD officer.

H. Reasonable cause determination.

- 1) Upon completion of the review of the material from the PSS investigation and/or the Office 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 § 18-6A(3), the Board Chairperson shall establish a rotation of Board members to serve on hearing panels composed of three members. Each panel shall include one Alliance-appointed member, but shall not include more than two Alliance-appointed members. Each panel shall select its own Chairperson on a case-by-case basis.
- 2) As described in § 18-5G(3), subpoenas may be issued during the hearing process.
- 3) Upon a majority vote of the Board membership in a duly published open meeting, the Board may determine to go into executive session so that the panel may conduct its hearing.
- 4) Panel hearings shall be recorded and transcribed by the Board. No other recordings or transcriptions are permitted.
- 5) Decisions made 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 complainants and RPD officers 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 officers 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, officers, 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: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD officer(s) pursuant to the disciplinary matrix described in § 18-5B.
  - a) If the panel finds that the RPD officer(s) may have engaged in criminal conduct, it shall refer the matter to the Monroe County District Attorney's Office or the New York State Attorney General's Office and request that their office initiate an investigation.
  - b) The Board shall notify the complainant and the Chief, in writing, within five business days of the panel's findings and decision. It shall be the responsibility of the Chief to notify the RPD officer(s) who were the subject(s) of the panel's findings and decision.
  - c) If a Notice of Panel Decision contains a dissenting opinion, the complainant may appeal to the Board for review of the panel's findings. The complainant's appeal requesting Board review must be in writing and received by the Board no more than 30 days after the Notice of Panel Decision 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 decisions, 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.
  - d) If there is an appeal by the complainant, the Board shall provide a written Notice of Board Decision to the complainant and the Chief. The Notice of Board Decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD officer(s) pursuant to the disciplinary matrix described in § 18-5B.
  - e) RPD officers shall have the right to appeal pursuant to § 76 of NYS Civil Service Law.

- f) Panel decisions may include disciplinary sanctions, including but not limited to counseling, reprimand, retraining, suspension, demotion, or dismissal.
- 11) The panel shall report its findings and decisions 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 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 the exact discipline imposed in accordance with the matrix.

J. Discipline.

- 1) Before conducting any hearings, the Board shall establish a disciplinary matrix per § 18-5B.
- 2) This article shall not limit the Chief's ability to impose any additional discipline for an RPD officer above and beyond that recommended by the Board.
- 3) The Board shall notify the complainant and the Chief, in writing, within five business days of the Board's final decision of discipline.
- 4) The Board's determination of discipline shall be binding on the Chief, who shall impose the discipline determined by the Board in accordance with the matrix within five days of receipt of the Board's decision. The Chief will provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix within 30 days.

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, the Mayor, and City Council. The Board shall publish its policy recommendations on the Board website.
- 3) The Board's recommendations may address, but are not limited to: conduct and policies exhibiting bias against individuals based on race, gender, sexual orientation, perceived sexual orientation, gender identity, disability and perceived disability; use of force both lethal and nonlethal; de-escalation policies; vehicle and foot pursuits; use of canines; failure to acknowledge and/or accommodate the needs of people with disabilities, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities, traumatic brain injuries; 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 recommendations, then the Chief shall provide a timeline to the Board indicating implementation of each recommendation.
- 6) The Board shall publish on its website whether or not the policy recommendations have been implemented.

**§ 18-6 Officers and staff.**

- A. At the initial Board's first meeting, the Board shall elect a Chairperson and Vice Chairperson, by majority vote. Subsequently, the Board shall elect a Chairperson and Vice Chairperson by majority vote, at the first meeting after July 1 of each year. Each Chairperson and Vice Chairperson shall serve until the June 30 following their election. No Board member shall serve as Chairperson or Vice Chairperson for more than three consecutive years. The initial Board shall convene a search committee for an Executive Director and a committee to establish rules of procedure not provided for herein. The search for a new Executive Director shall take place in the first year and whenever there is a vacancy. The Chairperson will also be responsible to:
  - 1) Facilitate and preside over meetings of the Board;
  - 2) Establish committees of Board members as needed; and
  - 3) Establish a regular rotation of Board members to serve on hearing panels.
- B. A quorum of five Board members must be present to conduct Board business, regardless of vacancies. No business shall be transacted by the Board without a quorum being present. Board action shall be decided by a simple majority of Board members present.
- C. Police Accountability Board Executive Director.
  - 1) The PAB shall conduct a search process to hire a full-time Police Accountability Board Executive Director in accordance with the City of Rochester hiring practices. The Executive Director is subject to a Council confirmation. The Executive Director 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 12 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 City Charter, 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 the Office, for the daily administrative work of the Board.
- 7) The Executive Director shall be responsible for hiring and supervising staff of the Office of Police Accountability in accordance with the City Charter and the Municipal Code. All such persons and their immediate family shall be free of any conflict of interest, including but not limited to current or former employment with the RPD or any other local, state, or federal law enforcement agency.
- 8) The Executive Director and all employees of the Office of Police Accountability shall be subject to all personnel codes, practices and policies that are applicable to City employees (Personnel Policies), including but not limited to those pertaining to ethics, confidentiality, discrimination, disabilities, whistleblowers, sexual harassment, workplace violence, retaliation, vacations and leaves, civil service and training with regard to the other aforementioned policies. The Department of Human Resources Management (DHRM) shall communicate and administer the Personnel Policies for the Executive Director and all other Office staff. Neither the Executive Director nor any other supervising employee of the Office shall contradict or supersede DHRM's directions and authority over the Personnel Policies.

**§ 18-7 Training and outreach.**

- A. Board and Office training. The Board and Office 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 the Office 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 antiracism;
  - 3) Gender identity and sexuality;
  - 4) Disability rights, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities and traumatic brain injuries;
  - 5) Classism, poverty and homelessness;
  - 6) Trauma-informed policing and crisis intervention, including RPD officer well-being;
  - 7) Patterns, practices, policies, and procedures of the RPD;
  - 8) Police Accountability Board Local Law;



- 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 to inform how the Board functions and serves the community and public reporting;
- 12) Discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance;
- 13) RPD ride-alongs;
- 14) Access to RPD training; and
- 15) Access to RPD manuals.

**B. Community outreach.**

- 1) The Board and the Office on its behalf shall conduct outreach to community members, groups, and nonprofit organizations. The Board and Office shall provide language access for limited- and non-English-proficient individuals. The Board and Office shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities.
- 2) Complaint forms and instructions shall be made available by RPD officers and 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 or the Office on its behalf shall survey complainants and the public to assess satisfaction and identify concerns with the Board's investigative and adjudicative processes.

**§ 18-8 Retaliation prohibited.**

Retaliation by RPD officers and employees against complainants, witnesses, the Board, its Office and staff, and other RPD officers and 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, action will be taken based upon the disciplinary matrix. The Chief will also be notified of the misconduct.

**§ 18-9 Conflict of interest.**

- A. No Board member or Office employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest. Any conflict of interest prohibited by Article 18 of the General Municipal Law or by the Code of Ethics shall disqualify a member. A conflict of interest shall include, but is not limited to: if they have reason to believe or expect that they will derive a direct monetary gain or suffer a direct monetary loss, by reason of their official activity; or if any benefit or detriment accrues to them as a member of a business, profession, occupation, or group to a greater extent than any other member of the business, profession, occupation, or group. Board members and Office employees may not represent a complainant or an RPD officer 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 the situation to the Chairperson, and shall recuse themselves from deliberations or action in connection with that case.
- C. Board members and Office employees shall be subject to the City of Rochester's Code of Ethics.

**§ 18-10 Legal representation.**

- A. The Corporation Counsel shall advise and represent the Board and the Office as it would other public boards and agencies in accordance with the Law Department's duties under Article IX of the City Charter. The Board may then seek and retain independent legal counsel for any purpose and may also utilize the City's Corporation Counsel at its discretion.
- B. All contracts for outside services (legal or other) shall be procured in accordance with the City of Rochester purchasing requirements and are subject to City Council approval when over \$10,000 or the Police Accountability Board does not have adequate funds in their annual budget to cover the cost of an agreement less than \$10,000.

**§ 18-11 Police Accountability Board reports.**

- A. The Board or the Office on its behalf shall publish on its website 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 on its website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor 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) Detailing information that is legally available to the Board, including but not limited to: the date, time, and location of each incident, whether there is video of the incident or not, age, race, and gender of adult complainant(s), rank(s), gender(s), section(s), and race(s) of the RPD officer(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 and Office shall comply with local, state, and federal law and redact any information that may not be disclosed publicly. The number of previous complaints against the RPD officer(s) within 10 years of the incident and whether or not those complaints were sustained.
  - 5) The number of times and the types of use of force used per complaint and the total number of times and types of use of force used;
  - 6) The number of times pepper spray was deployed per complaint and the total number of times pepper spray was deployed;
  - 7) The number of times and types of pain compliance tactics used per complaint and the totals for each use of pain compliance tactic;
  - 8) The number of times and types of use where a TASER<sup>®</sup> was deployed;
  - 9) Complaint and sustain rates for each RPD section;
  - 10) In the event where an RPD officer 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 officer(s), and/or any bystanders;
    - e) Any medical care provided and what type; whether the person or animal was killed;
    - f) The number of cases where the panel's disciplinary decision was enforced by the Chief;

- g) The number of cases where the Chief disputed the disciplinary decision of the panel;
  - h) The type of sanctions imposed;
  - i) The type of sanctions decided upon;
  - j) The number of cases reviewed by the Board;
  - k) The number of complaints found not to have reasonable cause to be heard;
  - l) The number of complainants contacting the Board but not following through with a formal signed complaint;
  - m) The length of time each case was pending before the Board;
  - n) 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 published on the Board's website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor and 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. Any video associated with the complaint that can be made public shall be made publicly available.
- G. The Board and Office shall comply with all local, state, and federal law concerning the release of personnel information.

**§ 18-12 Audit and evaluation.**

- A. The Board may, by majority vote, perform an audit, or direct that an audit be performed, to assess the investigation and adjudication of civilian complaints.
- B. An independent organization of Council's choosing shall conduct a formal annual evaluation of the functions, processes, and outcomes of the Police Accountability Board and the Office of Police Accountability. The evaluator will make specific recommendations to the Council regarding changes to the Board's and Office's functions, processes and outcomes.



**§ 18-13 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 article, including the funding of staff and all necessary operating expenses for the purpose of resolving all complaints within 90 days. The Board shall be funded through the budgetary process of the City, pursuant to Article VI of the City Charter. The Board budget shall be separate from, and independent of, the RPD budget.
- B. The Board shall annually prepare a budget in accordance with the budget allocation level that is deemed appropriate by the Office of Management and Budget. 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, such as office furnishings, equipment, training for all Board and staff, and a national search for the Executive Director.

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



## City of Rochester

City Hall Room, 30 Church Street  
Rochester, New York 14614-1284  
[www.cityofrochester.gov](http://www.cityofrochester.gov)

### INTRODUCTORY NO.

462,463,464

**Malik D. Evans**

Mayor

**Miguel A. Meléndez, Jr.**

City Council President

December 20, 2022

TO THE COUNCIL

Ladies and Gentlemen:

Re: Message of Necessity – Resolutions  
Police Accountability Board Training, Hiring,  
and Budgeting

We are submitting this Message of Necessity so that action on these three resolutions may be taken at the December 20<sup>th</sup> City Council meeting as follows:

- To address some of the Police Accountability Board personnel policy reforms recommended in the November 16<sup>th</sup> investigation report of outside counsel, and
- To reallocate to pressing community needs the anticipated surplus in funds appropriated to the PAB in the 2022-23 Budget.

Respectfully submitted,

Miguel A. Meléndez, Jr.  
President

Malik D. Evans  
Mayor

RECEIVED  
CITY OF ROCHESTER  
CLERK/COUNCIL OFFICE  
JAN 16 2023 2:51



**City of Rochester, NY**  
**Rochester City Council**

City Hall Room 301A • 30 Church Street • Rochester, New York 14614-1290

**Miguel A. Meléndez, Jr.** Council President, Councilmember At-Large

December 20, 2022

TO THE COUNCIL

Ladies and Gentlemen:

Re: Police Accountability Board –  
Training, Hiring and Spending Reforms

Transmitted herewith for your approval are three resolutions pertaining to the Police Accountability Board (PAB) and its staff. These resolutions will:

- Require that the Executive Director and other PAB staff, which in an accompanying proposed Local Law are proposed to be redesignated as the Office of Police Accountability, perform all training that is mandated by their status as City employees, as well as all training required of PAB staff by Charter § 18-7A, or face dismissal.
- Continue through to the end of the fiscal year (June 30, 2023), the moratoriums on staff hiring and budget expenditures approved in May 2022 (Resolution No.2022-27). The PAB and its staff will not be allowed to hire new staff or spend budgeted funds without the prior approval of the Council President or their designee.
- Provides for reappropriating for other community needs funds presently appropriated to the PAB in the 2022-23 Budget. It is anticipated that funds budgeted to the PAB will remain unspent in this fiscal year. This resolution authorizes Council to reappropriate unspent funds from the PAB's 2022-23 Budget among the following community needs only: (1) **Housing & Homelessness**; (2) **Substance Abuse Treatment**; (3) **Mental Health**; and (4) **Public Safety & Violence**.

Respectfully submitted,

A handwritten signature in blue ink that reads "Miguel A. Meléndez Jr.".

Miguel A. Meléndez, Jr.  
President

## INTRODUCTORY NO.

462

Resolution No.

### **Resolution mandating training requirements for the Police Accountability Board and its staff**

WHEREAS, due to complaints by personnel of the Police Accountability Board (PAB) that raised questions regarding the lawful and appropriate functioning of the PAB as an agency, during a special meeting held on May 19, 2022, this Council approved Ordinance No. 2022-145 authorizing the hiring of the Constangy Brooks law firm as outside counsel to investigate and to report upon the personnel complaints against the PAB (Counsel's Report); and

WHEREAS, the Counsel's Report issued on November 16, 2022 revealed numerous violations of the City's personnel, ethics, and PAB training requirements and included among its recommendations prioritizing and enforcing the training requirements for PAB board members and staff.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Rochester as follows:

Section 1. The Police Accountability Board (PAB), its Executive Director, and its staff are notified and reminded that they are required to satisfy training requirements with regard to City personnel practices and policies as administered by the Department of Human Resource Management, as well as training requirements specific to the PAB and its staff as set forth in City Charter § 18-7A. Each PAB Boardmember, Executive Director and PAB staff member is hereby directed to complete all training requirements that remain incomplete and to redo any DHRM training requirements previously completed.

Section 2. The failure to complete training requirements by June 30, 2023 shall be deemed grounds to remove or refrain from appointing any Boardmember or the Executive Director, as well as grounds for terminating the employment of any PAB staff member.

Section 3. This resolution shall take effect immediately.



## INTRODUCTORY NO.

463

Resolution No.

### **Resolution extending the temporary direct Council supervision over staff hiring and expenditures relating to the Police Accountability Board**

WHEREAS, due to complaints by personnel of the Police Accountability Board (PAB) that raised questions regarding the lawful and appropriate functioning of the PAB as an agency, during a special meeting held on May 19, 2022, this Council:

- a. approved Ordinance No. 2022-145 authorizing the hiring of the Constangy Brooks law firm as outside counsel to investigate and to report upon the personnel complaints against the PAB (Counsel's Report); and
- b. approved Resolution No. 2022-27, which, commencing immediately and continuing until the completion of Counsel's Report, directed the PAB to refrain from hiring and to refrain from making expenditures (other than for the salary and benefits of existing employees) without the prior approval of the Council President.

WHEREAS, the Counsel's Report was completed and issued on November 16, 2022;

WHEREAS, in addition to reporting on the investigation that revealed numerous violations of the City's personnel, ethics, and PAB training requirements, the Counsel's Report lists a series of recommendations intended to remedy the violations and prevent repeat violations going forward (Recommendations); and

WHEREAS, the Council concludes that its oversight of the PAB's hiring and spending should continue through to the end of the current fiscal year in order to make sure that the PAB is ramping up its investigation, hearing, decision-making and advisory functions to the maximum extent feasible consistent with PAB's implementation of those Recommendations that the Council, in consultation with the Department of Human Resource Management, Office of Management and Budget and the Law Department, deems necessary.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Rochester as follows:

Section 1. Commencing immediately and continuing until June 30, 2023, the Police Accountability Board and the Executive Director shall not hire any new or additional personnel without the prior approval of the Council President.

Section 2. Commencing immediately and continuing until June 30, 2023, the PAB and its staff shall make no expenditure without the prior approval of the Council President, provided, however, that the prior approval of the President shall not be required for paying the salary and providing the benefits to the PAB's existing employees.

Section 3. This resolution shall take effect immediately.

INTRODUCTORY NO.

464

Resolution No.

**Resolution allocating the unspent Police Accountability Board funds to community needs**

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

Section 1. The Council hereby resolves that any funds appropriated to the 2022-23 Budget of City Council & Clerk for the Police Accountability Board (PAB) that are anticipated to remain unspent at the end of the present fiscal year can only be appropriated to the following four community need categories (Community Needs) in amounts and shares to be determined and approved by the Council in subsequent legislation:

- a. Housing & Homelessness;
- b. Substance Abuse Treatment;
- c. Mental Health; and
- d. Public Safety & Violence.

Section 2. The Council hereby directs its staff to assist in the preparation of the Community Needs appropriations authorized herein by consulting with the Office of Management & Budget, the Department of Finance, the Department of Neighborhood and Business Development, the Department of Recreation and Human Services, the Police Department, the Fire Department, the Office of Mayor, any other appropriate City agency or official, or outside providers of Community Needs to obtain a conservative estimate of the amount of budgeted 2022-23 PAB funds likely to remain unspent at the end of the fiscal year (Unspent Funds) and to identify a variety of Community Needs projects, programs or facilities that would benefit the community with an appropriation of Unspent Funds.

Section 2. This resolution shall take effect immediately.