

### The Geospatial Information Systems (GIS) Charter Amendment

This amendment, proposed by the NYC Geospatial Information Systems and Mapping Organization (GISMO) calls for the following elements to be added to the DOITT section of the Charter (Chapter 48).

**Contact:** Alan Leidner, President, NYC GISMO: [aleidner@nyc.rr.com](mailto:aleidner@nyc.rr.com); 917-455-2834

- **Recommendation: Require appointment of a Deputy Commissioner for Geospatial Information Systems who would serve as the City's Chief Geospatial Information Officer**  
**Current Law:** Calls for 4 Deputy Commissioners one of whom is to be designated as 1<sup>st</sup> Deputy Commissioner  
**Justification for Proposed Change:** A City Geospatial Information Officer (CGIO) at the Assistant Commissioner level existed from 2002 – 2004, but that position was abolished. Currently, the City does not have a CGIO or anyone else designated as the Citywide GIS leader. Yet many major cities across the US and Europe, and almost all U.S. States have CGIO's.
- **Recommendation: Require that DOITT form a GIS steering committee composed of City agency GIS managers and outside experts.**  
**Current Law:** The Charter currently provides for DOITT to engage in interagency coordination activities (1072h)  
**Justification for Proposed Change:** The power of GIS depends upon collaboration and sharing. Agencies need to meet regularly to coordinate activities, develop policy and share data. City agency GIS Directors have consistently spoken out for a GIS Steering Committee.
- **Recommendation: Require the development and maintenance of a GIS strategic plan**  
**Current Law:** The current Charter provides for long range telecommunication planning (1072b), and computer systems and data communications strategic plans (1072g).  
**Justification for Proposed Change:** The GIS field is very dynamic with new applications, data types and technologies regularly being rolled out by developers. Without a strategic plan it is impossible to properly plan for best use of existing and new GIS resources and capabilities.
- **Recommendation: Require that DOITT act to ensure that spatially enabled open data is interoperable and easy to use**  
**Current Law:** The current Charter provides for simplified access to shared information (1072L)  
**Justification for Proposed Change:** Thousands of open datasets, available on the City's Open Data Portal, are an enormous resource for everyone. Most open data sets have a location attribute which makes it possible for the datasets to be used together, vastly increasing their value. DOITT must work to standardize its spatial open data and ensure that open data is made easy to use.
- **Recommendation: Require the formation of an underground utility data steering committee composed of representatives of government and private utility companies.**  
**Current Law:** The current Charter makes extensive reference to telecommunications, appropriately identifying it as a critical component of IT.  
**Justification for Proposed Change:** Underground infrastructure data is in the hands of City agencies, State organizations like the MTA and the Port Authority, and private utilities like Con Edison. These organizations are reluctant to standardize and to share their data. Creating an underground utility steering committee will motivate strategies to improve the sharing of quality underground infrastructure data for operations support and public safety.

**City Charter Amendment-DOITT (Chapter 48)-Public Hearing Statement  
Wendy Dorf, Director, NYC GISMO-May 2, 2019**

**Bio:** My career in City government spanned 34 years, including 6 years as a Legislative Analyst at the City Council Finance Unit; and 21 years of service at NYC DEP where I directed mapping of the City's water supply system and worked on the development of NYC's basemap. I directed infrastructure mapping at the Emergency Mapping and Data Center following the 9/11 attack. Since then I consulted for Plangraphics, a GIS firm, and Parsons Brinckerhoff, an infrastructure/engineering firm. Currently I serve on the Board of Directors of the NYC Geospatial Information Systems and Mapping Organization (GISMO). I am engaged in an international project of the Open Geospatial Consortium to develop a data model for all underground infrastructure.

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While working at NYC DEP in the mid 1980's, I was tasked with an effort to manage a project to digitize and create a 6,000 mile network of the city's water mains. The budgetary justification for mapping the accurate location of water mains was to coordinate planning and operations and also to facilitate design and construction, to reduce excess costs incurred by delays in construction. Further, if the city was able to locate a water main break rapidly, property damage, and payments associated with damages, could be reduced. This could only be accomplished with a networked map of water mains made possible with the use of geospatial information systems.

The successful implementation of the water main map for operations at DEP convinced the managers to fund a citywide sewer map layer. New York City is one of the very few cities in the world that has digital maps of its water and sewer systems.

I was in charge of underground infrastructure mapping of the World Trade Center site. I worked with DEP, DDC, MTA, Port Authority, Con Edison, Empire City Subway, etc. I collected maps of different scales and media and supervised a team of GIS technicians and engineers assigned to align/layer the maps for use by the responders as they navigated the World Trade Center site. It took several weeks to bring all of this information together, but it enabled us to discover a buried tank of freon gas threatened by underground fires, and enabled us to take measures to avoid the release of phosgene, mustard gas.

Since 9/11 I have been working on the development of an accurate, integrated underground infrastructure map for first responders. Since 9/11 we have canvassed colleagues, interviewed agency executives, had presentations with representatives, etc. ...all of whom agree that this initiative is critical for emergency response and for the development of New York as the premier Smart City. The project has been stalled due to lack of funding.

My efforts in advancing the use of GIS for infrastructure has been seriously impeded by lack of leadership, a lack of planning and difficulties with coordination between City infrastructure

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agencies and utilities. Yet recent analysis has shown that City infrastructure agencies and utilities could save billions of dollars by having complete, accurate and interoperable infrastructure data. Available interoperable utility data is also critical for disaster planning and response.

I support amendments to Chapter 48, DOITT of the City Charter as follows:

- The appointment of a Deputy Commissioner who serves as the City's Chief Geospatial Information Officer
- The establishment of a GIS Steering Committee comprised of Agency GIS leaders and other experts.
- A requirement that the City produce and keep up to date a GIS strategic plan.
- A requirement that the spatial data connecting most of the City's open data be standardized, interoperable and easy to use.
- The establishment of an underground infrastructure steering committee comprised of representatives from City infrastructure agencies and private utilities, to guide the improvement of utility data so it can be quickly accessed and used during routine operations and emergencies.

**City Charter Amendment-DOITT (Chapter 48)-Public Hearing Statement-May 2, 2019**

**Robert C. Dorf, Esq., Attorney and Retired Judge**

**BIO : I am the legal advisor to New York Geospatial Catalysts LLC and a retired United States Administrative Law Judge. I am also a past Adjunct Professor of Geographic Information Systems Law (GIS) at Hunter College, Geography Department as well as author of several legal articles on subjects related to GIS, Freedom of Information Law and Criminal Law. In addition, I am the author of a Provisional Patent Application filed with the United States Patent and Trademark Office on February 7, 2019, entitled "Radar Sensor Alert System For Schools" and also author of a related paper entitled "Stop School Shootings," proposing installation of a GIS based direct alert system to Police Radio Motor Patrol Cars (RMP's). (I may be contacted at robertclaydorf@gmail.com)**

**I am limiting my comments to Chapter 48 and amendments contained in a newly numbered Section 1075, which proposes the addition of a permanent government steering committee composed of public and private utilities and construction companies which will work towards the development and implementation of an underground infrastructure map for the City in a GIS format compatible with current DOITT standards.**

**In the second paragraph I have drafted, it is proposed that the Section 1075 committee be empowered to collect underground data and to require public city agencies, utilities and private data base owners to provide their GIS and other data base information. My thinking in providing authorization for the Section 1075 committee to require adherence to its data requests is that without the authority and power to enforce data requests such a committee may find itself unable to do its work in the event franchise agreements do not provide a basis to collect the data and in the further event that builders' and contractors' agreements with the city and financiers do not contain sufficient language to accomplish the required data collection.**

**In a third paragraph, I address the problems which may be created when private entities provide data to public authorities and government agencies and thereafter Freedom of Information requests are made for heretofore private and protected GIS data bases. In this regard it should be clear that requests for public underground infrastructure data implicate both security issues and privacy rights when data heretofore private and protected as Trade Secrets, Patents or Copyrights is requested by the public through the New York State Freedom of Information Law (FOIL) and/or the Federal Freedom of Information Act (FOIA).**

Comments submitted to the **NYC Charter Revision Commission 2019**

2-May-2019

We are writing to express our support of amendments to Chapter 48 (DOITT) of the Charter, submitted by Alan Leidner, President of the NYC Geospatial Information Systems and Mapping Organization (GISMO). A copy of the proposed **Geospatial Information System (GIS) Charter Amendment** is appended to this document.

We are Applied Geographics, Inc (AppGeo), a Boston-based GIS consulting company with a 28-year history of providing services primarily to state and local government clients across the US, including both New York State and New York City. A particular strength of AppGeo is in conducting studies and developing strategies to improve GIS coordination across large government organizations, usually states and large cities. We developed the GIS strategic planning template for the Federal Geographic Data Committee and prepared strategic plans following that template for many states (including New York) over the past decade. The best practice recommendations that are common to nearly all of our plans mirror very closely the proposed GIS Charter Amendment, and for this reason, we are pleased to add our voice in support.

In particular, we find that having an empowered leader with authority and clear responsibilities to coordinate GIS across the agencies is a critical requirement for success. The role is typically defined for a Geospatial Information Officer (GIO) and is a signature element in successful GIS coordination programs. The state of New York has a GIO at the Office of Information Technology Services (ITS), the state's counterpart to DOITT. William Johnson, the state's first GIO (from 2013-2016), is a senior member of the AppGeo team. Mr Johnson affirms that the presence of a NYC GIO, as proposed, would be highly beneficial to strengthen the level of coordination and collaboration between the city and the state, for mutual benefits.

We also strongly endorse the proposals to establish a GIS Steering Committee, the development and maintenance of a GIS Strategic Plan, and the focus on spatially-enabled open data. All are hallmarks of successful government GIS organizations.

We would be pleased to address any questions or concerns you might have on these issues.

Thank you,



Richard K. Grady, President  
AppGeo

## **Brooklyn**

I'm a former city planner and urban designer. I currently work with local community based development organizations across the city, such as the Downtown Brooklyn Partnership. I see first hand how much these organizations strive to provide useful and relevant information to their community members – the local stakeholders, as well as to potential private sector partners and to city agencies. This information is critically important for the local economic development process as well as ongoing urban planning and policy adoption, yet in most cases the data behind this info is often inaccurate or not accessible.

With the looming pressures New York City as a whole is expected to face in the years ahead, access to geospatial information is going to be more important than it has ever been before.

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I urge city officials and council members to consider revising the charter accordingly to centralize and strengthen GIS Data usage, particularly about important infrastructure. Doing so should promote accessibility to this data so that it can be put to good use informing those with missions and bottom lines associated with making the many communities in Brooklyn more vibrant and resilient.

Thank you for your consideration of this important amendment.

- Starling Childs

## **Campaign Finance & Lobbying Reform – Democracy Vouchers**

My name is John F. Manning. I am a resident of Brooklyn and a life-long New Yorker. Last September I testified for campaign finance and lobbying reforms that would empower the citizenry and end the control of big money over local government, how this issue is the root cause of many other problems, and to ask the Charter Revision Commission to place Democracy Vouchers on the November ballot as an alternative to the current campaign finance system. Thank you for the opportunity to speak again.

I have read the Preliminary Staff Report for Charter2019. I find it unfortunate that this issue has been relegated to the “Other Proposals” section for allegedly failing to satisfy the Focus Criteria of December 10, 2018. The Focus Criteria states that Commission proposals should “...improve government effectiveness, transparency, accountability, or efficiency... (and) encourage meaningful participation by New Yorkers.”

The biggest shortcoming in our political system today is the near-impossibility of conducting a successful election campaign without accepting huge sums of money from lobbyists, special interests and political action committees. The seemingly unchallengeable power of the Real Estate Industry in New York City and State government is just one of many examples

of how our democratic process has been corrupted. The lobbying industry, as it currently exists, is nothing less than legalized bribery.

The Mayor, Governor, our City Council Members, and our State Legislators, are supposed to be wrestling with representing the interests of their constituents and doing what is best for the society as a whole. They should not be responding to whichever lobby donates the greatest amount of money to their campaigns, or what special interest dangles lucrative post-government employment in front of them. That corruption, fraud and "Pay to Play" have become so pervasive in New York Government that it is hard for honest and competent people to get elected is a direct result of our current campaign finance and lobbying laws.

If every registered voter in the City were allocated 4 Democracy Vouchers worth \$25 or \$50 each, to give to the candidate(s) of their choice, it would encourage high voter turnout and enable well-meaning people of modest means to run for office. Democracy Vouchers are currently being used in Seattle, Washington and are being considered in numerous other cities and states. The Staff Report states that Democracy Vouchers are a new thing and that there is a lawsuit challenging Democracy Vouchers in Washington State. That lawsuit was dismissed in Superior Court and is currently being appealed. If you read the suit, the legal briefs, and the Superior Court's decision to

dismiss it you will find the logic and arguments of the suit unconvincing. There is nothing new, radical or unconstitutional about wanting to replace corruption and pay to play with honest good-government. The lobbying industry finds Democracy Vouchers to be a mortal threat and is trying to kill this before it catches on.

Democracy Vouchers, limiting other campaign donations to small amounts, and ending third-party donations from lobbying firms and bundlers, could cause the current political climate of cynicism, complacency and low voter turnout to be replaced with idealism, leadership and community involvement.

Democracy Vouchers will open up our political process, giving voters better choices. It will enable all kinds of citizens who care about their communities and our great City to run for office or otherwise get involved in civic affairs. The City of New York being the national leader of honest, competent, good government and real progressiveness would be a wonderful legacy for the Charter2019 Commission.

Let's have the courage and integrity to end the grip that big money, lobbyists and special interests have on our noble democratic process. Please give the voters the choice this November to amend the New York City Charter

to create Democracy Vouchers, and to end large bundled and third party donations.

Thank you,

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(718) 491-3701  
jmanngf@verizon.net

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

MARK ELSTER and SARAH PYNCHON,

Plaintiffs,

vs.

THE CITY OF SEATTLE,

Defendant.

No. 17-2-16501-8 SEA

ORDER GRANTING CITY OF SEATTLE'S  
MOTION TO DISMISS

Defendant City of Seattle has moved to dismiss the complaint filed by Plaintiffs Mark Elster and Sarah Pynchon. After briefing and argument of counsel,<sup>1</sup> the Court GRANTS the City's motion to dismiss based on the analysis set out below.

**City of Seattle's Democracy Voucher Program**

On November 3, 2015, the voters in the City of Seattle passed Initiative I-122, codified as "Honest Election Seattle," in Seattle Municipal Code (SMC) 2.04.600 to 2.04.690. The initiative authorized the funding of a "Democracy Voucher Program" through the imposition of an additional property tax imposed in years 2016 through 2025. The proceeds of this tax may be used only to fund the Democracy Voucher Program.

<sup>1</sup> See Appendix A for the materials considered by the Court.

1 Under this program, every Seattle registered voter received four vouchers totaling \$100 which  
2 the voter can assign to qualified candidates running for election to the position of city mayor, city  
3 attorney, and city councilmember. SMC 2.04.620(b) and (e).

4 Candidates qualify to receive these vouchers from voters if they agree to participate in at least  
5 three public debates for both the primary and general elections, and they agree to comply with special  
6 campaign contribution and spending limits. SMC 2.04.630(b). To qualify for the program, candidates  
7 must receive a minimum number of campaign contributions, ranging from 600 for a mayoral candidate  
8 to 150 for a city attorney candidate, of at least \$10 or more. SMC 2.04.630(c). The campaign spending  
9 limits run from a high of \$800,000 total for a mayoral candidate, to \$150,000 total for district city  
10 council candidates and city attorney candidates. SMC 2.04.630(d). If a qualifying candidate  
11 demonstrates that his or her opponent has exceeded these spending limits, the candidate may ask the  
12 Seattle Ethics and Elections Commission (SEEC) to be released from the program's contribution and  
13 spending limits. SMC 2.04.630(f).

14 All Seattle residents are entitled to receive Democracy Vouchers, whether the residents own  
15 property or not. No residents living outside of Seattle may receive these vouchers even if they own  
16 real estate within the city and are paying property taxes for the Democracy Voucher Program fund.

#### 17 **Plaintiffs' Complaint**

18 On June 28, 2017, Mark Elster and Sarah Pynchon filed this lawsuit challenging the  
19 constitutionality of the Democracy Voucher Program. Mr. Elster who owns a family home in  
20 Magnolia, has been taxed under the program and received but not used Democracy Vouchers.  
21 Complaint, ¶4. Ms. Pynchon owns property in Seattle and has been taxed under the program but,  
22 because she lives outside the city limits, is not entitled to receive any Democracy Vouchers. Complaint,  
23 ¶5. Mr. Elster and Ms. Pynchon contend that the Democracy Voucher Program is a compelled subsidy  
of political speech which violates their First Amendment rights. The City counters that the program is  
a constitutionally valid method of public campaign finance approved by the United States Supreme  
Court in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

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## ANALYSIS

The parties agree that this case presents the Court with an issue of first impression. Although there are reported cases affirming and invalidating various means of publicly funding political campaigns, none involve the imposition of a tax used to finance a voucher program in which registered voters make campaign contributions of their choice to candidates in certain qualified electoral races. After reviewing the case law cited by both parties and considering the arguments of the parties, the Court finds the City's position to be the more persuasive one.

### ***Buckley v. Valeo: The Use of Public Money to Finance Political Campaigns***

In 1976, the Supreme Court considered the constitutionality of the Federal Election Campaign Act, which placed limits on campaign contributions and expenditures and created a system of public financing of presidential election campaigns and nominating conventions. The Court invalidated the campaign spending provisions but affirmed the public financing provision of the act, known as Subtitle H.

Subtitle H created a Presidential Election Campaign Fund financed from general tax revenues. Taxpayers may check a box on their tax returns authorizing the diversion of taxes to a fund for distribution to presidential candidates for nominating conventions and primary and general election campaigns. 424 U.S. at 86-87. The amount of money each campaign was entitled to receive depended on whether the candidate belonged to a major or minor political party. *Id.*

The challengers contended that Subtitle H constituted government support of political speech in violation of the First Amendment. The Supreme Court rejected this argument and concluded that the program was intended "not to abridge, restrict, or censor speech, but rather *to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.*" *Id.* at 92-93 (emphasis added). *Buckley v. Valeo* affirmed the proposition "that the public financing of political candidates, in and of itself, does not violate the First Amendment, even though the funding may be used to further speech to which the contributor objects." *May v. McNally*, 203 Ariz. 425, 428, 55 P.3d 768 (2002).

1           **Public Funding of Political Campaigns Post-Buckley**

2           Since *Buckley v. Valeo*, several states have passed laws publicly funding political campaigns.  
3 Some have survived constitutional challenge. See *Libertarian Party of Ind. v. Packard*, 741 F.2d 981  
4 (7th Cir. 1984) (imposing sales tax on personalized license plates to publicly fund campaigns); *Bang*  
5 *v. Chase*, 442 F. Supp. 758 (D. Minn. 1977) (allowing income tax filer to allocate taxes to state election  
6 campaign fund for use by specific party); *May*, 203 Ariz. 425 (imposing 10% surcharge on criminal  
and civil traffic fines to publicly fund campaigns).

7           Some have not. See *Vt. Soc'y of Ass'n Execs. v. Milne*, 172 Vt. 375, 779 A.2d 20 (2001)  
8 (imposing tax on lobbyist expenditures to fund public grants to gubernatorial candidates violated  
9 lobbyists' First Amendment rights); *Butterworth v. Republican Party of Fla.*, 604 So. 2d 477 (Fla.  
10 1992) (imposing 1.5% assessment on donations to state political parties to finance public campaign  
11 funding of qualifying candidates violated First Amendment).

12           Plaintiffs contend that the Democracy Voucher program cannot survive their First Amendment  
13 challenge because the City is compelling them to subsidize the voucher recipients' private political  
14 speech. They argue that this program, unlike any other public campaign finance case, involves a  
15 government entity allowing voters to choose to whom to donate public funds. They contend that the  
16 voucher feature interferes with the Plaintiffs' First Amendment right to support candidates other than  
those selected by the voucher holder, or the right to not support any candidate at all.

17           The Court agrees with Plaintiffs that the City's Democracy Voucher program does implicate  
18 their First Amendment rights. In *Board of Regents v. Southworth*, 529 U.S. 217, 120 S. Ct. 1346, 146  
19 L. Ed. 2d 193 (2000), the Supreme Court considered a First Amendment challenge to a mandatory  
20 student fee used to support student organizations engaged in expressive activities. The plaintiffs  
21 claimed that they should not be compelled to subsidize student organizations with which they  
22 disagreed. *Id.* at 222-24. The Court held that once the university conditioned the opportunity to obtain  
23 an education on an agreement to support objectionable speech (through the imposition of a mandatory  
fee), the First Amendment was implicated. *Id.* at 231. By analogy here, the City is conditioning

1 property owners' rights to their land on the payment of a tax used to support speech property owners  
2 may find objectionable. The First Amendment is implicated.

### 3 Viewpoint Neutrality

4 But the fact that the First Amendment is implicated does not mean that the program is  
5 unconstitutional. The City asks this Court to adopt the public forum standard of viewpoint neutrality  
6 when evaluating the Democracy Voucher Program. Under public forum law, when a government  
7 creates a nonpublic or limited public forum, namely a forum that is limited to use by certain groups or  
8 dedicated solely to the discussion of certain subjects, speech restrictions need only be "reasonable and  
9 viewpoint neutral." *Pleasant Grove City v. Summum*, 555 U.S. 460, 469-70, 129 S. Ct. 1125, 172 L.  
10 Ed. 2d 853 (2009). In *Southworth*, the Supreme Court applied this standard when assessing the  
11 constitutionality of mandatory student funding of organizations. 529 U.S. at 230.

12 Plaintiffs, however, ask the Court to apply the "compelled funding of speech" cases. *See Knox*  
13 *v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 309-10, 132 S. Ct. 2277, 183 L. Ed. 2d 281  
14 (2012); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977). In *Knox*,  
15 the Supreme Court held that the "compelled funding of the speech of other private speakers or groups"  
16 is unconstitutional unless (1) there is a comprehensive regulatory scheme involving a mandated  
17 association among those who are required to pay the subsidy; and (2) the mandatory fee or tax is a  
18 necessary incident of the larger regulatory purpose which justified the required association. 567 U.S.  
19 at 310 (citing *United States v. United Foods, Inc.*, 533 U.S. 405, 414, 121 S. Ct. 2334, 150 L. Ed. 2d  
20 438 (2001)). The *Southworth* Court acknowledged this line of cases but concluded that those cases did  
21 not apply in the context of extracurricular student speech at a university. 529 U.S. at 230.

22 The Court does not find the test used in *Knox* or more recently *Harris v. Quinn*, \_\_\_ U.S. \_\_\_, 134  
23 S. Ct. 2618, 189 L. Ed. 2d 620 (2014) to be any more applicable to the City's Democracy Voucher Plan  
than it was to the University of Wisconsin's student fee. The program is not mandating that property  
owners associate with each other. Without this mandated association, it is difficult to see how the test  
laid out in the "compelled funding of speech" cases fits a campaign funding tax.

1 Plaintiffs next argue that the City's funding plan is not viewpoint neutral because it  
2 "distribut[es] voucher funds through the majoritarian preferences of Seattle residents." Response, p.  
3 21. At oral argument, counsel clarified this argument: the voucher recipient is choosing to whom to  
4 donate public money, rather than the City, based on the voter's viewpoint preference, making the  
5 decision as to which candidate receives financial support viewpoint-based. They rely on *Amidon v.*  
6 *Student Ass'n of the State University of New York*, 508 F.3d 94 (2d Cir. 2007) in which a federal court  
7 of appeals held that the use of a student referendum to determine how to allocate student fees among  
8 student organizations was not viewpoint neutral because the vote reflected the student body's majority  
9 opinion of the value or popularity of an organization's speech. *Id.* at 101.

10 This Court does not find *Amidon* to be analytically helpful. The City sets eligibility  
11 requirements for Democracy Voucher candidates. Candidates must demonstrate adequate grassroots  
12 support to qualify for the program by showing they have received a certain number of donations of \$10  
13 or more. In *Buckley*, the Supreme Court held that it was permissible for a government to set eligibility  
14 requirements because "Congress' interest in not funding hopeless candidacies with large sums of public  
15 money necessarily justifies the withholding of public assistance from candidates without sufficient  
16 public support." 424 U.S. at 96 (citation omitted). The City does not, however, put eligibility to a  
17 popular vote, as in *Amidon*. Any voter can assign a \$25 voucher to any eligible candidate, even if that  
18 candidate's viewpoint is unpopular with the majority of Seattle voters. The City is not distributing  
19 voucher funds "through majoritarian preferences of Seattle residents."

20 The City argues that its voucher program should be deemed viewpoint neutral because the City  
21 is not choosing to whom to allocate campaign funds and is allowing voters to make a completely private  
22 choice, similar to school voucher programs. In *Zelman v. Simmons-Harris*, 536 U.S. 639, 122 S. Ct.  
23 2460, 153 L. Ed. 2d 604 (2002), the Supreme Court held that a government school voucher program  
was constitutional under the Establishment Clause because it was "neutral with respect to religion,"  
and provided assistance to a broad class of citizens who directed the aid to a religious school "wholly  
as a result of their own genuine and independent private choice." *Id.* at 652. The Court is reluctant to

1 invoke Establishment Clause precedent here given the Supreme Court's admonition in *Buckley* that  
2 any analogy to Establishment Clause case law is "patently inapplicable" to the issue presented in that  
3 case. 424 U.S. at 92. But the Court can find no other analogous precedent. This Court concludes that  
4 the Democracy Voucher program is viewpoint neutral because candidates qualify for voucher support  
5 regardless of the views they espouse, and the City imposes no restrictions on voters' choice as to whom  
6 they may assign their vouchers.

7 The City has articulated a reasonable justification for the Democracy Voucher Program. It  
8 seeks an increase in voter participation in the electoral process. This goal was recognized by the  
9 *Buckley* Court to be "goals vital to a self-governing people." *Id.* at 92-93. The Democracy Voucher  
10 Program is a viewpoint neutral method for achieving this goal.

11 For the foregoing reasons, the Court GRANTS the City's motion to dismiss Plaintiffs'  
12 complaint.

13 IT IS SO ORDERED this 3<sup>rd</sup> day of November, 2017.

14 *Electronic signature attached*

15 \_\_\_\_\_  
16 Honorable Beth M. Andrus

17 APPENDIX A

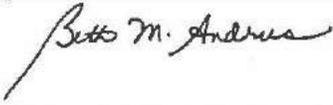
18 Plaintiffs' Complaint, Sub. #1  
19 City of Seattle's Rule 12(b)(6) Motion to Dismiss, Sub. #17  
20 Amicus Curiae Brief of Washington CAN!, et al., Sub. #20  
21 Plaintiffs' Response to Defendant's Motion to Dismiss, Sub. #34  
22 Plaintiffs' Consolidated Response to Amicus Briefs Filed in Support of City, Sub. #35  
23 City of Seattle's Reply in Support of Its Rule 12(b)(6) Motion to Dismiss, Sub. #36

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 17-2-16501-8  
Case Title: ELSTER ET ANO VS SEATTLE CITY OF

Document Title: ORDER DISMISSAL

Signed by: Beth Andrus  
Date: 11/2/2017 4:28:58 PM

A rectangular box containing a handwritten signature in cursive that reads "Beth M. Andrus".

Judge/Commissioner: Beth Andrus

This document is signed in accordance with the provisions in GR 30.

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**SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY**

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<p>MARK ELSTER and SARAH PYNCHON,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>THE CITY OF SEATTLE, a Washington Municipal corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. _____</p> <p style="text-align: center;"><b>COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF</b></p>
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16 **INTRODUCTION**

17           1.     The City of Seattle compels property owners to sponsor the partisan political speech  
18 of city residents. A new levy on real property funds so-called “democracy vouchers” that residents  
19 donate to candidates running for local elected offices. Property owners must thereby pay for  
20 political viewpoints they object to and enrich the campaign coffers of politicians they don’t  
21 support. Indeed, “democracy voucher” is mere euphemism for a law that operates in effect as a  
22 politician enrichment tax.

23 ///

1           2.       The First Amendment embodies not only the right to speak, but also its corollary—  
2 the right not to speak. This includes the right to refrain from funding the speech of another person.  
3 The Supreme Court calls this a “bedrock principle” of the First Amendment—“that, except perhaps  
4 in the rarest of circumstances, no person in this country may be compelled to subsidize speech by  
5 a third party that he or she does not wish to support.” *Harris v. Quinn*, \_\_ U.S. \_\_, 134 S. Ct. 2618,  
6 2644, 189 L. Ed. 2d 620 (2014). The politician enrichment tax, by forcing Seattle property owners  
7 to finance campaign contributions, tramples upon this bedrock principle.

8 **PARTIES**

9           3.       Plaintiff Mark Elster has owned and resided with his family in a home in the  
10 Magnolia neighborhood of Seattle since 1990. He is subject to the politician enrichment tax.  
11 Mr. Elster grew up in West Seattle and graduated from the University of Washington with a  
12 Masters in Architectural Design in 1988. He then cofounded AOME Architects in downtown  
13 Seattle—an award-winning firm that builds homes across the Northwest. Mr. Elster has actively  
14 volunteered at his sons’ local schools over the years, including serving as PTA President, designing  
15 a school garden, and teaching magic classes to middle schoolers.

16           4.       Mr. Elster is politically active, often meeting with candidates and attending  
17 campaign activities. He cares deeply about personal liberty and robust free markets. Mr. Elster  
18 does not wish to support any of the local candidates eligible to receive democracy vouchers. He  
19 had considered using his vouchers to support Sara Nelson for city council, but Ms. Nelson has  
20 declined to participate in the democracy voucher program because she objects to it on an ethical  
21 basis. Mr. Elster no longer plans to use the vouchers. He adamantly objects to being compelled to  
22 subsidize views that conflict with his own values.

23 ///

24

1           5.     Plaintiff Sarah Pynchon owns property in Seattle subject to the politician  
2 enrichment tax, though she herself lives outside city limits. Ms. Pynchon moved to the Seattle area  
3 after completing her MBA at University of California-Berkeley in 1997. She worked for T-Mobile  
4 for many years before turning to her current career as a marketing consultant. She also enjoys  
5 volunteering at a camp for at-risk kids every year. Ms. Pynchon has owned and rented out a four-  
6 bedroom, single-family home in Seattle's Broadview neighborhood since August 2005. She also  
7 rents out a small studio condo in Seattle that she purchased in 2009.

8           6.     Ms. Pynchon herself is not a Seattle resident or registered to vote in Seattle. She is  
9 therefore not qualified to receive vouchers, though she still must pay for the vouchers of Seattle  
10 residents. Ms. Pynchon objects to being compelled to subsidize other people's political speech,  
11 especially when she herself is not entitled to vouchers.

12          7.     Defendant City of Seattle is a municipality located in King County, Washington.

13 **JURISDICTION AND VENUE**

14          8.     Plaintiffs Mark Elster and Sarah Pynchon bring this civil-rights lawsuit under 42  
15 U.S.C. § 1983 for the violation of rights secured by the First Amendment to the United States  
16 Constitution.

17          9.     This Court has jurisdiction over this matter under RCW 4.28.020, RCW 7.24.010,  
18 7.40.010, and Article IV, Sections 1 and 6, of the Washington State Constitution.

19          10.    Under RCW 4.12.020, venue is proper in King County Superior Court because the  
20 City of Seattle sits within county limits.

21 **FACTUAL ALLEGATIONS**

22          11.    In November 2015, Seattle became the first city in the nation to single out property  
23 owners to finance campaign contributions through so-called "democracy" vouchers. Seattle voters

1 passed Initiative 122 (I-122), entitled "Honest Elections Seattle," which established the voucher  
2 program. I-122 is codified in Subchapter VIII of Section 2.04 of the Seattle Municipal Code. A  
3 true and correct copy of this initiative is attached as Exhibit A.

#### 4 **HOW THE POLITICIAN ENRICHMENT TAX OPERATES**

##### 5 **I. The politician enrichment tax funds municipal campaign contributions**

6 12. Washington law imposes strict limits on municipalities' power to increase property  
7 taxes. *See* RCW 84.55.010. A taxing district, however, can bypass the state law's lid on the levy  
8 rate if the levy is authorized by an initiative approved by a voter majority. RCW 84.55.050. I-122  
9 lifts the lid for the purpose of imposing the politician enrichment tax.

10 13. The levy lift lasts from 2016 through 2025 and authorizes the county tax assessor  
11 to collect up to \$30,000,000 in politician enrichment tax revenue over that period, with a cap of  
12 \$3,000,000 per year. I-122 § 2. This is in addition to the regular property taxes that the city collects  
13 through the King County assessor's office.

14 14. The politician enrichment tax authorized by I-122 may only be used to fund  
15 vouchers for Seattle residents to give to qualifying candidates in Seattle municipal elections and  
16 the administrative costs of running the program. *Id.*

##### 17 **II. Voucher distribution**

18 15. On the first business day of the municipal election year, the Seattle Ethics and  
19 Elections Commission (SEEC) distributes four \$25 campaign finance vouchers to Seattle voters.

20 16. Each individual duly registered to vote in Seattle elections by the prior November  
21 automatically receives four vouchers in the mail. Anyone who subsequently becomes a registered  
22 voter in Seattle by October 1 of the election year will also receive four vouchers by mail.

23

24

1           17.     Seattle residents who are not registered to vote in Seattle can also receive four  
2 vouchers. Any citizen or green-card holder over the age of 18 who has lived in the city for thirty  
3 days can obtain their vouchers upon request to the SEEC.

4 **III.    Voucher use**

5           18.     Voucher recipients can contribute the vouchers, separately or in combination, to  
6 any qualified candidate for Mayor,<sup>1</sup> City Council, or City Attorney who agrees to abide by certain  
7 conditions, listed below in paragraph 25. SMC § 2.04.620(e).

8           19.     Voucher recipients can only assign vouchers to an eligible candidate participating  
9 in the voucher program. *Id.*

10          20.     Each voucher states the voucher holder's name, an identification number, and the  
11 election year. *Id.* § 2.04.620(c). It contains language of assignment with blank spaces for the date  
12 and the name of the candidate that the holder wishes to support. *Id.*

13          21.     No one can buy, sell, or give away unassigned vouchers. *Id.* § 2.04.620(e).  
14 Trafficking in vouchers constitutes a gross misdemeanor punishable by up to a \$5,000 fine and  
15 imprisonment for up to 364 days. *Id.* § 2.04.690(d).

16          22.     Each voucher contains the following attestation:

17                 I attest that I obtained this Democracy Voucher properly and make this  
18 assignment freely, voluntarily and without duress or in exchange for any  
19 payment of any kind for this assignment, and not for any consideration of any  
20 kind, and that I am aware that assignment does not guarantee availability of  
21 funds and is irrevocable. Assignment is complete upon delivery to Seattle  
22 Ethics and Elections Commission, the named candidate, or her or his registered  
representative. Sale/transfer for consideration of this Democracy Voucher is  
strictly prohibited. Voucher may be redeemed only by qualifying candidates  
and only if such candidate has complied with additional contribution and  
spending limits and if funds are available.

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23 <sup>1</sup> Mayoral candidates may receive vouchers starting in the 2021 election cycle.

1 *Id.* § 2.04.690(c).

2 23. After listing a candidate's name and signing the voucher, the holder can deliver it  
3 to the selected candidate, an authorized representative, or the SEEC. *Id.* § 2.04.690(d). This can  
4 occur by mail, in person by anyone that the voucher holder wishes, or via SEEC's online system.  
5 *Id.*

6 24. If voucher recipients do not assign the vouchers to an eligible candidate by the last  
7 business day in November after the election, then the unused voucher funds will carry over to the  
8 next election cycle to fund the program. *See id.* § 2.06.620(e); Democracy Voucher Program  
9 FAQ.<sup>2</sup> Unused voucher money does not roll over into the general fund. Democracy Voucher  
10 Program FAQ, *supra*.

11 25. The program limits candidates' eligibility to receive vouchers. Candidates  
12 interested in the program must apply to the SEEC. To qualify, candidates—among other things—  
13 must:

- 14 • Accede to specific campaign spending and contribution limits not otherwise  
15 required by law;
- 16 • Receive a specified minimum number of campaign contributions;
- 17 • Participate in at least three debates in the primary and general elections; and
- 18 • Forebear soliciting on behalf of groups that make independent expenditures in the  
19 same election cycle.

20 *Id.* § 2.04.630.

21 ///

22 \_\_\_\_\_  
23 <sup>2</sup> <http://www.seattle.gov/democracyvoucher/i-am-a-seattle-resident/faqs#> (What happens if I do  
24 not use my Democracy Vouchers?)

1           26.   Candidates can only use voucher funds for campaign-related expenses. *Id.*  
2 § 2.04.630(i).

3           27.   Misuse of voucher funds can result in a civil penalty of up to \$5,000. *Id.* § 2.04.500.

4           28.   I-122 does not require the SEEC to audit candidates' uses of voucher funds. Nor  
5 does it require candidates to sign a sworn statement or otherwise affirm that they will use the  
6 voucher funds for limited campaign purposes.

7 **IV.   The Vouchers' impact**

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8           29.   The politician enrichment tax disfavors minority viewpoints and undermines the  
9 speech rights of property owners

10          30.   I-122 does not provide an equal amount of funding to each eligible candidate.

11          31.   Rather, each candidate will receive campaign funding from vouchers only to the  
12 extent that Seattle residents choose to direct their vouchers to support that candidate.

13          32.   Candidates who enjoy the most support among residents will receive more voucher  
14 funds than candidates with less support.

15          33.   This distribution differs from a neutral public funding scheme in which candidates  
16 all receive an equal allotment of public funds.

17          34.   The unequal distribution of voucher funds based on voter preferences harms the  
18 political interests of property owners who must pay the politician enrichment tax yet support less  
19 popular candidates.

20          35.   Landlord-tenant issues present one example of how the law harms property owners  
21 compelled to fund campaign contributions.

22          36.   Renters comprise more than 54 percent of Seattle households. *See* Seattle  
23 Ordinance 125280.

1           37.     The political interests of Seattle’s many renters and their landlords often clash  
2 before the city council. Landlord groups like the Rental Housing Association, for example, actively  
3 opposed recent legislation such as the Seattle Renters’ Commission, caps on move-in fees, and the  
4 first-in-time rule limiting landlord discretion to select tenants. Pro-renter groups such as the  
5 Tenants Union of Washington State and Washington CAN supported these measures.

6           38.     Seattle imposes the burden of funding renters’ political speech—in the form of  
7 vouchers—solely on the shoulders of landlords and other property owners. It thus forces landlords  
8 to fund the speech of the very interest group that they often oppose before the city council.

9           39.     The current distribution of 2017 voucher funds underscores this outcome.

10          40.     As of June 7, 2017, three candidates are actively receiving vouchers, while ten more  
11 are awaiting approval from the SEEC. Two of the currently eligible candidates are running for city  
12 council, and the third is running for city attorney.

13          41.     Four local candidates have opted not to participate in the program. Of these, city  
14 council candidates Sara Nelson and David Preston have declined to participate because of ethical  
15 and constitutional objections to the program.

16          42.     As of June 9, one of the three currently eligible candidates, Jon Grant—a housing  
17 advocate and former head of the Tenants Union of Washington State—has received more  
18 compelled campaign contributions than the other two candidates combined.

19          43.     Of the 9,116 vouchers that voters have thus far assigned to candidates for the 2017  
20 election, Mr. Grant has scooped up 5,178, totaling \$129,450.<sup>3</sup>

21     ///

22     \_\_\_\_\_

23     <sup>3</sup> Democracy Voucher Program, Program Data,  
<http://www.seattle.gov/democracymvoucher/program-data>.

1           44.    If elected, Mr. Grant promises, among other things, to grant renters collective  
2 bargaining rights, a proposal that will affect the political and economic interests of Seattle's  
3 landlords.<sup>4</sup> He has vowed to "freeze all permits, licenses, and rental registrations where the  
4 landlord has any ownership stake until they meet and negotiate in good faith with the tenants."<sup>5</sup>

5           45.    I-122 forces landlords and other property owners to sponsor these messages to the  
6 tune of \$129,250 to date.<sup>6</sup>

7           46.    The politician enrichment tax disfavors dissidents and compels property owners to  
8 bankroll speech they do not wish to support.

9    **CLAIM FOR RELIEF**

10   **The politician enrichment tax unconstitutionally compels property owners to fund political  
11 speech in violation of the First Amendment**

11           47.    The plaintiffs reallege the preceding paragraphs as though fully set out here.

12           48.    The First Amendment to the United States Constitution protects an individual's  
13 right to refrain from speaking or subsidizing the speech of others.

14           49.    I-122 violates the First Amendment on its face and as applied to Mr. Elster and  
15 Ms. Pynchon.

16           50.    A viewpoint-based or content-based speech regulation—whether it compels silence  
17 or compels speech—must satisfy strict scrutiny. *See Knox v. Service Employees Int'l Union, Local*  
18 *1000*, 567 U.S. 298, 132 S. Ct. 2277, 2289, 183 L. Ed. 2d 281 (2012). Such speech regulations  
19 must serve a compelling interest in a narrowly tailored manner. *Harris*, 134 S. Ct. at 2639.

21 \_\_\_\_\_  
22 <sup>4</sup> Elect Jon Grant, Affordable Housing, [http://www.electjongrant.com/affordable\\_housing](http://www.electjongrant.com/affordable_housing).

23 <sup>5</sup> *Id.*

24 <sup>6</sup> Democracy Voucher Program, Program Data,  
<http://www.seattle.gov/democracyvoucher/program-data>.

1           51.    The politician enrichment tax forces Seattle property owners to subsidize campaign  
2 contributions to local politicians. By distributing such funds at the whim of majoritarian interests,  
3 the program disfavors minority viewpoints. It also disfavors the supporters of candidates who  
4 object to and refuse to abide by the increased campaign contribution limits required to participate  
5 because these candidates' supporters cannot use their vouchers to contribute to their preferred  
6 campaign. The program is therefore viewpoint-based and must satisfy strict scrutiny.

7           52.    The law also discriminates based on content. It compels the financial support of  
8 speech on a particular topic—campaigns for Seattle elected offices. For this reason, too, the  
9 democracy voucher program must satisfy strict scrutiny.

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10          53.    I-122 does not satisfy strict scrutiny because funding the speech of Seattle residents  
11 at the expense of property owners serves no compelling interest.

12          54.    The law is not narrowly tailored to achieve its purposes in a manner least restrictive  
13 of First Amendment freedoms. The voucher program, for example, claims to fight corruption.  
14 SMC § 2.04.620(a). Certainly, preventing contributions might reduce corruption. But corruption  
15 is not stymied when individuals who wish to refrain from contributing are forced to do so.

16          55.    The law also purports to level the playing field and strengthen democracy. *Id.* By  
17 disfavoring minority viewpoints, however, the law undermines rather than serves these goals. A  
18 program that funnels money in a partisan manner does not level the playing field, strengthen  
19 democracy, or prevent corruption. Indeed, the program contradicts each of these goals. It therefore  
20 fails strict scrutiny and violates the First Amendment on its face.

21          56.    Additionally, the politician enrichment tax violates the First Amendment as applied  
22 to Mr. Elster and Ms. Pynchon.

23    ///

1           57.    Mr. Elster does not support any of the candidates currently eligible to receive  
2 vouchers. He had planned to use his vouchers to support Sara Nelson, but she has refused to  
3 participate in the program because she objects to the policy. Therefore any use of the voucher  
4 funds will enrich the war chests of candidates that he opposes. I-122 thus violates his First  
5 Amendment right to refrain from supporting speech with which he disagrees.

6           58.    Ms. Pynchon, as a property owner who lives outside the city, must subsidize private  
7 speech, but she cannot avail herself of the voucher program to counteract voucher contributions to  
8 candidates that she does not want to support. I-122 therefore violates her First Amendment right  
9 to refrain from subsidizing speech.

10          59.    Plaintiffs have and will continue to suffer irreparable harm until this law is declared  
11 unconstitutional and void.

## 12 **DECLARATORY RELIEF ALLEGATIONS**

13          60.    An actual and substantial controversy exists between Plaintiffs and the City as to  
14 their respective legal rights and duties.

15          61.    Under 42 U.S.C. § 1983, Plaintiffs contend that Subchapter VIII of Section 2.04 of  
16 the Seattle Municipal Code and the associated property levy violate the First Amendment on their  
17 face and as applied to Mr. Elster and Ms. Pynchon.

18          62.    The First Amendment to the United States Constitution does not allow local  
19 governments to force individuals to subsidize private political speech.

20          63.    I-122 violates the First Amendment by compelling Seattle property owners to pay  
21 for other people's campaign contributions.

22          64.    A declaratory judgment will afford relief from the uncertainty and insecurity giving  
23 rise to this controversy.

1 **PERMANENT INJUNCTIVE RELIEF ALLEGATIONS**

2 65. Mr. Elster and Ms. Pynchon have no adequate remedy at law to address the City's  
3 forced subsidization of private political speech.

4 66. I-122 offers no refund mechanism or exemption for conscientious objection.  
5 Mr. Elster and Ms. Pynchon therefore will suffer irreparable injury absent an injunction restraining  
6 the City from administering this unconstitutional program.

7 **PRAYER FOR RELIEF**

8 Plaintiffs pray for the following relief:

- 9 1. For a declaration that Subchapter VIII of Section 2.04 of the Seattle Municipal  
10 Code and the associated levy facially violate the First Amendment to the United  
11 States Constitution;
- 12 2. For a declaration that Subchapter VIII of Section 2.04 of the Seattle Municipal  
13 Code and the associated levy violate the First Amendment to the United States  
14 Constitution as applied to Mr. Elster and Ms. Pynchon;
- 15 3. For a permanent injunction forbidding the City from enforcing Subchapter VIII of  
16 Section 2.04 of the Seattle Municipal Code;
- 17 4. For an award of reasonable attorney fees, expenses, and costs under 42 U.S.C.  
18 § 1988; and
- 19 5. For such other relief as the Court deems just and proper.

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PACIFIC LEGAL FOUNDATION  
BRIAN T. HODGES, WSBA No. 31976  
ETHAN W. BLEVINS, WSBA No. 48219

Date: June 28, 2017

By: s/ Ethan W. Blevins

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**OFFICE OF THE PUBLIC ADVOCATE  
FOR THE CITY OF NEW YORK  
JUMAANE D. WILLIAMS**

**TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS  
TO THE NEW YORK CITY CHARTER REVISION COMMISSION  
MAY 2, 2019**

Good evening,

My name is Jumaane D. Williams, and I have the pleasure of serving as the newly elected Public Advocate for the City of New York. Before I get into the thrust of my remarks, I'd like to thank all of you in this room – Commission Members, and fellow New Yorkers – for your participation in this process to make government better, fairer and more efficient for us all.

As the Public Advocate for the City of New York, I serve as a direct link between New Yorkers and their government. The Office of the Public Advocate acts as a watchdog to ensure that City agencies are as efficient and effective as demanded by the people of New York. The office also investigates and resolves constituent complaints relating to the services provided by these agencies.

As the second highest ranking elected official in the City, however, my ability to fully serve New Yorkers is currently impaired by the present language in the New York City Charter. While the Charter is a living document that has grown and changed, just as our city has grown and changed, the language governing the Public Advocate's abilities has not kept pace. As the Charter Revision Commission is undergoing the process of the first top-to-bottom review since 1989, I urge the body to take several actions to improve the effectiveness of the office.

I would like to recommend three concrete areas:

**1. Independent Budget:** The Mayor and the City Council currently determine the budget for the Office of the Public Advocate, which is inconsistent and subject to the political whims of these parties every year. As an example, the Public Advocate is empowered to introduce legislation as a method to cure systemic flaws and shortcomings that negatively impact the public. However, what may be practically necessary for New Yorkers on the street may not be politically expedient in the moment for other parties; this disconnect can result in pushback through the budgetary process.

Already, the current budget for the Public Advocate is smaller than that of each individual Borough President, yet the Public Advocate's constituency encompasses all 8.6 million New York City residents. Even in this short time, I have seen how many of these residents rely on the Public Advocate's office to resolve complaints about allegations of systemic abuses or fraud. Effective service of these residents is a two-way street, as those closest to the problems are often best positioned to recommend improvements to agency operations which my office can then pursue legislatively or otherwise.

A system where the Public Advocate must rely on the elected officials it is charged with overseeing to determine the budget by which the Public Advocate can conduct that oversight is an inherent limit on the Public Advocate's autonomy and effectiveness. Independently elected officials should not have to weigh possible retaliation from the Mayor or the Council when bringing issues to light.

**2. Subpoena Power:** At present, the Charter states that the Office of the Public Advocate "shall have timely access to those records and documents of city agencies which the public advocate deems necessary to complete the investigations, inquiries and reviews." However, city agencies are not clearly legally obligated to comply with these requests without a subpoena, delaying investigations that the Office of the Public Advocate is required to conduct. Giving the office full subpoena power would better allow the office to fulfill its duties as mandated by the existing Charter.

**3. Standing to Sue:** The Public Advocate's standing to sue on behalf of the office's 8.6 million constituents is unclear, at best. In addition, the Law Department has determination over which cases can be pursued, which violates the intended separation of powers among city officials. Granting the office clear standing to sue is an essential tool that the Public Advocate requires in order to improve transparency and accountability in New York City.

Additionally, I agree with several proposals that the City Council has previously put forward, including providing the Public Advocate with appointments to the Civilian Complaint Review Board, Conflict Of Interests Board, Landmarks Preservation Commission, and Franchise Concession Review Commission. I further believe we should explore having the Independent Budget Office report to the Public Advocate, and using the Public Advocate's office as a central resource for community boards across the city.

To increase our transparency, accountability and effectiveness, the revisions I recommend above are critical and necessary. I look forward to working with you to ensure that the City adopts a Charter that reflects the current landscape and the will of the people in New York City.

Again, thank you to the Commission for taking up this work, and I am happy to answer any of your questions.



## **Southside United H.D.F.C. – Los Sures®**

*Developing and Preserving a Sustainable Community Since 1972*

ATTN: NYC Charter Reform Commissioners  
Brooklyn Public Hearing  
209 Joralemon Street  
Brooklyn, NY

To Our Esteemed 2019 Charter Reform Commissioners,

New York City's charter reform and its commissioners have an opportunity to create a comprehensive plan that would provide a guideline that ensures equity and integration without displacement. The charter is not a BUSINESS PLAN it should be reflection of the values of equity, inclusiveness, sustainability and resilience and transparency and accountability.

Currently our city's lack of a comprehensive plan allows for the city's land to be treated like an asset to be bargained if the capital budget was coordinated with the comprehensive plan's community investments, the budget would then cover the needs of the community eliminating the bargaining process that occurs with a council member and a developer or DCP. The bargaining happens as a result the council member needing investments for infrastructure that his budget may not cover. This would terminate the tradeoff of displacement and investment over long standing community members and viability.

In Williamsburg, we have made the tradeoff of a park (Two Trees Domino Park) for the community for a large development that will help skyrocket the city's AML, and help displace many other community members like myself. & you may ask about that luxurious park they built for the "community" well lets just say that the buildings are not even fully inhabited but community members with their children have been told by newcomers they're not welcome in that space.

In 2005, we participated in the ULURP process and made recommendations for the North Brooklyn Water Front rezoning through the community board, which since have been disregarded by the developer. Sure the area has become lucrative for commercialization and business investment but the new comer tenants have their own private shuttle services, access to their own "community park", and have brought in the need for private landlords to buy out and decontrol tenants out of their homes in surrounding buildings.

A comprehensive plan would stop treating our cities communities as assets, and it would provide a standard to follow when a rezoning occurs so that investment in low income communities doesn't continue at the expense of losing the CULTURE everyone is so proud of when they refer to NYC.

Sincerely,  
Roberto and Nora Rodriguez  
Tenant Leaders of Los Sures LUCHA  
522 Metropolitan Avenue  
Brooklyn, NY

# Thriving Communities Coalition

## OUR POLICY PROPOSALS

**Create a Comprehensive Planning Process** for a just, equitable New York City now and into the future.

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**Require Equity in Budgeting** so that resources are directed based on need, and the public can track and understand where money is going.

**Reform the Land Use Process** to properly evaluate & address the negative impacts of proposed changes.

**Limit how the City disposes of Public Land** so that this valuable public resource is always used for public purposes like deeply affordable housing and job-creation.

**Require ULURP for NYCHA land** so that public housing residents have the same opportunity as everyone else for public review and input when land or buildings are being disposed of.

**Reform Community Boards** to be more representative, informed, and accountable to the communities they serve.

**Enshrine a “Right to Housing”** in the Charter as a principle to guide policy and resource decisions towards long-term solutions to the affordability and homelessness crisis.

For more information on the Thriving Communities Coalition, please contact Emily Goldstein ([emily.g@anhd.org](mailto:emily.g@anhd.org)), or visit <https://anhd.org/project/thriving-communities-coalition>



## **Southside United H.D.F.C. – Los Sures®**

*Developing and Preserving a Sustainable Community Since 1972*

Atencion: Comité de la revisión constitucional de la ciudad de Nueva York  
Audiencia de Brooklyn  
209 Joralemon St  
Brooklyn, NY

Estimados miembros de la comisión,

La ciudad de Nueva York es una de las más segregadas, dado a que tiene pólizas que refuerzan una ciudad que equivale el desplazamiento con la integración de varias comunidades. En el 2005 en Williamsburg tuvimos una rezonificación bastante impactante en la zona frente al mar del Norte de Brooklyn, la cual ha abierto varios comercios – pero fue el ejemplo a seguir para los desarrolladores que buscaban hacerse multi-millonarios a base negocio de bienes raíces aquí en nuestra ciudad, costándonos nuestro bien estar a los miembros de largo tiempo de nuestra comunidad. Mas halla, la junta comunitaria dio recomendaciones, las cuales no fueron referenciadas durante el desarrollo que ganaron en el 2005.

El problema más grande fue la discriminación que ocurrió a causa de esta rezonificación, ya que las personas que residan en estos edificios tienen acceso hasta servicios privados que los manejan a las estaciones locales del tren. Después de ahí tuvimos la rezonificación del sitio domino, y ahora vamos a tener la rezonificación del sitio Pfizer – que también va empeorar nuestra calidad de vida como miembros comunitarios

Estamos decepcionados en los resultados preliminares del informe personal que realizaron ustedes de la comisión porque no consideraron varios puntos que trajo la coalición a la cual pertenecemos- que dan una serie de estándares que cambiaran los problemas ambientales, económicos, de educación, y acceso a comida para residentes locales. Pensamos que ustedes de la comisión deberían de tomar en cuenta recomendaciones hechas que daban mitigaciones con respeto a la calidad de aire, problemas ambientales. Necesitamos que en nuestra ciudad haiga un plan comprensivo que incluya un guía para cómo se asigna capital para hacer parques, carriles para bicicletas, asientos estudiantiles—sin que sea nadamos remediados con que inviertan desolladores en comunidades antes olvidadas para hacer estas mejoras en nuestras comunidades. Necesitamos poder real, y solo con revisiones que dan principios podemos un día recibir equidad a todas las comunidades de nuestra ciudad.

Sinceramente,

Florida Miranda  
Inquilin@ de Los Sures LUCHA  
743 Driggs Avenue  
Brooklyn, NY  
11211

# Thriving Communities Coalition

## OUR POLICY PROPOSALS

**Create a Comprehensive Planning Process** for a just, equitable New York City now and into the future.

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**Require Equity in Budgeting** so that resources are directed based on need, and the public can track and understand where money is going.

**Reform the Land Use Process** to properly evaluate & address the negative impacts of proposed changes.

**Limit how the City disposes of Public Land** so that this valuable public resource is always used for public purposes like deeply affordable housing and job-creation.

**Require ULURP for NYCHA land** so that public housing residents have the same opportunity as everyone else for public review and input when land or buildings are being disposed of.

**Reform Community Boards** to be more representative, informed, and accountable to the communities they serve.

**Enshrine a "Right to Housing"** in the Charter as a principle to guide policy and resource decisions towards long-term solutions to the affordability and homelessness crisis.

For more information on the Thriving Communities Coalition, please contact Emily Goldstein ([emily.g@anhd.org](mailto:emily.g@anhd.org)), or visit <https://anhd.org/project/thriving-communities-coalition>



**New York City Anti-Violence Project**  
116 Nassau Street, 3<sup>rd</sup> Floor  
New York, New York 10038  
212.714.1184 voice | 212.714.2627 fax  
212.714.1141 24-hour hotline

Good evening, my name is Lynda Nguyen and I am representing the New York City Anti-Violence Project (AVP), a crisis organization that serves New York's lesbian, gay, bisexual, trans, queer (LGBTQ) and HIV-affected survivors of violence. AVP is also a member of Communities United for Police Reform (CPR). I am here to talk about how the city's Charter Revision Process can increase police accountability and transparency to better serve LGBTQ communities.

I work with queer and trans communities every day-- folks who are navigating multiple systems to survive, the same systems that disproportionately impart material violence onto our communities. The NYPD is the only agency in New York City that is provided the ability to take someone's life. Less than a month ago we lost Kawaski Trawick, a member of the LGBTQ community, in the Bronx at the hands of the NYPD. The NYPD needs to be held accountable for all misconduct and killings that happens on their watch. Under the current system, queer and trans survivors are not able to receive the information we need to seek justice, rather we are confronted with a mirage of police secrecy laws and negligence. There needs to be a Civilian Complaint Review Board (CCRB) to prosecute cases related to NYPD misconduct and killings, and cases that include school safety agents and other peace officers. Further, the public should also be privy to any discrepancies the Commissioner makes that deviate from the CCRB's findings and/or recommendations.

Directly-impacted communities deserve the right to know what is going on. We deserve to have a say on how our communities are being policed and surveilled. Under the current system, the public is not able to receive information on any of the NYPD's private sources of income, nor are we provided any information on any major purchases. There must be real oversight and transparency on NYPD fiscal operations. We should be able to know why the NYPD is purchasing equipment and be able to provide input on whether this is something that our communities need. The Council should also be able to veto those purchases. Further militarizing our communities is not safety, it is violence.

We need to ensure that directly-impacted communities, that LGBTQ survivors of violence are being fully protected by the systems that aim to serve us. AVP supports the Charter Commission priorities laid out by Communities United for Police Reform in the 2019 ballot. The city needs to take this seriously and require the full accountability and transparency of the NYPD by enacting a CCRB and mandating fully detailed fiscal reports from the agency. Thank you for hearing my testimony today.

This document outlines the priorities of Communities United for Police Reform (CPR) for the City Charter Revision Process in 2019. CPR believes that the 2019 Charter Revision process represents an important opportunity to consider changes to the Charter that can better advance safety for all New Yorkers, along with increased police accountability and transparency.

**Top priorities for CPR that can be achieved through changes to the 2019 NYC Charter Revision process:**

- Increase police accountability for killings, brutality, sexual violence and gender-based violence.
- Increase NYPD transparency, particularly related to the NYPD budget (including related to surveillance technologies, military grade equipment, and expenses paid by private/other sources that are not currently subject to Council oversight).

**Proposed changes to Charter**

- **NYPD accountability**
  - Enable Civilian Complaint Review Board (CCRB) to determine discipline in cases that they prosecute (via their Administrative Prosecution Unit).
  - Expand CCRB authority to prosecute on "other related misconduct" (e.g. lying in official reports; false statements; failure to follow BWC/other protocol) in cases that CCRB prosecutes – instead of referring those findings to IAB.
  - Expand CCRB authority to explicitly include school safety agents, and other "peace officers".
  - Require that when the Commissioner deviates on CCRB findings and discipline recommendations, that the reason for deviation be made public (as was intended when CCRB's Administrative Prosecution Unit was created in 2012).
- **Fiscal transparency and Council oversight for NYPD purchases**
  - Amend procurement process so that it would require transparency, equity impact statement, public input & opportunity for Council veto prior to purchase of surveillance equipment, software/tech, and other major purchases (e.g. new weapons and military grade equipment)
  - Require NYPD reporting of private sources of income and expenses paid by those sources (& other sources of income not currently subject to Council oversight)
  - Require more detailed units of appropriation in NYPD budget

**Other policing-related Charter recommendations that CPR currently supports**

*CPR currently supports 3 of the 4 main recommendations CCRB is advocating for, codifying other aspects of the 2012 CCRB/NYPD MOU:*

- Codify the CCRB's Administrative Prosecution Unit
- Delegation of subpoena power to high ranking CCRB staff
- Expand NYPD "duty to cooperate" with CCRB



**Girls for Gender Equity Testimony  
The New York City Council's  
2019 Charter Revision Commission -  
Policing Related Recommendations  
Delivered by: Kylynn Grier  
May 2, 2019**

My name is Kylynn Grier and I am the Policy Manager at Girls for Gender Equity (GGE), an organization challenging structural forces that work to obstruct the freedom, full expression, and rights of girls, transgender, and gender non-conforming (TGNC) youth of color. We work daily with young women and TGNC youth of color who are policed at every juncture of their lives, on the way to school by NYPD officers, in school by NYPD School Safety Agents, and while accessing City services as seen with Jazmin Headley at the Department of Social Services. Young women and TGNC young people are criminalized for normal adolescent behavior, often times hyper-sexualized due to historically located racialized and gender-based stereotypes, and their bodies are regularly policed because of their race, ethnicity, sexual orientation, gender identity and/or gender expression.

Girls for Gender Equity stands with Anna Chambers<sup>1</sup>, an 18-year-old girl who was raped and sexually assaulted by two NYPD officers in this borough of Brooklyn and who is one of many survivors of NYPD gender-based violence against community members, including police sexual violence. These experiences and narratives are often unheard in mainstream media or conversations about policing. This silence exists alongside a multitude of systemic barriers to reporting, survivor supports, and often victim-blaming and criminalization of survivors. This is absolutely and unequivocally rooted in racialized and gender-based discrimination.

Girls for Gender Equity for almost 20 years has worked alongside young people in every borough and in particular, Brooklyn. Based on this years of experience, Girls for Gender Equity and partners call for the expansion of power of the Civilian Complaint Review Board and for greater fiscal transparency of the NYPD.

**Expand the Power of the Civilian Complaint Review Board:**

As a city, we must empower the CCRB to remain a true oversight agency allowing them to make final discipline determinations in FADO complaints which they are already able to investigate

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<sup>1</sup> Two New York Detectives Are Charged With Rape and Kidnapping  
<https://www.nytimes.com/2017/10/30/nyregion/nypd-detectives-rape-kidnapping-charges.html>



and have an expanded purview to include related misconduct and allegations against peace officers. Related, in cases that the CCRB does not already prosecute, as is already documented on public record in the the MOU between the CCRB and the NYPD, the NYPD Commissioner should document and make publicly available the reason for deviating from the CCRB's recommended disciplinary actions for officers who have substantiated claims of misconduct.

Girls for Gender Equity also calls for the expansion of CCRB's authority to explicitly include NYPD School Safety Agents, and other "peace officers" who operate under the direction of the NYPD through the 2019 New York City Charter Revision process. This expanded power must also include complaints of gender-based violence and sexual harassment. Currently, pathways for reporting harmful experiences with school safety agents and other peace officers must have their cases referred to the NYPD Internal Affairs Bureau (IAB). Young people who have experienced harm by school safety agents must have their reports handled by the NYPD. CCRB can and should be the primary agency for these reports.

**Expand Fiscal Transparency and City Council Oversight of the New York Police Department:**

Lastly, we call on the 2019 Charter Revision Commission and New York City at large to increase fiscal transparency and Council oversight for NYPD purchases. Currently the NYPD is able to acquire surveillance technologies, military grade equipment, software and technology without community input or City Council oversight using New Yorkers tax dollars. We call for greater transparency through the following mechanisms:

1. Amend procurement process so that it would require transparency, equity impact statement, public input & opportunity for Council veto prior to purchase of surveillance equipment, software/tech, and other major purchases (e.g. new weapons and military grade equipment)
2. Require NYPD reporting of private sources of income and expenses paid by those sources (& other sources of income not currently subject to Council oversight)
3. Require more detailed units of appropriation in NYPD budget

Thank you for the opportunity to speak today and for the ongoing work of this Commission.

**Testimony of Ellen Bilofsky before the 2019 Charter Revision Commission  
Brooklyn Borough Hall, May 2, 2019**

Good evening. My name is Ellen Bilofsky. I'm here tonight as a New Yorker, Brooklyn resident, and concerned voter.

I'm supporting ranked choice voting in New York City very simply because I believe that elections should be about voting for the candidate you think will do the best job in the office, and not a gambling game requiring voters to calculate the odds on which candidate has the best chance to win.

Our current electoral system all too often allows situations, such as the recent Public Advocate race, where the vote is split among many candidates, allowing someone with a minority of votes to win with a plurality.

With ranked choice voting, we could vote for our preferred candidate without worrying that our vote would "spoil" someone else's chances to be elected or "steal" votes from him or her. If my first choice candidate doesn't receive sufficient votes and is eliminated, then my second- or third-choice vote will be counted, but my actual preference will also have been heard. The winner is someone who actually receives a majority of the votes counted. Whether or not that person was the first choice of all the voters, the winner was chosen by the majority of the voters.

Ranked choice voting would have been helpful for the people of New York City when we had some 17 candidates running for Public Advocate earlier this year, splitting the vote. Ranked choice voting would help the voters of my city council district right now, when we have some 7 or 8 candidates running in yet another special election, for city council member of District 45. This situation shows that we need ranked choice voting for all elections in NYC, not just citywide elections. I also support giving New Yorkers the opportunity to rank their top 5 candidates to make sure their ballots will count in races such as these with many candidates.

Ranked-choice voting has been introduced successfully elsewhere around the country, and NYC has the opportunity to help pave the way for improving our voting system nationwide.

I support ranked choice voting because voting should be about expressing a preference for the best candidate, not about gaming the system. I believe ranked-choice voting will encourage more voters to turn out because they know their votes will count. It will strengthen our elections and our democracy.

Ellen Bilofsky  
37 DeKoven Court  
Brooklyn NY 11230  
ebb11@optonline.net

Good Evening, my name is Mariam and I am a youth leader with Make The Road NY, a member organization of the city wide coalition Communities United for Police Reform. I am here to talk about increasing accountability for NYPD School Safety Agents by expanding the CCRBs scope of investigation authority to cover complaints against Safety Agents. Right now in NYC there is no public accountability process to hold Safety Agents accountable for misconduct and abuse. The only real process youth have is to go through the Internal Affairs Bureau, something that is very intimidating for youth and their families and relies on internal accountability which we know often means no accountability. Often times at the end of that process SSAs are simply transferred to another school and not actually held accountable by the NYPD.

The need to have a better and public way of holding SSAs accountable is clear when the NYPD doesn't even hold officers accountable for killing people, like in the case of Eric Garner where 5 years have passed and no officers have been disciplined. For youth in NYC schools SSA's are often the first point of contact and are often the ones in school who make us feel the most unsafe. From the moment young Black girls walk into school we have to go through invasive policing. SSA's will request young women to remove hair wraps, pins, and even bras that may have wires. Agents often assume the worst of young people and create an environment where we are no longer students and can't get our education with respect and dignity. On top of that, SSA's never think they are doing something wrong to us, and even when they are told directly that they are they boast an air of confidence, knowing they will get away with whatever actions they commit.

Black and Brown youth are among the most vulnerable to the violence committed by SSA's. In NYC Black girls are 10.4x more likely to come in be arrested by SSAs. The main line used by the NYPD is that young people are dangerous and that's why we need police in our schools, but what happens when the people sent to "keep us safe" are the very ones

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harming us and walking around with impunity. We can't continue to live in a city where the people who are allegedly responsible for the safety of our most vulnerable populations continue to harm folks and not be held accountable. Expanding CCRB authority to specifically include SSA and other peace officers who operate under the direction of the NYPD is one step to ending the School to Prison Pipeline and providing safety and justice to youth of color in NYC schools. This offers an opportunity to provide actual safety to youth in our schools and make them feel heard and respected! That is why Make the Road NY supports this expansion as a priority along with all other priorities laid out by CPR and we hope you do to. Thank you for listening to me today.

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Testimony provided by Gina Arias (Brooklyn resident)

Thursday, May 2<sup>nd</sup>, 2019

Chart Commission Hearing (Brooklyn)

**Suggested changes to the City Charter**

- Enable the Civilian Complaint Review Board (CCRB) to determine discipline in cases that they prosecute (via their Administrative Prosecution Unit)
  - Expand CCRB authority to explicitly include school safety agents and other “peace officers”
- 
- Expand CCRB authority to prosecute on other misconduct (for example, when officers provide false statements or lie on official reports)
  - Require that when the NYPD Commissioner deviates on CCRB findings and discipline recommendations that the reason for the deviation be made public—this was what was intended when the CCRB’s Administrative Prosecution Unit was created in 2012)

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- Codify the CCRB’s Administrative Prosecution Unit
- Delegation of subpoena power to high ranking CCRB staff
- Expand NYPD “duty to cooperate” with CCRB

Comments by sandy Hornick, May 2, 2019

Members of the Commission, Good Evening,

My name is Sandy Hornick, I am an urban planner now in private practice but for 38 years I was an employee of, or consultant to, the Department of City Planning. From 1991 to 1996, I had the privilege of serving as the Deputy Executive Director for Strategic Planning at the Department, a position mandated by a previous Charter revision, and then for another 7 years I performed a similar function as a consultant.

I would like to address two of the topics raised in the Preliminary Staff Report:

How the ULURP and Pre-ULURP Process might be revised and  
How to best encourage planning takes place in the context of the best possible balance of city-wide and local concerns.

#### ULURP PROCESS

As currently structured, the ULURP process assures that sooner or later everyone is frustrated and I believe that is by design to ensure that a diversity of views gets considered in land use decisions.

As currently structured, the ULURP process is intended to give communities meaningful *voice* but not *authority*, which often means that sooner or later everyone is frustrated but I believe that is by design.

- The public can only voice its opinion or, as if sometimes the case, opinions and hope that its reasoning resonates or its numbers overwhelm.
- Community Board members give freely of their time but their recommendations are only advisory.
- Staff at the public agencies has the luxury of being paid for their time but no voice in the decision-making process.
- The Planning Commission neither develops proposals nor controls the final decision making and
- the City Council has final decision making authority but does not control what comes before them.
- Not that they are the subject of much sympathy but private applicants often feel they must invest substantial time and money in a process with no certainty other than the ULURP time line and that they are at the mercy of everyone else in the process.

This is a messy process but one that is designed to promote balance. I believe this is good and should not be changed. I do think that community boards are at a disadvantage, however, because, while they get 60 days to review in the ULURP calendar, the interaction of the dates of

certification with the calendars of the community boards often means that the community boards effectively have less than 60 days to review.

Changes to ULURP that promote advance notice may be workable without adding to much difficulty to the process. Changes that try to change the carefully crafted balance among the various participants in the process are likely to cause more problems than they would solve.

### BALANCING CITYWIDE AND LOCAL CONCERNS

The staff report does an admirable job in highlighting and explaining 12 Planning Documents. While all of these documents do not address the same issues, this is just too many documents. This process needs to be simplified.

Planning and planning issues are not static. New York City is, fortunately, a dynamic place and as a consequence the city is constantly confronting evolving issues as the city reinvents itself. The history of the past 30 years of requiring all these reports is not that these mandated and extensive processes remain precise guidance documents for the future.

As an example, PlaNYC was an innovative document that focused the City on a host of issues that the City would confront. But the issues did not stay the same and the arrival of a new administration with new or revised policies inherently changes the emphasis and sometimes the recommendations of the plan.

There should be fewer planning documents and they should focus on identifying important issues and priorities for planning, and broad strategies to address them, rather than detailed prescriptions of specific actions. They cannot be expected to detail specific proposals that do not yet exist, such as what future rezonings are needed or where specifically they should be. Even if this could be done, it would run counter to the desire for meaningful local engagement, which is informing the Commission's consideration of the pre-ULURP process.

As this Commission considers potential revisions, I would encourage you to also consider the temporal implications of all of these reports. Obviously, they take a lot of time and allocation of limited resources to prepare.

But it is important to consider that governance commences with inauguration. Reports that take years to prepare, especially when based on other reports that also need to be prepared, will automatically be completed well into and perhaps even at the end of the term. This was the case with the one and only Planning and Zoning Report that took years to prepare and was issued after the Dinkins administration had been voted out of office.

These mandated reports are most likely to affect the administration that prepares them and the more detailed they have to be and the more complicated the process of making them means that they will take more time to prepare and therefore have less of an impact on that administration.

The following administration may share the same goals as its predecessor but more frequently it wants to show that it is different. Charter-mandated reports have proven to be an ineffective tool of mandating an agenda on subsequent administrations and we should be happy that this is the case. Each time the public elects a new administration, it is choosing how much continuity and how much innovation it wants.

Fewer and more flexible charter-mandated documents offer the best guidance without unwanted and unworkable control.

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## Charter Revision Commission Testimony

Initially given September 20<sup>th</sup>, 2018 – Queens Borough Hall (resubmitted on May 2<sup>nd</sup>, 2019 at Brooklyn Borough Hall)

Good evening Commissioners. As someone that has testified before every Charter Revision Commission since 2002 and by extension has sat through literally hundreds, perhaps thousands of suggestions from the public about more subjects than I can possibly count- including reforming the CCRB, changes to the Community Boards, abolishing certain offices, empowering certain offices, changes to mayoral succession, nonpartisan elections, changes to the Board of Standards and Appeals and scrutiny of every possible syllable in the city charter. Now, most of these Commissions have been one year Commissions and not two year Commissions as this one is, but they've all had one thing in common: every single one of these Commissions, especially those tasked with doing a comprehensive review of the city charter has felt there was more work to do. Commissioners have felt that there were certain areas that required more testimony, certain topics that needed more scholarly research and public input and areas in which there just simply didn't seem ample opportunity for appropriate discussion. At the conclusion of these Commissions, members of the Commission, citizen activists, students of municipal governance and good government advocates are all left hoping that the current Mayor or the next Mayor will appoint another Charter Revision Commission, consisting of responsible Commissioners to pick up the baton and carry it forward on all these subject areas. Unfortunately though, what generally happens is that whomever the Mayor appoints a group of people, who act more like a task force as opposed to an independent tribunal, stocked by people who are more likely than not to do the Mayor's bidding.

The reason this Commission offers so much promise is because while you certainly include some terrific Mayoral appointees, the fact that there are appointees from the other citywide officeholders, the Speaker and the Borough Presidents has allowed this Commission to have a political diversity and an independence that has been lacking in so many of the Commissions that have existed since 1988. It also offers a great deal of promise because it's a two year Commission, rather than rushing to complete its work in a single year. I suspect though that at the end of two years, many of you will still be left thinking that there's still so much work to be

done and hoping that the next Mayor or Speaker appoints a Commission to pick up where you've left off. There is a better way.

Humbly, I'm suggesting that you make the process you're currently involved in permanent. Rather than leave the Charter Revision process to the whims of future Mayors and Speakers, why not put a question on the ballot that asks New Yorkers if the Charter Revision process should be permanent and regular? You could have it mandated in the City Charter that every two years, a diverse group of elected officials, like the ones that have appointed you, will have the opportunity to appoint a Charter Revision Commission, which would regularly hold hearings and public meetings around the city taking up many of the issues of concern to New Yorkers. Then, on a biennial basis, this permanent Charter Commission would have the opportunities to put questions on the ballot.

Additionally though, this Commission could do a quarterly report to the City Council and the Mayor's office recommending both changes to the city charter and legislative changes that might make certain charter revisions unnecessary. This new permanent Charter Commission wouldn't preclude the Mayor from also appointing Charter Revision Commissions, but by having this Commission serve regularly and by guaranteeing a diverse political makeup, because of the nature of those making the appointments, this allows the work you're doing to be studied, dissected analyzed and built upon by future Commissions. This way, you wouldn't feel as if you're playing "Beat the Clock" and obliged to rush to finish your work in order to get something on the ballot. It's easy to imagine a scenario for instance in which you look at an issue like "Democracy Vouchers" for instance and while the idea has some appeal, there might be a desire on the part of some to see how the program has worked out in Seattle before implementing it in New York. The fact that you know a new Commission, which some of you may be serving on, is coming would allow you to study the issue, hold hearings on the issue, hear expert testimony on the issue and then recommend to those come after you exactly where to pick up.

Some may see a Commission like this is unnecessary, costly and usurp the proper legislative role of the New York City Council. I don't believe that's the case. Because so much of the work of the City Council is focused on constituent service, oversight of municipal agencies and putting together the city's budget, there's actually very little time, attention and interest, quite frankly, in

to the structure of city government itself. The job of a City Council member is by definition governed by issues that are politically expedient. A Commission focused solely on the structure, nature and scope of city government would allow the Council to implement changes that have been studied, debated and examined in-depth in a manner that even the most comprehensive city council committee hearings don't allow for. In many ways, this would free council members up to focus solely on the job of being a modern day Councilman. I suspect there would be very few members that would say, "Wait a minute! I want to spend more time looking at whether or not the Procurement Policy Board should have members appointed by the Speaker" or "Don't you dare take away our ability to determine the scope of the New York City Sports Commission".

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The nice thing about it though was that the Council and the Mayor would be free to ignore the permanent Charter Commission's recommendations and then at it would be up to the voters whether or not they wanted to implement these changes. Hopefully, once New Yorkers see that they not only have a stake in city government, but a direct voice, this will encourage them to learn more about municipal government and what's happening in New York City in general.

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Too often, New Yorkers, who are already cynical by nature, feel as if their vote doesn't matter, so the logical consequence is they simply choose to opt out and not pay attention. If voters know they can change the structure of city government itself, it will cause at least some of them to learn more about it.

Such a concept is hardly a new idea. At the state level, New Yorkers have repeatedly been the beneficiaries of a constitutional commission to prepare both voters and potential Constitutional Convention delegates for future conventions. The work done by these commissions has repeatedly been used to propose specific amendments to the constitution, even without a convention. The work done by such a constitutional convention in 1873 paved the way for constitutional changes the following year that were overwhelmingly adopted by the voters in areas like combating corruption, expanding suffrage and reforming both the state and legislative branches. As former New York Governor John Hoffman said in 1872 when he appointed the first of these constitutional commissions,

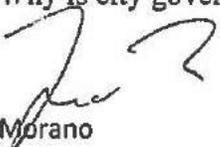
“Such a commission could have all the benefit of the debate incident to a larger body through intelligent discussion in the press, and the voluntary suggestions of thoughtful citizens; and would be almost certain to agree upon amendments which would secure the popular approval”

Why wouldn't the same thing hold true at a municipal level? Even Governor Andrew Cuomo recognized the importance of such Commissions. When he ran for Governor in 2010, he wrote in his campaign policy book "The New NY Agenda" that prior to any constitutional convention,

"...we should create a constitutional commission to help define the constitutional convention and issues that need to be addressed, including recommending amendments for passage. That blueprint will then provide the starting point for both the constitutional convention and any amendments made via voter approval at the ballot box. While less well-known than constitutional conventions, these commissions have been key tools used to amend our Constitution".

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Why is city government somehow less deserving of a similarly deliberative approach?



Frank Morano

816-8-Morano

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# Compelling Research for an Elected Civilian Review Board

## I. ECRB Proposed Draft Legislation (pdf attached)

## II. Examples of proposals for police accountability/review boards in other cities

- “Petition of Submission to Electors of Proposed Amendments to the Charter of the City of Los Angeles.”  
*(Community-developed legislation proposing an Elected Civilian Review Board in Los Angeles calling for elected members, power to enforce disciplinary decisions, and a Special Prosecutor. on the LA ballot in 1992; pdf attached)*
- “Council-Ready Proposed Legislation; Proposed Change to Municipal Code of Chicago to create Civilian Police Accountability Council.”  
*(Community-developed legislation calling for elected board members, final decision-making regarding discipline, ability to hire police superintendent and general policy, under current discussion; pdf attached)*
- Rochester, NY (current): “The Case for an Independent Police Accountability System: Transforming the Civilian Process in Rochester, NY.”  
*(Community-developed legislative proposal to replace current complaint board with a system in which the majority of board members are elected and the board having the final determination regarding discipline decisions and the right to propose policy changes; pdf attached)*

## III. Performance and systemic flaws of Civilian Complaint Review Board (CCRB)

### A. Documentation of the failure to implement NYC’s CCRB recommendations on discipline and the consequences of those failures

- “Police Punishment: CCRB vs NYPD,” graphic presentation (*prepared by WNYC based on the 2012 CCRB annual report stunningly demonstrates the extent to which CCRB recommendations on discipline are reduced or ignored*): <https://project.wnyc.org/ccrb/>
- NYC Commission to Combat Police Corruption 18<sup>th</sup> Annual Report, August 2017 (*The Commission documents instances in which the members believed police officers were inadequately disciplined for a wide range of infractions. Refer to FADO violations, pp 107-111 and their concluding recommendations pp 169-174*): <https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf>
- “Exclusive Documents: The disturbing secret history of the NYPD officer who killed Eric Garner,” by Carimah Townes and Jack Jenkins, 3/21/17 (*Evidence that the officer who applied a chokehold resulting in Mr. Garner’s death had multiple prior substantiated CCRB complaints that, if appropriately followed through, might have resulted in his dismissal*): <https://thinkprogress.org/daniel-pantaleo-records-75833e6168f3/>

- “The Cop Said He “Slipped.” The Video Shows Him Forcing An 11-Year-Old Girl To The Ground. He Wasn’t Punished,” by Kendall Taggart and Mike Hayes. *Buzzfeednews.com*, October 29, 2018 (*An example of an officer who used excessive force and lied about it, yet was not disciplined. The same officer has repeatedly made racist and homophobic posts on social media in violation of NYPD policy.*): <https://www.buzzfeednews.com/article/kendalltaggart/nypd-paul-gaglio-bill-bratton-punishment>

## **B. Analyses of the functioning of civilian review boards in NYC and other cities.**

- “Getting It Right: Building Effective Civilian Review Boards to Oversee Police,” by Udi Ofer, *Seton Hall Law Review*, 2016 (*A review of civilian oversight in the largest 50 U.S. cities and identification of key components to success, including “making discipline stick.”*): <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1572&context=shlr>
- “How Mayors, Police Unions and Cops Rig Civilian Review Boards,” by Tim Lynch, *CATO Institute* 2016 (*Asserts that appointed boards do not truly function independently and are undercut if their disciplinary recommendations are not carried out. Such ineffective boards may undermine public confidence and do more harm than good in achieving police accountability.*): <https://www.cato.org/publications/commentary/how-mayors-police-unions-cops-rig-civilian-review-boards>
- “An Investigation of NYPD’s Compliance with Rules Governing Investigations of Political Activity,” NYC Department of Investigation, Office of Inspector General, 2016 (*The DOI investigation finds extensive violations of the Handschu guidelines, which are court-required standards for police investigations of political activity. This jeopardizes NYC residents’ civil rights and subjects the City to liability.*): [https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig\\_intel\\_report\\_823\\_final\\_for\\_release.pdf](https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_intel_report_823_final_for_release.pdf)
- New York Advisory Committee, U.S. Commission on Civil Rights, “Police Practices and Accountability in New York City,” Statement of Darius Charney, Senior Staff Attorney, Center for Constitutional Rights, 3-21-17 (*Refer to pp 8-11 regarding the reversal of CCRB disciplinary recommendations and the impact of lack of transparency regarding police conduct*): [https://ccrjustice.org/sites/default/files/attach/2017/03/CCR\\_Testimony-USCsmCivRights-20170321\\_Final.pdf](https://ccrjustice.org/sites/default/files/attach/2017/03/CCR_Testimony-USCsmCivRights-20170321_Final.pdf)
- New York Civil Liberties Union report on CCRB (2007) (*A review of CCRB functioning with recommendations for improvement, including removing the police commissioner’s power to have final determination regarding discipline.*): <http://www.nyclu.org/content/civilian-complaint-review-board-and-civilian-oversight-of-policing>

- “This Law Makes it Nearly Impossible to Police the NYPD,” by Michael Sisitzky and Simon McCormick, NYCLU 2018 (*Explanation of how the application of law 50(a) obscures police misconduct cases.*): <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/law-makes-it-nearly-impossible-police-nypd>
- NYC Civilian Complaint Review Board Annual Report, 2017 (*The most recent available annual CCRB report; note p. 34 showing that the concurrence rates of disciplinary recommendations with NYPD action is the lowest since 2013, with reduced severity occurring in 30% of cases and no discipline in 28%.*) [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2017\\_annual.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf)

#### **IV. Campaign’s analysis of why ECRB proposed legislation does not conflict with New York State civil service laws or violate police officers’ rights to collective bargaining**

- Currently the police commissioner is vested with final disciplinary authority pursuant to the NY City Charter sections 434 and 440(e) and section 14-115 of the Administrative Code. Courts have held that this authority is not superseded by Civil Service Laws. See In re Application of Lynch v. Giuliani, 301 A.d. 2d 351 (N.Y. App. Div. 2003) (The police commissioner’s delegation of power to the CCRB to prosecute police officers in certain cases does not violate Civil Service Law Section 75 or Civil Rights Law Section 50 (a)). Same reasoning would apply to an amended NYC Charter, establishing final authority for discipline in an ECRB. <https://casetext.com/case/in-re-application-of-lynch-v-giuliani>
- Link to relevant precedent In the Matter of Montella v. Bratton, 93 N.Y. 2d 434 (June 8, 1999) (New York City Civil Service Commission does not have jurisdiction to hear appeals by police officers of punishment imposed by police commissioner since such punishment is not pursuant to Civil Service Law Section 75; sole appeal is by Article 78). Link to decision regarding Civil Service Law sections 75 and 76: [https://www.law.cornell.edu/nyctap/I99\\_0093.htm](https://www.law.cornell.edu/nyctap/I99_0093.htm)
- Likewise, the ECRB proposed legislation does not conflict with police officers’ rights to collective bargaining. Link to relevant legal precedent In the Matter of the City of New York v. McDonald, 201 A.D. 2d 258 (1994). <https://www.leagle.com/decision/1994459201ad2d2582404>
- Link to subsequent legal confirmation of this principle: <http://www.nyc.gov/html/law/downloads/pdf/Friedlander%20Jeff%20Newspaper%20Article%207-26-10.pdf> regarding NYS Court of Appeals holding in Matter of Patrolmen's Benevolent Assn. v. New York State Public Employment Relations Board, 6 N.Y.3d 563 (2006) (PBA v. PERB).
- “Police and the Public,” (*Letter to the Editor from Police Accountability Board advocate Ted Forsyth clarifying questions on state law regarding police discipline and collective bargaining*): <https://www.rochestercitynewspaper.com/rochester/feedback-6-13/Content?oid=6799220>

**V. Relevant documents in public record studied**

- New York City Charter (refer Chapter 18)
- New York Administrative Code
- NY Municipal Home Rule, sections 10, 11, 23, and 24.
- Civil Service Law sections 75 and 76
- NYS Department of Civil Service Manual of Procedure in Disciplinary Actions
- New York State Constitution, Article XIII, section 13
- NY Consolidated Laws, County Law--CNT §700 and 701
- NY Executive Law, Section 63 (a)
- NY Civilian Complaint Review Board Annual Reports

## **Proposed Legislation Creating an Elected Civilian Review Board (ECRB) to Replace the Current Civilian Complaint Review Board**

Draft amendment to the NYC City Charter and NYC Administrative Code

Adopted by the Campaign for an Elected Civilian Review Board on March 23, 2017, as amended on October 7, 2017

CHAPTER 18-A OF THE NEW YORK CITY CHARTER IS DELETED IN FULL AND REPLACED BY:

### CHAPTER 18-A ELECTED CIVILIAN REVIEW BOARD

§440. Public complaints against members of the police department.

(a) The people of the city of New York require a mechanism for the investigation of complaints of misconduct and possible uses of excessive force by officers and employees of the New York police department toward members of the public and determination of appropriate disciplinary actions that is comprehensive, thorough, and impartial. These investigations must be conducted fairly and independently. An independent Elected Civilian Review Board (“ECRB” or “Board”) is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct as provided in this Section.

(b) Elected Civilian Review Board.

1. The Elected Civilian Review Board shall consist of twenty-one (21) members of the public. One ECRB member shall be elected from each of seventeen (17) ECRB districts, each of which shall be comprised of three (3) adjacent city council districts as follows: Elected Civilian Review Board district (ECRBD) #1 corresponds to City Council districts (CD) 1, 2 and 3; ECRBD #2 corresponds to CDs 4, 5, and 6; ECRBD #3 to CDs 7, 9 and 10; ECRBD #4 to CDs 8, 16 and 17; ECRBD #5 to CDs 11, 14 and 15; ECRBD #6 to CDs 12, 13 and 18; ECRBD #7 to CDs 19, 23 and 27; ECRBD #8 to CDs 20, 24 and 29; ECRBD #9 to CDs 21, 22 and 25; ECRBD #10 to CDs 28, 31 and 32; ECRBD #11 to CDs 26, 30 and 34; ECRBD #12 to CDs 33, 35 and 36; ECRBD #13 to CDs 38, 39 and 40; ECRBD #14 to CDs 37, 41 and 42; ECRBD #15 to CDs 43, 44 and 47; ECRBD #16 to CDs 45, 46 and 48; ECRBD #17 to CDs 49, 50 and 51. Four additional members will be elected as follows: upon creation of the ECRB, Civilian Complaint Review Board data will be used to determine the four ECRB districts that contain police precincts with the highest number of complaints reported in the preceding two (2) calendar years. In subsequent elections, the four ECRB districts apportioned an additional representative will be based on ECRB data regarding the numbers of substantiated complaints received from residents of each ECRB district during the preceding two (2) calendar years prior to the election.

2. In order to stand for election to the ECRB, a prospective candidate is required to have resided in New York City for the preceding three (3) years, in the ECRB district for at least the preceding twelve (12) months, and must submit a petition supporting her or his candidacy signed by 25 residents (either registered voters or holders of IDNYC at least 18 years of age) of the ECRB district she or he seeks to represent.

*Proposed Legislation Creating an Elected Civilian Review Board (ECRB)  
to Replace the Current Civilian Complaint Review Board, p. 2*

3. Residents of New York City 18 years of age or older are eligible to be a candidate for the Board in the district where they reside, without regard to sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, or physical ability. Persons who are currently employed by the NYPD, or who were employed by NYPD within the prior five (5) years, are not eligible to be candidates or to serve as ECRB members. No member of the Board shall hold any other public office or employment.

4. The members shall be elected for a term of four (4) years, coinciding with the terms of office and scheduled elections of the mayor and city council members. Upon completion of each term, each Board member shall be eligible to stand for reelection. ECRB members are not subject to charter provisions §1137 and §1138 on Term Limits.

5. In the event of a vacancy on the Board during the term of office of a member by reason of recall, death, resignation, or otherwise, a successor from the same district shall be selected by a majority vote of the ECRB members to serve until the next general election. At the next general election, the position will be filled by election as described in §440(b)2 and 3.

6. Board members are subject to recall by voter referendum. A recall vote may be initiated by a petition signed by 200 residents (either registered voters or holders of IDNYC at least 18 years of age) of the ECRB district the Board member represents. The recall vote will then take place within four months, either at the general election or a specially scheduled election. If the vote to recall is upheld, the ECRB member is immediately removed and replaced as described in §440(b)5. If the vote to recall is defeated, the ECRB member is not subject to an additional recall for the duration of that term and may seek election to additional terms.

(c) Powers and duties of the Elected Civilian Review Board.

1. The ECRB shall have the power to receive, investigate, hear, make findings, and take action upon complaints by members of the public, including employees of the NYPD or any NYC governmental agency or department, against members of the police department that allege police misconduct. These include:

- a. Using unnecessary or excessive force in the performance of duties;
- b. Conducting a false arrest or unlawfully detaining any person;
- c. Conducting an unlawful search or seizure, or unlawful surveillance;
- d. Tampering with evidence;
- e. Falsifying official and/or unofficial reports;
- f. Conducting unauthorized investigations, surveillance, infiltration, or disruption of lawful political, social, economic, religious organizations, or their members, for their political, social, economic, or religious views; or conducting unauthorized investigations or surveillance of individuals for their political, social, economic, or religious views;
- g. Threatening to arrest or to detain any person without a justifiable legal basis;
- h. Threatening to use force against any person without a justifiable legal basis;
- i. Discriminating on the basis of age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity

*Proposed Legislation Creating an Elected Civilian Review Board (ECRB)  
to Replace the Current Civilian Complaint Review Board, p. 3*

- and expression, record of criminal conviction and incarceration, physical ability, or state of mental health in the enforcement of the law (evidence of a past or present pattern of discriminatory conduct shall be admissible on the question of the officer's intent);
- j. Using abusive or insulting language including, but not limited to derogating a person's age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, physical ability, or state of mental health;
  - k. Sexually harassing, verbally or physically, any person;
  - l. Engaging in abusive or offensive conduct in relation to a person's age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, physical ability, or state of mental health;
  - m. Failing to provide any person their post-arrest rights as guaranteed by the laws and the constitutions of the state of New York and of the United States;
  - n. Committing perjury;
  - o. Engaging in, soliciting, or arranging for the harassment of or discrimination against any person in relation to a complaint she or he has filed with the ECRB; a family member or associate of such person; an individual who has provided or is about to provide any facts or evidence in any proceeding before the ECRB; or a member or staff of the Board, her or his family member, or associate because of the Board's performance of its duties;
  - p. Violating any police department policy or procedure that falls within the jurisdiction of the ECRB as set forth in this Section.
2. The Board shall investigate all cases of officer-inflicted serious bodily harm, officer-involved deaths, and officer-involved shootings.
3. The ECRB shall promulgate rules of procedure in accordance with the city administrative procedure act, including rules that prescribe the manner in which investigations are to be conducted and determinations made and the manner by which a member of the public is to be informed of the status of his or her complaint. Such rules may provide for the establishment of panels of no fewer than three (3) members of the Board, which shall be empowered to supervise the investigation of complaints, and to hear, make findings, and determine action on such complaints.
4. Determinations by the ECRB may include that allegations are unsubstantiated and no action is required, or that disciplinary action is warranted. Such disciplinary actions may include mandatory counseling and/or re-training; suspension; reassignment; or dismissal. When there is the potential for criminal charges against the police department officer or employee, the results of the ECRB investigation and findings will be submitted to the Special Prosecutor, as described in §440(g)3.
5. The findings and determinations of the Board and the basis therefore shall be submitted to the police commissioner for implementation. No finding or determination shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded,

*Proposed Legislation Creating an Elected Civilian Review Board (ECRB)  
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or withdrawn complaints be the basis for any such finding or recommendation.

6. The ECRB shall establish procedures and accessible means for members of the public residing throughout the city to report complaints against members of the police department on a 24-hour/day basis.

7. The ECRB may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of complaints submitted pursuant to this Section, including the power to issue subpoenas.

8. The Board shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.

9. The ECRB shall have the responsibility of informing the public about the Board and its duties and shall develop and administer an ongoing program for the education of the public regarding the provisions of this chapter, how to initiate a complaint, and the work accomplished by the Board.

10. Each member of the Board shall convene and organize, once each month, a Community Assembly in his or her district, open to all interested persons. Each public meeting will offer an opportunity for community members to discuss police- and community-related issues and to comment and present complaints and proposals relating to the Board and its work.

a. Each member shall publicly advertise the time and place of the Assembly and ensure that meeting notification and outreach gives particular emphasis to persons most affected by police misconduct, including people of color, women, LGBQ and transgendered persons, immigrants, the undocumented, persons who have been imprisoned, political and union activists, and the disabled.

b. At each Assembly, the Board member, or his or her designee, shall present a report on the work of the ECRB, including information and statistics on the number and type of complaints received and actions taken by the Board.

c. Minutes of each Assembly shall be taken by ECRB staff and shall be made available to the public upon request.

11. The ECRB shall issue to the mayor and city council a semi-annual report, which shall describe its activities and summarize its actions.

12. The Board is authorized, within appropriations available, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The ECRB will appoint a staff of special civilian investigators. Hiring of investigators and other staff shall ensure representation of groups most impacted by police misconduct.

(d) Cooperation of police department.

1. It shall be the duty of the police department to cooperate fully with investigations by the Elected Civilian Review Board and to provide to the ECRB and its investigators upon request

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records and other materials necessary for the investigation of complaints submitted pursuant to this Section, except such records or materials that cannot be disclosed by law.

2. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the Board and its civilian investigators in connection with the investigation of complaints submitted pursuant to this Section, provided that such inquiries are conducted in accordance with department procedures for interrogation of its members.

3. The police commissioner shall carry out the decisions made by the ECRB pursuant to their findings upon investigation of complaints as described in §440(c)1 and shall report the completion of each action to the Board.

(e) Authority of police commissioner.

The provisions of this Section shall not be construed to limit or impair the authority of the police commissioner to discipline members of the department, except as outlined in this Section pursuant to the ECRB's investigation and issuing of determinations regarding complaints submitted to it. Nor shall the provisions of this Section be construed to limit the rights of members of the department with respect to disciplinary action, including, but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise, except as specified in §440(c)1 and 2.

(f) Investigation or prosecution of members of the police department by other authorized parties. The provisions of this Section shall not be construed to prevent or hinder the investigation or prosecution of members of the police department for violations of law by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency, or body.

(g) Establishment of a Special Prosecutor to work in conjunction with the ECRB.

1. The Special Prosecutor (SP) will be elected to serve for a term of four (4) years, coinciding with the terms of office and scheduled elections of the mayor and city council members. In order to stand for election as SP, the prospective candidate is required to have resided in New York City for at least the three (3) preceding years and must submit a petition supporting her or his candidacy signed by 100 residents (either registered voters or holders of IDNYC at least 18 years of age) of New York City.

2. The SP must be qualified to practice in all courts of this State and must have been so qualified for at least five (5) years preceding the election. The SP shall devote her or his entire time to the duties of the office.

3. The powers and duties of the Special Prosecutor shall be as follows:

a. The SP shall institute, attend, and conduct, on behalf of the people, all criminal cases against police officers acting under color of law arising in New York City and upon violation of the provisions of this Charter or the ordinances of the City in the court of original jurisdiction, and on appeal.

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b. Whenever it shall be authorized by the laws of this state, the SP shall prosecute on behalf of the people, any or all offenses committed by police officers acting under color of law arising upon violation of the laws of the State and appeals arising therefrom.

c. The SP shall draw complaints for offenses committed against the laws of this State as described in §440(g)3, prosecute all recognizance and bail bonds forfeited in such offense cases, and prosecute all actions for the recovery of fines, penalties, and forfeitures accruing to New York City in said cases.

d. The SP shall give advice or opinions in writing to any member of the ECRB or to the Board itself upon request by such a member or by the Board.

e. The SP shall keep in her or his office proper books of record and registry of all actions in her or his charge in which the City or any member of the ECRB is a party or is interested.

4. The SP is authorized, within appropriations available, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The SP will appoint a staff of special civilian investigators. Hiring of investigators and other staff shall ensure representation of groups most impacted by police misconduct.

5. The SP shall have access to the complaints, arrest reports, investigation reports, and evidence made, kept, or obtained by the New York police department, the ECRB, or other city agencies that maintain records or files concerning the actions of its employees when they act in the capacity of police officers within the scope or course of their employment.

6. The SP shall request from the ECRB all cases considered by that Board for disciplinary action, for the purposes of review in deciding whether criminal prosecution is warranted.

7. The office of the SP is separate, apart from, and independent of the City Attorney's office, the police department, and the City Council. The City Council shall not have control of litigation undertaken by the SP pursuant to this Charter.

§457(c). Protocols is amended as follows: Wherever "Civilian Complaint Review Board" appears, it is to be replaced by "Elected Civilian Review Board."

**Proposed Change in Chapter 18: POLICE DEPARTMENT**

Amend § 434 as follows (proposed change capitalized):

§ 434. Commissioner; powers and duties. a. The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department, EXCEPT AS LIMITED IN CHAPTER 18A, §440 (C) AND (D) AND THE NEW YORK CITY ADMINISTRATIVE CODE § 14-115.

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to Replace the Current Civilian Complaint Review Board, p. 7*

Amend § 457 c. to replace “Civilian Complaint Review Board” with ELECTED CIVILIAN REVIEW BOARD.

c. ~~Civilian Complaint Review Board~~. ELECTED CIVILIAN REVIEW BOARD Within ninety days after the ~~appointment of the last member~~ ELECTION of the board pursuant to section four hundred and fifty, the board and the ~~civilian complaint review board~~ ELECTED CIVILIAN REVIEW BOARD established pursuant to chapter eighteen-a of this charter shall establish a protocol pursuant to which (i) the board, if in the course of any assessment, audit or investigation undertaken pursuant to subdivision a of section four hundred and fifty-one, forms a reasonable belief that any act of misconduct, as defined in paragraph one of subdivision c of section four hundred and forty of this charter, has occurred or is occurring, shall as soon as practicable, report the facts that support such belief to the ~~civilian complaint review board~~ ELECTED CIVILIAN REVIEW BOARD; (ii) the ~~civilian complaint review board~~, ELECTED CIVILIAN REVIEW BOARD if in the course of an investigation authorized pursuant to chapter eighteen-a of the charter, forms a reasonable belief that any act of corruption has occurred or is occurring, shall as soon as practicable, report the facts that support such belief to the board; and (iii) information shall be exchanged and cooperation between the boards facilitated.

**Proposed change in NYC Administrative Code to be implemented in concert with changes in City Charter establishing the Elected Civilian Review Board**

Amend as indicated by ITEMS IN CAPS  
New York City Administrative Code

Title 14, Chapter 1 POLICE DEPARTMENT

§14-115 Discipline of members.

a. The commissioner shall have power, in his or her discretion, on conviction by the commissioner, or by any court or officer of competent jurisdiction, of a member of the force of any criminal offense, or neglect of duty, violation of rules, or neglect or disobedience of orders, or absence without leave, or any conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming an officer, or any breach of discipline, to punish the offending party by reprimand, forfeiting and withholding pay for a specified time, suspension, without pay during such suspension, or by dismissal from the force; but no more than thirty days' salary shall be forfeited or deducted for any offense. All such forfeitures shall be paid forthwith into the police pension fund. THE COMMISSIONER SHALL HAVE POWER TO ENACT DISCIPLINARY DECISIONS OF THE ELECTED CIVILIAN REVIEW BOARD (ECRB) AS SPECIFIED IN THE NEW YORK CITY CHARTER, CHAPTER 18A, §440(c)1-5.

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b. Members of the force, except as elsewhere provided herein, shall be fined, reprimanded, removed, suspended or dismissed from the force only:

i) on written charges made or preferred against them, after such charges have been examined, heard and investigated by the commissioner or one of his or her deputies upon such reasonable notice to the member or members charged, and in such manner or procedure, practice, examination, and investigation as such commissioner may, by rules and regulations, from time to time prescribe ; OR

ii) AFTER WRITTEN COMPLAINTS HAVE BEEN EXAMINED AND INVESTIGATED; A HEARING HELD BY THE ECRB IN ACCORDANCE WITH THE MANNER AND PROCEDURE AS DETERMINED BY THE ECRB AND WITH DUE PROCESS FOR THE CHARGED MEMBER OF THE FORCE; AND A WRITTEN DETERMINATION AND DISCIPLINARY ACTION HAS BEEN PRESENTED TO THE POLICE COMMISSIONER FOR IMPLEMENTATION, AS SPECIFIED IN THE NEW YORK CITY CHARTER, CHAPTER 18A, §440(c)1-5.

c. The commissioner is also authorized and empowered in his or her discretion, to deduct and withhold salary from any member or members of the force, for or on account of absence for any cause without leave, lost time, sickness or other disability, physical or mental; provided, however, that the salary so deducted and withheld shall not, except in case of absence without leave, exceed one-half thereof for the period of such absence; and provided, further, that not more than one-half pay for three days shall be deducted on account of absence caused by sickness.

d. Upon having found a member of the force guilty of the charges preferred against him or her, either upon such member's plea of guilty or after trial, the commissioner or the deputy examining, hearing, and investigating the charges, in his or her discretion, may suspend judgment and place the member of the force so found guilty upon probation, for a period not exceeding one year; and the commissioner may impose punishment at any time during such period. THIS DISCRETIONARY SUSPENSION OF JUDGMENT AND PLACEMENT ON PROBATION DOES NOT APPLY TO DISCIPLINARY ACTIONS DETERMINED BY THE ECRB, WHICH HAS THE SOLE AUTHORITY TO MAKE DETERMINATIONS AND MANDATE DISCIPLINARY ACTION ON COMPLAINTS INVESTIGATED AND HEARD BY THE ECRB.

# PETITION FOR SUBMISSION TO ELECTORS OF PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF LOS ANGELES

To the Honorable Council of the City of Los Angeles:

We, the undersigned, registered electors of the City of Los Angeles, a municipal corporation of the State of California, equal in number with such other registered electors whose names are signed to other papers of tenor and effect identical herewith, to at least fifteen percent (15%) of the registered electors of said City of Los Angeles calculated upon the total vote cast in said City for all candidates for Governor at the last preceding general State election at which a Governor was elected, do hereby petition the Honorable Council of the City of Los Angeles, as the legislative body of said City, to submit, at the earliest practicable date, to the qualified electors of said City of Los Angeles, at an election called and held pursuant to Section 3 of Article XI of the Constitution of the State of California, and Section 34461 of the California Government Code, the following amendments to the Charter of the City of Los Angeles; said amendments being fully and particularly hereinafter set forth and described.

The following registered electors of the City of Los Angeles, who are resident voters therein, as a committee of Petitioners, sponsor this petition:

1. Wendy Elaine Hubbard, 1116 South Longwood, Los Angeles, CA 90019
2. Dolores Trevizo, 312 South Commonwealth Avenue, #D, Los Angeles, CA 90020
3. Gloria Jernigan, 9708 Grape Street, Los Angeles, CA 90002
4. M.H. Settlage, 4269 1/4 Leimert Boulevard, Los Angeles, CA 90008
5. Robin S. Toma, 950 North Edgecliffe Drive, #15, Los Angeles, CA 90026

Proposed Amendments to the City Charter Establishing an  
Elected Civilian Police Review Board and a  
Special City Prosecutor

## PROPOSED CHARTER AMENDMENTS

That the following sections of the charter of the City of Los Angeles be amended to read as follows:

- Section 5.** The officers of the City shall be:
- A Mayor,
  - A City Attorney,
  - A Special City Prosecutor,*
  - A City Clerk,
  - A Controller
  - A City Engineer,
  - A City Administrative Officer,
  - A Purchasing Agent,
  - A Secretary of the Board of Public Works,
  - A Treasurer,
  - The Members of the Board of Education,

A City School Superintendent,  
The Members of the Board of the Departments and the Chief Administrative Officers  
of each Department

*The Members of the Civilian Police Review Board.*

Such other officers as shall be named by Ordinance.

**Section 6(1).** The following officers of the City shall be elected by the electors of the City of Los Angeles, at large:

Mayor,  
City Attorney,  
*Special City Prosecutor*  
Controller

The Mayor, City Attorney, *Special City Prosecutor*, Controller, Members of the City Council, and Members of the Board of Education, *and Members of the Civilian Police Review Board* shall hold their office for a term of four (4) years, *except as provided herein at Section 202(6)(d).*

(2) The members of the Council shall be elected by districts, as follows:

(a) Between July 1 and September 15 of each tenth year, commencing with the year 1972, the Council shall, by ordinance, which shall be effective upon publication, redistrict the City into fifteen (15) districts, which shall be designated in such ordinance by numbers from 1 to 15 inclusive and such districts shall be used for all elections of ~~councilmen~~ *councilpersons*, including their recall, and for filling any vacancy in the office of member of the Council, subsequent to the effective date of such ordinance and until new districts are established. Districts so formed shall each contain, as nearly as practicable, one-fifteenth of the total population of the City of Los Angeles as shown by the Federal Census immediately preceding such formation of districts. As nearly as practicable such districts shall be bounded by natural boundaries or street lines. Nothing in this section shall prohibit the City Council from redistricting with greater frequency provided that districts so formed shall each contain, as nearly as practicable, one-fifteenth of the total population of the City of Los Angeles as shown by the Federal Census immediately preceding such formation of districts or based upon such other population reports or estimates as may be determined by the City Council to be substantially reliable. No change in the boundary or location of any district by redistricting as herein provided shall operate ce of any member of the Council prior to the expiration of the term of office for which such member was elected. Any territory hereafter annexed to or consolidated with the City of Los Angeles shall, prior to or concurrently with completion of the proceedings therefor, be added to an adjacent district or districts by the council by ordinance, which addition shall be effective upon completion of the annexation or consolidation proceedings notwithstanding any other provision of the Charter to the contrary. (Amended, 1971.)

In 1973, the terms of those members of the Council elected from the odd districts shall commence. The terms of those members of the Council elected from the even numbered districts shall commence in 1975. (Added, 1971.)

(b) The electors signing any petition for the nomination of any person to the office of member of the Council, or for the recall of any member of the Council, shall be qualified, registered voters and residents of the district from which such person seeks to be elected, or in the case of a recall petition of the district from which such member was elected or the district as it exists by reason of redistricting as provided in paragraph (a) of subsection (2) hereof; and in the case of a member of the Board of Education, or for the recall of any member of the Board of Education,

shall be qualified, registered voters and residents of one or more of the Los Angeles city school districts governed by said board. The names of no electors not qualified, registered voters and residents of the respective district involved shall be counted in determining the sufficiency of any such petition. (Amended, 1963.)

*(3) The Members of the Civilian Police Review Board shall be elected according to the procedure set forth in Section 202(6)(d) of this Charter.*

**Section 7.** The Mayor, City Attorney, *Special City Prosecutor*, Controller, Members of the City Council, and Members of the Board of Education, *and Members of the Civilian Police Review Board* shall hold their office for a term of four (4) years, *except as provided herein at Section 202(6)(d).* *The Special City Prosecutor and the members of the Civilian Police Review Board shall serve no more than two (2) consecutive terms.*

The terms of all such Officials shall commence on the first (1st) day of July next succeeding their election.

**Section 9(a)** (1) An office becomes vacant when the incumbent thereof dies, resigns, is adjudged insane, convicted of a felony, or of an offense involving a violation of his or her official duties, or is removed from office, or shall have been absent from the City without the consent of the Council for more than sixty consecutive days, or ceases to be a resident of the City, where residence therein is made a qualification for the office. An offense involving a violation of official duties includes without limitation a violation of the conflict of interest and government ethics provisions of this Charter or City ordinances; provided, however, that removal from office for violating conflict of interest or governmental ethics provisions shall be required only if a court determines that the seriousness of the offense and degree of culpability of the officer so warrant. Should any officer fail to qualify within ten days from the time he or she receives his or her certificate of election or appointment, the office to which he or she was elected or appointed shall be deemed vacant for the purpose of filling the same by appointment.

(2) For purposes of subsection (a)(1), absence from the City of the incumbent of an elective office shall be deemed to be with the consent of the Council if the absence was caused by illness, injury, or other reason, if the incumbent could not reasonably have been expected to have returned to the City under such circumstances.

(3) In addition to the circumstances giving rise to a vacancy in elective and appointive office becomes vacant when:

(A) the incumbent has ceased to discharge the duties of the office for ninety consecutive days, except when prevented by illness, injury, or other reasonable cause, or

(B) in a quo warranto action, or such other applicable proceeding as may be established by state law, a court has found that (i) the incumbent is then physically or mentally incapacitated due to illness, injury, or other reason such that he or she cannot perform the duties of the office, (ii) the incumbent was so incapacitated for at least ninety consecutive days prior to the filing of the application with the Office of the California Attorney General for leave to sue in quo warranto or, if such application was not legally required, any other act commencing litigation under this paragraph, and (iii) there is reasonable cause to believe that the incumbent will not be able to perform the duties of the office for the remainder of the term of office.

(4) If the City Clerk, after investigation, has reason to believe that all of the conditions set forth in subsection (a)(3)(B) exist with respect to an incumbent elected officer, the City Clerk, on behalf of the City, shall initiate, or cause to be initiated, litigation under subsection (a)(3)(B) by filing an application for leave to sue in quo warranto with the Office of the California Attorney General or by following such other applicable procedure as may be established by state law.

(5) Litigation under subsection (a)(3)(B), in quo warranto or as otherwise provided by state law, may also be brought by any person authorized to do so by state law.

(b) The City Controller ~~and~~, the City Attorney, *and the Special City Prosecutor* each shall appoint an assistant or deputy, who thereby shall become the acting incumbent in case of any vacancy in such office as hereinabove provided, or otherwise. Such acting incumbent shall serve as City Controller, ~~or as~~ *as* City Attorney, or as Special City Prosecutor respectively, until the Council appoints a successor for the unexpired balance of the term. Such appointment made by the Controller, ~~or the City Attorney, or the Special City Prosecutor~~, shall be in writing filed with the City Clerk and may be changed from time to time. Any person so anointed must possess the qualifications prescribed for such office and shall take the oath prescribed by Sec. 13 of this Charter before assuming his or her duties as acting incumbent.

(c) The Treasurer, City Engineer, City Clerk, Secretary of the Board of Public Works, Purchasing Agent, and City Administrative Officer, for their respective offices, also shall designate, in like manner, the assistant or deputy who, upon taking the oath of office, shall serve as acting incumbent of the office in case of any vacancy in such office, until an appointment thereto is made in the manner prescribed specifically for such offices.

**Section 42.** (1) The City Attorney must be qualified to practice in all the courts of this state, and ~~he~~ must have been so qualified for at least five years next preceding his *or her* election. ~~He~~ *The City Attorney* shall devote *his or her* ~~the~~ entire time to the duties of ~~his~~ *the* office. (Added, 1925.)

The powers and duties of the City Attorney shall be as follows:

(2) The City Attorney must prosecute and defend for the City all actions at law or in equity, in special proceedings, for or against the City, or in which it may be legally interested, or for any officer of the City in any action or proceeding, when directed to do so by the Council, *except for those cases which fall within the power and duty of the Special City Prosecutor as herein provided in this Charter.*

(3) Whenever any cause of action at law or in equity or by special proceeding exists in favor of the city, the City Attorney shall commence the same when within this knowledge or when directed so to do by the Council. ~~He~~ *The City Attorney* shall give his *or her* advice or opinions in writing to any officer or board of the city, when requested so to do by such officer or board; provided, that the Council shall have control of all litigation of the city, and may employ other attorneys to assist the City Attorney therein, with his *or her* approval in writing first had and obtained. (Added, 1925.)

The Board of Water and Power Commissioners, the Board of Harbor Commissioners, or any Board in control of a department of the city government operating a public utility owned by the city, may, with the approval of the Council and City Attorney, given in writing but not otherwise, employ (and fix the compensation of and other conditions of employment, including termination of the same) other attorneys to assist the City Attorney in performing ~~his~~ *those* duties in relation to any such department. The compensation for such extra legal services shall be paid out of the special funds under the control of the department receiving such services. (Added, 1925.)

(4) ~~He~~ *The City Attorney* shall approve, by endorsement in writing, the form of all official or other bonds required by this charter, or by ordinance, before the same are submitted to the proper body, board or officer for final approval, and no such bond shall be approved without such approval as to form by the City Attorney. Except as otherwise in this charter provided, ~~he~~ *the City Attorney* shall approve in writing the draft of all contracts before the same are entered into by or on behalf of the city. The City Attorney shall do and perform all such other things affecting or relating to ~~his~~ *the City Attorney's* office as may be required of ~~him~~ *the City Attorney* by ordinance. (Added, 1925)

(5) The City Attorney shall keep in his *or her* the office proper books of record and registry of all actions and proceedings in his *or her* charge in which the City or any officer or board is a party or is interested, and copies of all written opinions given by ~~him~~ *the City Attorney* to any officer, board or department. All other papers, records and files otherwise required to be preserved may be disposed of in the manner provided by law. (Amended, 1953.)

(6) The City Attorney shall institute, attend and conduct, on behalf of the People, all criminal cases arising upon violation of the provisions of this Charter or the Ordinances of the City, in the court of original jurisdiction, and on appeal, *except for those cases which fall within the power and duties of the Special City Prosecutor, as provided in this Charter.* (Amended, 1932.)

(7) The City Attorney shall draw complaints in such cases, and prosecute all recognizance and bail bonds forfeited in said cases. ~~He~~ *The City Attorney* shall prosecute all actions for the recovery of fines, penalties and forfeitures and other money accruing to the City of Los Angeles in said cases. (Added, 1925.)

(8) Whenever it shall be authorized by the laws of this State, the City Attorney shall prosecute any or all misdemeanor offenses arising upon violation of the laws of the State and appeals arising therefrom, *except for those cases falling within the power and duties of the Special City Prosecutor as herein provided in this Charter.* ~~He~~ *The City Attorney* shall draw complaints for misdemeanors committed against the laws of this State, prosecute all recognizance and bail bonds forfeited in such misdemeanor cases and prosecute all actions for the recovery of fines, penalties and forfeitures accruing to the City or County of Los Angeles in said cases. (Added, 1925)

(9) Whenever the laws of the State shall so provide, if any person held in custody or restrain by any peace officer of the City and charged with having committed any criminal offense against the provisions of the Charter of this City, or the Ordinances thereof, with having committed any misdemeanor or other offense in the City of Los Angeles against the laws of the State, *except in those cases which fall within the powers and duties of the Special City Prosecutor as herein provided in this Charter,* shall apply for a Writ of Habeas Corpus, a copy of the application for such writ must in any such case be served upon the City Attorney at such time and in such manner as may be provided by such laws and it shall be the duty of the City Attorney to conduct all proceedings connected with or relating to the application for or hearing upon such writ on behalf of the People. (Added, 1925.)

(10)(a) The City Attorney may appoint such assistants, deputies, clerks, stenographers, and other persons as the Council, by ordinance, shall prescribe; provided, however, that each assistant must, at the time of appointment, be qualified to practice in all of the courts of the State and must have been so qualified at least two years next preceding the appointment. (Amended, 1975.)

(b) 1. No person shall be removed, suspended or reduced in grade without good cause who shall have served continuously as an attorney in the Office of the City Attorney for two years or more immediately preceding such action or who shall have served continuously in any other capacity in the Office of the City Attorney or one year or more immediately preceding such action. The time during which persons serve at the pleasure of the City Attorney as prescribed in subsection (10)(c) shall not be considered in the computation of time periods under this provision. (Added, 1975.)

2. Every person having served for those periods enumerated in subsection (1)(b)1 who is removed, suspended, or reduced in grade, shall have the right to appeal to an impartial trier of fact in accordance with written rules promulgated by the City Attorney. Such rules and any amendments thereto shall, before they become effective, be submitted to the Council. If the council approves such rules, or if the Council fails to disapprove the rules within 60 days after submission thereof, they shall become effective. The rules shall provide for service upon the period involved of a written statement of grounds and for a fair hearing by an impartial trier of fact who may: (1) deny the appeal; (2) sustain the appeal and order that the appellant be reinstated with full back pay to the

position from which removed, suspended, or reduced in grade; or (3) sustain the appeal in part and deny it in part and substitute as a lesser penalty either a suspension or a reduction in grade as may be appropriate. The trier of fact shall have the power to administer oaths and affirmations, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence at the hearing by subpoena to be issued by the City Clerk. (Added, 1975.)

3. Notwithstanding any other provision of this subsection, any person employed in the Office of the City Attorney is subject to layoff due to lack of work, lack of funds, or abolishment of position in a manner consistent with the principles contained in Section 125. The rules promulgated pursuant to subsection (1)(b)2 shall establish the procedures for such layoffs and for the establishment of reserve lists. (Added, 1975.)

(c) Notwithstanding any other provision of this subsection, each City Attorney may appoint to serve at the pleasure of the City Attorney from among persons not then employed in the Office of the City Attorney no more than four assistants who meet the qualifications of subsection (10)(a) and no more than four other persons. At the time of such appointments, the City Attorney shall file with the City Clerk a statement identifying the persons so appointed. The appointment of all persons serving at the pleasure of the City Attorney shall terminate when the succeeding City Attorney is sworn in, unless such persons shall be reappointed by the succeeding City Attorney. In the event there is no vacancy in the class of positions to which a person is appointed under this provision, and should the Council fail to authorize an additional position, the person in the class to which the appointment is to be made having the least seniority in that class and higher classes shall be reassigned to a position in any other lower class of positions in which such person has displacement rights based on seniority under the provisions of subsection (10)(b)3 or, at such person's option, may be transferred to any vacant position in the Office at the same or lower level class for which such person is found by the City Attorney to be qualified. (Added, 1975.)

**Section 43.** That the office of the City Prosecutor be and the same is hereby abolished. The City Attorney *and the Special City Prosecutor* is *are* hereby declared to be the successors to the City Prosecutor. (Added, 1933.)

## *SPECIAL CITY PROSECUTOR*

**Section 45.** (1) *The Special City Prosecutor must be qualified to practice in all of the Courts of this State, and that individual must have been so qualified for at least five (5) years next preceding the election. The Special City Prosecutor shall devote his or her entire time to the duties of the office. The powers and duties of the Special City Prosecutor shall be as follows:*

(2) *The Special City Prosecutor shall institute, attend and conduct, on behalf of the People, all criminal cases against peace officers acting under color of law arising in the City of Los Angeles and arising upon violation of the provisions of this Charter or the ordinances of the City in the court of original jurisdiction and on appeal.*

(3) *The Special City Prosecutor shall draw a complaint in such cases, and prosecute all recognizance and bail bonds forfeited in such cases. The Special City Prosecutor shall prosecute all actions for the recovery of fines, penalties and forfeitures and other monies accruing to the City of Los Angeles in said cases.*

(4) *Whenever it shall be authorized by the laws of this State, the Special City Prosecutor shall prosecute on behalf of the People, any or all misdemeanor offenses committed by peace officers acting under color of law arising upon violation of the laws of the State and appeals arising therefrom. The Special City Prosecutor shall draw complaints for said misdemeanors committed against the laws of this State, prosecute all recognizance and bail bonds forfeited in such misdemeanor cases and prosecute all actions for the recovery of fines, penalties and forfeitures accruing to the City of Los Angeles in said cases.*

(5) *Whenever the laws of the State shall so provide, if any peace officer who is held in custody or restraint by any peace officer of the City and who has been charged by the Special City Prosecutor under the authority granted above in Section 45(2) and (4) should apply for a writ of habeas corpus, a copy of the application for such writ in any such case shall be served upon the Special City Prosecutor at such time and in such manner as may be provided by such laws, and it shall be the duty of the Special City Prosecutor to conduct all proceedings connected with or relating to the application for or hearing upon such writ on behalf of the People.*

(6) *The Special City Prosecutor shall keep in his or her office proper books of record and registry of all actions in his or her charge in which the City or any Officer or Board is a party or is interested.*

(7) *The Special City Prosecutor may appoint such assistants, deputies, clerks, stenographers, and other persons as the Council by ordinance shall prescribe; provided, however, that each assistant must, at the time of appointment, be qualified to practice in all the courts of the state and must have been so qualified at least two (2) years preceding the appointment. All appointments under this Paragraph shall be made in conformance with the affirmative action policies established by the Civilian Police Review Board as set forth in Section 202(6)(f) of this Charter.*

(8) *The Special City Prosecutor shall have access to the complaints, arrest reports, investigation reports and evidence made, kept or obtained by the Los Angeles Police Department, the Civilian Police Review Board, or other City agencies which maintain records or files concerning the actions of its employees when they act in the capacity of peace officers within the scope or course of their employment.*

(9) *The office of the Special City Prosecutor is separate, apart from, and independent of the City Attorney's office and the City Council. The City Council shall not have control of litigation undertaken by the Special City Prosecutor pursuant to this Charter.*

(10) *The Special City Prosecutor may request or receive from the Civilian Police Review Board all cases considered by that Board for disciplinary action, for the purposes of review in deciding whether criminal prosecution is warranted.*

(11) *The Special City Prosecutor shall receive, in full compensation for all services of every kind whatever rendered by him or her, an annual salary of \$108,000, payable in monthly installments, or more frequently as the Council by ordinance may direct. The Special City Prosecutor shall be eligible for salary increases in like manner to all other elected officials as set forth in Section 65.6 of this Charter.*

(12) *The Special City Prosecutor shall give advice or opinions in writing to any officer of the Civilian Police Review Board or to the Board itself, when requested to do so by such officer or by the Board.*

**Section 78.** The head of each department shall have power (subject to the provisions of this charter and to such ordinances of the city as are not in conflict with the grants of power made to each such department of the city government elsewhere in this charter), to supervise, control, regulate and manage the department and to make and enforce all necessary and desirable rules and regulations therefor and for the exercise of the powers conferred upon the department by this charter. (Amended, 1965.)

Boards of Commissioners shall have such additional powers and perform such other duties as may be granted or imposed elsewhere in this charter, or by ordinance not in conflict with the provisions of this charter. (Amended, 1965.)

The board for each department created by Section 70(c) shall have the power (subject to the provisions of this charter and to such ordinances of the city as are not in conflict with the grants of power made to each such board of commissioners elsewhere in this charter), to make and enforce all necessary and desirable rules and regulations for the exercise of powers and the performance of the duties conferred upon each such board by this charter. (Added, 1965.)

No grant of power by this charter to any department or board of city government shall be construed to restrict the power of the Council to enact ordinances under the police power of the city, except as otherwise specially provided in this charter. (Amended, 1965.)

*The powers of the Chief of Police of the Police Department, the Chief of Police, the Board of Police Commissioners, and the Board of Rights are limited by the jurisdiction granted to the Civilian Police Review Board established in Section 202 of this Charter.*

**Section 111.** The provisions of this Article shall apply to all departments, divisions and offices of the city government including therein all employees of the city, except that the following shall be exempt therefrom, to-wit (Amended, 1965.)

All officers elected by the people.

All members of the several boards.

Members of the Board of Zoning Appeals (Amended, 1977.)

The secretary to the Mayor and such other persons employed in positions established by the Council in the Office of the Mayor, except clerks, stenographers and secretaries other than the secretary to the Mayor. (Amended, 1967.)

Such persons employed in positions established by the Council for the purpose of assisting the members of the Council in the performance of their duties, except clerks, stenographers, secretaries and administrative analysts. (Added, 1967.)

The chief deputy of the Controller. (Added, 1925.)

The City Superintendent of Schools and assistants and deputies, and all teachers and employees in the School Department. (Added, 1925.)

The assistants, deputies, clerks and stenographers of the City Attorney: *and the Special City Prosecutor.* (Added, 1925.)

The General Manager who is the Chief Engineer of the Department of Water and Power, and two deputies of said General Manager; provided that if the work of that Department be divided into two bureaus as provided elsewhere in this Charter, then there shall be exempted the General manager who is the Chief Engineer of the Bureau of Water Works and Supply and the General Manager who is the Chief Electrical Engineer of the Bureau of Power and Light, and a Deputy of the general Manager of each of the Two Bureaus. (Amended, 1951.)

The Auditor and the Cashier of the Department of Water and Power. (Amended, 1951.)

Four persons employed to render services in the Department of Water and Power as assistants or deputies, at a position level in any supervisory line of authority in said Department higher than any position existing under the classified civil service in said line of authority, or as members of the staff of the General Manager of that department, or as they may be divided by action of the Board of Water and Power Commissioners between the respective General Managers if the work of that department be divided into two bureaus; provided that each such person must, at the inception of such exempt employment, hold a position in the Department of Water and Power under the classified civil service provisions of this charter, and must have held one or more such positions for an aggregate period of fifteen years or more, and provided further that the exemption of each such persons shall be declared by the Board of Water and Power Commissioners. (Amended, 1951.)

The General Manager of the Department of Airports. (Added, 1957.)

The City Administrative Officer and Assistant City Administrative Officers. (Amended, 1973.)

The General Manager, Traffic Manager and the Port Warden of the Harbor Department. (Amended, 1977.)

The Inspector of Public Works. (Added, 1925.)

School Crossing Guards. (Added, 1980.)

All physicians appointed on or after January 1, 1955, to render services in the Department of Water and Power; provided that such appointments shall be without prejudice to those appointed subject to this article before said date. (Added, 1957.)

All officers of election. (Added, 1925.)

Persons specially employed by the City Clerk, as authorized by the provisions of Section 305 hereof, to assist in the conduct of any election. (Added, 1957.)

The Police Surgeon and assistant police surgeons. (Added, 1925.)

Persons or positions elsewhere specifically exempted by the provisions of this charter. (Added, 1949.)

Persons employed to render professional, scientific, technical or expert services of an exception character upon the request of the head of the department, division or office in which such persons are to be employed, approved by the resolution of the Council, and by the Board of Civil Service Commissioners. (Added, 1925.)

Any of the following may be exempted from the provision of this article upon the request of the head of the department, division or office in which they are employed, by order of the Board of Civil Service Commissioners, approved by the Council by resolution, to-wit: (a) persons employed as the first and second deputies where not exempt as above provided; (b) positions of unskilled laborers, including drivers; (c) positions the occupants of which are workmen, mechanics or craftsmen (including foremen) employed exclusively as such on the construction of public works, improvements or buildings; (d) any position requiring the services of one individual for not more than half time and paying a salary not to exceed three-fourths of the monthly rate established by the salary fixing authority of such department, division or office for entering level clerical positions; (e) grant funded positions the term of which does not exceed two years but which, by application of the procedures described in this paragraph, may be extended for one additional year for a maximum exemption period of three years. Any exemption made under the provisions of this paragraph may be terminated at any time by resolution of the Board of Civil Service Commissioners. (Amended, 1980.)

Each and every person exempted by or pursuant to the provisions of this section or occupying a position exempted by the provisions of this section shall, during the period of such exempt employment, be considered as being on leave of absence from the classified civil service if at the time of such exemption he holds a position in the classified civil service, or is entitled to hold a position therein, and shall continue, during such period, to accrue seniority credit the same as though serving in the position in the classified civil service from which he is deemed to be on leave. (Amended, 1969.)

**Section 202** (1) The right of an officer or employment of the Police Department to hold *his the* office or position and to the compensation attached to such office or position is hereby declared to be a substantial property right of which *he that individual* shall not be deprived arbitrarily or summarily, nor otherwise than as herein in this section provided. No officer or employee of the Police Department shall be suspended, removed, deprived of his *or her* office or position, or otherwise separated from the service of the Police Department (other than by resignation), except for good and sufficient cause shown upon a finding of "guilty" of the specific charge or charges assigned as cause or causes therefor after a full, fair and impartial hearing before the Board of Rights (except as otherwise specifically provided in paragraphs two (2) and seven (7) of this section): *or before the Civilian Police Review Board in cases involving allegations or complaints of the type set forth*

*in Section 202(6)(a), except as otherwise specifically provided in paragraph two (2) of this section*). Such charges must be based upon some act committed or omitted by such officer or employee within one (1) year prior to the filing of the complaint referred to herein. No case of suspension with loss of pay shall be for a period exceeding six (6) months.

(2) Provided, however, that the Chief of Police ~~may~~ *(in internal departmental matters only) or the Civilian Police Review Board (in cases involving allegations or complaints of the type set forth in Paragraph (6)(a) of this Section) may*:

(a) Temporarily relieve from duty any officer or employee of the Police Department pending a hearing before and decision by the Board of Rights *or the Civilian Police Review Board (in cases involving allegations or complaints of the type set forth in Section 202(6)(a))* of any charge or charges pending against such officer or employee; or he may

(b) Suspend such officer or employee for a total period not to exceed thirty (30) days with loss of pay and with or without reprimand, subject, however, to the right of such officer or employee to a hearing before a Board of Rights. In the event the officer or employee suspended under this subparagraph files ~~his~~ *an* application with the Chief of Police (within five (5) days after service upon ~~him~~ *such officer* of notice of such suspension if ~~his~~ *such officer* has been personally served or within ten (10) days if such officer has been served in any other manner as herein prescribed), for a hearing before and decision by a Board of Rights in the manner in this section provided, such suspension, shall thereupon automatically become a temporary relief from duty pending hearing and decision by the Board of Rights. In the event, however, that such officer or employee so suspended under subparagraph (b) of paragraph Two (2) hereof, fails to so apply for such hearing within the period prescribed, ~~he~~ *such officer* shall be deemed to have waived such hearing and such suspension shall remain effective, unless the Chief of Police required that a hearing be had, as hereinafter provided.

(3) In the event any order of relief from duty or order of suspension is made under either subparagraphs (1) or (b) of paragraph (2), such order must contain a statement of the charges assigned as causes therefor, and the Chief of Police *or the Civilian Police Review Board (in cases involving allegations or complaints of the type set forth in Paragraph (6)(a) of this Section)* must (within five (5) days after such order of relief from duty or order of suspension is served as in this section prescribed file with the Board of Police Commissioners *and the Civilian Police Review Board (in cases involving allegations or complaints of the type set forth in Section 202(6)(a))* copy of a verified written complaint upon which such order of relief from duty or order of suspension is based, with a statement that a copy of such order of relief from duty or order of suspension and copy of verified complaint was served upon the accused. Such complaint must be verified by the oath of the person making the same and must contain a statement in clear and concise language of all the facts constituting the charge made. In the event that the Chief of Police fails to file the aforesaid statement and complaint within the five (5) day period heretofore prescribed, the aforesaid order of temporary relief from duty or order of suspension shall thereupon become void and of no effect and shall be automatically revoked, and the accused officer or employee restored to duty with the department without loss of pay and without prejudice, the same as if no order of relief from duty or order of suspension had been made.

(4) The service of any notice, order or process mentioned in this section, other than service of subpoena, may be made either by handing the officer or employee a copy thereof personally or by forwarding such copy by registered mail to ~~his~~ *the officer or employee's* last known address of record with the Police Department if after due diligence ~~he~~ *the officer or employee* cannot be found.

(5) Within five days after service upon ~~him~~ *the officer or employee* of copy of the aforesaid verified complaint if ~~he~~ *the officer or employee* has been personally served or within ten (10) days after service upon ~~him~~ *the officer or employee* of copy of the aforesaid verified complaint ~~he~~ *the officer or employee* has been served in any other manner as herein prescribed, the accused officer or employee may file with the Chief of Police his or her written application for a hearing before the decision by a Board of Rights.

(6)(a)(i) *A Los Angeles Civilian Police Review Board is hereby created. The Civilian Police Review Board shall have exclusive jurisdiction over all disciplinary proceedings of ~~police-officers~~ peace officers for misconduct relating to both alleged violations of internal procedures and abuse of authority, or alleged violation(s) of the civil rights or civil liberties of any person or persons. The Board of Rights is hereby limited in jurisdiction to complaints alleging improper acts in connection with internal Police Department procedures, such as, but not limited to, uniform specifications, consumption of alcohol, insubordination, dereliction of duty, tardiness, and absenteeism.*

(ii) *The Civilian Police Review Board shall have the power to receive, investigate, and adjudicate complaints alleging police misconduct within its jurisdiction and shall have the power to impose penalties upon officers whom the Board finds guilty of such offenses. The Board may create at its discretion committees of the Board composed of at least three of the Board's members. They shall be known as "Board panels" and may be charged by the Board with recommending action to the Board. The Civilian Police Review Board shall also have the power independently to initiate investigations and issue its own complaints.*

(iii) *The Civilian Police Review Board shall investigate all cases of officer-inflicted serious bodily harm, officer-involved deaths, and officer-involved shootings of any description, except with regard to department-supervised training activities, and the completion of periodic "shooting qualifications."*

(iv) *Police misconduct offenses. Any police officer who is found guilty by the Civilian Police Review Board of committing any of the following offenses is subject to the penalties prescribed in Subsection (12)(a) of this Section.*

- ♦ 10 *Using unnecessary or excessive force in the performance of duties;*
- ♦ 20 *conducting a false arrest or unlawfully detaining any person;*
- ♦ 30 *conducting an unlawful search or seizure, or unlawful surveillance;*
- ♦ 40 *tampering with evidence;*
- ♦ 50 *falsifying official and/or unofficial reports;*
- ♦ 60 *conducting unauthorized investigations, surveillance, infiltration, or disruption of lawful political, social, economic, or religious organizations, or their members, for their political, social, economic, or religious views; or conducting unauthorized investigations or surveillance of individuals for their political, social, economic or religious views;*
- ♦ 70 *threatening to arrest or to detain any person without a justifiable legal basis;*
- ♦ 80 *threatening to use force against any person without a justifiable legal basis;*
- ♦ 90 *knowingly discriminating on the basis of race, sex, age, religion, creed, national origin, union membership, or sexual orientation, in the enforcement of the law (evidence of a past or present pattern of discriminatory conduct shall be admissible on the question of the officer's intent);*

- ◆ 100 *using abusive or insulting language including, but not limited to, derogating a person's age, race, sex, religion, creed, national origin, union membership, or sexual orientation;*
- ◆ 110 *sexually harassing, verbally or physically, any person;*
- ◆ 120 *engaging in abusive or offensive conduct relation to a person's race, sex, age, religion, creed, national origin, union membership, or sexual orientation;*
- ◆ 130 *failing to provide any person their post-arrest rights as guaranteed by the laws and the constitutions of the state of California and of the United States;*
- ◆ 140 *committing perjury;*
- ◆ 150 *engaging in, soliciting, or arranging for the harassment of, or discrimination against, any person because such person has filed a charge with the Board or is a family member or an associate of such person, or has given or is about to give to the Board any facts or evidence in any proceeding before the Board.*
- ◆ 160 *violating any Police Department policy or procedure that falls within the jurisdiction of the Civilian Police Review Board as set forth in this Section.*

(6)(b) The Board of Rights shall be constituted of three (3) officers of the rank of captain or higher. Upon the filing of the request for hearing before a Board of Rights as hereinabove provided, the officer or employee shall draw six (6) cards from a box containing the names of all of the officers who are qualified to sit upon such board (except the names of the accused, the accuser, the Chief of Police and the Assistant Chief of Police, and such other officer as may be otherwise prejudiced or otherwise disqualified by reason of being a material witness to the facts constituting the charges made), and shall select any three (3) of the six (6) names thus drawn to constitute the Board of Rights to hear and decide upon the charges against him, rejecting the three (3) not selected by replacing them in the box. The three (3) thus selected shall constitute the Board of Rights to hear and decide the matter.

(6)(c) *In the event that the Civilian Police Review Board has determined that probable cause exists to believe that any policy, rule, regulation, or procedure of the Los Angeles Police Department authorizes or condones any of the conduct enumerated in paragraph (6)(a) of this Section, the Board shall so notify the Board of Police Commissioners. Immediately upon receipt of said notice, the Board of Police Commissioners shall cause to be instituted a hearing to be presided jointly by the Civilian Police Review Board, open to the public, to review said policy, rule, regulation, or procedure in accordance with the guidelines provided by the Civilian Police Review Board. The public hearing must occur within four (4) weeks of the receipt of the notice from the Civilian Police Review Board, and the Commission must publish its findings and decision within two weeks of the termination of the hearing.*

(6)(d) *The Civilian Police Review Board shall consist of fifteen (15) members, elected by each council district. The members shall devote their entire time to the duties of their office. Each member shall serve a term of four years (except as herein provided), and no member shall serve more than two consecutive terms. The election to fill the seats of the first Civilian Police Review Board shall be held within six (6) months of the passage of the Charter amendment establishing said Board.*

*Immediately following the first election, the seats shall be divided into two classes. The seats of the first class (representing those council districts for which elections were held at the same time as those of the first Civilian Police Review Board) shall be vacated at the expiration of two years, and of the second class (representing those council districts for which elections will be held in the regular election following the election of the first Civilian Police Review Board) at the expiration of four years, so that one-half may be chosen every second year.*

No person shall serve as a member of the Civilian Police Review Board who is a present employee of the Los Angeles Police Department. Should a vacancy occur, the Civilian Police Review Board shall appoint, by majority vote, an interim member to serve until the next election. Board members shall be paid an annual salary of \$68,000, be eligible for salary increases in like manner to all other elected officials as set forth in Section 65.6 of this Charter, and be subject to the recall provisions of the California State Constitution.

In all other respects, the election of members of the Civilian Police Review Board shall conform with the Charter's general provisions relating to elections (Article XXVII, Sections 301 et seq.). Where the terms of those provisions directly conflict with the terms of this paragraph, this paragraph's terms shall control.

(6)(e) The Civilian Police Review Board shall appoint a staff of special investigators, numbering not less than fifteen (15). The special investigators, as agents of said Board, shall have immediate and unrestricted access to the sites of all officer-involved shootings and officer-inflicted bodily harm; and the power to subpoena all Police Department records and documents deemed pertinent to the incident under investigation; and the power to question all Police Department officers with material knowledge of the incident under investigation. The Police Department shall immediately inform the Board of all officer-involved shootings and officer-inflicted bodily harm. The Board shall have the power to subpoena Police Department personnel to appear before it and to produce pertinent evidence.

(6)(f) The Civilian Police Review Board shall appoint an office manager to supervise, control, regulate, and manage the staff and to execute the rules and regulations voted by the Board; at least one Board counsel; a secretary, not a member of the Board; a chief accounting employee, who may be the secretary; and a staff of persons sufficiently large in number to allow the Board and the special investigators to perform their assigned duties. Any appointment made under this section shall be subject to the provisions of Article IX of this Charter, provided only that the Board must establish affirmative action staff hiring policies for ethnic and sexual minorities, must appoint bilingual staff whenever possible, and must not appoint to staff or special investigator positions any person who is a present employee of the Los Angeles Police Department.

(6)(g) The Civilian Police Review Board shall organize by electing one of its members President and one Vice-President, which officers shall hold office for one year and until their successors are elected unless their membership on the Board sooner expires. No officer can succeed himself or herself in office. The election of the President and Vice-President shall be held at the first Board meeting in July of each year. The Board may fill, for the unexpired terms, any vacancy occurring in the office of President or Vice-President. The Board shall hold at least three (3) regular meetings a month. All meetings shall be held in a municipal or other facility open to the public and with reasonable provision for attendance by the public, provided that no meeting may be held in any law enforcement facility.

(6)(h) The powers conferred by this Charter upon the Civilian Police Review Board shall be exercised by order or resolution adopted by a majority of its members and recorded in the minutes with the ayes and noes at length. Such action shall be attested by the signatures of the President or Vice-President, or two members of the Board, and by the signature of the Secretary of the Board. The Secretary shall keep a record of the proceedings and transactions of the Board, specifying therein the names of the Board members at all meetings and giving the ayes and noes upon all votes; shall post and publish all orders, resolutions, and notices which the Board establishes to govern its work; and make available to the public the minutes of all meetings.

(6)(i) The Civilian Police Review Board must have a quorum of nine (9) members present for votes on all policy formulations, staff appointments, and temporary suspensions of police officers charged with violations of any of the offenses listed under Paragraph (6) subparagraph (a) of this Section.

*All cases shall be heard by panels presided by the Board member representing the district from which the complaint arises, unless said Board member is materially involved or a conflict of interest exists. The remaining members of the panel shall be chosen by a lottery procedure to be established by the Board, provided that no less than nine (9) members shall sit on cases involving severe bodily harm, shootings, and officer-involved deaths; no less than five (5) must sit on cases involving battery resulting in any bodily harm; and no less than three (3) members must sit on hearings of all other cases.*

*The Board, whenever it deems it appropriate, may sit en banc. A majority vote of the Board is required for a finding of "guilty" or "not guilty."*

*(6)(j) The Civilian Police Review Board shall, prior to the beginning of each fiscal year, adopt an annual budget and submit an annual staff budget to the Mayor, covering the anticipated revenues and expenditures of said staff. The Board shall provide suitable quarters and equipment for its staff.*

*(6)(k) Any person may initiate a complaint, in person, or in writing, or by telephone, with the Civilian Police Review Board, at its central location, at any council district office, or any other facility so designated by the Board. Each complainant shall be issued or mailed a written receipt of the complaint, a notification of the initiation of the investigation of said complaint, a notification, and a notification of the disposition of said complaint or said investigation. The identity of any person filing such a complaint shall be kept confidential by the Board and its personnel, unless the complainant releases that confidence in writing. Investigations shall be completed within thirty (30) calendar days of the receipt of a complaint, provided that the Board may extend the deadline for fifteen (15) day intervals if written notice and reasons are provided to the accused Police Department member, the Chief of Police, and the complainant and the extension shall not exceed 90 days. All complaint-receiving locations shall follow a uniform procedure, to be established by the Board. The Board shall establish procedures for receiving and registering complaints, assigning investigators, notifying the accused Police Department officer(s) and appropriate superiors, and for issuing quarterly public reports setting forth the number, types, and disposition of all complaints received during that time period.*

*(6)(l) The Civilian Police Review Board must announce its finding of "guilty" or "not guilty," within thirty (30) days of the completion of the hearing. If good and sufficient reasons prevent such a deadline from being met, the Board may grant itself an additional fifteen (15) days, provided, however, that written notice of the delay is provided to the Chief of Police, the accused officer(s), and the complainant(s).*

*(6)(m) Each member of the Civilian Police Review Board shall convene and organize, once each month, a Community Assembly in district, open to all interested persons. Each member shall publicly advertise the time and place of the meeting and appear to receive proposals and complaints relating to the Board and its work, render an account of the Board's activities, and discuss police- and community-related issues. The Community Assembly shall be moderated by a person selected by the Assembly, who shall not be the Board member. Minutes of each meeting of the Community Assembly shall be taken, with assistance by Board staff, if necessary.*

*(7)(a) In the event the accused fails, in any case, to request a hearing before a Board of Rights as hereinabove provided within the period prescribed, the Chief of Police may require a hearing to be had before a Board of Rights and may for that purpose, within five (5) days, after the expiration of such period, draw three (3) names from such box to constitute such board. Provided, however, that in any case where such Board of Rights has been constituted for the purpose of hearing as herein in this section provided and the accused, without reasonable excuse, fails, neglects or refuses to appear before the said Board of Rights in session for such trial or hearing at the time and place designated, the Chief of Police may, at ~~his discretion~~ *the Chief of Police's* discretion, either direct the Board of Rights to proceed with such trial or hearing in the absence of such accused, or ~~he~~ the Chief of Police may, without such hearing, impose such penalty of suspension or removal as ~~he~~ *or she* deems fit and proper, and cause notice thereof to be served upon such officer or employee so suspended or removed in the manner herein prescribed, and file a statement of such action with*

the Board of Police Commissioners within five (5) days thereafter; and, provided further, however, that in the event the accused and Chief of Police both fail to draw and create such Board of Rights within the period prescribed in any case of temporary relief from duty pending hearing, then and in that event such temporary relief from duty shall be null and void and of no effect the same as if it had not been made.

*(b) If the accused Police Department officer(s), without reasonable excuse, fails, neglects, or refuses to appear before the Civilian Police Review Board in session for such hearing at the time and place designated, the Board may proceed in the absence of the accused, provided, however, that the accused and his or her superiors are promptly notified of any and all dispositions and decisions made by the Board.*

*(c) Upon completion of the investigation the Board or Board Panel shall set the time (not less than 15, nor more than 30 days thereafter) and place of the hearing, and shall cause notice thereof to be served upon the accused in the manner herein prescribed.*

(8) Upon the selection of the officers to constitute the Board of Rights the said Chief of Police shall appoint the time (not less than five (5) nor more than ten (10) days thereafter) and designate a place where such hearings is to be held, and shall cause notice thereof to be served upon accused in the manner herein prescribed.

The Board of Rights may at any stage of the proceedings (after it has first met in session at the time and place designated) continue from time to time the hearing of the matter pending before them.

(9) The officers so selected as herein prescribed shall constitute the Board of Rights (for the purpose of hearing and deciding upon the matter for which it was specially drawn) and shall have the power to administer oaths and affirmations in any investigation or proceeding pending before said board, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence before them, respectively, as the case may be, by subpoena to be issued in the name of the City of Los Angeles, and to be attested by the City Clerk of said city.

(10) The City Clerk shall, upon demand of the officers constituting the said Board of Rights or the Civilian Police Review Board (in cases involving allegations or complaints of the type set forth in Section 202(6)(a)), issue such subpoena in the name of the city, and attest the same with the corporate seal thereof, and shall in such subpoena direct and require the attendance of the witnesses sought to be subpoenaed before ~~the said board one or the other~~ Board, at the time and place in said subpoena specified *and the production of books, papers, and documents sought*; and it shall be the duty of the Chief of Police to cause all such subpoenas to be served by some member of the Police Department, *in Board of Rights' cases*, upon the person or persons required to attend as aforesaid; and it shall be the duty of the ~~Council upon the adoption of this charter amendment to provide suitable penalties for disobedience of such subpoenas, and the refusal of witnesses to testify as herein provided.~~ *staff of the Civilian Police Review Board to serve any subpoenas upon the person or persons required to attend Civilian Review Board hearings or to produce books, papers, or documents sought; and the Civilian Police Review Board may seek the aid of any Superior Court of California within Los Angeles County to enforce the Board's subpoenas by contempt proceedings.*

(11) The City Attorney (or some duly authorized deputy) shall, upon request of the Board of Rights sit with said Board of Rights during its session or hearing for the purpose of advising the same board on any and all legal matters pertaining to this section.

(12)(a) ~~At such hearings~~ *all hearings herein described*, the accused shall have the right to appear in person and by counsel or representative, or both, and make defense to such charge and may produce *subpoena* witnesses to testify in ~~his~~ *the accused's* behalf and cross-examine witnesses against him. The accused shall have the right and privilege to select and name any officer of the department of any rank not higher than the rank of Lieutenant (who is not otherwise disqualified by reason or prejudice or being a party to the action in any capacity) to act as ~~his~~ *the* defense

representative at such hearing. The Chief of Police must immediately assign the officer so selected and named to act as such representative, and it is hereby made the duty of such officer to use every legal means available and exercise the best efforts of which ~~he~~ *such officer* is capable to defend the accused at such hearing. All testimony, at all hearings herein described, shall be given under oath, reported by a stenographer and transcribed and the accused shall be entitled to a certified copy of such transcript without charge or payment of fee. The ~~said~~ Board of Rights or *Civilian Police Review Board (in cases involving allegations or complaints of the type set forth in Section 202(6)(a))* shall, at the conclusion of all hearings, make a specific finding of "guilty" or "not guilty" (on each specific charge) which must be based upon the evidence adduced before it at such hearing and not otherwise and render and certify its decision in writing. If the accused is found "not guilty," said respective Board shall order ~~his~~ *the individual's* restoration to duty without loss of pay and without prejudice, and such order shall be self-executing and immediately effective. In case, however, that the accused is found "guilty," the said respective Board shall prescribe its penalty (by order in writing) of either suspension for a definite period not exceeding six (6) months with total loss of pay, and with or without reprimand; or reprimand without further penalty; or of removal from office or position; which decision and order must be certified in writing and a copy thereof immediately delivered to the Chief of Police. The departmental personal history and records of the accused shall not be available to the Board of Rights or to members of the *Civilian Police Review Board (but shall be available to the staff of special investigators of the Civilian Police Review Board)* except and only in such cases where the accused has been found guilty of any charge upon which he was heard or tried by ~~the Board of Rights~~ *said respective Board*, then only for the purpose of determining a proper penalty to be prescribed; provided, however, that in prescribing such penalty the said respective Board must look to the nature and gravity of the offense of which the accused has been found guilty and may at its discretion review the departmental personal history and record of such accused; provided further, however, that no item or entry in such record may be considered by said respective Board except in the presence of the accused, nor unless such accused has been given a fair and reasonable opportunity to explain any such item or entry.

*(b) The Civilian Police Review Board is hereby authorized to pay, settle, or compromise any tort claim or tort litigation pending against the City of Los Angeles, or any officer or employee thereof, growing out of, or relating to, damages to person(s) or property, or both, arising from police-involved incidents under its jurisdiction, for which the City of Los Angeles may be ultimately liable, in an amount not exceeding \$50,000, without first securing the approval of the City Council. Automatic adjustments to this amount shall be made every four year by the City Council in accordance with the rate of inflation over that time period. (The City Attorney, by this subparagraph, is hereby relieved of the power to settle claims against the City of Los Angeles arising from any conduct by employees of the Los Angeles Police Department which fall under the jurisdiction of the Civilian Police Review Board as enumerated in Subsection (6)(a) of this Section.) Upon the written order of the Civilian Police Review Board, the City Controller shall cause a warrant to be issued upon the Los Angeles City Treasury in the amount for which a claim has been allowed, compromised, or settled. The acceptance of any award made under this paragraph shall constitute a complete and total compromise of such claim and release of liability of the City of Los Angeles on behalf of the complaining party.*

*(c) The Civilian Police Review Board shall turn over to the Special City Prosecutor or County District Attorney the complete records of any case in which the finding has been "guilty," accompanied by a recommendation for criminal prosecution.*

(13)(a) The Chief of Police shall thereafter execute the order of the Board of Rights within five (5) days after delivery to ~~him~~ *the Chief of Police* of such certified copy of decision and order, or, ~~he~~ *the Chief of Police* may within five (5) days at ~~his~~ *the Chief of Police's* discretion and in lieu of such order, impose a penalty upon such officer or employee less in severity than that ordered by the Board of Rights, but may not impose a greater penalty. In the case of a suspension or removal, the Chief of Police shall cause a copy of ~~his~~ *the* notice of suspension or removal (based upon the order of the Board of Rights or upon ~~his~~ *the Chief of Police's* modification thereof) to be served upon such officer or employee and shall file a statement of such action with the Board of Police Commissioners within five (5) days thereafter.

(b) *The Chief of Police shall execute all orders of the Civilian Police Review Board within five (5) days after delivery to him or her of a certified copy of the decision and order. The orders of this Board are final and conclusive. In the case of suspension or removal, the Chief of Police shall cause a copy of this notice of suspension or removal to be served upon such officer or employee and shall file a copy of such notice with the Board of Police Commissioners.*

(14) In any case of penal suspension or removal prescribed by the Board of Rights (or by the Chief of Police in case no hearing is had before a Board of Rights) or by the Civilian Police Review Board (in cases involving allegations or complaints of the type set forth in Section 202(6)(a)) the time of such suspension shall be computed from the first day such officer or employee was so suspended or relieved from duty pending hearing before and decision by ~~the Board of Rights~~ *said respective Board* and such removal shall relate back to and be effective as of the date of such relief from duty pending hearing before and decision by ~~the Board of Rights~~ *said respective Board*.

(15) No officer or employee of the Police Department shall be twice tried for the same offense, except upon his request. In any case of exoneration of the accused after a hearing before the Board of Rights or the Civilian Police Review Board (in cases involving allegations or complaints of the type set forth in Section 202(6)(a)), such exoneration shall be without prejudice to such officer or employee.

(16)(a) At any time within three (3) years after any case of removal as hereinabove provided, the officer or employee so removed may file ~~his~~ *a* request with the Chief of Police to be reheard or to be heard on the cause of ~~his~~ *the officer or employee's* removal, together with ~~his~~ *a* supporting affidavit specifically setting forth in clear and concise language the reasons or grounds therefor. The Chief of Police must consider and decide upon such request and affidavit within thirty (30) days after such filing. If good reason or cause appears therefor, the Chief of Police must, without unnecessary delay, cause a Board of Rights to be constituted in the manner hereinabove provided for the purpose of hearing and deciding upon the matter. The said Board of Rights shall proceed as hereinabove prescribed, and shall at the conclusion of the hearing render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, board or other tribunal, or any investigation or report of or discretion exercised by the Chief of Police in such cases where no hearing was had before a Board of Rights), based upon the evidence adduced before it at such hearing and not otherwise; and shall make and certify its decision and order in writing, and shall delivery a copy thereof to the Chief of Police. The Chief of Police shall thereupon proceed in the same manner as is hereinabove provided for after decision by the Board of Rights.

(b) *At any time within ninety (90) days after any case of removal by the Civilian Police Review Board, the officer or employee so removed may file a request with said Board to be reheard or to be heard on the cause of his or her removal, together with his or her supporting affidavit specifically setting forth in clear and concise language the reasons or grounds therefor. The Civilian Police Review Board must consider and decide upon such request and affidavit within thirty (30) days after such filing. If good reason or cause appears therefor, the Board must, without unnecessary delay, schedule a new hearing on the matter. The Board shall proceed as hereinabove prescribed, and shall at the conclusion of the hearing*

*render and certify its findings (independent of any previous findings by it or any other tribunal), based upon the evidence adduced before it at such hearing and not otherwise; and shall make and certify its decision and order in writing, and shall delivery a copy thereof to the Chief of Police. The Chief of Police shall thereupon proceed in the same manner as is hereinabove provided for after decision by the Civilian Police Review Board.*

(17) If, as and when the Board of Police Commissioners herein referred to should become abolished, then, and in that event, wherever in this section the Board of Police Commissioners is named or referred to there shall be read into this section in place thereof, the name of the officer, board of other body created in its place to assume the functions, powers and duties of such Board of Police Commissioners; or, in the absence of such specific provision, then there shall be read into this section the name of the officer, board or body to whom such powers or duties may be delegated, or who shall assume such powers or duties.

(18) This section shall not be construed to in any way affect any other rights any officer or employee may have to pursue or assert any and all other legal rights or remedies in relation to ~~his~~ *the officer or employee's* office or position or to the compensations attached thereto, or to appeal to or be heard or tried by or before any court or other tribunal of competent jurisdiction, whether such court or other tribunal now exists or may be hereafter created or established.

(19) Any person restored to duty or reinstated in ~~his~~ *an* office or position after suspension or removal, as provided in and under any provision of this section, shall be entitled to receive full compensation from the city the same as if such compensation or removal had not been made, provided that such compensation shall not be for more than six (6) months salary. (Sec. ~~ammended~~ amended, 1935.)

(20) *Should any section, clause, or part of the set of amendments concerning the office of the Special City Prosecutor or the Civilian Police Review Board be held, for any reason, invalid or inoperable, the remainder shall remain in full force and effect.*

**MUNICIPAL CODE OF CHICAGO**  
**Chapter 2-83 CIVILIAN POLICE ACCOUNTABILITY COUNCIL**

**ARTICLE I. ORGANIZATION AND ELECTION (2-83-010 et seq.)**

**2-83-010 Definitions.**

The following terms wherever used in this chapter shall have the following meanings unless a different meaning appears from the context:

- (a) *Coercion* means the use of express or implied threats that put a person in immediate fear of the consequences in order to compel that person to act against his or her will.
- (b) *Department* means the Chicago Department of Police.
- (c) *Police Board* means the Police Board established by Chapter 2-84 of this code, as amended.
- (d) *Superintendent* means the Chicago Superintendent of Police or his designated representative.

(e) *Verbal abuse* means the use of a remark which is overtly insulting, mocking or belittling directed at a person based upon the actual or perceived race, color, sex, religion, national origin, sexual orientation, or gender identity of that person.

(f) *Independent Police Review Authority* means the Independent Police Review Authority established by Chapter 2-57 of this code, as amended.

**2-83-020 Establishment--Composition.**

There is hereby established an office of the municipal government to be known as the Civilian Police Accountability Council [CPAC]. The CPAC shall be composed of elected individuals, one from each police district in the City of Chicago. Each CPAC member shall have voting power in the council equivalent to the percentage of the population of the City of Chicago that his district comprises. Once elected, the members of the CPAC shall employ such deputies, assistants and other employees as may be provided for in the annual appropriation ordinance. The offices of the CPAC shall be located in a facility outside of the Department of Police. The CPAC shall replace the Police Board and the Independent Police Review Authority. Chapter 2-57 in its entirety and Chapter 2-84, Article I, Sections 2-84-020, 2-84-030, 2-84-040, 2-84-050, 2-84-053, 2-84-060, 2-84-080 and Article IV, Sections 2-84-330, 2-84-350, 2-84-353, 2-84-360, 2-84-380 and Article V, Sections 2-84-390, 2-84-400, 2-84-410, 2-84-420, 2-84-430, 2-84-490, 2-84-500 are herewith repealed.

**2-83-030      Civilian Police Accountability Council--Election to Office.**

Members of the CPAC shall be elected in a non-partisan election every four years at the same time and places of the elections that year as for Local School Councils in the Chicago Public Schools. CPAC Members shall serve a term of four years, and be paid the same base salary as Aldermen in the Chicago City Council. A candidate for District CPAC Member must be 18 or more years of age and provide proof of having lived in the police district for at least one year before seeking the office. Elected District CPAC Members who move out of the police district from which they were elected must resign. Vacancies on the CPAC shall be filled by the remaining members of the CPAC from candidates selected from within the district of the missing member. The person selected by the CPAC to fill the vacancy will serve in the position until the next election. CPAC District Members may not serve concurrently in any other elected office.

The signature requirement to be nominated on the ballot for election as District Member of CPAC shall be 300 signatures of residents of the police district of the candidate on a nominating petition that states that the candidate seeks nomination to election to Member of the Civilian Police Accountability Council from the District in which they live, and will state the address of the candidate.

To vote in the election for CPAC Member, a person must provide proof of age and residency in the police district in which the person wishes to vote on the day of the election. Such proof of residency shall be the same as that required for voting in the election for Local School Council. Judges of election shall verify that the residence of the voter lies within the police district for which the person is requesting a ballot utilizing a Geographic Information System Mapping application. Every person voting will have their thumb-print stained with an ink that is indelible for at least 48 hours. No person may vote more than once.

The CPAC, once established, may provide for voting in subsequent elections via the Internet as the Council sees fit.

A candidate for election shall not accept contributions of any kind from outside the district for which he or she is running.

Neither active-duty nor retired law enforcement officers shall serve on the CPAC. Nor shall the spouse, domestic partner, partner to a civil union or any of the following, whether by blood, marriage or adoption; parent, son, daughter, stepson, stepdaughter, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-

law, daughter-in-law, stepfather, stepmother, stepbrother, stepsister, half brother, half sister, or first cousin of active-duty or retired law enforcement officers serve on the CPAC.

**ARTICLE II. POWERS AND DUTIES OF CPAC (2-83-040 et seq.)**

**2-83-040 Civilian Police Accountability Council --Powers and duties.**

The CPAC shall exercise the following powers:

1. Appoint a Superintendent of Police;
2. Adopt rules and regulations for the governance of the Department of Police of the city;
3. Serve as a board to hear disciplinary actions for which a suspension for more than the 30 days expressly reserved to the Superintendent is recommended, or for removal or discharge involving officers and employees of the Police Department in the classified civil service of the city;
4. Promulgate rules, regulations and procedures for the conduct of the CPAC's investigations consistent with the requirements of collective bargaining agreements, due process of law and equal protection under the law;
5. In those instances where CPAC's investigation indicates that a member of the Department of Police has committed a crime, petition the Chief Judge of the United States District Court for the Northern District of Illinois to convene a Grand Jury if one is not already convened, and present CPAC's findings of criminal activity to the Grand Jury to get an indictment for Deprivation of Rights Under Color of Law pursuant to 18 U.S. Code § 242;
6. Review, approve and submit to the City of Chicago the annual budget of the Department of Police;
7. Provide required educational opportunities for CPAC members to become familiar with citizens' United States and Illinois constitutional rights, learn law enforcement oversight techniques, and undergo victims' assistance, sexual assault and domestic violence certification training;
8. Establish officers, committees and subcommittees for the effective conduct of CPAC business;
9. Protect the rights guaranteed to the citizens of Chicago by the United States and Illinois Constitutions;
10. Review and sign off on all complaint investigations;
11. Review and sign off on all new Department of Police policies and special orders;
12. Disallow the use of the Department of Police by outside law enforcement agencies to commit crimes;

13. Negotiate and approve contracts with the police unions. and

14. Remap the City of Chicago police districts as needed as determined by the CPAC.

No officer or employee of the Police Department in the classified civil service of the city whose appointment has become complete may be removed or discharged, or suspended for more than 30 days, except for cause upon written charges and after an opportunity to be heard in his own defense by the CPAC, the CPAC district panel consisting of the CPAC member for that district and his two deputies, or any member or hearing officer designated by the CPAC.

Before any such officer or employee may be interrogated or examined by or before the CPAC or any member or hearing officer designated by the CPAC, or any departmental agent or investigator, the results of which hearing, interrogation or examination may be the basis for filing charges seeking his removal or discharge, he must be advised in writing as to what specific improper or illegal act he is alleged to have committed; he must be advised in writing that his admissions made in the course of the hearing, interrogation or examination may be used as the basis for charges seeking his removal or discharge; and he must be advised in writing that he has the right to counsel of his own choosing present to advise him at any hearing, interrogation or examination. A complete record of any hearing, interrogation or examination shall be made and a complete transcript thereof made available to such officer or employee without charge and without delay.

Upon the filing of charges for which removal or discharge or suspension of more than 30 days is recommended, a hearing before the CPAC or any member or hearing officer designated by it shall be held.

The CPAC shall establish rules of procedure not inconsistent with this section respecting notice of charges and the conduct of the hearings before the CPAC or any member or hearing officer designated by it. The CPAC, or any member or hearing officer designated by it, is not bound by formal or technical rules of evidence, but hearsay evidence is inadmissible in CPAC proceedings. The person against whom charges have been filed may appear before the CPAC, or any member or hearing officer designated by it, with counsel of his own choice and defend himself; shall have the right to be confronted by his accusers; may cross-examine any witness giving evidence against him; and may through counsel present witnesses and evidence in his own behalf.

The CPAC or any member or hearing officer designated by it may administer oaths and secure by its subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. All proceedings before the CPAC or any member or hearing officer

designated by it shall be recorded. No continuance may be granted after a hearing has begun unless all parties to the hearing agree thereto. The findings and decision of the CPAC, including an explanation of those findings and decision, when approved by the CPAC, shall be certified to the Superintendent of Police and shall be enforced by the Superintendent. Such findings and decision, including an explanation of the reasons for such findings and decision, shall be posted on the CPAC website within ten business days of the date of certification of such findings and decision to the superintendent, and shall remain posted on such website for at least two years. If any member of the CPAC dissents from the CPAC's findings and decision, such member shall state the reasons for his or her dissent. Such dissents shall be posted by the secretary on the CPAC website within ten business days of the date of certification of the CPAC's findings and decision to the superintendent, and shall remain posted on such website for at least two years.

In the designation of hearing officers, the CPAC shall select only attorneys licensed to practice law in the State of Illinois, with a minimum of five years' experience. Hearing officers shall conduct disciplinary hearings in accordance with the provisions of this chapter and the rules of procedures established by the CPAC. The hearing officer may take judicial notice, rule on offers of proof, receive relevant evidence during the hearing and certify the record and make findings of fact, conclusions of law and recommendations to the CPAC following the hearing.

No member of CPAC may participate in any disciplinary recommendation or action without having read the record upon which said recommendation or action is based.

Nothing in this section limits the power of the Superintendent to suspend a subordinate for a reasonable period, not exceeding 30 days.

In appointing a Superintendent of Police, the CPAC shall be governed in part by the professional and executive qualifications required for the position which shall be without reference to the residence of the candidate at the time of application. The CPAC shall evaluate new candidates until the position is filled.

The CPAC's power to adopt rules and regulations for the governance of the Police Department does not include authority to administer or direct the operations of the Police Department or the Superintendent of Police, except as provided in Section 12.1 of "An Act to regulate the civil service of cities," approved March 20, 1895, as amended.

In addition to other powers conferred herein, the CPAC shall have the following powers and duties:

Each elected member of the CPAC shall appoint two deputies who will serve with the member in the police station of the district to which the member was elected. The deputies must be residents of the district. Each deputy will be paid the same base salary as a Chicago police officer. The member and the two deputies as a panel are empowered:

(a) To receive and register all complaints filed against members of the department in the CPAC member's district;

(b) To conduct investigations into complaints against members of the department concerning domestic violence, excessive force, coercion, and verbal abuse;

(c) To conduct investigations into all cases in which a department member discharges his or her firearm, stun gun, or taser in a manner which potentially could strike an individual, even if no allegation of misconduct is made;

(d) To conduct investigations into cases where the death of a person or an injury sustained by a person occurs while in police custody or where an extraordinary or unusual occurrence occurs in lockup facilities, even when no allegation of misconduct is made;

(e) To review all cases settled by the Department of Law in which a complaint register was filed against a member of the department in that district, and if, in the opinion of the CPAC member, further investigation is warranted, to conduct such investigation;

(f) To conduct investigations in a manner consistent with the rules and regulations established by the CPAC and all Department operating procedures, general orders, collective bargaining agreements, and other applicable laws and regulations;

(g) To make recommendations to the Superintendent of Police concerning the appropriate disciplinary action against members of the Department in that district who have been found to be in violation of Department rules and regulations, or in violation of any of the laws of the State of Illinois or ordinances of the City of Chicago;

(h) To make recommendations to the CPAC concerning revisions in policy and operating procedures to increase the efficiency of the Department;

(i) To request information related to an investigation from any employee or officer of the district;

(j) To issue subpoenas to compel the attendance of witnesses for purposes of examination and the production of documents and other items for inspection and/or duplication;

(k) To address police personnel and community groups on regulations and operations of the

CPAC;

(l) To be on call 24 hours a day, seven days a week to handle immediate complaints lodged against the Department in that district;

(m) To suspend the police powers of any officer involved in a shooting pending a complete investigation; and

(n) To sit in on officer performance evaluations.

The CPAC member may also facilitate:

(a) Restorative circles and justice;

(b) Mediation - The CPAC member shall have the authority to develop a mediation program, informed by national best practices that engage both complainants and accused police officers, aimed at resolving civilian complaints, except that no incident involving an allegation of use of force, sexual assault, rape, sexual misconduct, the discharge of a firearm, or the discharge of a stun gun, Taser or any other weapon police use to inflict pain and induce compliance shall be mediated.;

(c) Station adjustments;

(d) Community accommodation awards;

(e) Random monitoring of police vehicle surveillance recording equipment; and

(f) CPAC attendance at all roll calls.

**2-83-050 Subpoena issuance.**

The CPAC or any member or hearing officer designated by it may administer oaths and secure by subpoena both the attendance and testimony of witnesses and the production of relevant information. A subpoena shall be served in the same manner as subpoenas issued under the Rules of the Illinois Supreme Court to compel appearance of a deponent, and subject to the same witness and mileage fees fixed by law for such subpoenas.

A subpoena issued under this chapter shall identify the person to whom it is directed and the documents or other items sought thereby, if any, and the date, time and place for the appearance of the witness and production of the documents or other items described in the subpoena. In no event shall the date for examination or production be less than seven days after service of the subpoena.

**ARTICLE III. DISCIPLINE AND INVESTIGATIONS (2-83-060 et seq.)**

**2-83-060 Decisions; recommendations.**

(a) If the CPAC district panel or any member or hearing officer designated by it issues a

recommendation of discipline against one or more members of the district, the Superintendent must respond to such recommendation within 90 days. The response must include a description of any disciplinary action the Superintendent has taken with respect to the member in question.

(b) If the Superintendent did not take any disciplinary action, or took a different disciplinary action than that recommended by the CPAC district panel or any member or hearing officer designated by the CPAC, the Superintendent must describe the different action and explain the reasons for the different action in the written response. The Superintendent's response shall include, but is not limited to, the following reasons for taking a different action:

(i) an analysis of the employee's work history, including any prior disciplinary actions, any prior complaints filed against the employee, and/or any prior complimentary history;

(ii) the superintendent's professional opinion with regard to the case;

(iii) the existence of any lawsuits arising out of the performance of police duties to which the employee has been a named party, and the outcome of such lawsuits, including those in which the employee has been exonerated; and

(iv) any evidentiary concerns with regard to the investigation.

This response must be submitted to the CPAC district panel or any member or hearing officer designated by it within the 90-day decision period.

(c) If the superintendent fails to respond to the recommendation within the 90-day decision period, such recommendation shall be deemed to be accepted by the superintendent.

(d) Nothing in this section shall limit the superintendent's ability to impose any additional discipline than that recommended by the CPAC district panel.

(e) If the CPAC district panel and the superintendent fail to agree on the discipline to be imposed, the matter shall be referred to the CPAC for resolution. The decision of the CPAC is final.

(f) If the CPAC district panel determines that a civilian's complaint is without merit, the civilian may appeal that ruling to the CPAC for reconsideration. The decision of the CPAC is final.

#### **2-83-070 Investigations.**

In addition to other powers conferred herein, the CPAC shall have the following powers and duties:

(a) To conduct investigations into incidents that include any complaint against members of the Department concerning domestic violence, excessive force, illegal search or seizure, false arrest,

coercion, and verbal abuse, rape, sexual assault, sexual misconduct, First Amendment violations, denial of access to an attorney, phone, family member, or other visitor while in police custody, other Fifth Amendment violations, biased police practices, or unjustifiably killing or injuring an animal;

(b) To conduct investigations into the conduct of members of the Department concerning any investigative category, even in the absence of a civilian complaint, when, based on information and belief, the Chief Administrator determines such investigation is warranted;

(c) To conduct investigations into all cases in which a Department member discharges and/or uses his or her firearm, stun gun, or Taser, or any other weapon police use to inflict pain and induce compliance in a manner which potentially could strike an individual even if no allegation of misconduct is made;

(d) To conduct investigations in all cases in which a civilian dies and/or sustains a suspicious injury or any injury that requires medical attention in police custody or as a result of an interaction with the police, even if no allegation of misconduct is made, to identify these instances through a review of the Department's tactical response (use of force) reports and when possible, through information sharing agreements negotiated with relevant entities, including, but not limited to, the Cook County Jail, the Cook County Public Defender's and State's Attorney's Offices, and the Illinois Department of Corrections;

(e) To conduct investigations into cases where the death of a person or an injury sustained by a person occurs while in police custody or where an extraordinary or unusual occurrence occurs in lockup facilities, even when no allegation of misconduct is made;

(f) To investigate the facts stated in all lawsuits that allege a member of the Department engaged in excessive force, sexual misconduct, a false arrest, or illegal search or seizure, and/or committed another civil rights violation or tort. CPAC shall not require that civilian plaintiffs in such litigation submit a sworn complaint prior to launching an investigation; review all cases settled by the department of law in which a complaint register was filed against a member of the department, and if, in the opinion of the chief administrator, further investigation is warranted, to conduct such investigation

(g) To investigate any other violation of police Rules and Regulations, policies and procedures, or the United States Constitution that may have occurred in any incident under investigation by the CPAC;

(h) To request information related to an investigation from any employee or officer of the

city and to execute information sharing agreement;

(i) To issue subpoenas to compel the attendance of witnesses for purposes of examination and the production of documents and other items for inspection and/or duplication;

(j) To compel prompt statements from members of the Department and to re-interview Department members as needed;

(k) To collect and preserve physical evidence related to matters under investigation by the CPAC;

(l) To compel members of the Department to immediately submit to tests for substances, physical evidence, and DNA, including, but not limited to, breath, blood, urine, and DNA tests.

(m) To conduct investigations concurrently with any criminal investigation that may result from a matter under investigation by the CPAC;

(n) To play an active role in the community, perform community outreach, publicize the civilian complaint process, and identify locations within that are suitable for civilians to file complaints online, via the telephone, and in community-based environments free from police presence;

(o) To analyze policing trends and patterns related to the CPAC's investigative jurisdiction, including but not limited to: officer use of force; police shootings; use of Tasers or any weapon used to inflict pain and/or to gain compliance; citizen complaint log numbers; and racial, ethnic, gender, sexuality, or geographic biases in policing;

(p) To conduct regular analyses of citizen complaints, use of force, lawsuits, and other relevant data to identify individual and groups of officers who may be engaged in a pattern of misconduct, and to initiate disciplinary investigations into the conduct of those identified officers;

(q) To examine the disciplinary and complaint history and relevant complaint investigative files as a standard, required part of every disciplinary investigation for each officer who had a material role in any incident that triggered an investigation;

(r) To maintain and regularly update a website that makes public the information described in this ordinance and to identify and execute other methods of widely disseminating to the general public information about the work of the CPAC;

(s) To administer the office including, but not limited to, the hiring, terminating, training, and supervision of all employees in conformity with the requirements of this ordinance; and

(t) To maintain permanent in-house legal counsel to advise the CPAC on legal issues and to

represent the CPAC's Office in legal and administrative proceedings, including those to enforce the CPAC's subpoenas, and to prosecute or defend the CPAC's investigative, disciplinary, and policy recommendations.

**2-83-080 Proactive Policy and Pattern Analysis and Investigations**

The CPAC shall appoint a full time employee as Director of Policy and Practice Analysis and Investigations to analyze policing trends and patterns related to the CPAC's investigative jurisdiction and to launch disciplinary investigations into Department members who may demonstrate a pattern of misconduct and/or non-compliance with Department policy. The CPAC has the discretion to treat as confidential any proactive disciplinary investigation initiated and supervised by the Director of Policy and Practice Analysis and Investigations, and his or her staff, for as long as the CPAC deems necessary during the investigation.

If the CPAC or any member or hearing officer designated by it, does not conclude an investigation within six months after its initiation, the CPAC or any member or hearing officer designated by it, shall notify the complainant and the employee named in the complaint or his or her counsel of the general nature of the complaint or information giving rise to the investigation and the reasons for failure to complete the investigation within six months. The investigation will end only at CPAC's discretion.

**2-83-090 Cooperation in investigations.**

It shall be a condition of employment for every officer, employee, department, and agency of the city to cooperate with the CPAC or any member or hearing officer designated by it, in any investigation or hearing undertaken pursuant to this chapter. Any employee or appointed officer of the city who violates any provision of this section shall be subject to discharge (or such other discipline as may be specified in an applicable collective bargaining agreement) in addition to any other penalty provided in this chapter.

**2-83-100 Retaliation prohibited--Penalty.**

No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with or assisting the CPAC or any member or hearing officer designated by it, in the performance of his or her office. Any person who violates the provisions of this section shall be subject to a fine of not less than \$5,000.00 and not more than \$10,000.00 for each violation.

**2-83-110 Community Input, Engagement and Outreach**

The CPAC shall appoint a full time employee as Director of Community Engagement to

develop and implement a program of community outreach aimed at soliciting public input about police practices and the work of the CPAC from a broad segment of the community in terms of age, race, gender, gender expression, sexual orientation, neighborhood, ethnicity, and socio-economics. The Director of Community Engagement will also be responsible for assisting the CPAC to widely disseminate information regarding the activities of the CPAC including information about how individuals can file complaints, the investigative process, know-your-rights-training aimed at informing individuals about the types of police conduct the CPAC is authorized to investigate, and information about the policy audit and data collection activities undertaken by the CPAC. The Director of Community Engagement shall be responsible for ensuring that the CPAC holds at least four community meetings annually.

The CPAC shall appoint staff sufficient to ensure that all civilian complaints are assigned a complaint support specialist, who shall provide support to civilians throughout the complaint and investigative process. Such support services shall include, but are not limited to providing complainants with regular updates regarding the status of their complaints, counseling complainants regarding the investigative process and outcomes, and providing referrals to outside service providers whenever necessary.

As a part of the Director's duties, he or she shall develop a civilian feedback process that seeks feedback from civilians who interact with the CPAC on their experiences, including, but not limited to, their overall satisfaction with the process, their ability to access information from the CPAC, their treatment throughout the investigation, the investigator's sensitivity to their circumstances, and the ease with which they could make a complaint. The feedback process shall also seek suggestions to improve the civilian's experience. The Director shall publish the results of those surveys in the CPAC's annual report.

#### **ARTICLE IV. CPAC REPORTS (2-83-120 et seq.)**

##### **2-83-120 Final Summary Reports--Open to public inspection. Transparency.**

All final summary reports of the independent police review authority shall be open to public inspection, except to the extent that information contained therein is exempted from disclosure by the Illinois Freedom of Information Act, collective bargaining agreement, or any other applicable law.

It shall be the policy of the CPAC to make all of its work available to the public in order to promote accountability and transparency. The CPAC shall keep the public informed of its

investigations and their progress, and the CPAC shall ensure transparency throughout the entire investigative process.

The CPAC must collect and post information on its website about pending investigations. Specifically, within 10 days of intake, the CPAC must publish on its website the information that triggered an investigation, including a copy of a civilian complaint, lawsuit, document reporting a suspicious injury, or a summary of any other information that triggered an investigation. The CPAC must regularly update both the complainant and the website as to the status of the investigation.

When the Superintendent rejects, disputes, or agrees with a finding or outcome recommended by the CPAC, the complete written explanation must be published on the website along with the public investigation history. All such updates should also be published to a live timestamped data feed. All current and historic public information pertaining to all complaints or investigations must be accessible through a well-documented API or data feed (i.e., Rich Site Summary, RSS) that conforms to open data standards

The CPAC shall maintain a database which contains the complete complaint and disciplinary history for each Department member. The database shall include, but is not limited to, the following for each member of the Department: 1) any and all police misconduct investigations; 2) complete disciplinary history; 3) all tactical response reports; 4) civil lawsuits and relevant motions to suppress in criminal cases; and 5) assignment histories. At the database shall be expanded to include any other relevant information. The CPAC shall be provided full administrative access to all databases maintained by the Chicago Police Department.

In addition, the CPAC shall maintain full administrative rights to an electronic database that is independent from databases used by the Department. It shall maintain the data in a format that allows efficient exporting of data. These data shall be posted live on the CPAC's website in delimited machine-ready format for public inspection. The data sets shall redact the names and other identifying information of civilians, including complainants. The database must, at a minimum, include the information described throughout this section.

Within 10 days of its availability, the CPAC shall post on its website the following information for each investigation:

- 1) The log or complaint number;
- 2) The beat number in which the complaint incident took place;
- 3) Location of incident reduced to hundred block;

- 4) Date and time of the incident;
- 5) Date the incident was reported to the CPAC and/or otherwise came to the CPAC's attention;
- 6) Whether video of the incident exists;
- 7) Date the investigation was completed;
- 8) Name, race, and gender of the assigned Investigator(s), and date of Investigator's appointment in CPAC's office;
- 9) For civilian complaints, whether the complaint was accompanied by a signed affidavit;
- 10) For each Department member who is a subject of the investigation:
  - a. Name;
  - b. Badge Number;
  - c. Unit of assignment at the time of complaint;
  - d. Race;
  - e. Gender;
  - f. Year of birth;
  - g. Date of Appointment to the Chicago Police Department;
  - h. Rank at the time of complaint;
  - i. On or off duty at time of incident;
  - j. In police uniform or plain clothes;
  - k. Number of previous log numbers against officer within 10 years of incident;
  - l. Number of previous sustained log numbers against officer within 10 years of incident.
  - m. All complaint category codes for the incident under investigation;
  - n. The CPAC's recommended outcome of the investigation for each complaint (e.g., sustained, not sustained, unfounded, exonerated);
  - o. The CPAC's recommended discipline;
  - p. The Superintendent's recommended outcome of the investigation of each complaint;
  - q. The Superintendent's recommended discipline;
  - r. The final outcome of the investigation;
  - s. The final discipline imposed;

11) For each witness officer:

- a. Name;
- b. Badge number;
- c. Gender;
- d. Race;
- e. Year of Birth;
- f. Unit of assignment on date of complaint incident;
- g. Rank on date of complaint incident;

12) For each civilian involved in an incident under investigation:

- a. Race;
- b. Gender;
- c. Age at time of complaint;

13) In addition to the information detailed above, the CPAC shall also post the following information within 10 days of its availability in every investigation of a Department member's discharge or other use of a firearm, stun gun, Taser, or any other device capable of inflicting pain or injury:

- a. The type of incident (e.g., Taser, shooting with hits, shooting without hits, etc.);
- b. The log number, "U" number, or any other tracking number used by the CPAC;
- c. For each shooting officer:
  - i. The type of weapon used (if firearm, type and brand)
  - ii. Number of shots fired;
  - iii. The range at which the weapon was fired;
  - iv. For Taser incidents, the duration that the device was deployed and the

number of cycles;

- d. Injuries sustained by any officer on the scene;
- e. For each target or victim of the weapon:
  - i. Type of animal targeted or victimized;
  - ii. If person is targeted or victimized, the CPAC shall also post the

individual's:

- 1. Gender;
- 2. Race;

3. Age at time of incident;
  4. Any weapon possessed;
  5. The point at which any bullet impacted the subject;
- iii. Any medical care provided;
  - iv. Injuries sustained;
  - v. Whether person or animal was killed.

The CPAC shall also strive to post on its website any video of an incident that is the subject of its investigation, after redacting any parts capturing events within private areas, such as inside a person's home, or that would violate clearly established rights to personal privacy, within 48 hours of the incident, unless the release would seriously compromise the integrity of CPAC's investigation. If CPAC withholds video, it must articulate and publish the reason that the release would seriously compromise the integrity of the investigation, and shall post the video as soon as possible after the 48-hour-period, but under all circumstances, CPAC's posting of the video must occur within 14 days of the incident.

The CPAC shall post on its website any "911" records or records of police radio communications or data transmissions related to the incident within 10 days of their availability. The CPAC shall also release lab test results, police reports, and other information, after redacting any private material, so long as the release would not seriously compromise the integrity of the CPAC's investigation.

Within 10 days of completing each investigation, the CPAC must post on its website the summary report of investigation, and provide a copy of the summary report of investigation to any complaining witness.

Summary Reports for complaints that are not supported by an affidavit—if an affidavit is required by state law—must include a detailed record of any attempts to contact the complainant to obtain an affidavit as well as a detailed record of the preliminary investigation, including any attempts to obtain sufficient evidence to continue the investigation.

Notwithstanding any other provision of this ordinance, CPAC is prohibited from releasing to the public the civilian names and identifying information without their consent. CPAC shall provide any alleged victim in a sexual misconduct, sexual assault, rape or domestic violence investigation with the option to keep confidential the specific details of the complaint and specifics of the investigation from the Summary Reports made available to the public. CPAC is otherwise

authorized to release any additional information or data to the public regarding its investigations otherwise allowed by law.

CPAC shall permanently retain and shall not destroy any records related to its investigations.

**2-83-130 Quarterly Reports - Open to public inspection.**

All reports, investigations, policies and procedures of CPAC shall be open to public inspection, except to the extent that information contained therein is exempt from disclosure by the Illinois Freedom of Information Act, or any other applicable law. All investigations, audits, surveys, and policy evaluations and recommendations conducted by CPAC shall be released publicly at the time of completion and will be published on the website of CPAC's office and remain available on the website permanently. All data sets associated with each investigation, audit, survey, and policy evaluation and recommendation will be released publicly on the website of CPAC at the time of the publishing of the audit. The data sets will remain on the website for at least 10 years from the date of publication, but in no event may they be destroyed.

CPAC shall issue an annual report. The annual report must include a detailed summary of CPAC's activities during the year and shall include the following information:

- 1) A summary report for each investigation completed during applicable time frame;
- 2) A summary of all activities undertaken related to community input, engagement, and outreach, including the results of the customer feedback survey described above; and
- 3) A detailed annual statistical analysis that will help the general public understand the work of CPAC. Wherever possible, CPAC must aggregate the data by investigative category and the demographics of the involved civilians and Department members. The analysis shall include, but is not limited to, data related to the following:
  - a. Total number of civilian complaints received;
  - b. Total number of civilian complaints referred to internal affairs;
  - c. Total number and type (e.g., excessive force, false arrest, illegal search, domestic violence, sexual misconduct, rape, sexual assault, coercion, First Amendment, denial of access to counsel, other Fifth Amendment, etc.) of investigations opened;
  - d. Total number and type of investigations completed;
  - e. Total number and type of investigations that remain open;
  - f. Number and type of investigations resolved by mediation;
  - g. Investigative outcomes (e.g., sustained, not sustained, etc.) of completed

investigations aggregated by type of complaint;

h. Department member disciplinary recommendations aggregated by type of investigation, amount of discipline, and the demographics of involved civilians and involved Department members;

i. A comparison of the disciplinary recommendations made by the CPAC to those of the Superintendent and those actually imposed, aggregated by type of investigation and the demographics of involved civilians and Department members;

j. Total number of firearm discharges, aggregated by the demographics of involved civilians and Department members and resulting injuries or fatalities;

k. Total number of non-firearm weapon discharges, aggregated by type of weapon, demographics of involved civilians and Department members and resulting injuries or fatalities;

l. Data regarding the racial, ethnic, gender, and geographic demographics of the civilians and Department members involved in each investigation;

m. Unit by unit analysis of investigations by type and outcome (including disciplinary and/or training recommendation);

n. List of Department members with more than 10 misconduct complaints filed against them within 5 years of the reporting period, including for each Department member name, badge number, unit of assignment, gender, race, date of appointment to the Department, and the number and types of complaints filed against the member.

**2-83-140 Quarterly reports to legislative and executive branches.**

No later than the fifteenth day of January, April, July and October of each year, the CPAC or any member or hearing officer designated by it, shall file with the Office of the City Clerk and the legislative reference bureau a report accurate as of the last day of the preceding month, indicating: (1) the number of investigations initiated since the date of the last report; (2) the number of investigations concluded since the last report; (3) the number of investigations pending as of the reporting date; (4) the number of complaints not sustained since the last report; (5) the number of complaints sustained since the last report; (6) the number of complaints filed in each district since the last report; (7) without identifying any complainant, the number of complaints filed against each police officer in each district since the last report; (8) the number of complaints referred to other agencies and the identity of such other agencies; (9) the number of complaints in the last 30, 60, and 90 days, and the last 6 months; (10) the number of complaints referred or appealed to CPAC; (11) a

demographic breakdown of the complainants, including but not limited to race, sex, or age; and (12) a breakdown by complaint type. Such reports shall be open for public inspection and shall be posted on the city's website.

**ARTICLE V. REMOVAL FROM OFFICE AND PENALTIES (2-83-150 et seq.)**

**2-83-150 CPAC--Conditions for removal from office.**

Members and employees of the CPAC shall be subject to Title 2, Chapter 2-55 of the Municipal Code of the City of Chicago, the Office of the Legislative Inspector General.

**2-83-160 Obstructing or interfering with investigations--Penalty.**

No person shall wilfully refuse to comply with a subpoena issued by CPAC or any member or hearing officer designated by it, or otherwise knowingly interfere with or obstruct an investigation authorized by this chapter and conducted by an announced investigator of CPAC. Any person who wilfully violates the provisions of this section shall be subject to a fine of not less than \$1,000.00 and not more than \$5,000.00 for each such offense, or imprisonment for a period of not less than 30 days and not more than six months, or both a fine and imprisonment. Each day that a violation continues shall constitute a separate and distinct offense. Actions seeking the imposition of a fine only shall be filed as quasi-criminal actions subject to the provisions of the Illinois Code of Civil Procedure, as amended. Actions seeking incarceration, or incarceration and a fine, shall be filed and prosecuted as misdemeanor actions under the procedure set forth in Section 1-2-1.1 of the Illinois Municipal Code, as amended.

**2-83-170 Violation--Penalty--Discharge or other discipline.**

Any employee or appointed officer of the city who violates any provision of this chapter shall be subject to discharge (or such other discipline as may be specified in an applicable collective bargaining agreement) in addition to any other penalty provided in this chapter.

**2-83-180 Rules and regulations.**

The CPAC, or any member or hearing officer designated by it, is authorized to adopt such rules, regulations and procedures as it may deem expedient for the proper administration and enforcement of the provisions of this chapter.

**2-83-190 Public policy.**

The public policy of this chapter is to make certain that complaints concerning police misconduct and abuse are resolved fairly and timely. All collective bargaining agreements must be in accord with this policy.

**ARTICLE VI. BUDGET (2-83-200 et seq.)**

**2-83-200 CPAC Budget, Staffing, and Independent Evidence Analysis Requirements**

Each fiscal year, the City Council shall appropriate an amount that shall not be less than one and-a half percent (1.5%) of the annual appropriation of the Department available to pay for the expenses of the CPAC. The CPAC must maintain at least one full-time investigator for every 100 sworn officers in the Department.

Investigators employed by the CPAC may not have previously been employed by the Department and/or the Cook County State's Attorney. Investigators should broadly represent the diversity and demographics of the City by way of, including but not limited to, racial, ethnic, gender, and geographic diversity.

# **The Case for an Independent Police Accountability System:**

## **Transforming the Civilian Review Process in Rochester, New York**

**By Barbara Lacker-Ware  
and Theodore Forsyth**

**The Case for an Independent  
Police Accountability System:  
Transforming the Civilian Review Process  
in Rochester, New York**

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## DEDICATION

We dedicate this report and its accompanying ordinance to the memory of community activist Rev. Raymond L. Graves, called the “spiritual father” of civilian police review. As a civil rights leader for over 40 years, Rev. Graves was a fearless advocate and prophetic voice for justice in Rochester.

It is also dedicated to the following individuals, who died during the course of conflicts with Rochester Police Department officers:

Ronald Frazier 1975  
Denise Hawkins 1975  
Alecia McCuller 1983  
Kenneth Jackson 1984  
Louis Davila 1985  
Calvin Greene 1988  
Vandre Davis 2001

Willie Carter 2002  
Craig Heard 2002  
Lawrence Rogers 2002  
Patricia Thompson 2006  
Hayden Blackman 2011  
Israel “Izzy” Andino 2012  
Richard Gregory Davis 2015

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## ABSTRACT

The purpose of this document is to improve the accountability of the Rochester Police Department through a robust civilian oversight system. The City of Rochester's civilian review process embodied in the Civilian Review Board does not adequately address the instances of police misconduct by officers in the Rochester Police Department (RPD). Civilians file complaints with the RPD's internal affairs office, the Professional Standards Section (PSS), which investigates them. These investigations and their findings are submitted to the Civilian Review Board (CRB) and the Chief of Police, who each make their own findings. The CRB has no power to independently investigate complaints, no power to compel testimony or evidence, and no power to discipline officers. The Chief of Police makes the final determination as to whether the complaint against the officer is sustained, and if so, what, if any discipline is administered. This process lacks transparency and accountability, and many individuals and organizations believe it perpetuates a system of officer misconduct resulting in ongoing mistreatment of some civilians in Rochester, NY.

The authors researched: annual reports of the CRB 2001-2015 and PSS 2002-2015, the history of Rochester's civilian review processes, and how the current process works. We compared the CRB, PSS, and Chief of Police findings and recommendations. We examined how the CRB was established, its make-up, and how it is funded. We reviewed the records of disciplinary consequences imposed by the RPD in instances of officer misconduct. We studied civilian review processes in other areas of the United States.

Our research indicates a lack of accountability and transparency within the RPD, resulting in continued occurrences of police officer misconduct. The PSS process involves the police investigating themselves, and there is no independent review of police misconduct that calls officers to account for their actions or enacts appropriate discipline that would deter the misconduct. The process through which the CRB is funded involves an apparent conflict of interest. The CRB has no power to investigate complaints. Instead, the police, through PSS, conduct all investigations of complaints. In many cases CRB findings mirror PSS findings, and there is no appeal process. The CRB is not adhering to portions of the 1992 ordinance that established it, and the ordinance itself does not address the need for an independent body to provide true accountability and transparency in incidents where civilians are mistreated by the police. There is no real opportunity for civilians to have their complaints heard in a just and fair process outside of the control of the RPD, short of filing a lawsuit, which is often not a realistic alternative, due to cost and other factors.

We recommend the abolition of the current Civilian Review Board and the establishment of a Police Accountability Board (PAB) through a City Council ordinance. The PAB would be completely autonomous and funded separately from the RPD, have investigative powers, and issue subpoenas to compel testimony and evidence. The PAB would make the final decision on the disposition of complaints and the recommended discipline to be imposed on officers if the complaints against them are sustained. This recommendation has been endorsed by numerous organizations and community leaders in Rochester, New York.

## SUMMARY OF REPORT FINDINGS

### Findings/Data

1. From 2002 to 2015, only 2% of civilian complaints of unnecessary force have been sustained by the Chief of Police and only 5% by the Civilian Review Board. (In contrast, Syracuse's Citizen Review Board's sustain rate was 23% in 2015.)
2. From 2008 to 2013, the Rochester Police Department (RPD) Professional Standards Section (PSS) did not sustain ANY civilian complaints for unnecessary use of force.
3. During the 14 years reviewed in the data, the harshest penalties meted out to the police officers for sustained complaints of excessive use of force were 6 suspensions.
4. From 2008 to 2015, there were no internal investigations regarding use of force by RPD officers; over the same time period there were 156 investigations of "procedure."
5. The Civilian Review Board (CRB) exonerated officers (meaning what they did was considered lawful) at a higher rate than the RPD most years.
6. When the Chief of Police disagreed with the CRB's recommended findings, he exonerated officers in all cases where the CRB sustained the complaint (meaning the officers' conduct was considered unlawful).
7. After the 2011 – 2012 City Council Commission review of the CRB, the Chiefs of Police sustained fewer civilian complaints, according to PSS reports, than they had before the Commission was established.
8. Civil lawsuits against the City of Rochester for police misconduct cost taxpayers millions of dollars each year.

### Discipline

1. RPD officers can appeal any disciplinary action related to a civilian complaint through a three-person police appeal board, which could include a potentially sympathetic commander and a civilian of their choosing (per police union contract).
2. 77% of all types of civilian complaints filed 2002 – 2015 resulted in counseling memos or letters of reprimand as the only discipline for RPD officers.
3. Officers were suspended 7 times more for procedural violations during 2008 – 2015 and 10 times less for violations of force during 2002 – 2007.
4. In 2003, three different officers were cited for separate instances of: sexual harassment of a minor, an in-custody death, and shooting a bystander; all of which resulted in

suspensions. After 2003, PSS reports no details on discipline of officers for use of force.

### **Management/Process**

1. The Center for Dispute Settlement (CDS) has served as the City of Rochester's contractor for the Civilian Review Board (CRB) for 24 years.
2. In 2012, the City established a process of requesting proposals to administer the CRB. This process has favored CDS to remain the sole contractor for the CRB, an apparent conflict of interest. In 2012, City Council administered the process. In 2015, the Rochester Police Department took over this administration.
3. The CRB is not independent. It receives training from the RPD and uses police investigators to conduct investigations into civilian complaints of police misconduct.
4. The Request for Proposals to administer the CRB includes the Chief of Police being able to remove anyone from the CRB based on undefined "bias"; this stipulation is not found in the 1992 ordinance establishing the CRB.
5. The majority of the CRB panel chairs have been either CDS staff or members of the CDS Board of Directors. This violates the 1992 ordinance that the panelists be volunteers.
6. The number of panelists and chairs has dwindled over the years to a select few who do not represent the racial or ethnic composition of the City of Rochester.
7. Information is not readily available to the public about the number of complaints made against a specific officer or the types of disciplinary measures that have been taken, if any.
8. The CDS's Community Advocate does not actually advocate for the civilian complainant.
9. The CRB offers no formal appeal process for complainants who disagree with the final dispositions of their complaints.
10. The CRB has never requested further investigation of a civilian complaint to the level of Rochester City Council; in 24 years, City Council has never reviewed a single civilian complaint.
11. The transmission of CRB recommended findings via voicemail to PSS seems to be an inadequate and insecure method.

## **KEY ELEMENTS OF THE PROPOSED POLICE ACCOUNTABILITY BOARD**

1. The Civilian Review Board (CRB), established by a 1992 City Council ordinance, shall be abolished.
2. An independent Police Accountability Board (PAB) shall be established, which will be an autonomous office of the City separate from the Rochester Police Department (RPD).
3. The PAB shall be prohibited from contracting with, hiring, or consulting with the Center for Dispute Settlement (CDS) in any administrative capacity.
4. The PAB will be a civilian-controlled process for hearing civilian complaints about police misconduct. Its oversight will ensure accountability and transparency regarding the powers exercised by members of the RPD.
5. The PAB will report to the Rochester City Council and be funded through the budgetary process of the City of Rochester.
6. The PAB will hire an administrator, administrative staff, and independent investigator(s) who are not currently nor ever have been employed by the RPD or any other law enforcement agency.
7. The PAB will consist of 11 members who are residents of the City of Rochester and will serve terms of four years.
8. Six members of the PAB will be elected by the public. Four members of the PAB will be appointed by City Council and one by the Mayor. PAB members shall not be employed or formerly employed by the RPD or any law enforcement agencies while serving as a Board member.
9. The PAB will evaluate the efficacy of existing RPD policies, procedures and practices. The PAB may identify major problems or trends within the RPD and will make recommendations to the Chief of Police for appropriate and necessary changes to policies, practices, and procedures. It will share these recommendations publicly.
10. The PAB may conduct investigations into the conduct of specific members of the RPD concerning any allegation of misconduct and may investigate complaints of police misconduct independently of any investigation conducted by PSS.
11. PSS will provide full PSS reports, recommendations, and investigatory case files to the Police Accountability Board.
12. The PAB shall be trained in civil and human rights law, anti-racism, implicit bias, gender identity and sexual orientation, disability rights, both physical and mental disabilities, RPD and NY police policies and procedures, and other relevant state and local laws.

13. Complaints will be received directly by the Police Accountability Board or by the Rochester Police Department's Professional Standards Section (PSS) and referred from one to the other.
14. The PAB Chair shall establish a regular rotation of PAB members to serve on hearing panels composed of three members of the PAB.
15. The PAB, by majority vote of its members, may issue subpoenas to compel the attendance of witnesses, police officers, and the production of any records necessary to complete the investigation of a civilian complaint.
16. If the hearing panel finds that misconduct has occurred, the PAB will have the authority to recommend disciplinary sanctions including but not limited to reprimand, retraining, suspension, demotion, or dismissal.
17. If the panel believes there is evidence of criminal conduct, the complaint and its file will be forwarded to the Monroe County District Attorney's Office and/or to the NYS Attorney General's office to request that a Special Prosecutor be appointed.
18. The panel may also recommend that restitution be paid to the complainant by the City for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.
19. The Chief of Police must share his or her final determination with the PAB and the complainant; where the Chief imposes lesser discipline or no discipline than recommended, he must explain and justify such action.
20. A disciplinary matrix will be established, and if the PAB and the Chief of Police fail to agree on the discipline to be imposed, the PAB will determine the discipline.
21. If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal with the Police Accountability Board.
22. The PAB will publish monthly, quarterly, and annual reports related to the number and type of complaints, the types of force used, discipline recommended and administered, and appeals requested.

## NOTE TO THE READER

Throughout this report, we have inserted text boxes to exemplify cases of police excessive use of force. In each of these incidents the civilians were Black and unarmed at the time the police targeted them. Documentation of each case is cited in the bibliography. These cases include one or more of the following scenarios:

- A complaint was made to the Professional Standards Section, presumably reviewed by the Civilian Review Board, and not sustained by the Chief of Police, meaning the officer was not found to be guilty of the charge (Warr, Davis, Coleman).
- The criminal charges against the civilian were dismissed or reduced in court, which may mean there was not sufficient evidence to indicate the civilian had committed the charged crime (Warr, Turner, Sinclair, Ivery, Keene, Griner).
- The civilian brought a civil complaint against the City of Rochester and/or filed a civil lawsuit, which resulted in monetary damages being paid to the complainant (Turner, Blackman/Williams, Sinclair, Libbett, Redd/Carelock/Weathers).
- The civilian brought a civil complaint against the City of Rochester and/or filed a civil lawsuit, which was discontinued (Rogers) or is pending (Warr, Ivery, Lipford, Parker).

### The Case of Benny Warr

On May 1, 2013, Benny Warr, a Black man, age 52, was in his motorized wheelchair waiting for a bus on Jefferson Avenue and Bartlett Street. As part of “Operation Clear the Block,” RPD Officers Joseph Ferrigno and Anthony Liberatore ordered Warr to get off the street. When Warr replied that he was waiting for the bus, the officers pepper-sprayed him and tipped his wheelchair over, throwing him to the ground. The officers punched and kicked Warr all over his body and head. Sgt. Mitchell Stewart arrived shortly after Warr was on the ground, and proceeded to kick and strike him. Warr was arrested for disorderly conduct and resisting arrest. He received an adjournment in contemplation of dismissal. Warr suffered three broken ribs and irreparable damage to his leg. He is still in constant pain and suffers from PTSD. Warr filed a complaint with the CRB, and the officers were exonerated a year after the event occurred. Warr has a civil rights lawsuit pending in federal court. Officer Ferrigno and Sgt. Stewart are still employed by the Rochester Police Department; Officer Liberatore is not.

Millions of taxpayer dollars have been awarded by the City of Rochester to compensate those who brought civil complaints against the Rochester Police Department and its officers.<sup>1</sup> In the text boxes, several officers are named, a few of whom the reader will note repeated from one text box to the next. These are just a few examples of myriad cases of officer misconduct. Some may believe that lawsuits resulting from officer misconduct are just the cost we have to pay for “a few bad apples.” This is not the case. In fact, research indicates that officers and civilians are influenced by implicit racism, which can cause

people's subconscious minds to treat black people as "dangerous criminals."<sup>2</sup> Police departments, like most American social systems, reflect a systemic racism that has been part of our cultural mindset since slavery. This system must be dismantled and replaced with a process of accountability wherein police administration, city government, and the community ensure that there is no tolerance for police misconduct, and where consequences for such actions in the form of appropriate discipline are fair and transparent.

## INTRODUCTION

In recent years, numerous individuals and organizations across the United States have called for an end to systemic racism, especially as exhibited by police departments that engage in racial profiling. Since the inception of slave patrols in the early 1800s, the police have been utilized primarily to "protect and serve" white, wealthy society, according to Kristian Williams, author of *Our Enemies in Blue: Police and Power in America*.<sup>3</sup> That "protection and service" have been carried out primarily against poor people of color, especially those who are Black. With the rise of a white middle class and subsequent white flight out of cities and into the suburbs, poor Black people have been deliberately segregated into carefully bounded areas that became "ghettos," as elucidated by Ta-Nehisi Coates in "The Case for Reparations."<sup>4</sup> Although Chicago is perhaps the most famous for its "redlining" practices that isolated Black communities and deprived them of assets, Rochester, New York fits perfectly into the pattern of draining resources from urban areas, resulting in high unemployment, poor educational opportunities, violence, crime, homelessness, drug abuse, mental illness, and high arrest and incarceration rates. In fact, the boundary-drawing and mortgage-lending discrimination of redlining is still happening, most recently litigated by the New York Attorney General against Five Star Bank, which settled in 2013.<sup>5</sup>

Police officers in Rochester, over 90% of whom do not live in the city,<sup>6</sup> patrol high-poverty, predominantly Black and Latino neighborhoods that are targeted with special scrutiny. Whether walking, driving, standing, riding a bike, being in one's own yard or home, increasing documentation demonstrates what many have known for decades: "Blacks are far more likely to be arrested than any other racial group in the USA. In some places, dramatically so," according to *USA Today*.<sup>7</sup> Rochester is one of those places: "Within Monroe County, the average disparity rate means blacks are arrested at a rate about six times higher than people of other races" (*Democrat & Chronicle*).<sup>8</sup> In the City of Rochester, as of 2013, the rate was 2.7 times higher. This might seem comparatively low until considering the fact that Rochester is 42% Black. In many cases, even if a Black person's behavior could be legitimately questioned by the police, officers seem prone to harass and escalate rather than respectfully de-escalate situations. Such police aggressiveness too often leads to misconduct by the officer, resulting in actions that range from excessive ticketing to excessive and unlawful use of physical force.<sup>9,10</sup> This excessive use of force has had devastating consequences for people, including injuries leading to long-term mental distress and/or disabilities, and in some cases death.

As a reaction to this kind of violence and police misconduct in general, many cities have instituted new civilian review processes or enhanced existing ones. There are currently more than 200 civilian entities that oversee police departments around the country, up from 100 in 2007.<sup>11</sup> In 2013, the Center for Public Policy at California State University, Fullerton published a report that reviewed national trends in civilian oversight committees. The study cites the “troublesome” nature of police autonomy “when officers commit acts that cause the public to question the integrity of a police officer or agency. Instances of officer-involved shootings, use of excessive force, or perceived racial profiling can often

#### **The Case of Robinn Turner**

On September 12, 2010, Robbin Turner, a Black woman, was assaulted by a youth who threw a softball- sized rock at her right knee, causing excruciating pain. Turner called 911, and Officer Joseph Ferrigno responded but did nothing and left. Turner called 911 again and was told a sergeant would report to the scene, but instead Ferrigno returned, whereupon she was again assaulted by the youths in the officer’s presence, forcing her to the ground. Ferrigno then picked Turner up off the ground, slammed her onto the concrete and dragged her by her arm approximately 10 feet, saying, “Bitch, you are on my last nerve. You’re going to fucking jail.” When Turner told Ferrigno that she had a ruptured disk in her back, Ferrigno said, “Oh yeah?” then pulled her arm behind her back and slammed his knee into Turner’s back. He then handcuffed her and put her into a police car. A crowd had gathered, and some people asked Ferrigno why he was treating Turner that way. He replied, “Don’t you know I’m internationally known to be a ruthless mother fucker?” Turner was charged with second degree harassment, which was later dismissed. She filed a civil claim, which was settled by the City for monetary damages in her favor. Ferrigno is still employed with RPD.

challenge public trust in law enforcement agencies.”<sup>12</sup> These incidents often lead to increased costs for taxpayers, who pay for the prosecution and defense of meritless cases in the court system.

In 2011, the City of Syracuse, New York, which had an established citizen review board since 1993, amended its laws to “insure public accountability over the power exercised by members of the Syracuse Police Department.” In 2012, the Syracuse Common Council appointed an eleven-member Citizen Review Board (SCRB) and hired an administrator and an independent investigator. The SCRB is a separate department of the City with its own budget. The SCRB has “the power to investigate complaints of police misconduct independent of and concurrently with any investigations conducted by Office of Professional Standards (OPS).”<sup>13</sup> Additionally, the OPS (Syracuse’s internal affairs department) must provide the SCRB with a copy of the full OPS report, investigatory case file, and recommendation to the Chief of Police for each complaint it investigates.<sup>14</sup> The Board also has the power to authorize issuances of subpoenas to compel witnesses, including police officers, to attend the hearing and records to be produced. The Chief of Police is required to ensure compliance by police officers with SCRB procedures.<sup>15</sup> For more information on the SCRB, see Appendix A, Appendix C, and Appendix D.

In 2013, the SCRB sustained civilian complaints of excessive force at a rate of 24%;<sup>16</sup> in 2014, the sustain rate was 41%, and in 2015 it was 23%, for an average sustain rate of 31% since the new

process was instituted.<sup>17,18</sup> In contrast, the Rochester Civilian Review Board's average sustain rate for use of force is at 5% over the past 15 years.<sup>19</sup> Rochester's rate is closer to Chicago (2%), which is notorious for its lack of police transparency and accountability.<sup>20</sup> If there were more transparency in the process, there could be more accountability, and patterns of policing could be studied and corrected, leading to increased safety and justice for the residents of the City of Rochester.

The first half of this document examines the current process of investigating unnecessary uses of force by the Rochester Police Department, the subsequent review of civilian complaints related to these incidents, and the lack of transparency for, and accountability to, the public in the process. Over the past 50 years, several attempts have been made to address the need for police to be held accountable to the civilians they serve in a meaningful way such that officers face consequences as a result of misconduct and unnecessary use of force. These efforts have not yet resulted in a process that satisfactorily reduces the incidents of misconduct in question, especially those that seem to stem from racial profiling. Black and brown people are overrepresented in the instances of being harassed, pepper-sprayed, hit, kicked, arrested, and in some cases killed by the Rochester Police Department. This report aims to provide unequivocal evidence that the police do not have an adequate system of accountability and the current Civilian Review Board does not function as a deterrent to police misconduct.

The second half of this document proposes an ordinance, through legislation enacted by the Rochester City Council, that will abolish the current Civilian Review Board and replace it with a Police Accountability Board as a separate and independent office of the City of Rochester. The Police Accountability Board would have the capacity to conduct its own investigations into civilian complaints, subpoena testimony and evidence, and discipline Rochester police officers who have committed the misconduct with which they are charged by civilian complainants.

The authors hope that this report will be the basis of an honest discussion about the state of police community relations, civilian review and police oversight, and that it will be the impetus for transformative justice to take place.

## **HISTORY of CIVILIAN REVIEW IN ROCHESTER**

In the City of Rochester, the history of racial profiling and use of excessive force incidents has been documented back to 1962 by Ted Forsyth, an independent journalist with Rochester Indymedia. In a comprehensive report, Forsyth also chronicles the rise and fall of the Police Advisory Board in Rochester.<sup>21</sup> This board was organized in 1963 by public demand, and served for a few years as an effective means to review police misconduct. The Police Advisory Board was strongly opposed by Rochester's police union, the Rochester Police Locust Club, which waged a legal battle over five years to prevent its operation, resulting in the Police Advisory Board being disbanded in 1970. In 1977, the Rochester City Council adopted recommendations of the Citizen's Committee on Police Affairs to create a

Complaint Investigation Committee, but it had little significant effect on behalf of complainants.<sup>22</sup> In the 1980s, under the leadership of Rev. Raymond Graves and Rev. Franklin Florence, Black ministers and church leaders called for police accountability in the wake of police shootings of Black civilians. New models were proposed, but City Council accomplished little of significance in this area until 1992, when the Chief of Police was found guilty of embezzlement and conspiracy.<sup>23</sup>

The current Civilian Review Board (CRB) was established in 1992 by Rochester City Council through Resolution 92-40. The Center for Dispute Settlement (CDS), a nonprofit organization, was selected to administer the CRB, and has done so since that time.<sup>24,25</sup> In its legislation, the Council resolved that a “body composed of civilian volunteers” (originally 48) would be recruited by the City and would rotate service on panels to hear complaints: “each CRB panel is made up of three trained volunteers who review the investigation of a complaint against a Rochester police officer, issue a finding and forward the finding to the Chief of Police for consideration.” Specific volunteers were to be appointed by the Mayor from a list provided by the CDS as “chairpersons to serve as presiding officers” for the reviews.<sup>26</sup> In 1992, there were to be 10 chairpersons; in 1995 this was expanded to 15 by Resolution 95-8.<sup>27</sup> By 2015, the number of chairs dwindled to three.<sup>28</sup> CRB panelists must be City residents and undergo: 30 hours of New York State mediator training, 32 hours of Rochester Police Department (RPD) policies and procedures training, and eight hours of “ride-alongs” with the RPD in order to be certified for the CRB. The current Civilian Review Board has seemingly had no effect on reducing incidents of police misconduct and excessive force, despite a reform effort in 2011-12. This lack of effectiveness is primarily due to the fact that the CRB is not independent of the RPD; thus it cannot conduct its own investigations, it cannot issue subpoenas to compel testimony or evidence, it cannot discipline officers, and it relies solely upon the investigative materials and recommendations provided by the Rochester Police Department.

## **PROCESS FOR FILING A COMPLAINT**

Each year the RPD’s internal affairs office, known as Professional Standards Section (PSS) and the Civilian Review Board (CRB) administered by the Center for Dispute Settlement (CDS), complete annual reports related to civilian complaints about police misconduct. When a civilian makes a complaint, PSS completes its own investigation, the CRB reviews their findings, and both make recommendations to the Chief of Police who subsequently reviews each recommendation and determines the ultimate findings regarding the complaint.

For the purpose of this study, CRB annual reports 2001-2015 and PSS annual reports 2002-2015<sup>29</sup> were analyzed specifically related to claims of police misconduct where officers were alleged to have used unnecessary force against the complainant. Every civilian complaint may carry more than one allegation, e.g. a punch, a kick, etc., each of which can be exonerated or sustained separately. Whenever there is a civilian complaint of physical force, the case is required to be heard by the CRB. Civilians can initiate their complaints

against RPD officers using the following methods: walk-in, call or email Professional Standards Section Office, Neighborhood Service Centers, Patrol Divisions/Sections, Office of Public Integrity or Center for Dispute Settlement; via RPD website or Twitter.

The online process to make a complaint, learn about the complaint process, or understand PSS via the City website is not user friendly. On the RPD webpage, there is no mention of how to make a complaint, although there is a sentence at the bottom: “We value your feedback. Please feel free to share a comment about a Rochester Police Department Employee.” This links to a form that can be submitted. In order to find out about complaints, you have to type in “complaint” in the search bar. This navigates to a page with articles containing the word “complaint.” Here you can click on “RPD Citizen Complaint Process,” which outlines the process for making a complaint. At the bottom under “Your Complaint is Important,” there is a sentence “Comment about a police officer.” This section also takes you to the online form. The Professional Standards Section page is also not listed on the RPD page. To find PSS, you have to type it into the search bar.

Regardless of where or how a complaint is filed, the complainant must be interviewed in person and complete documentation, usually at the PSS office. The interview constitutes the beginning of the investigation. Supporters can accompany complainants to the interview, but may not interject. The complainant can choose whether or not the interview is video recorded, and if so, it becomes part of the case file. PSS then contacts witnesses, reviews audio or visual evidence, takes statements from the officers involved, and searches for / follows up on evidence. At the conclusion of the investigation, PSS makes a findings report with recommendations that are passed on to the command officers and the CRB, then to the Chief of Police.

#### **The Case of Hayden Blackman**

Hayden Blackman, a Black man, was shot and killed on October 13, 2011, by Officer Randy Book, who was responding to a neighbor’s call to police about a domestic dispute. Blackman’s stepson had punched him in the face. When Book arrived on the scene, Blackman was holding a knife. Without saying anything to Blackman or asking him to drop the knife, Book immediately fired his gun 5 times, hitting Blackman 3 times in the torso. Blackman’s death led to a rally and march to city council and the formation of a Commission to review the process for filing complaints against police officers. Blackman’s widow, Roxanne Williams, filed a civil rights claim and received monetary compensation. Officer Book is still employed by RPD.

When PSS has completed an investigation, its investigative package and findings are transmitted electronically to the CRB panelists for review on computers set up by PSS in a designated secure room in City Hall. The three panelists complete forms to note the allegations of the complaint, their recommended findings, any feedback they have, and to log their attendance. The forms may include comments by individual panelists, such as why they disagree with their peers. Panelists vote to determine the CRB’s recommendation to the Chief of Police; the chair then calls PSS and leaves a voicemail message of their recommendation at the PSS office. In 2011, “the recording of findings by the Chairperson following the completion of an investigation review has been changed from using a digital recording device, that would be secured in the CRB review room for later retrieval by the

PSS Sargent *[sic]* assigned to the case, to calling in to a secure PSS voicemail system and reading the findings via phone for transcription by PSS.”<sup>30</sup> In other words, the CRB chairperson calls the PSS sergeant who is acting as the CRB liaison and leaves a voicemail message of their recommended findings on the sergeant’s phone. According to the 2015 liaison, that voicemail “transfers over to our email and I’ll email that to the stenographer, she’ll type up the transcription of the phone call recording,”<sup>31</sup> which the stenographer then sends to the Chief.<sup>32</sup> The CRB does not keep or receive a copy of the recording. There is no stenographic record of panelists’ deliberations—no account is filed with the City. CDS maintains panelists’ summary sheets and written records of their recommended findings. But there is no independent verification of the accuracy or integrity of this process.<sup>33</sup>

The Chief of Police reviews the CRB finding as well as the PSS finding and makes a final determination on any action to be taken in response to the complaint. After a few months, the complainant receives a determination letter from the Chief, referring any questions or follow-up to the investigative sergeant.<sup>34</sup> Any subsequent discipline is handled by the Chief: the CRB has no power to discipline officers.<sup>35</sup> If the complaint is sustained, the Chief’s letter may state that an officer was disciplined but the details of any disciplinary actions are never revealed. In fact, the complainant, the CRB, and the public cannot gain access to any records as to why an officer was (or was not) disciplined and what disciplinary action, if any, was administered.

## RECENT ADAPTATIONS

In 2011, community protests arose due to unnecessary use of force by police in several incidents, some of which were video recorded. The expression of these community-wide concerns resulted in the City of Rochester creating a Commission, which spent 16 months studying the issue and making recommendations to City Council. The Commission included several representatives on each of five committees: Community, Government, Police Administration, Center for Dispute Settlement, and Police Union. Each committee made recommendations to the Commission. In 2012, the Commission made several recommendations to the Council.

The points of agreement that were recommended for adoption by City Council are listed below. These are taken directly from Commission documents<sup>36</sup> that were made available to the authors; detailed minutes were not available. We have added unofficial clarifications in brackets.

- Community Advocate [to be hired]
- Multiple options for intake and investigation
- Members of CRB must be City residents
- Timetable for investigation [to be shortened]

- Case update letter sent every 30 days [to complainant]
- Monthly progress report to Council
- Additional community outreach
- Additional youth outreach
- Overhaul intake process
- Intake option at City Hall
- Fast track procedural discourtesy complaints
- Disciplinary details shared with complainant (general disposition)

Some of the recommendations that were not adopted include:<sup>37</sup>

- Independent CRB
- Subpoena power
- Legislated CRB
- Council open monthly for complaints
- Complaint in full can be made to either CRB or PSS
- Shared information for investigations
- Open meetings to decide procedural and advocacy issues
- Improve intake through mandatory report for every phone call to PSS
- Record all intake calls
- Complaint qualifies as notice of claim<sup>38</sup>
- Copy final determination letters to Council

#### **The Case of Russell Davis**

On August 5, 2006, Russell Davis, a Black man, went outside of his apartment to look for the superintendent to tell him that his sink needed to be fixed. Davis was outside the window of another apartment trying to get the superintendent's attention when several RPD officers approached him with their guns drawn. Sergeant Ronald Malley told him to get on the ground. Davis replied, "Is there a problem?" After some verbal back and forth, two officers jumped Davis, wrestled him to the ground, and bashed his head. The superintendent came out and told the officers that Davis lived there and there was no problem with him. The officers placed Davis in a police car with handcuffs so tight his wrists bled and his hands swelled. When Davis filed a complaint with PSS, Sgt. Malley was the officer put in charge of the investigation, even though he was the commanding officer who ordered the assault on Davis. After two years, Davis's complaint was determined to be unfounded. Sgt. Malley was promoted to Lieutenant and is still working for the RPD.

- Hearing officer as final arbiter, not Police Chief

Ultimately, a few policy changes within both the Professional Standards Section (PSS) and the Civilian Review Board (CRB) were made. According to the PSS 2012 Annual Report, these recommended changes were implemented:

- Multiple options for complaint intake, including internet options and hard copy reports in City public buildings were expanded, e.g. libraries, city hall, etc.<sup>39</sup>
- Investigative case timelines were streamlined.<sup>40</sup>
- Disciplinary details (in accordance with Civil Service Law) and case updates are provided to the complainants every 30-days.<sup>41</sup>
- Detailed PSS reports are made available to the public.<sup>42</sup>

The Center for Dispute Settlement (CDS) 2012 Annual Report indicates the following enhancements as a result of the Commission's recommendations:

- The civilian oversight process includes utilizing only city resident, NY State Unified Court System certified mediators as CRB panelists for reviewing complaint investigations.<sup>43</sup>
- CDS added the position of Community Advocate: a staff person to accompany complainants to police interviews and help them to understand the process.

[The title "Advocate" is a misnomer, as CDS's contract requires the organization to maintain a strict stance of neutrality. Thus, the advocate does not actually speak or act on behalf of the complainant.]

The job description of the Community Advocate includes these duties:

- Guide complainant through the complaint process;
- Provide a fair complainant intake process at Rochester Police Department's Professional Standard Section (PSS) or other off-site locations;
- Provide case status updates to complainants at all appropriate case stages providing regular case processing updates.<sup>44</sup>

## DEFINITIONS

PSS Annual Reports, CRB Annual Reports, and the RPD website each have defined the possible recommended findings that can be made in civilian complaints. We have combined these in Table 1:

TABLE 1

<b>Finding</b>	<b>CRB Reports</b>	<b>PSS Reports</b>	<b>RPD Website</b>
<b>Exonerated</b>	RPD personnel's conduct was justified, lawful and proper.	Conduct was lawful, justified, and proper.	Police officer(s) involved acted properly and will not be disciplined.
<b>Sustained</b>	The act occurred and the act amounts to misconduct or misjudgment.	The conduct occurred and amounted to misconduct or misjudgment.	Your complaint has been supported: The officer(s) involved acted improperly and may be disciplined.
<b>Unprovable</b>	There is insufficient evidence to prove or to disprove an allegation.	There is insufficient evidence to prove or to disprove an allegation.	There was not enough evidence to prove your complaint true or false so no further action will be taken.
<b>Unfounded</b>	The act complained of apparently did not occur.	The act apparently did not occur.	The investigation found no basis to your complaint.
<b>No Findings/ Closed/ Officed</b>	Not listed	An allegation is closed because a complainant fails to cooperate with the investigation and there is not enough evidence available to draw a fair conclusion and apply a finding.	Not listed
<b>Pending</b>	This is not a category of finding, but is listed in both CRB and PSS annual reports when the case was carried over from one year to the next.		

## LACK OF APPEAL PROCESS

The Civilian Review Board (CRB) has no authority to initiate its own investigations into complaints, but if the panelists are not satisfied with the Professional Standards Section (PSS) investigation, the following process is in place: the CRB can write to PSS to request further investigation if the panelists believe it is lacking. According to PSS, they cooperate fully with these requests for more information.<sup>45</sup> If the CRB is not satisfied with the PSS response, however, the CRB can submit a request to the Chief of Police and again, if not satisfied, it can request the Mayor of Rochester to investigate the complaint. If the decisions by these entities regarding the case fail to satisfy the CRB, it can then write to City Council to hear the case and investigate it. If Council votes to accept the case, it can hold public hearings and may issue subpoenas to compel testimony before sending the new findings

back to the CRB. Should this happen, the 1992 law states: “The results of City Council's review of the PSS investigation shall be a matter of public record.”<sup>46</sup>

We have learned that a true appeal process does not exist when the CRB or the complainant does not agree with the Chief's investigative finding. The review procedures are part of the original legislation implemented in 1992, but are not noted as an appeal process. Although City officials have claimed that there is an appeal process, an inquiry in September 2015 yielded this response from the Bureau of Communications: “Per the City Law Department there is no specific appeal process for the Civilian Review Board, but there is a procedure which a citizen may follow if a citizen is not satisfied with the investigation of a complaint.”<sup>47</sup> As described on the Rochester Police Department (RPD) website, this involves speaking to or making an appointment with the investigator, filing a claim against the City for damages, or contacting a lawyer to pursue a criminal or civil lawsuit. In a presentation on the complaint process, PSS officials stated that they only knew of one case

#### **The Case of Kerry Coleman**

On January 9, 2009, Kerry Coleman, a Black man, age 47, called the Mobile Crisis Unit to his home because his wife was in mental distress. Instead of the crisis unit, RPD Officer Brian Cala and other police officers barged into the house. When Coleman's wife told him to get out of the house, Cala pepper-sprayed her, then punched her in the face several times. When Coleman tried to help her, another officer pepper-sprayed him. Coleman's wife was then forced to sit on their front steps in the cold, and when other family members came toward the house, saw her injuries, and asked who had done it, Cala yelled, “I fucking did it!” When Coleman's complaint was presented to the Civilian Review Board in 2011, Officer Cala was exonerated. Cala is still serving on the RPD, and in 2012 was one of seven officers who shot and killed Israel Andino, a mentally ill man whom the police could have detained without the use of a deadly weapon.

in which a complainant disagreed with the Chief's finding that the allegation against the officer was found to be unprovable. The complainant called Mayor Thomas Richards, who called then Chief of Police James Sheppard, and the Mayor ended up agreeing with the Chief's findings. This was the extent of the “appeal” process.<sup>48</sup> Notably, in the 24-year history of the CRB, no PSS investigation has been brought to Rochester City Council, nor has the City Council voted to review any PSS investigation.<sup>49</sup>

A PSS official stated that in the past five years, he's had one instance of “push back” from the CRB on an investigation.<sup>50</sup> Another PSS official described the relationship between PSS and the CRB as “not adversarial at all, if anything, it is overly congenial.”<sup>51</sup>

The absence of a robust CRB independent investigation also prevents the possibility of a meaningful appeal process for civilians when their complaints have been wrongly denied. The CRB and the civilian each receive the finding from the Chief, and that is the end of the complaint, whether they agree with the finding or not. As stated above, there is no appeal process spelled out in the ordinance. Outside of the civilian complaint process, complainants may file a Notice of Claim with the City of

Rochester within 90 days of the incident, or they may file a civil rights claim in federal court.

Now that we have reviewed how the process works, we will examine the findings of civilian complaint investigations where unnecessary use of force by police officers is alleged. As noted above, the internal affairs department of the Rochester Police Department, known as the Professional Standards Section, completes its own investigation and makes its finding on each allegation contained in the complaint. Thereafter, PSS sends its investigative package and recommended findings to the Civilian Review Board, which reviews and makes its own recommended findings. Both of these sets of findings are sent to the Chief of Police, who makes the final determination that is then conveyed to the complainant. First we will look at the Chief's ultimate findings as reported by PSS. Then we will review the findings of all three entities as reported by the CRB.

### **RPD / PSS COMPLAINT REVIEW FINDINGS**

Table 2 shows the findings made by the Chief of Police in investigations of civilian/citizen<sup>52</sup> complaint reviews related to allegations of excessive use of force. The data are taken from the Rochester Police Department's Professional Standards Section (PSS) annual reports 2002-2015. The definitions of exonerated, unprovable, unfounded, and sustained can be found on page 19. The Rochester Police Department (RPD) Chiefs of Police during the relevant period are:

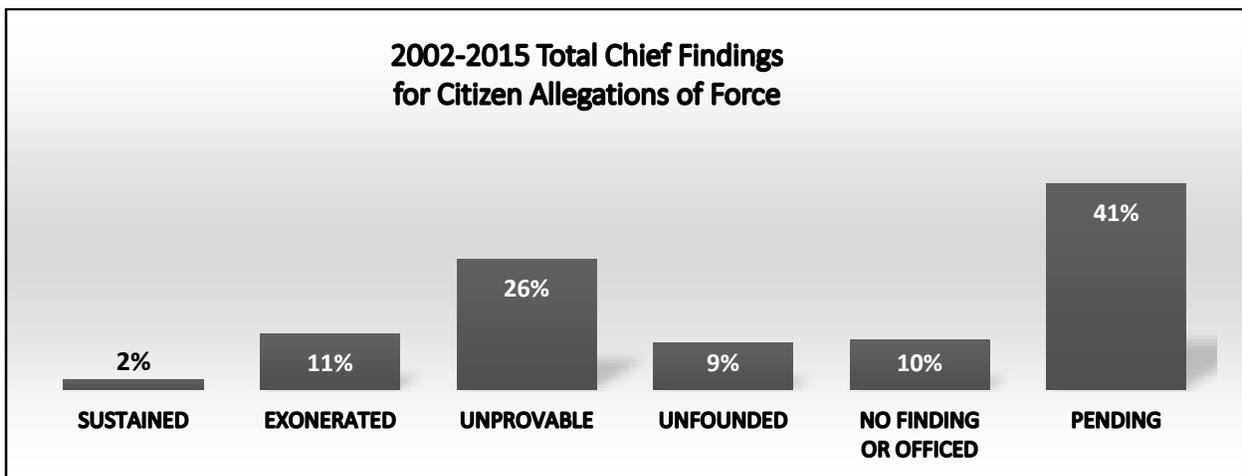
Robert Duffy	1998 – 2005
Cedric Alexander	2005 (Acting)
David Moore	2006 – 2010
James Sheppard	2010 – 2013
Michael Ciminelli	2014 – Present

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The totals of Table 2 are summarized in the chart below:

TABLE 2

<b>CHIEF OF POLICE FINDINGS for CITIZEN COMPLAINTS RE: ALLEGATIONS OF FORCE</b>													
<b>ALLEGATIONS</b>		<b>SUSTAINED</b>		<b>EXONERATED</b>		<b>UNPROVABLE</b>		<b>UNFOUNDED</b>		<b>NO FINDING OR OFFICED</b>		<b>PENDING</b>	
<b>Years</b>	<b>Total</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
2002	107	2	2%	23	21%	43	40%	26	24%	13	12%	NA	NA
2003	152	8	5%	23	15%	85	56%	23	15%	13	9%	NA	NA
2004	95	2	2%	20	21%	62	65%	10	11%	1	1%	NA	NA
2005	108	7	6%	16	15%	25	23%	15	14%	7	6%	38	35%
2006	97	2	2%	11	11%	27	28%	14	14%	8	8%	35	36%
2007	110	1	1%	8	7%	10	9%	1	1%	15	14%	75	68%
2008	71	0	0%	0	0%	0	0%	0	0%	18	25%	53	75%
2009	85	0	0%	2	2%	0	0%	2	2%	7	8%	74	87%
2010	69	0	0%	4	6%	1	1%	0	0%	4	6%	60	87%
2011	70	0	0%	6	9%	15	21%	2	3%	12	17%	35	50%
2012	64	0	0%	5	8%	3	5%	4	6%	8	13%	44	69%
2013	69	0	0%	2	3%	17	25%	0	0%	6	9%	44	64%
2014	49	1	2%	7	14%	12	24%	10	20%	5	10%	14	29%
2015	27	0	0%	5	19%	6	22%	4	15%	1	4%	11	41%
<b>TOTAL</b>	<b>1173</b>	<b>23</b>	<b>2%</b>	<b>132</b>	<b>11%</b>	<b>306</b>	<b>26%</b>	<b>111</b>	<b>9%</b>	<b>118</b>	<b>10%</b>	<b>483</b>	<b>41%</b>



According to PSS annual reports, the number of civilian-initiated complaint allegations decreased from a total of 107 allegations in 2002 to a total of 27 in 2015. Between 2002 and 2007, the number of allegations ranged from 95 to 152. From 2008 to 2013, the range was 64 to 85; then 2014 saw a sharp drop to 49 and an even sharper drop to 27 in 2015.

What has caused this drop in complaints? Are the police using less force? We believe not. In fact, based on anecdotal evidence, we surmise several reasons for the drop in civilian complaints. First, in recent years, cell phone videos have demonstrated that police officers all over the country have engaged in unnecessary, unlawful, and even deadly use of force with little disciplinary penalty or consequences for the officer. Nationwide, police use of force is either more prevalent or more visible, or both. Secondly, the process used to investigate a complaint in Rochester is quite often unsatisfactory for the civilian. If complainants have criminal charges pending against them (usually disorderly conduct, obstructing government administration and/or resisting arrest) they are encouraged by PSS not to file the complaint until after the criminal charges have been adjudicated to protect their Fifth Amendment rights. This delay can be problematic, however, because officers cannot be disciplined for complaints that are filed more than 18 months after the incident. Many people have lost faith in the process and don't utilize it. Complainants have told us it is a "waste of time," and even a "hoax" that does not deliver any sense of accountability.<sup>53</sup> For example, in Rochester:

- Even though PSS and Civilian Review Board (CRB) public descriptions of the process state that civilians can make their complaints at the Center for Dispute Settlement (CDS), this description does not include the information that they still have to be interviewed by the PSS, who are the police.
- The PSS "interview" is conducted by uniformed officers at a police facility, in a room that looks like an interrogation room, and in a way that often feels to the complainant like an interrogation.<sup>54</sup>
- Complainants do not have any interaction with the Civilian Review Board, only with PSS, and all follow-up usually consists of a letter from the RPD containing the Chief of Police's findings.
- The wait between filing of the complaint and the conclusion of the investigation is very lengthy, with very little communication from PSS.
- There is a lack of transparency in the process, and even if the complaint is sustained, the complainant never learns what, if any, discipline was administered.
- During the time that the complaint is being processed, the officer is usually still on the street, patrolling the same area in which the incident happened.
- Complainants have been harassed by the officers against whom they have lodged complaints, both during the complaint process and after it has concluded.<sup>55</sup>
- Lawyers who might encourage their clients to use the process often choose not to do so, as stated by one attorney: "I haven't had any clients go to PSS. If I did, I'd accompany them. I'm somewhat conflicted because the only way to make the

process work is to use it, but on the other hand, what's the point of going through the process if it doesn't work?"<sup>56</sup>

The primary reason for dissatisfaction with the complaint process, of course, is that very few complaints are sustained. As we review the totals line on the bottom of Table 2 on page 22, the most concerning data point is that overall, only 2% of the unnecessary force civilian allegations have been sustained by the Chief of Police. In other words, over a 14-year period, 2002-2015, when civilians made the effort and went through the lengthy, difficult, and frequently traumatic process of making a complaint, the Chief only sustained 23 out of 1,173 allegations. Further, whether the Chief ultimately ruled the charge to be exonerated, unprovable, unfounded, or no finding/officed, the result is the same—the allegation by the civilian has not been sustained and the officer faces no consequences.

In fact, the highest number of civilian allegations sustained by the Chief was 6% in 2005 and 5% in 2003. Only 2% were sustained in 2004, 2006, and 2014, with 1% sustained in 2007. And for seven years (2008-2013 and 2015) the Chief did not sustain ANY civilian allegations for unnecessary use of force by the police in all 455 instances. The low frequency of founded complaints leads us to question the thoroughness of the RPD internal police investigations and the accuracy of these rulings.

Furthermore, it is troubling that overall, almost half (41%) of the allegations were still pending at the time of the annual reports; we presume these were rolled into the results of successive years. For several years, more than 50% of the complaints filed were pending—even as high as 87%. What was the determination on these investigations? How can we compare the findings in a meaningful way? Most of the PSS annual reports studied include a "Summary of Investigations" section, with the note: "some of the investigations this year were initiated in the previous year,"<sup>57</sup> or "Data reflects investigations initiated, not necessarily completed in 2014."<sup>58</sup> But there is no explanation as to which allegations these refer and what were the final determinations.

#### **The Case of Shakirrah and Jamar Carolyn Sinclair's Children**

On March 31, 2005, Carolyn Sinclair's 12-year old daughter Shakirrah was verbally harassed by RPD Officer Robert Cortese. When her brother Jamar tried to call the police, Cortese slapped the cell phone from his hand. Officer Timothy Wright and other officers grabbed Jamar, threw him to the ground and kicked him. Cortese called him an "asshole," and said he "couldn't stand niggers like you," then officers pepper-sprayed and arrested Jamar. Shakirrah picked up her brother's cell phone and called her stepfather. Officers threw her to the ground, pepper-sprayed and arrested her. Both children were treated at the hospital. The charges against them were later dismissed. The family was then stalked and harassed by RPD officers. Sinclair filed a civil rights claim and the family received monetary compensation. Cortese is no longer serving on the RPD; Wright remains an officer.

## CIVILIAN REVIEW BOARD RECOMMENDED FINDINGS

The information in Table 3 on page 26 was taken from the Civilian Review Board (CRB) Annual Reports 2001-2015 and compares CRB recommended findings, Professional Standards Section (PSS) recommended findings, and Chief of Police findings on civilian allegations related to use of force. This section addresses only civilian-initiated complaints, and Table 3 shows the number and percentage of complaint allegations. The categories are the same: exonerated, sustained, unprovable, unfounded, and pending (see page 19 for definitions). Those that are pending in these CRB data include only Chief of Police findings that were pending, not overall investigations that were pending, as in the PSS reports.

It is immediately noticeable that the totals for number of civilian complaint allegations of force in Table 3 below are not the same as the PSS number totals for the same data reported in Table 2 on page 22. These differing numbers of allegations and sustain rates are compared in Table 4 on page 27. Although both sets of annual reports show the total number of complaints, civilian-initiated complaints, and Rochester Police Department-initiated complaints, the numbers for civilian-initiated allegations of force for each report are different. Overall, PSS reports 337 more allegations of force than the CRB. In fact, in 11 out of 14 years, PSS reported higher numbers of allegations than the CRB, ranging from 17% to 59% annually. In the three years that the CRB indicates more allegations of force, the difference ranges from 18% to 41% fewer. What is the cause of these disparities? In the 11 years wherein PSS reports significantly higher numbers, we wonder, did they not submit all records of civilian complaints of force to the CRB for review? In the three years when CRB reports more allegations than PSS, is PSS attempting to indicate there are less instances of civilian complaints of force? The lack of transparency and accountability in the process leaves us to question these discrepancies and the reasons behind them.

The totals of Table 3 are summarized in the chart below.

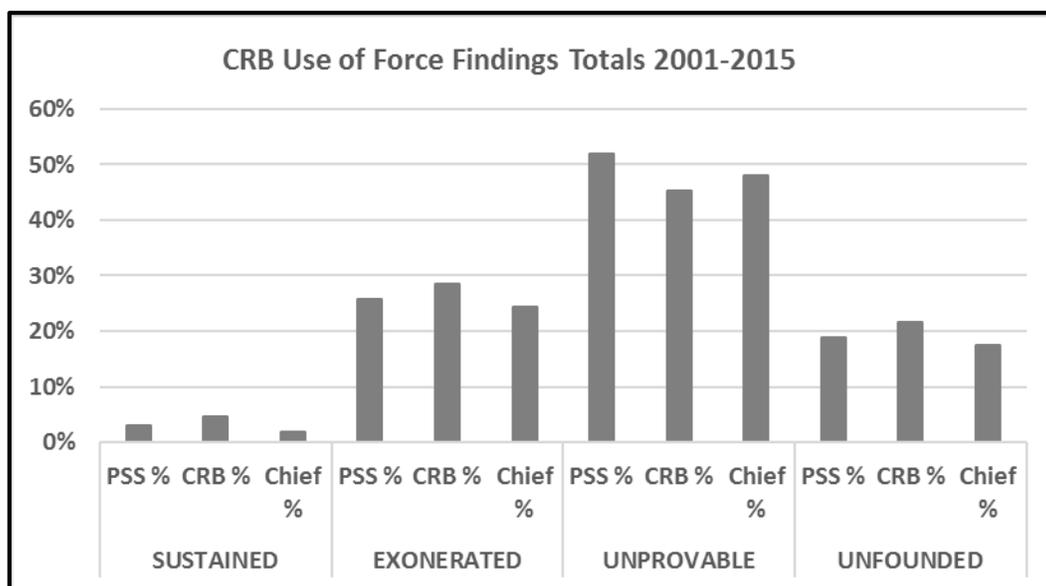


TABLE 3

CRB REPORT ON CITIZEN ALLEGATIONS OF FORCE FINDINGS															
ALLEGATIONS		SUSTAINED						EXONERATED							
YEAR	TOTAL	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %		
2001	63	1	2%	0	0%	0	0%	13	21%	15	24%	12	21%		
2002	83	7	8%	8	10%	4	5%	14	17%	18	22%	14	19%		
2003	88	3	3%	2	2%	2	2%	15	17%	14	16%	15	18%		
2004	79	4	5%	4	5%	1	1%	14	18%	19	24%	17	24%		
2005	44	0	0%	1	2%	0	0%	15	34%	19	43%	14	33%		
2006	52	2	4%	2	4%	0	0%	10	19%	12	23%	11	26%		
2007	49	2	4%	2	4%	1	3%	11	22%	11	22%	10	26%		
2008	38	0	0%	2	5%	0	0%	12	32%	12	32%	9	25%		
2009	62	1	2%	3	5%	0	0%	25	40%	26	42%	24	44%		
2010	54	0	0%	0	0%	0	0%	15	28%	17	31%	18	33%		
2011	94	2	2%	5	5%	2	2%	17	18%	20	21%	21	24%		
2012	42	1	2%	2	5%	1	2%	16	19%	18	21%	14	24%		
2013	55	1	2%	1	2%	0	0%	19	35%	22	40%	16	31%		
2014	58	3	5%	7	12%	3	6%	22	38%	17	29%	12	23%		
2015	38	1	3%	3	8%	2	5%	14	37%	16	42%	13	34%		
<b>Total</b>	<b>899</b>	<b>28</b>	<b>3%</b>	<b>42</b>	<b>5%</b>	<b>16</b>	<b>2%</b>	<b>232</b>	<b>26%</b>	<b>256</b>	<b>28%</b>	<b>220</b>	<b>24%</b>	<b>PENDING/ OFFICED/ NO DECISION</b>	
ALLEGATIONS		UNPROVABLE						UNFOUNDED							
YEAR	TOTAL	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %	Chief #	Chief %
2001	63	32	51%	22	35%	33	59%	17	27%	26	41%	11	20%	7	11%
2002	83	41	49%	33	40%	36	48%	21	25%	24	29%	21	28%	8	10%
2003	88	53	60%	47	53%	53	62%	17	19%	25	28%	15	18%	3	3%
2004	79	52	66%	40	51%	46	64%	9	11%	16	20%	8	11%	7	9%
2005	44	23	52%	15	34%	21	50%	6	14%	9	20%	7	17%	2	5%
2006	52	29	56%	28	54%	23	55%	11	21%	10	19%	8	19%	10	19%
2007	49	30	61%	24	49%	23	59%	6	12%	12	24%	5	13%	10	20%
2008	38	14	37%	16	42%	15	42%	12	32%	8	21%	12	33%	2	5%
2009	62	28	45%	24	39%	22	40%	8	13%	9	15%	9	16%	7	11%
2010	54	20	37%	21	39%	18	33%	19	35%	16	30%	18	33%	0	0%
2011	94	54	57%	53	56%	49	52%	18	19%	16	17%	16	17%	6	6%
2012	42	17	59%	15	56%	15	56%	8	20%	7	17%	8	18%	4	10%
2013	55	31	56%	29	53%	33	63%	4	7%	3	5%	3	6%	0	0%
2014	58	24	41%	26	45%	27	51%	9	16%	8	14%	11	21%	0	0%
2015	38	18	47%	14	37%	17	45%	4	11%	5	13%	6	16%	0	0%
<b>TOTAL</b>	<b>899</b>	<b>466</b>	<b>52%</b>	<b>407</b>	<b>45%</b>	<b>431</b>	<b>48%</b>	<b>169</b>	<b>19%</b>	<b>194</b>	<b>22%</b>	<b>158</b>	<b>18%</b>	<b>66</b>	<b>7%</b>

Additionally, the Rochester CRB found that overall, 45% of civilian complaints were unprovable. How can an organization with no investigative powers know if an allegation is unprovable if it does not have the means at its disposal to determine its “unprovability”? Furthermore, Table 3 shows us that the CRB determined that civilian complaints were unfounded at a three-percentage point higher rate than PSS, and four percentage points higher than the Chief. In these cases, the CRB decided “the act apparently did not occur,” more often than PSS or the Chief did. When the CRB goes out to do its “Road Show Presentations”<sup>59</sup> to market its services as a community benefit, the public probably does not know that 22% of their complaints will not be considered to have happened and that almost half (45%) will be deemed unprovable. In complaint after complaint, year after year, the data suggest that CRB rubber stamps the PSS investigations, and in some instances even finds against the complainant more frequently than the police. Furthermore, over the 14 years of reports filed by both PSS and the CRB, there is no indication that the CRB questioned any investigation to the point where public hearings could be initiated.

Table 4 isolates and compares the rate at which PSS, the CRB, and the Chief of Police sustained civilian allegations of excessive force.

TABLE 4

TOTAL ALLEGATIONS REPORTED and SUSTAINED BY PSS VS CRB												
YEARS	PSS REPORTS			CRB REPORTS							DIFFERENCE IN TOTAL ALLEGATIONS	
	ALLEG	SUSTAINED		ALLEG	SUSTAINED							
	Total	Chief #	Chief %	Total	PSS #	PSS %	CRB #	CRB %	Chief #	Chief %		
2002	107	2	2%	83	7	8%	8	10%	4	5%	24	22%
2003	152	8	5%	88	3	3%	2	2%	2	2%	64	42%
2004	95	2	2%	79	4	5%	4	5%	1	1%	16	17%
2005	108	7	6%	44	0	0%	1	2%	0	0%	64	59%
2006	97	2	2%	52	2	4%	2	4%	0	0%	45	46%
2007	110	1	1%	49	2	4%	2	4%	1	3%	61	55%
2008	71	0	0%	38	0	0%	2	5%	0	0%	33	46%
2009	85	0	0%	62	1	2%	3	5%	0	0%	23	27%
2010	69	0	0%	54	0	0%	0	0%	0	0%	15	22%
2011	70	0	0%	94	2	2%	5	5%	2	2%	-24	-34%
2012	64	0	0%	42	1	2%	2	5%	1	2%	22	34%
2013	69	0	0%	55	1	2%	1	2%	0	0%	14	20%
2014	49	1	2%	58	3	5%	7	12%	3	6%	-9	-18%
2015	27	0	0%	38	1	3%	3	8%	2	5%	-11	-41%
<b>Total</b>	<b>1173</b>	<b>23</b>	<b>2%</b>	<b>836</b>	<b>27</b>	<b>3%</b>	<b>42</b>	<b>5%</b>	<b>16</b>	<b>2%</b>	<b>337</b>	<b>29%</b>

## NONCONCURRENCES

Nonconcurrences are cases wherein the Chief of Police disagrees with the recommended findings of the Civilian Review Board (CRB). Table 5 illustrates nonconcurrences related to allegations of force, reported by PSS annual reports over the years 2002-2015, which occurred in 138 allegations out of 1,173 cases, or 12% of the time. The left column indicates the recommended findings made by the CRB in each category. The right hand columns show how the Chief of Police ruled, thus disagreeing with the CRB recommended findings. For example, in the 40 total instances where the CRB exonerated the officer, the Chief sustained once and found allegations unprovable 31 times. Of the 138 times the Chief disagreed with the CRB, the Chief ruled against the officer only 4 times, or 3%.

TABLE 5

CRB FINDINGS	TOTAL FINDINGS	NONCONCURRENCES BY CHIEF OF POLICE									
		Sustained		Exonerated		Unprovable		Unfounded		Officed	
Exonerated	40	1	3%	0	0%	31	78%	6	15%	2	5%
Sustained	23	0	0%	7	30%	14	61%	2	9%	0	0%
Unfounded	34	0	0%	4	12%	28	82%	0	0%	2	6%
Unprovable	41	3	7%	21	51%	0	0%	17	41%	0	0%
<b>Total</b>	<b>138</b>	<b>4</b>	<b>3%</b>	<b>32</b>	<b>23%</b>	<b>73</b>	<b>53%</b>	<b>25</b>	<b>18%</b>	<b>4</b>	<b>3%</b>

In a 2015 meeting between the Professional Standards Section (PSS) and the Coalition for Police Reform, there was a discussion about the difference between PSS findings and CRB findings. A PSS official stated: “we don’t always agree on the allegation, but a lot of times our non-concurrences are: they found unprovable; we found unfounded. We find exonerated; they find unprovable. You know, on most occasions very rarely is it that we find sustained, they find exonerated.” He added, “it would be very odd and suspicious if we agreed on every single allegation and finding.”<sup>60</sup> Since PSS officials indicated that one of the primary areas of nonconcurrency was between unfounded / unprovable / exonerated charges, we will look at these first. In the 34 instances when the CRB found a complaint was unfounded, the Chief of Police ruled them to be unprovable 28 times (82%). In the 41 instances when the CRB found a complaint to be unprovable, the Chief found them to be unfounded 17 times (41%), but exonerated the officer 21 times (51%).

Yet out of 40 cases where the CRB exonerated the officers, the Chief ruled complaints to be unprovable 31 times (78%), unfounded 6 times (15%), and sustained only one. In the 23 (17%) cases where the CRB sustained the complaint, the Chief exonerated 7 times (30%) and found unprovable 14 times (61%). Although PSS reports indicate that the Chief did not agree with CRB recommended findings in only 12% of complaints, some of those concurrences were significant. For example, when the CRB believed 23 charges to be sustainable, the Chief instead determined in such a way that the officer suffered no penalty. On the other hand, the Chief sustained only one charge for which the CRB found

exonerated. In other words, the Chief chose not to sustain a charge when the CRB found it to be warranted 17% of the time. In general, when the Chiefs disagreed with the CRB recommended findings, for the most part, they ruled in favor of the officers by exonerating them or finding the allegations unprovable or unfounded.

### THE CDS CIVILIAN REVIEW BOARD

There has been discussion over the years as to whether the Center for Dispute Settlement’s (CDS) Civilian Review Board (CRB) is independent, and if so, what that means. Although the word “independent” was not found in the CRB’s annual reports 2001-2010, it appears several times in the 2011-2015 reports, for example, that it is an “independent” agency providing “independent civilian oversight.”<sup>61</sup> Notably, it was in 2011, after public protest regarding police use of force and subsequent lack of accountability, that a Commission was empaneled by the Rochester City Council to review the process of civilian oversight of the police. Yet even though the word “independent” is continually used in these CRB annual reports to describe the process, there is little indication that true transparency, accountability, and independence are utilized in the process. In fact, when comparing the 2002-2012 data with the 2013-2015 data during and after the time the “improvements” were made to the process, the sustain rate for the Chief of Police went down from 2.1% to 0.7% according to PSS reports. When comparing CRB reports, while the PSS sustain rates for use of force remained essentially the same, going from 3.2% to 3.3%, the CRB rates rose from 4.5% to 7.3%, and the Chief of Police sustain rates rose from 1.6% to 3.3%. These numbers still give great cause for concern, especially when contrasted with the outcome in Syracuse when they overhauled their civilian review process during roughly the same time period as Rochester. The Syracuse Citizen Review Board formed an 11-member board to issue subpoenas and hold hearings; it hired an independent administrator and independent investigator. Compared to Rochester, the results in the City of Syracuse are startling, as shown in Table 6.<sup>62</sup> For more on the Syracuse Citizen Review Board, see Appendix A, Appendix C and Appendix D.

TABLE 6

<b>Syracuse CRB Use of Force Complaints</b>			
<b>Year</b>	<b>Total</b>	<b>Sustained</b>	<b>Percentage</b>
2013	49	12	24%
2014	43	18	42%
2015	26	6	23%
Total	118	36	31%

(Note: when making their findings, Syracuse uses the standard of proof “substantial evidence”; Rochester currently uses the standard “a preponderance of the evidence.”)<sup>63</sup>

Rochester’s 2012, 2013, and 2014 CRB annual reports include a section (duplicated in each) about the 2011 Rochester City Council review of the “Police Complaint System,”

stating, it “resulted in Council recommending police oversight program enhancements that were incorporated into the existing legislatively governed programs.” For four years in a row (2011-2014) the annual reports repeat the statement: “The Center has also been involved in recommending and institutionalizing modifications and improvements to the oversight process to present day.” Yet the Program Enhancements from 2011 to 2014 were almost identical, except for the creation of a new Community Advocate position, which was mandated by City Council Resolutions.<sup>64</sup>

In 2011, the CRB included in its annual report a section entitled “Facilities Upgrade,” which was repeated verbatim in the 2012 report. In 2013, a paragraph was inserted, indicating that a new camera and recording system were added to the interview room. Reviewing these reports, it was startling to learn that the way the CRB transmits its recommended findings to the Rochester Police Department (RPD) is through a voicemail that is transcribed by the Professional Standards Section (PSS), which does not seem to be a very secure method due to the many opportunities for error and/or revision. Furthermore, there is no indication that the transcripts are ever verified by the CRB or that any written record of the CRB recommended findings and PSS recommended findings are compared for quality assurance.

### **Selection of CDS as Organizational Contractor of CRB**

After the City Council’s Commission completed its review of Rochester’s civilian “oversight” of police in 2012, a request for proposals process was initiated, presumably to offer a fair opportunity for any organization to serve as the organizational contractor of the Civilian Review Board (CRB). In the first proposal request process in 2012, the City of Rochester, through City Council, sent out a request for “outside Consultants to provide services relating to management of complaints involving members of the Rochester Police Department.”<sup>65</sup> Although “the Center for Dispute Settlement was the only firm to respond to the request”<sup>66</sup> in 2012, we don’t know if or when the proposal request was made available to other prospective organizations.<sup>67</sup> In 2015, another proposal request was issued, this time by the Rochester Police Department, and the contract was again awarded to the Center for Dispute Settlement (CDS), thus maintaining its unbroken string of management of the CRB for the City of Rochester (dating officially back to 1992 and in some form to 1977). Typically, in a proposal request process, numerous organizations are offered the opportunity to present proposals and an objective process is used to determine which organization is awarded the contract. In 2015, the proposal request was sent to four nonprofit organizations.<sup>68</sup> In the request issued by the RPD, the “sole point of contact” was Lt. Mark Simmons of the Professional Standards Section.<sup>69</sup> The nonprofit organization responsible for reviewing complaints of a government body is selected by, under contract to, and financially dependent upon, the agency it is reviewing. This is an apparent conflict of interest. It is significant to note that, based on our research of over 20 other civilian review processes in cities across the country, *none of them* contract with a nonprofit organization to administer their police accountability system.

The proposal requests also include a requirement that panelists for the CRB be “certified arbitrators.”<sup>70</sup> According to Webster’s thesaurus, another word for an “arbitrator” is a “mediator.”<sup>71</sup> CDS annual reports 2001-2015, include the following statement:

A unique aspect of the Rochester program that sets it apart from all other oversight efforts across the country is the exclusive use of mediators certified by the Center under auspices of the New York State Unified Court System as review board panelists.<sup>72</sup>

Indeed, the authors have yet to find another civilian review process in the nation that requires its CRB panel members to be certified mediators or arbitrators. Why would this be a contract requirement if the proposal request process is meant to be open to any organization to apply to be the consultant? On the contrary, this requirement seems specifically designed to narrow the awarded application to one organization as the consultant: the Center for Dispute Settlement. In fact, City Council’s 2013 and 2014 ordinances reaffirm that CDS was the only firm to respond to the request.<sup>73</sup> In 2015, the Ordinance stated that when a new proposal request was issued on September 28, 2015, the proposal request was “mailed to four local companies ... and CDS was the sole respondent and is able to satisfactorily meet the requirements”<sup>74</sup> set forth in the proposal request. Is this because no other entity possessed the predetermined requirement that the CRB panelists be certified mediators? Mediation is a different skill than being able to review police investigations and determine if proper policies and procedures were followed. Perhaps this is why no other civilian review board has the certified mediator requirement—because it is not relevant to the process of determining civilian complaints.

Another unsettling requirement of this proposal request relates to the prior discussion of how panelists are selected to serve on a CRB panel.

First:

When a citizen is needed to serve on ... the Civilian Review Board in accordance with current City policy, the Commanding Officer of the Professional Standards Section of the Rochester Police Department shall forward to the consultant the name of the officer involved and a brief description of the incident. The consultant shall then contact the next available individual on the listing derived from the pool of qualified potential panelists, in order to determine if this individual possesses any knowledge

#### **The Case of Lawrence Rogers**

On August 31, 2002, Lawrence Rogers, a mentally ill Black man, was running in a parking lot in only his briefs, unarmed. Police Officers Jason Elwood and Thomas Rodriguez tackled Rogers and wrestled him to the ground. Officers Cynthia Muratore and Daniel Nowack joined them as all four officers hit Rogers with nightsticks, put a knee on his neck, punched and pepper-sprayed him. Rogers suffered 27 lacerations, contusions and abrasions to his face and body, respiratory trauma, asphyxiation, and death. All four officers are still employed by RPD; Elwood is now a Sergeant, and Muratore is an Investigator. Rogers’ family filed a civil rights claim, which was discontinued.

of the incident, or of the persons involved, which would preclude him or her from making an unbiased decision. In the event that the potential panelist is disqualified in the opinion of the Consultant, the Consultant shall proceed to the next individual on the list ... and shall in similar manner canvass the list of Chairs supplied by the Mayor, to select a Chair for the panel.<sup>75</sup>

We wonder how this requirement is fulfilled given the small number of chairpersons, (see Table 11, page 36) and the similarly decreasing number of panelists (see Table 7, page 33).

Another disturbing element follows:

The Consultant shall then forward the name(s) of the panelist(s) ... to the Commanding Officer ... [who] shall review the designated names with the chief of Police, who may reject any or all of them if, in his determination, the potential panelist(s) will not deliver an impartial or unbiased opinion. If one or more of the potential panelists is rejected, the Consultant shall furnish another name or names.... This process shall continue until a sufficient number of panelists, and a Chair if necessary, are selected.<sup>76</sup>

There is no mention of this requirement in the 1992 or 1995 legislation establishing the CRB, nor in the subsequent City Council ordinances 2012-15 authorizing the agreement with the Center for Dispute Settlement agreement.<sup>77</sup> Nowhere in the City/RPD proposal document is there a definition of what might constitute “impartial or unbiased opinion” or how the Chief of Police would make this determination. It is difficult to understand how the Chief can determine in advance whether a potential panelist will or will not deliver an impartial or unbiased opinion.

We strongly question the implications of this requirement in the proposal request, as it seems to give undue discretion to the Chief, which does not lend itself to providing a fair process for the complainant:

If a panelist ... fails to perform his or her duties or performs these duties in a manner that, in the opinion of the Chief of Police or his designee, shows bias, the Chief of Police shall immediately inform the Consultant, and the Consultant shall immediately replace that panelist. Panelists who are replaced for non-performance or for bias shall not be eligible for further service under this Agreement, and shall be replaced in the pool of potential panelists by the Consultant.<sup>78</sup>

Again, there is no indication of how “bias” is defined or determined. These stipulations seem to document a process in which a narrower and narrower acceptable pool of panelists could constitute the Civilian Review Board, leading to recommended findings that closely resemble those desired by the PSS and the Chief of Police. Furthermore, there is no similarly stringent requirement to provide fairness to the complainant, nor is there any accountability in this proposal request of the CRB, the PSS or the Chief, as to the representation of the concerns of the community originally brought forward in the public outcry of 2011.

### Civilian Review Board Panelists

In its proposal to the Rochester Police Department (RPD) in October 2015, the Center for Dispute Settlement (CDS) notes the need to increase the number of Civilian Review Board (CRB) panelists. This seems to be a significant issue, as Table 7 demonstrates: over the past 15 years, the total number of panelists who served (including chairs) has declined from a total of 35 in 2001 to a total of 8 in 2015:

TABLE 7

NUMBER OF CRB PANELISTS														
2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
35	25	23	23	15	14	14	25	22	22	21	17	9	10	8

Yet in spite of this notation about the need for more panelists, the CRB had only 4 chairs and 9 panelists listed in its second quarterly report published June 2016.<sup>79</sup> There seems to be no oversight or monitoring by the Mayor over the selection of panelists to ensure that a sufficient pool, as required by the legislation, is fulfilled, even though they are appointed by the Mayor upon recommendation by CDS.<sup>80</sup> In its submitted proposal, CDS states that it will “provide to the Mayor of the City a listing of all current CRB panelists noting their designation as either a panelist or a Mayoral appointed Chairperson”.<sup>81</sup>

Furthermore, the CRB is required as part of the legislation and proposal request process to represent the racial and ethnic diversity of the overall population of the City of Rochester. Table 8 and Table 9 show the racial and ethnic composition of the City of Rochester in the 2000 and 2010 decennial census.

TABLE 8

ROCHESTER POPULATION BY RACE											
Rochester Population	White		Black		Other		Asian		Total		
	#	%	#	%	#	%	#	%			
2000	106,161	48%	84,717	39%	23,952	11%	4,943	2%	219,773	100%	
2010	91,951	44%	87,897	42%	24,224	12%	6,493	3%	210,565	100%	

TABLE 9

ROCHESTER POPULATION BY ETHNICITY						
Rochester Population	Hispanic or Latino		Non Hispanic/Latino		Total	
	#	%	#	%	#	%
2000	28,032	13%	191,741	87%	219,773	100%
2010	34,456	16%	176,109	84%	210,565	100%

The CRB’s annual reports are required to provide the racial and ethnic makeup of the panelists and chairpersons each year. Utilizing this data for 2001-2015, we have created Table 10, which shows the actual racial and ethnic composition of the CRB’s panelists and chairs.

TABLE 10

CRB PANELISTS BY RACE AND ETHNICITY								
Year	White		Black		Hispanic		Total	
	#	%	#	%	#	%	#	%
2001	14	40%	17	49%	4	11%	35	100%
2002	11	44%	11	44%	3	12%	25	100%
2003	11	48%	9	39%	3	13%	23	100%
2004	11	48%	9	39%	3	13%	23	100%
2005	8	53%	6	40%	1	7%	15	100%
2006	8	54%	5	40%	1	6%	14	100%
2007	8	54%	6	40%	1	6%	15	100%
2008	15	60%	8	32%	2	8%	25	100%
2009	14	64%	6	27%	2	9%	22	100%
2010	13	59%	7	32%	2	9%	22	100%
2011	11	52%	8	38%	2	10%	21	100%
2012	9	53%	7	41%	1	6%	17	100%
2013	5	56%	3	33%	1	11%	9	100%
2014	7	70%	3	30%	0	0%	10	100%
2015	6	75%	2	25%	0	0%	8	100%

United States Census Bureau estimates of Rochester’s White population between the decennials has remained at approximately 44% - 48%. In comparison, the numbers of people of color, including those who are Black and people in the Other category (which may include those of more than one race) have increased to 50% or more since 2001.<sup>82</sup> In terms of ethnicity, the number of Hispanic people grew from 13% to 18%. As Table 10 demonstrates, only in 2001-2004 did the racial/ethnic makeup of CRB panelists resemble the racial/ethnic composition of the City as a whole. In fact, as time went on, the percentage of Black and/or Hispanic Rochester residents increased while the percentage of Black and Hispanic CRB panelists decreased.<sup>83</sup> By 2015, the panel’s racial makeup had changed drastically from 2001; now 75% of the CRB are White, 25% Black, and 0% Hispanic. In contrast, the City’s estimated racial composition in 2015 was 48% White, 42% Black, and 10% Other; 18% were of Hispanic ethnicity.<sup>84</sup> Yet CDS’s submitted proposal in 2015 states: “The current pool of CRB panelists consists of 8 active panelists...an ethnically and racially diverse group of community volunteers comprised of 1 Black Female, 1 White Female, 1 Black Male, 5 White Males...”<sup>85</sup>

### Civilian Review Board Chairpersons

All of the Civilian Review Board (CRB) annual reports we reviewed describe the importance of the CRB panel Chairperson who reviews the Professional Standards Section (PSS) investigation packages. This quote from the 2012 report is typical: “Seasoned

panelists are recommended to the position of chairperson as they demonstrate an accepted level of proficiency, and/or as the need for new or more chairs is identified.”<sup>86</sup>

The 1992 City Council Resolution notes that there shall be a “group of ten individuals to serve as Chairs of the CRB;” there will be “individual panels, of three civilians, selected on a rotating basis from a pool of qualified individuals who have been trained by CDS for such service.”<sup>87</sup> In 1995, the number of volunteers to serve as chairs was increased to 15.<sup>88</sup>

Table 11 on page 36 shows the actual distribution of CRB chairs 2001-15, taken from the CRB annual reports of these years.

The row totals in Table 11 indicate the number of years in which each individual served as the chair for at least one review panel during a given year. The data show that some people chaired only a few panels, while others chaired in as many as 14 out of the 15 years reviewed.

The column totals in Table 11 indicate the number of different individuals who chaired at least one review panel in a given year. Even though the legislation requires 15 individuals to serve as chairs, we see that from 2001 to 2015 there were never more than 10 people who served as chairs at least once per year, and this number has decreased over time. In 2012, there were only 8 people who chaired at least once in the year; in 2013, there were 5, in 2014, there were 4, and in 2015 only 3 people served as chairperson at least once. This indicates an increasing consolidation of power in the hands of a few people.

#### **The Case of Cardell Libbett**

On December 9, 2011, Cardell Libbett was pulled over by RPD, but got out of his car and ran. Police officers chased him, then ordered him to the ground. Libbett lay face down on the ground and was attacked by six officers using hands, batons, and pepper spray. Officers punched, kicked, and struck Libbett on his head, face, and body. After handcuffing him, officers tasered him while he was on the ground. Libbett lost his left eye as a result of this beating. He filed a civil rights lawsuit, for which he received monetary damages. All officers: Nick Thomas, Chris Kosch, Jason Cropo, Brian Flint, Tim Thomas, and Sgt. Nathan Cornell are still employed by RPD; Lt. Mark Wiater is now a Captain.

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TABLE 11

CHAIRPERSONS OF CIVILIAN REVIEW BOARD PANELS 2001 - 2015														Role in Center for Dispute Settlement			
Chairperson	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total*	
Frank Liberti		X	X	X	X	X	X	X	X	X	X	X	X	X	X	14	Director of Police Community Relations 2010-16
Luis Zamot	X	X	X	X	X	X	X	X	X	X	X	X	X			13	Board of Directors 2002-12
Karen Spofford Shery		X	X	X	X	X	X	X	X	X	X	X	X			11	Volunteer
Walker-Cowart Peggy	X	X	X	X					X	X	X	X	X	X	X	11	President & CEO 2005-16
Richardson Theodore			X	X	X	X	X	X	X	X	X	X				10	Program Director (unknown years)
Kantor	X	X	X	X	X	X	X	X	X							9	Board & Executive Comm 200?-15, CDS Attorney
Patricia Mason William Daniels							X	X	X	X	X	X	X	X	X	8	Director of Professional Development 2010-14
											X	X	X	X	X	5	Certified NYS Mediator 2004-16
Peter Bibby	X	X								X	X	X				5	Dir Police/Comm Relations 2003-08, Board Secretary 2002
Michal Herrera	X	X	X	X												4	Program Manager, Police/Community Relations 1993-98
Patricia Tyser	X	X	X	X												4	Volunteer
Ruby Turner			X	X												2	Volunteer
Evelyn Scott	X	X														2	Board of Directors 2001-02
George Vito	X	X														2	Board of Directors (honorary 2002-07)
Ann Valinzo	X															1	Volunteer
<b>Total**</b>	<b>9</b>	<b>10</b>	<b>9</b>	<b>9</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>7</b>	<b>7</b>	<b>8</b>	<b>8</b>	<b>5</b>	<b>4</b>	<b>3</b>		

\* Row totals indicate the number of years in which each individual chaired at least one civilian review panel.

\*\* Column totals indicate the number of different individuals who chaired at least one review panel in a given year.

Earlier it was noted that the 1995 City Council legislation stipulates the CRB panelists must be *volunteers*.<sup>89</sup> Given this requirement, it is alarming to note the professional roles of seven of the individuals who repeated as chairpersons during or after the time they were employed by the Center for Dispute Settlement (CDS) in the span of 2001 – 2015:

- Director of Police/Community Relations Frank Liberti chaired 14 years; he was employed at CDS during 6 of those years.
- President & Chief Executive Officer Sherry Walker-Cowart chaired 11 years; she was employed at CDS during 7 of those years.
- Program Director Peggy Richardson chaired 10 years; it is unknown how many of those years she was employed by CDS.
- Attorney Theodore Kantor chaired 9 years; he was presumably the CDS lawyer during those years.
- Director of Professional Development, Patricia Mason, chaired 8 years; she was employed at CDS during 5 of those years.
- Director of Police/Community Relations Peter Bibby chaired 5 years, none while employed at CDS.
- Program Manager Police/ Community Relations Michael Herrera chaired 4 years, none while employed at CDS.

Six of these people were key CDS staff members, and one was the CDS Attorney. They were not volunteers, as stipulated in the 1995 legislation, and they did not reflect the general populace. Yet the CDS response to the City's request for proposals in 2015 uses the word "volunteer" at least six times over six pages to describe the CRB panelists and chairs. These "volunteers" are also paid stipends.<sup>90</sup> As salaried employees, how did the four staff members justify serving as "volunteers" on the CRB? Did they collect the stipend for their service on the CRB as well as their salary from CDS? Did the CDS attorney bill CDS for the hours he served on the CRB as well as collecting a stipend? This use of staff is a serious lapse in the application of the ordinance on the part of CDS.

Additionally, five members of the CDS Board of Directors served as CRB chairs:

- Luis Zamot chaired 13 years; he was on the CDS Board of Directors (includes serving an unknown timespan as CDS chair) during 11 of those years.
- Theodore Kantor chaired 9 years; he was on the CDS Board of Directors' Executive Committee each of those years.

- Peter Bibby chaired 5 years; he was on the CDS Board of Directors as Secretary one of those years.
- Evelyn Scott chaired 2 years; she was on the CDS Board of Directors both of those years.
- George Vito chaired 2 years; he was on the CDS Board of Directors (honorary) one of those years.

The utilization of key staff and CDS board members on the Civilian Review Board represents an apparent conflict of interest. While there are several definitions of conflict of interest in legal parlance, a widely used definition states: “

A conflict of interest is a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary interest.<sup>91</sup>

In this case, the professional judgment of the CDS as an organization and that of the CRB panelists individually to render fair, independent, neutral findings and recommendations would be the primary interest. This could be unduly influenced by a secondary interest, that of financial gain for the organization through budget support and/or financial gain for individuals who received salary or stipend support.

Another definition of conflict of interest, which includes the type to which we refer, puts it simply:

A conflict of interest is a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity. An apparent conflict of interest is one in which a reasonable person would think that the professional’s judgment is likely to be compromised.<sup>92</sup>

As mentioned on page 30, the RPD issued a request for proposals to which the Center for Dispute Settlement was required to respond directly to the agency whose officers it was contracted to review. The CRB’s entire budget, while administered through City Council, is dependent upon the RPD selecting the Center for Dispute Settlement as the consultant contractor. Members of the CDS Board of Directors have served on the Civilian Review Board, which is designated to assess the investigations of the RPD. The power of making the decisions regarding whether police acted appropriately and in the interests of civilians belongs to a very small number of people whose primary interest would likely be to maintain the financial contract with the City to enhance their nonprofit organization.

Rather than representing the community at large, the majority of those who had the greatest influence over the CRB review process most of the time were either paid by CDS, which relied financially on the contract with City Council, or were representing CDS in some official capacity. This is deeply concerning: over the past 15 years studied, CDS as a nonprofit organization has depended upon this contract with the City, and one would

assume this practice dates back to 1992.<sup>93</sup> This apparent conflict of interest warrants scrutiny, as a “reasonable person” might expect that it would be difficult, if not impossible, for the CRB to be objective. Individuals who held key positions of influence within the Center for Dispute Settlement were the primary decision makers 77% of the time during which only 5% of use of force complaints brought by civilians in Rochester were sustained by the CRB. The City of Rochester has for 24 years contracted with and paid an organization that in essence has essentially rubber stamped the police administration’s tolerance and promotion of officer misconduct.

## **ROCHESTER POLICE DEPARTMENT DISCIPLINE**

The ultimate issue with police misconduct and excessive use of force against civilians is whether appropriate disciplinary measures and penalties are enforced after violations have been fairly reviewed and determined to have been committed by police officers. The Rochester Police Department’s (RPD) General Order Manual addresses discipline under the Rules of Conduct chapter. Before reviewing this data, we thought it might be helpful to review the Webster’s dictionary definition of the word “Discipline”:

- control that is gained by requiring that rules or orders be obeyed and punishing bad behavior
- a way of behaving that shows a willingness to obey rules or orders
- behavior that is judged by how well it follows a set of rules or orders

The RPD General Order Manual, in its section on discipline, provides the following “Background”:

Discipline within an organization requires compliance to a code of ethics and standards of performance supported by a system of authoritative guidelines, such as rules, regulations, general orders, and other policies and procedures. Discipline is a necessary element in the maintenance and growth of any person or organization. The establishment of rules, policies, and other guidelines assumes voluntary compliance by all who are affected.<sup>94</sup>

The RPD utilizes an internal computer tracking system, Internal Affairs Professional, known as IA Pro, which provides an early warning to supervisors related to police officer behavior. This system “allows for the setting of thresholds relative to alleged officer misconduct.” It maintains “disciplinary and award records of Departmental personnel...and a database of complaints.”<sup>95</sup> According to PSS officials, any time an officer is involved in an accident, internal investigation, or civilian complaint, IA Pro triggers a flag that is sent to the commanding officer of that section and then brought to the lieutenant and sergeant. It also provides information and documentation to support the findings about the officer. Even phone call complaints, which are not part of the formal process, are tracked in this system. Supervisors are required to log into IA Pro at least once per week to check on complaints made about officers under their command. An official stated: “Once the officer reaches a certain threshold in a time period, whether it be three months, six months or a

year, we send that information out to the supervisor,” and they “look into ‘hey, is there a problem here? Does the officer need more training? What is the motivating cause for this officer to always get into a use of force?’”<sup>96</sup> Another official put it this way: “If we get three different complaints, even if they’re found to be unprovable, we’re still gonna have the officer’s supervisor sit down with the officer and find out exactly what’s going on. ... So basically we try to handle situations before they become problems—try to get ahead of them.”<sup>97</sup>

Judging by the number of use of force incidents that have occurred, including those

#### **The Case of Dwayne Ivery**

On August 17, 2013, Officers Alexander Baldauf and Rickey Harris, Jr. came to Dwayne Ivery’s home due to a disagreement between Ivery and his girlfriend. She wanted to remove license plates from a vehicle and Officer Baldauf assisted her. Ivery calmly and slowly approached Baldauf to ask if one of the officers could accompany him to his girlfriend’s home to retrieve his TV. Baldauf stood up and said, “I thought I told you to be quiet,” then punched Ivery numerous times in the head and face, threw him on ground, continued punching him and stomped on his head. Harris placed handcuffs on Ivery, but Baldauf continued beating Ivery for several minutes. This incident was captured on video camera. Ivery was treated at the hospital for his injuries then taken to jail. He was charged with harassment, which was adjourned in contemplation of dismissal. Ivery still suffers from PTSD due to the head trauma. A civil lawsuit is currently pending against the City of Rochester and the officers, who are still employed by the Rochester Police Department.

reported by the media, plus the number of civil lawsuits filed against the RPD, it would not seem that the “early warning system” is successful in preventing recurring incidents of force by officers. In fact, when government employees hold the lives of the community in their hands, it would seem that waiting until three incidents trigger a flag in a computer system is insufficient. If the first event is an incident of force, we believe that should be an immediate trigger of a problem that has already occurred, not a problem that can be gotten “ahead of” after three incidents.

Furthermore, it is not clear if the RPD has used this data to develop policies and procedures to reduce officer misconduct or to discipline repeat offenders. Neither complainants nor the public have received any information that indicates what actual disciplinary measures were taken in response to specific civilian complaints. Most of this information, which would be of great interest to the public (especially involving officers who have had complaints lodged against them yet continue to patrol and harass civilians) cannot be shared unless a judge compels it to be released in court, under Civil Rights Law §50-a. (This law is discussed on page 51.)

In a handout<sup>98</sup> provided at the October 2015 meeting of the Coalition for Police Reform with PSS, under the summaries of case findings for 2014 and the first three quarters of 2015, it was indicated that the number of each type of allegation was trending lower. Yet the actual percentage of each type of allegation was exactly

the same. Later scrutiny after the meeting revealed that the percentage numbers reported for the first three quarters of 2015 in the PSS handout were duplicated from the 2014 summary and, when correctly calculated, resulted in completely different percentages. This issue is troubling, because it leads us to speculate as to whether PSS deliberately reported incorrect numbers or were incompetent in their reporting efforts.

When asked during the meeting discussion about the difference between the number of complaints recorded in 2014 versus 2015, in terms of the seeming trend of 2015 to be lower, PSS officials responded that they would attribute reductions in allegations to be related to the maturation of officers. They stated that research shows new officers to have more complaints lodged against them than veteran officers. PSS officials also stated that there was an influx of new officers “about five years ago,” (which would be 2010) so the data indicated that as those officers matured, their behavior apparently improved, resulting in fewer complaints. This raises additional questions, which remained unasked: knowing this information, what additional training has been implemented for new officers to reduce this behavioral discrepancy? And, how many people were unnecessarily mistreated during those five years of “officer maturation”? It is unsettling that the officials had a ready answer for a question that was not indicated in the data but is indeed a problem. It seems that they are aware of the misconduct issue with younger police officers and choose to do nothing but wait for them to mature.

Curious about this theory, we decided to test it by calculating the ages of the RPD officers referenced in the text boxes of this report. In all, 24 officers are mentioned, and their ages in 2012<sup>99</sup> averaged 40 years. The officers’ ages ranged from 24 to 62 as follows: 8 officers in their 20s, 7 in their 30s, 8 in their 40s, and 1 officer in his 60s. We speculate that lack of maturation may be used as an excuse for misconduct by the Rochester Police Department. Excessive use of force seems to be prevalent equally across the age ranges of the officers reflected in the text boxes in this report.

### **Discipline in Investigations of Civilian Complaints**

Professional Standards Section (PSS) Annual Reports 2003-2015 list the formal charges preferred against Rochester Police Department (RPD) officers and the discipline for each charge as categorized by: Citizen Complaints investigated, Departmental Investigations, Command Discipline (initiated by a Command Officer), and Satellite Issues (“alleged violation discovered during an investigation, but was not part of the original complaint”).<sup>100</sup> These are listed by PSS case number, but in terms of the civilian complaint process, neither the PSS nor Civilian Review Board (CRB) annual reports provide information on which charge and its subsequent penalty correspond to which sustained civilian complaint. This information might be accessed through public records if it is raised in court. In one case, the authors connected the PSS number with the finding and subsequent penalty while attending a hearing for a civil litigation in which the plaintiff was also a civilian complainant.<sup>101</sup> For the purposes of this report, all discipline and penalties listed in PSS reports as departmental, command, or satellite will be categorized under the general category of RPD discipline or penalty. Although we can’t know from the PSS annual

reports which sustained civilian complaints resulted in which type of penalty, we can review the type of discipline that was enforced for specific categories of complaint. Table 12 on page 43 delineates 115 sustained civilian complaints 2003-2015 and the subsequent penalty.<sup>102</sup> For purposes of comparison, Table 12 includes not only investigations related to allegations of use of force, but also those for procedure, discourtesy,<sup>103</sup> and other complaints.

### **The Case of Delmar Lipford**

On April 4, 2015, Delmar Lipford, a Black man, got out of his car at a red light to speak to a person in another car, and walked back to his car while the light was still red. Officer Alexander Baldauf pulled up and told Lipford to “get on the fucking curb.” While Lipford was walking towards the curb, Baldauf shoved him twice, and Lipford stumbled, but raised both hands in the air in a nonthreatening manner, stating, “You don’t have to shove me.” Baldauf shoved Lipford again, punched him in the face, and pointed his taser at him. A witness yelled, “Do not shoot him, he didn’t do anything to you, I saw you punch him for no reason. I am recording you.” Baldauf then told Officer Rickey Harris to handcuff and arrest Lipford. The Sergeant arrived and did not prevent the unlawful arrest of Lipford, who spent the night in jail, posted bail and was released. Officers did not complete the required Subject Resistance Report, but untruthfully stated that Lipford was disorderly and hit the officer. A civil lawsuit against the two officers, the sergeant, and their commanding lieutenant is pending. The officers are still employed by the RPD.

*This space intentionally left blank. Section continues on next page.*

TABLE 12

year	RPD Discipline Civilian Complainants*	no disciplin e	counselin g memo or letter of reprimand	total suspens ions	resigned , retired or terminat	total	percenta ge
2003	force	0	1	3	0	4	
2004	force	2	1	0	0	3	
2005	force	0	1	0	0	1	
2005	force, failure to cooperate w/internal investigation	0	0	2	0	2	
2006	force	1	0	0	0	1	
2007	force	0	1	0	0	1	
2011	force	0	1	0	0	1	
2012	force	0	1	0	0	1	
2014	force	0	0	1	0	1	
2015	force	0	1	0	1 retired	2	
<b>total</b>	<b>force</b>	<b>3</b>	<b>7</b>	<b>6</b>	<b>1</b>	<b>17</b>	<b>15%</b>
2004	procedure	0	1	0	0	1	
2006	procedure	0	5	1	0	6	
2007	procedure	0	5	0	0	5	
2008	procedure	0	4	3	1 term'd	8	
2009	procedure	0	3	0	0	3	
2010	procedure	0	1	0	0	1	
2011	procedure	0	2	1	0	3	
2012	procedure	0	7	0	0	7	
2013	procedure	0	9	2	0	11	
2014	procedure	0	9	2	0	11	
2015	procedure	0	4	0	0	4	
<b>total</b>	<b>procedure</b>	<b>0</b>	<b>50</b>	<b>9</b>	<b>1</b>	<b>60</b>	<b>51%</b>
<b>total</b>	<b>discourtesy</b>	<b>0</b>	<b>25</b>	<b>1</b>	<b>0</b>	<b>26</b>	<b>22%</b>
<b>total</b>	<b>other</b>	<b>0</b>	<b>11</b>	<b>2</b>	<b>1 resigned</b>	<b>14</b>	<b>12%</b>
	<b>grand total</b>	<b>3</b>	<b>92</b>	<b>19</b>	<b>3</b>	<b>117</b>	<b>100%</b>
	<b>total percentage</b>	<b>3%</b>	<b>77%</b>	<b>16%</b>	<b>3%</b>		<b>100%</b>
*may include multiple allegations							

Despite the fact that there were 23 complaints of force sustained by the Chief of Police 2002-2015 (Table 2, page 22), the subsequent penalties for only 17 of them are reported. For these 17 complaints of force, (15% of 117 total complaints) the officers received no penalty 3 times over the period, while they were given counseling memoranda or letters of reprimand (CM/LR) 7 times, suspended 6 times, and one officer retired.

In contrast, 60 complaints were found to be related to procedure. This represents a much higher number of officers, 60 of 117 or 51%, who were disciplined in this category. In most of these cases, 49 of 60 or 82%, the complaint resulted in the officers receiving CM/LR. But 9 officers were suspended for procedural violations, more than the number of officers suspended for acts of force against civilians (6). One officer was terminated for a procedural violation.

The authors wondered what a procedural violation entails, and a word search of the RPD General Order Manual yielded almost 500 instances of the words “procedure,” “procedures,” and “procedural.” Suffice it to say a procedural violation seems to be a catch-all term that can apply to almost any area of the policing system to be found within the 1,232 pages of the RPD’s rules and regulations manual.<sup>104</sup>

Only 3%<sup>105</sup> of civilian complaints were sustained out of 1,173, and only 17 of those 21 complaints were reported on. By any standard, it is startling that the harshest penalties meted out for sustained use of force complaints involved merely 6 suspensions. Two of these suspensions were 1-20 days, one was 30 days, two were 60 days, and one was of unspecified length.<sup>106</sup> We don’t know if the officer who retired for use of force charges did so to avoid termination. Overall, 77% of civilian complaints resulted in CM/LR and 16% led to suspensions, while the remaining 3% resulted either in no penalty or retirement/termination.

A growing body of research indicates that it is common for police officers faced with charges of misconduct to resign or retire rather than be terminated, so they will not lose their pensions. In Nassau County, New York, “at least 33 officers have retired with serious misconduct charges against them pending...” and only six officers “were officially terminated since 2003.” For example, Sgt. William Kaul was “suspended for 30 days without pay” for injuring another driver in a car crash. Kaul then returned to “administrative duties, but he retired two months after the accident with an \$80,966 pension. He also faced criminal charges of official misconduct, obstructing governmental administration and leaving the scene of an accident. Kaul pleaded guilty to official misconduct in April 2012, and he received a conditional discharge and a \$500 fine.”<sup>107</sup>

Although common in American policing, the practice of police officers retiring or resigning in order not to lose one’s pension seems to have become a problem beyond the United States. In the United Kingdom, the government has enacted “...regulations which stop police officers from resigning or retiring if they are subject to an allegation that could lead to dismissal” after “144 officers resigned or retired whilst subject to a gross misconduct investigation, preventing them from being held to account for their actions” from December 13, 2013 through August 1, 2014.<sup>108</sup>

### Discipline in Investigations Initiated by RPD

Internal investigations by the Rochester Police Department (RPD) document 363 instances of disciplinary actions taken against police officers during 2002-2015. Table 13 breaks down these investigations, which may include multiple allegations, in the following categories: very serious, force, procedure, discourtesy, conduct, untruthfulness, insubordination, property damage/loss, and other. These data include departmental investigations, command discipline, and satellite issues.

TABLE 13

Year	RPD Discipline Internal Investigations*	no discipline	couns memo/ letter of reprima	suspensions	transfer / demotion	resigned/retired/terminated	other	total	percent
2003	poor supervision / in-custody death	0	2	0	0	0	0	2	
2003	sex with a minor / harrasment	0	0	1	0	0	0	1	
2003	shooting related to death	0	0	1	0	1 resigned	0	2	
2003	shot at moving vehicle / injured bystander	0	0	2	0	0	0	2	
2004	misappropriated funds / drug possession	0	0	0	0	1	0	1	
<b>total</b>	<b>very serious</b>	<b>0</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>8</b>	<b>2%</b>
2002-07	force	0	4	10	0	1 resigned	0	14	
2008-14	force	0	0	0	0	0	0	0	
2015	force	0	0	2	0	0	0	2	
<b>total</b>	<b>force</b>	<b>0</b>	<b>3</b>	<b>12</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>16</b>	<b>4%</b>
2002-07	procedure	2	18	6	0	5	0	31	9%
2008-15	procedure	0	91	43	3	16	3	156	45%
<b>total</b>	<b>procedure</b>	<b>2</b>	<b>109</b>	<b>49</b>	<b>3</b>	<b>21</b>	<b>3</b>	<b>187</b>	<b>52%</b>
2002-15	discourtesy	2	16	10	0	0	0	28	8%
2002-15	conduct	0	14	8	0	2	1	25	7%
2002-15	untruthfulness	0	2	6	0	4	0	12	3%
2002-15	insubordination	0	2	6	1	0	1	10	3%
2002-15	property damage / loss	0	28	8	0	0	7	43	12%
2002-15	other	2	19	12	1	0	0	34	9%
	<b>grand total</b>	<b>6</b>	<b>195</b>	<b>115</b>	<b>4</b>	<b>30</b>	<b>12</b>	<b>363</b>	
	<b>percentage</b>	<b>2%</b>	<b>54%</b>	<b>30%</b>	<b>1%</b>	<b>9%</b>	<b>4%</b>	<b>100%</b>	
	*may include multiple allegations								

As can be seen by the first list of formal charges in Table 13, earlier iterations of Professional Standards Section (PSS) annual reports researched for this study provided more detail regarding the offenses for which officers were disciplined than those in more recent years. In fact, the list from 2003 is shocking, especially when comparing the charges

with the penalties assessed. “Poor supervision related to in-custody death” resulted in a CM/LR while the officer who harassed and had sex with a minor received a 60-day suspension. When two officers were involved in a shooting wherein someone was killed, one was suspended for 30 days and the other resigned. The officer who shot and injured a bystander received a 10-day suspension.<sup>109</sup> Since 2003 is the only year in which such detail is provided for the 14 years of reports studied, one can only imagine what the details are for the charges in other years, and why they were not reported. This lack of transparency results in a lack of accountability to the public.

There is a lower number of charges of force and an increased number of procedural violations in RPD after 2007.<sup>110</sup> During the years 2002-2007, there were 8 very serious violations and 14 charges of force, totaling 22. Yet from 2008 to 2014, an 8-year span, RPD reported zero very serious violations or charges of force, and only 2 in 2015. This causes us to question what changed after 2007 that the number dropped from 22 over a 6-year period to only two over the next 8 years?

By contrast, from 2002 to 2007, RPD reported 31 violations of procedure compared to 156 from 2008 to 2015. Taking into account that 2002 to 2007 covers 6 years and 2008 to 2015 covers 8 years, the latter span contains 5 times more procedural violations than the former. Since we have already determined that “procedure” seems to be a catch-all term, we question whether the category of procedure incorporates charges of force that have not been reported as such by the RPD. If so, what is the motivation for this increasing lack of transparency around the exact charges for which police officers were disciplined?

Furthermore, over the total period of 2002-2015, 30 officers resigned or retired from, or were terminated by, the RPD. From 2002 to 2007, 3 of these (10%) were the result of very serious or force investigations, whereas from 2008 to 2015, none (0%) of the resignations, retirements or terminations (RRT) were related to force charges. That is 8 years with no investigations of use of force by RPD officers. Yet from 2002 to 2007, 5 out of 30 (17%) RRT came from procedural violations, while 16 out of 30 (53%) RRT were caused by procedural violations between 2008 and 2015. Again taking into account the different span of years, there were 3 times the number of officers who resigned, retired, or were terminated for procedure over the latter 8-year span than the previous 6-year span.

Turning to suspensions, 14 officers (12%) were suspended for very serious or use of force charges during 2002-2007 out of a total of 115 suspensions, while only 2 (2%) officers were suspended for use of force charges during 2008-2015. In contrast, 6 out of 115 (5%) suspensions were related to violations of procedure during 2002-2007, while 43 out of 115 (37%) suspensions were for procedural violations between 2008 and 2015. Officers were suspended 7 times more for procedural violations over 2008-2015 than 2002-2007.

Finally, there were 6 (3%) counseling memos or letters of reprimand (CM/LR) issued for very serious or force charges during 2002-2007 out of 195 total CM/LR, compared to 0 (0%) during 2008-2015. But 18 out of 195 (9%) CM/LR were issued from 2002 to 2007 for procedural violations, in contrast to 91 out of 195 (47%) from 2008 to 2015. There were 5

times more CM/LR issued to officers for violations of procedure in the latter 8 years than in the previous 6 years.

Overall, out of a total 363 penalties issued to RPD officers through internal investigations (2002-2015), 24 or 6% related to very serious or force violations and 187 or 52% related to procedure, 8 times greater. Charges of force went down over the period while procedural violations went up.

Utilizing vague violations of procedure and providing less information about charges of force in the discipline of police officers who are the subject of internal investigations indicates an increasing lack of transparency within the RPD as we come to the present day. If there were more transparency in the process, there could be more accountability, and patterns of policing could be studied and corrected, leading to increased safety and justice for the residents of the City of Rochester.

### **Police Union Involvement**

As indicated earlier, the Rochester Police Department's (RPD) General Order Manual has an entire chapter devoted to Rules of Conduct, and 14 pages of this chapter specifically address issues of discipline and penalties for violations of the rules. Yet the very first point in this section of the manual states:

If any portion of this General Order conflicts with the employees' respective current Collective Bargaining Unit Agreements, the terms of the applicable bargaining agreements will prevail.<sup>111</sup>

The collective bargaining unit for the RPD is the Rochester Police Locust Club, which represents officers at the ranks of police officer, investigator, sergeant, lieutenant, and captain with minor exceptions. The Locust Club protects RPD officers in myriad ways, whether through publicly defending officers' misconduct or clauses within the police union contract involving officer discipline. And as the above statement indicates, even though there are numerous policies and procedures enacted by the RPD General Orders, these can all be superseded by provisions within the union contract that protect the officer.

#### **The Cases of Raliek Redd, Daequon Carelock and Wan'Tauhis Weathers**

On November 27, 2013, Raliek Redd, age 15, and his teammates, Daequon Carelock and Wan'Tauhis Weathers, Black high school basketball players, were waiting for a school bus outside S & S Market on East Main Street, as directed by their coach. Officer Eliud Rodriguez, Jr. approached the students in an aggressive manner and ordered them to move, even after they explained they were waiting for a school bus to play in a basketball game. Rodriguez then grabbed the players, handcuffed them, searched their belongings and arrested them. At the police precinct, the students were humiliated and strip-searched. The charges of blocking pedestrian traffic were later dismissed. Civil lawsuits were brought on behalf of Redd, Carelock, and Weathers, who each received monetary settlements from the City of Rochester. Rodriguez is now a police investigator.

In a case where a complaint against an officer is sustained by the Professional Standards Section (PSS) and the Chief of Police agrees with the finding, the Chief can administer discipline. The police officer found to have committed misconduct has a number of options in response to that discipline. According to the contract between the City of Rochester and the Locust Club, if a complaint against an officer is sustained and that discipline is deemed appropriate by the Police Chief, then the officer appears before a Hearing Board. The accused officer can choose to have a “professional neutral”<sup>112</sup> arbitrator hear the case, paid for by the City. Or the officer can choose to have a hearing board composed of:

- A Locust Club member selected by the Appointing Authority from the accused officer’s list of three, at a rank higher than the accused officer, and two command officers, above the rank of Lieutenant, selected by the accused officer from the Appointing Authority’s list of three; or
- Two command officers, above the rank of Lieutenant, selected by the accused officer from the Appointing Authority’s list of three, a Locust Club member selected by the Appointing Authority from the accused officer’s list of three, and a civilian chosen by the accused officer, who would displace one of the selected command officers; or
- A single “professional neutral” arbitrator who would hear the case and make a determination.

In other words, we surmise, an officer’s three-member hearing board could be composed of a potentially sympathetic Locust Club member *and* a potentially sympathetic civilian. The burden of proof is on the department to prove that the officer committed misconduct. Regardless of which option the accused officer selects, if they lose the hearing, they can appeal the decision again under Article 76 of New York’s Civil Service Law.

Police policing police is codified into the policy and procedure for disciplinary hearings within the Locust Club contract and Civil Service Law, and the RPD’s General Orders must conform to the contract agreement. Thus, the police union’s contract runs interference against all justifiable notions of accountability and transparency.

There are myriad other protections found in the Locust Club / RPD contract. Take for instance the statute of limitations when it comes to removing or disciplining an officer for misconduct:

No removal or disciplinary proceeding shall be commenced more than eighteen (18) months after the occurrence of the alleged...misconduct...[unless] the misconduct ...would, if proved in a court of appropriate jurisdiction, constitute a crime.<sup>113</sup>

Although there is no limit on when a complaint to PSS can be made against an officer, this point is moot in some aspects, because if a complainant waits too long to go to PSS to make the complaint, there can be no discipline if the complaint is sustained. If complainants have criminal charges pending against them (usually disorderly conduct, obstructing government administration and/or resisting arrest) PSS advises them not to file their

complaint until after the charges are adjudicated, to protect their Fifth Amendment rights. But 18 months could easily pass before the court ruling. A complainant might have any number of other reasons to wait to file a complaint, e.g., fear of reprisal, mental distress, or physical injuries. Yet if a civilian commits a crime, there is no 18-month limit on whether the civilian will be punished.

Another issue relates to how the discipline of officers is defined and documented. In most organizations and businesses, if an employee is given a warning or reprimand, it is placed in the employee's personnel file as documentation in case of further issues related to one's behavior or job performance. It is pretty standard that such a warning or memo could be used as an indication that a further level of discipline might be expected after the first infraction. Yet in the RPD's General Orders, Locust Club members must receive copies of this type of documentation but they are not counted as disciplinary measures:

Any member of the bargaining unit shall be given a copy of any warning or memorandum entered into his personnel file. ...Such warnings and memoranda are not considered discipline.<sup>114</sup>

The authors wonder how these warnings and memoranda are not considered discipline when they are clearly listed as such in the PSS annual reports (see Table 12 on page 43 and Table 13 on page 45). If they are not considered discipline, what does this mean in terms of consequences for infractions?

Issues with lack of accountability in egregious acts of police misconduct and use of force are not unique to Rochester. In fact, powerful police unions are the primary reason for the increasing and deliberate lack of transparency in Rochester, in New York State, and across the country. Police departments continually demonstrate intransigence in the face of attempts to gain more public control over holding them responsible for actions that harm the community. Although police department administration officials may portray themselves as powerless in the face of the strength of the police unions and the contracts they wield, the two organizations work more closely than is revealed to the public.

According to Kristian Williams:

Police associations provide a stronghold for the most reactionary aspects of the

### **The Case of Quintin Keene**

On September 18, 2014, Quintin Keene, a Black man, was standing in a laundromat talking to his grandmother on his cell phone when Officer Mario Masic burst in, lunged at Keene, grabbed him, and told him to drop the phone. When Keene turned away from him to tell his grandmother what was going on, Masic pepper sprayed him and took him down, stating, "If you don't stop moving, I'm going to shoot you." Masic had been apparently looking for a man with a gun who bore no resemblance to Keene. Keene was charged with disorderly conduct, obstruction of justice and resisting arrest. Before offering an adjournment upon contemplation of dismissal to Keene, the judge stated, "This case raises a lot of issues for our community."

profession—elements that the command hierarchy is often at pains to disavow. When the police command cannot, for legal or political reasons, resist demands for civilian oversight...the union can defend the departmental status quo... Police unions are also on hand to defend individual officers whose misbehavior becomes embarrassing to the department and who therefore cannot be protected by their supervisors. ...The police union represents an extreme of autonomy, protecting officers of the lowest rank from authority both inside and outside the department.<sup>115</sup>

The public is led to believe at times that conflict may exist between the City of Rochester and the Locust Club, but in reality the RPD administration and the police union have common interests. This has been played out over the years, and most recently in several cases of police misconduct and use of force. Williams provides the rationale:

The careful tension between departmental policy and officer autonomy has its benefits for both the commanders and the line officers. Though police regulations do notoriously little to actually control officer conduct, they do provide a layer of plausible deniability between commanders and the routine activities of their troops. That is, the rules help to insulate commanders from responsibility for misconduct while at the same time police unions defend the rank and file from meaningful discipline. This arrangement allows for the formal appearance of a rigorous command and control while maintaining maximum discretion at the lowest levels of the organization. The command staff can minimize the criticism it faces through the manipulation of formal policies and bureaucratic shuffling, but concessions granted at that level need not affect much of what happens on the street.<sup>116</sup>

Williams has perfectly described what has happened in Rochester, and why previous iterations of civilian oversight mechanisms have yielded few fundamental changes in the ultimate accountability of the police to the public it serves. Despite commissions, committees, ordinances, and legislation, we have seen little, if any, tangible improvement in terms of police/community relations and public trust in the police because the civilian review process is not independent of the police department and has no power. There is no true accountability because there is no transparency in the system, and the community has no independent oversight for investigations outside the police department.

## **LACK OF TRANSPARENCY**

The significant issues related to lack of transparency and accountability in Rochester were eloquently described 15 years ago by Attorney Matthew Fusco, who has defended clients in cases of alleged police misconduct. In a 2001 *Democrat & Chronicle* article about the Civilian Review Board, “Criticism Hounds Police Oversight,” he raised important issues:

Critics say the board members can be misled by a completed investigation that has been wrapped into a tidy report. “How are you supposed to know what questions weren’t asked if you have somebody else telling you what the findings are?” asked Matthew Fusco.... [He] said the board is presented each case in isolation, so members don’t know whether a particular officer has a history of misconduct

allegations. And he said a true investigative body could undertake investigations to curb misconduct. For instance, he said, a civilian review board could examine every incident of officers using force to see whether particular names reappear. Or they could study arrests to see whether minority residents are charged disproportionately for certain crimes. “We have this board looking at complaints in a vacuum,” he said. “They’re only looking at one particular incident but they never look at patterns, or patterns among particular officers.”<sup>117</sup>

Although much of the information in this document was taken from the annual reports of the Civilian Review Board (CRB) and the Rochester Police Department (RPD) Professional Standards Section (PSS), it would undoubtedly be much more productive, as Fusco suggests, to complete a comprehensive analysis of each RPD officer’s complaint history to review patterns within their individual histories. These could then be compiled to review patterns within the department as a whole. The lack of transparency in police records, especially for complaints of misconduct involving unnecessary use of force, has prevented the public from knowing if justice has been served. And in many cases, it leads us to believe it has not. Organizations and individuals have made scores of attempts, through the Freedom of Information Law, to obtain records relating to police misconduct, only to be denied access to relevant records.

This lack of transparency is made possible by a law enacted in New York State (NYS) to deliberately block public access to police records. As stated by the NYS Committee on Open Government’s 2014 annual report:<sup>118</sup>

The Freedom of Information Law (FOIL) today affords the public far less access to information about the activities of police departments than virtually any other public agency—even though police interact with the public on a day-to-day basis in a more visceral and tangible way than any other public employees. The cause of this disparity is §50-a of the Civil Rights Law, an exemption from the ordinary rules of disclosure that apply to other government agencies. Section 50-a permits law enforcement officers to refuse to disclose “personnel records used to evaluate performance toward continued employment or promotion.” The Legislature adopted this exemption in 1976 for the narrow purpose of preventing criminal defense lawyers from rifling through police personnel folders in search of undocumented information to use in cross examination of police witnesses during criminal prosecutions. Over time this narrow exception has been expanded in the courts to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer. That means information about what an officer actually has done can be kept from the public in most cases. And it is.<sup>119</sup>

The personnel records of the majority of government employee are subject to public scrutiny and can be viewed through FOIL requests, e.g. public school teachers, senators, or secretaries.<sup>120</sup> Yet police officers, corrections officers, fire fighters, paramedics, and parole officers are the only government employees whose personnel records cannot be viewed by the taxpayers who fund their salaries, those whom they are sworn to serve and protect, those whose lives can be snuffed out or ruined based upon their decisions.

Current efforts are underway in Rochester and throughout New York State to repeal Civil Rights Law §50-a so that police records will be transparent. The recent decision by the City of Rochester to institute the use of body-worn cameras by the RPD is commendable, if the policies are stringent and if the public can have access to the video footage. Yet under Law §50-a,<sup>121</sup> the police have the discretion to release body-worn camera recordings or not, thus withholding footage that the public has a right to view. This contradicts the stated purpose of body-worn cameras: transparency and accountability. When the statewide effort to repeal §50-a is successful, there will be more opportunities for police officers to be held responsible for their misconduct. It is clear, however, that the RPD has benefitted from this law and the public has been denied the accountability it deserves in a free and democratic society.

#### **The Case of Rasheed Griner**

On May 23, 2015, Rasheed Griner, a young Black man, and his family were at the beach listening to music. Monroe County sheriffs pulled up and asked the group to turn down their music, which they did. Then several RPD vehicles surrounded the group and told them they had to leave. When Griner asked why, he was told they looked “suspicious.” The group moved to a parking lot, but the police returned and told them to leave. When Griner asked for the officer’s badge number, Officer Mario Masic said, “I’ve had enough of your mouth,” and pulled out his baton. Masic hit Griner in the face, arrested and charged him with disorderly conduct and resisting arrest. He received stitches for his facial injuries. The criminal case against Griner was dismissed when the judge decided that Masic’s arrest of Griner was unlawful. Officer Masic is still employed by the Rochester Police Department.

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## SUMMARY OF REPORT FINDINGS

### Findings/Data

1. From 2002 to 2015, only 2% of civilian complaints of unnecessary force have been sustained by the Chief of Police and only 5% by the Civilian Review Board. (In contrast, Syracuse's Citizen Review Board's sustain rate was 23% in 2015.)
2. From 2008 to 2013, the Rochester Police Department (RPD) Professional Standards Section (PSS) did not sustain ANY civilian complaints for unnecessary use of force.
3. During the 14 years reviewed in the data, the harshest penalties meted out to the police officers for sustained complaints of excessive use of force were 6 suspensions.
4. From 2008 to 2015, there were no internal investigations regarding use of force by RPD officers; over the same time period there were 156 investigations of "procedure."
5. The Civilian Review Board (CRB) exonerated officers (meaning what they did was considered lawful) at a higher rate than the RPD most years.
6. When the Chief of Police disagreed with the CRB's recommended findings, he exonerated officers in all cases where the CRB sustained the complaint (meaning the officers' conduct was considered unlawful).
7. After the 2011 – 2012 City Council Commission review of the CRB, the Chiefs of Police sustained fewer civilian complaints, according to PSS reports, than they had before the Commission was established.
8. Civil lawsuits against the City of Rochester for police misconduct cost taxpayers millions of dollars each year.

### Discipline

1. RPD officers can appeal any disciplinary action related to a civilian complaint through a three-person police appeal board, which could include a potentially sympathetic commander and a civilian of their choosing (per police union contract).
2. 77% of all types of civilian complaints filed 2002 – 2015 resulted in counseling memos or letters of reprimand as the only discipline for RPD officers.
3. Officers were suspended 7 times more for procedural violations during 2008 – 2015 and 10 times less for violations of force during 2002 – 2007.
4. In 2003, three different officers were cited for separate instances of: sexual harassment of a minor, an in-custody death, and shooting a bystander; all of which resulted in

suspensions. After 2003, PSS reports no details on discipline of officers for use of force.

### **Management/Process**

1. The Center for Dispute Settlement (CDS) has served as the City of Rochester's contractor for the Civilian Review Board (CRB) for 24 years.
2. In 2012, the City established a process of requesting proposals to administer the CRB. This process has favored CDS to remain the sole contractor for the CRB, an apparent conflict of interest. In 2012, City Council administered the process. In 2015, the Rochester Police Department took over this administration.
3. The CRB is not independent. It receives training from the RPD and uses police investigators to conduct investigations into civilian complaints of police misconduct.
4. The Request for Proposals to administer the CRB includes the Chief of Police being able to remove anyone from the CRB based on undefined "bias"; this stipulation is not found in the 1992 ordinance establishing the CRB.
5. The majority of the CRB panel chairs have been either CDS staff or members of the CDS Board of Directors. This violates the 1992 ordinance that the panelists be volunteers.
6. The number of panelists and chairs has dwindled over the years to a select few who do not represent the racial or ethnic composition of the City of Rochester.
7. Information is not readily available to the public about the number of complaints made against a specific officer or the types of disciplinary measures that have been taken, if any.
8. The CDS's Community Advocate does not actually advocate for the civilian complainant.
9. The CRB offers no formal appeal process for complainants who disagree with the final dispositions of their complaints.
10. The CRB has never requested further investigation of a civilian complaint to the level of Rochester City Council; in 24 years, City Council has never reviewed a single civilian complaint.
11. The transmission of CRB recommended findings via voicemail to PSS seems to be an inadequate and insecure method.

## INSIGHTS & CONCLUSIONS

The authors were present at meetings with Rochester Police Department (RPD) and Professional Standards Section (PSS) officials in 2015 and 2016. These meetings led us to several insights. First, there is significant evidence that RPD policies and procedures encourage, or at least do not prevent, the use of force by police officers against civilians. We believe these regulations need to be reviewed and revised since they seem to allow for the kind of behavior that does not meet the standard of human rights. In a discussion of how these policies and procedures play out in the lives of civilians, PSS Commander Lieutenant Mark Simmons noted that one complainant said the officer who arrested him “may not have violated the procedures, but he violated *me*.” Even recognizing this, Simmons said, police still “have to go by the procedures.”<sup>122</sup>

Herein lies the crux of the matter: the Rochester Police Department, the Professional Standards Section, and the Civilian Review Board (CRB) are committed to following the policies and procedures of the RPD. Yet they do not seem to be committed to the *civil and human rights* of the civilians who end up being complainants, that is, the people who are targeted by the police. In fact, in conversations we have had with police officials, they commonly refer to the person with whom they are interacting as “the bad guy.”<sup>123</sup> This was particularly notable in one conversation when the central issue was how the RPD might have acted differently in the beating of William James, a mentally ill and homeless Black man, in 2015. The RPD has an Emotionally Disturbed Persons Response Team, but only approximately 10% of officers<sup>124</sup> are trained in those tactics, resulting in many instances where an unarmed person was beaten instead of being treated humanely.

Likewise, in the final analysis, the Civilian Review Board of Rochester seems to be nothing more than an artifice designed to give the false impression that civilians have an avenue through which they can obtain justice when they have been mistreated by the Rochester Police Department. This system works for the bureaucratic institutions but not for the civilian complainants they purport to protect. Regardless of which chief or mayor was in power, the system—and the results—remained essentially unchanged.

The CRB prides itself on its stance of neutrality, but in reality, there is not much difference between the findings of the CRB, the PSS, or the Chief. The authors wonder how a civilian review board, partially trained by the police, using police investigations, which is selected by, and thus financially dependent upon, the very organization it is contracted to review, can, in any sense, be neutral. The CRB serves no purpose for the civilian, providing only a rubber stamp for what PSS has already determined. The City of Rochester, funded by its people to serve and protect them, does not meet its responsibility. The relationship between the City, the RPD, and the CRB represent an apparent conflict of interest. Even after a Request for Proposals process was conducted, the means of selection completely favored choosing the Center for Dispute Settlement as the organization to administer the Civilian Review Board.

Furthermore, the CRB having instituted a position of “Community Advocate” gives complainants false hope that someone will actually advocate on behalf of justice for them. The authors have heard numerous accounts and been present at the interviews of those who have undergone this process. The complainant “interview” by RPD officers assigned to PSS is conducted as if the complainant were a suspect being interrogated regarding their involvement in a crime.<sup>125</sup> Thus, a person who has been physically brutalized is frequently set up to be mentally and emotionally traumatized through interrogation by the same entity. Additionally, complainants cannot speak directly to the CRB panelists to plead their cases. The CRB recommendations are made solely through reviewing PSS investigation files on the complaint.

Even members of the CRB recognize the futility of the process. One former panelist, on condition of anonymity, told us: “I found the process frustrating and ineffective. I remember one case when our panel and the investigating officers separately concluded that unreasonable, abusive force had been used by the arresting officers. The chief overruled all of us – we had no authority or power. I quit after that.”

Police cannot police themselves. As the data cited herein demonstrate, the civilian review process in Rochester is a travesty and does not serve complainants in any way. Thus, civilians are reluctant to file complaints alleging police misconduct, especially when the community is not really represented by the CRB. At best, community members are skeptical of this process; at worst, they fear retaliation from the police, which has occurred. Those who have filed complaints have been surveilled, followed, video-recorded, and verbally harassed by the same officers against whom the complaint was filed as well as other RPD officers. Some have been arrested under false pretenses, the charges were dismissed, and then the individuals were rearrested on the same charges after their lawyers filed Notices of Claim against the Rochester Police Department.<sup>126</sup>

Over the years, many in the community have lost trust in the police and the police review process, which has been detrimental to the purported relationship-building activities conducted by the City and the RPD. Neither the “improvements” instituted after the 2011-2012 Commission, nor any recent “community policing” rhetoric, have ameliorated affected community members’ attitudes or made any noticeable difference in the behavior of officers on the ground. Rather than increasing public trust, it seems that the failure of the 2011-12 process has resulted in a loss of faith in the complaint review process while at the same time awareness of police brutality nationally and locally has risen. At the very least, the RPD seems to have strayed from its stated mission “to place people first, internally and externally and to appreciate the value of each and every person.”<sup>127</sup>

Civilian complaints of use of force seem to result in little consequence for officers. Even in internal investigations, use of force charges have given way to procedural violations, the nature of which are not made public even in aggregated data. All decisions related to discipline reside in the hands of the Chief of Police. It is impossible to gain any information about which charges result in what type of discipline, if any. The public’s trust in the integrity of its police department has been eroded. The power of the police union and the laws that protect police officers to an extent not enjoyed by any other public servant,

further exacerbate the lack of accountability by these government employees to the tax-paying public to whom they owe their employment, protection, and service.

Millions of tax payer dollars have been awarded by the City of Rochester to compensate those who have brought civil complaints against the Rochester Police Department and its officers.<sup>128</sup> The misconduct of several officers and the resulting lawsuits are not the cost we have to pay for “a few bad apples.” Rather, the entire policing system encourages aggressively racist and brutal attitudes and behaviors that treat people of color as criminals instead of human beings. This system must be dismantled and replaced with a system of accountability wherein police administration, city government, and the community indicate that there is no tolerance for police misconduct, and where consequences for such actions

in the form of appropriate discipline are swift and transparent.

#### **The Case of Lentorya Parker**

On September 15, 2016, Lentorya Parker’s boyfriend Quentin Bowen was detained by police on Hollenbeck Street. Parker, who was on her way to pick up her daughter a few doors down, yelled at the police, “What are you doing?” Officer Jonathan Marsh warned Parker to stop yelling and get out of the street. She was turning away from him and into a yard when Marsh said, “Oh, too late.” He then ran and tackled Parker to the ground from behind and drove his knee into her back. One officer pepper-sprayed Parker three times and then sprayed in the direction of her daughter, who was nearby screaming. Parker was handcuffed and placed in a police car. Later, another officer said to the little girl, “sorry your mom’s an animal.” Parker was charged with disorderly conduct, resisting arrest, harassment and obstructing government administration. While her criminal case is pending, she has filed a civil rights claim against the City of Rochester. Parker suffered injuries to her back and elbow. Marsh is still employed by RPD.

The Rochester City Council ordinance establishing the Civilian Review Board in 1992, Resolution 92-40, included a separate resolution addressing the practices of the Rochester Police Department. This resolution contained requirements for recruitment, training and supervision of police officers, including:

- training in appropriate verbal skills to be used to diffuse potentially violent situations;
- commitment to attitudes of tolerance, openness, and understanding for the various cultural and ethnic groups which make up the City of Rochester, and a refusal to tolerate any behavior which deviates from this commitment;
- increased accountability for all officers who exhibit bias or racially motivated behavior...
- interviews of all officers involved in serious incidents, including excessive force or shootings, should be recorded.

Similarly, we recommend that the Rochester City Council establish a resolution in 2017 with training requirements for all Rochester Police Department officers, including, but not limited to: anti-racism, de-escalation techniques, how to handle mental health and emotional disturbance issues, awareness of physical and mental

disabilities, gender identity and sexuality, human and civil rights laws, and restorative justice skills.

We recommend a resolution empowering the new Police Accountability Board (PAB) to have the authority to establish a disciplinary matrix to be used to determine levels of discipline and sanctions for sustained charges of civilian complaints against officers of the Rochester Police Department. If the PAB and the Chief of Police fail to agree on the discipline to be imposed on an officer, the PAB will determine discipline and compel the Chief to impose it. The Board's determination of discipline will be final.

Finally, the human cost to hundreds of people whose complaints have been reviewed by the Civilian Review Board is incalculable. People deserve a true and transparent accountability process for those who have control over their lives, their employability, and their overall well-being. Lives can be ruined by a single decision of a police officer, yet the police are not accountable to the public who pay their salaries. Even worse, the Center for Dispute Settlement, which administers the Civilian Review Board, and is purported to be fair and neutral, derives its power and the livelihood of its employees from the Rochester Police Department, which it is supposed to be monitoring. This is not fair, it is not just, and it must be changed!

The case of Lentorya Parker (see text box on previous page) occurred as this document was being completed in 2016 and served as a catalyst to heighten awareness and reignite the issue of reforming the police accountability process in 2017. As these words are being written, a coalition is building in Rochester to address the issues raised in this report and to demand the enactment of the ordinance herein. A significant number of organizations and individuals endorse this call to action. We will stand and fight together until the needed changes are made and the Police Accountability Board is established by City Council ordinance in Rochester, New York.

## **KEY ELEMENTS OF THE PROPOSED POLICE ACCOUNTABILITY BOARD**

1. The Civilian Review Board (CRB), established by a 1992 City Council ordinance, shall be abolished.
2. An independent Police Accountability Board (PAB) shall be established, which will be an autonomous office of the City separate from the Rochester Police Department (RPD).
3. The PAB shall be prohibited from contracting with, hiring, or consulting with the Center for Dispute Settlement (CDS) in any administrative capacity.
4. The PAB will be a civilian-controlled process for hearing civilian complaints about police misconduct. Its oversight will ensure accountability and transparency regarding the powers exercised by members of the RPD.
5. The PAB will report to the Rochester City Council and be funded through the budgetary process of the City of Rochester.
6. The PAB will hire an administrator, administrative staff, and independent investigator(s) who are not currently nor ever have been employed by the RPD or any other law enforcement agency.
7. The PAB will consist of 11 members who are residents of the City of Rochester and will serve terms of four years.
8. Six members of the PAB will be elected by the public. Four members of the PAB will be appointed by City Council and one by the Mayor. PAB members shall not be employed or formerly employed by the RPD or any law enforcement agencies while serving as a Board member.
9. The PAB will evaluate the efficacy of existing RPD policies, procedures and practices. The PAB may identify major problems or trends within the RPD and will make recommendations to the Chief of Police for appropriate and necessary changes to policies, practices, and procedures. It will share these recommendations publicly.
10. The PAB may conduct investigations into the conduct of specific members of the RPD concerning any allegation of misconduct and may investigate complaints of police misconduct independently of any investigation conducted by PSS.
11. PSS will provide full PSS reports, recommendations, and investigatory case files to the Police Accountability Board.
12. The PAB shall be trained in civil and human rights law, anti-racism, implicit bias, gender identity and sexual orientation, disability rights, both physical and mental disabilities, RPD and NY police policies and procedures, and other relevant state and local laws.

13. Complaints will be received directly by the PAB or by the Rochester Police Department's Professional Standards Section (PSS) and referred from one to the other.
14. The PAB Chair shall establish a regular rotation of PAB members to serve on hearing panels composed of three members of the PAB.
15. The PAB, by majority vote of its members, may issue subpoenas to compel the attendance of witnesses, police officers, and the production of any records necessary to complete the investigation of a civilian complaint.
16. If the hearing panel finds that misconduct has occurred, the PAB will have the authority to recommend disciplinary sanctions including but not limited to reprimand, retraining, suspension, demotion, or dismissal.
17. If the panel believes there is evidence of criminal conduct, the complaint and its file will be forwarded to the Monroe County District Attorney's Office or to the NYS Attorney General's office to request that a Special Prosecutor be appointed.
18. The panel may recommend that restitution be paid to the complainant by the City for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.
19. The Chief of Police must share his or her final determination with the PAB and the complainant; where the Chief imposes lesser discipline or no discipline than recommended, he must explain and justify such action.
20. A disciplinary matrix will be established, and if the PAB and the Chief of Police fail to agree on the discipline to be imposed, the PAB will determine the discipline.
21. If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal with the Police Accountability Board.
22. The PAB will publish monthly, quarterly, and annual reports related to the number and type of complaints, the types of force used, discipline recommended and administered, and appeals requested.

**RECOMMENDED NEW ACCOUNTABILITY LAW:  
A LOCAL ORDINANCE ESTABLISHING  
THE POLICE ACCOUNTABILITY BOARD**

**Section One. Purpose.**

- 1) To establish a civilian-controlled process for fairly hearing and reviewing complaints involving officers of the Rochester Police Department.
- 2) To establish a Police Accountability Board as the mechanism to hear such civilian complaints.
- 3) To ensure public accountability and transparency over the powers exercised by officers of the Rochester Police Department.
- 4) To provide a non-exclusive alternative to civil litigation.

**Section Two. Definitions.**

- 1) The term “Board” shall mean the Police Accountability Board, and such Board is a public agency within the meaning of New York Civil Rights Law §50-a.
- 2) The term “complaint” shall mean a written or oral report, regarding police misconduct, made by any individual.
- 3) The abbreviation “RPD” shall mean Rochester Police Department.
- 4) The abbreviation “CRB” shall mean the Civilian Review Board.
- 5) The abbreviation “CDS” shall mean the Center for Dispute Settlement.
- 6) The abbreviation “PAB Administrator” shall refer to the Police Accountability Board Administrator.
- 7) The abbreviation “PSS” shall refer to the Rochester Police Department Professional Standards Section, which is the internal affairs department of the RPD.
- 8) The term “police misconduct” is defined in Section Three.
- 9) The term “Chief” shall mean the “Chief of Police” for the City of Rochester.
- 10) The term “public notice” shall mean published in a conspicuous manner so as to attract civilian attention and interest in the various media outlets, including but not limited to newspapers, television, radio, or the internet.
- 11) The term “sanction” shall mean disciplinary action and/or retraining recommended in response to a sustained complaint, or a recommendation that restitution be made

by the City of Rochester.

- 12) The term “election” shall refer to elections as undertaken by the City of Rochester.
- 13) The term “immediate family” shall mean spouse, sibling, parent, child, stepchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, half-brother, half-sister, first cousin, domestic partner, and partner to a civil union, whether by blood, marriage, or adoption.
- 14) The term “qualified civilian” shall mean any civilian who meets the terms and conditions presented in Section Five of this ordinance and may be appointed or elected for a position on the Board.
- 15) A “quorum” of the Board shall consist of seven (7) members.
- 16) The term “public tracking number” shall mean an arbitrary number attached to individual complaints, submitted to the Board, made public in annual and quarterly reports.
- 17) For the purposes of this ordinance, the use of the terms “his/hers” and “he/she” have been removed and replaced with the singular and plural use of “they” and “their” where appropriate.
- 18) The term “good cause” shall mean “a legally sufficient reason.”

### **Section Three. Jurisdiction.**

- 1) There shall be established a Police Accountability Board independent of the Rochester Police Department which shall hear, investigate, and review complaints, recommend action, and enforce discipline regarding police misconduct. Jurisdiction shall include misconduct that violates local, state, and/or federal law and/or RPD rules and regulations, including but not limited to complaints of:
  - a) Active misconduct – behavior that is alleged by any individual to be inappropriately aggressive and intrusive to persons, ranging from death or excessively physical force to harassment and slurs or insults;
  - b) Passive misconduct – failure to intervene appropriately, especially in misconduct of other officers when present, including untimely responses and refusal to take complaints;
  - c) Damage to property, including residences, whether owned or rented;
  - d) Denial or violation of individual rights, including but not limited to, human rights law, civil rights law, the United States Constitution, the New York State Constitution, and the laws of New York State; and
  - e) Disputes regarding truthfulness of police reports with regard to misconduct in any of the foregoing categories.
- 2) With respect to human rights, the Board is not bound to adhere to RPD policy and procedure as a human rights standard during its investigations, findings of fact, and

recommendations; it may set a higher standard and review civil rights, constitutional rights, and human rights laws in pursuing justice.

- 3) The Board may investigate and make recommendations to the Chief of Police with respect to changes in police policies and procedures. Copies of any such recommendation must be sent to the Mayor, President of the City Council, and the Chair of the City Council's Public Safety Committee.
- 4) The Board may investigate and make recommendations to the Chief with respect to patterns and practices of misconduct of individual officers.
- 5) The Board shall have access to the written policies and procedures of the RPD that the Board determines are necessary for the review of a matter within the jurisdiction of the Board. If any portion of this ordinance conflicts with the RPD employees' respective current Collective Bargaining Unit Agreements, RPD Rules and Regulations, and/or the RPD General Orders, the applicable sections of the ordinance shall prevail.
- 6) The annual budget of the Police Accountability Board shall be prepared and presented in accordance with Article VI of the Rochester City Charter, 1834, as amended.
- 7) The Board budget shall be separate from, and independent of, the RPD budget.

**Section Four. Establishment.**

- 1) The Civilian Review Board, established by Rochester City Council Resolution 92-40 and expanded by Resolution 95-08, is hereby abolished.
- 2) There is hereby established an independent office of municipal government to be known as the Police Accountability Board. It shall be an autonomous office the City separate from the Rochester Police Department and other local, state, and federal law enforcement agencies.
- 3) The Board shall be prohibited from contracting with, hiring, or consulting with the Center for Dispute Settlement (CDS) in any administrative capacity including personnel such as former CRB board members, chairpersons, CDS board members, staff, contract employees, consultants, and other personnel.
- 4) The Board shall be housed in a facility that is separate from the police department and all police substations.
- 5) The RPD shall make no conditions upon nor issue any restrictions or limitations upon the creation, policies, or composition of the Board.
- 6) The Board shall report to the Rochester City Council and be funded through the budgetary process of the City of Rochester, pursuant to Article VI of the Rochester

City Charter, 1834, as amended.

- 7) The Board shall employ an administrator, administrative staff, independent investigator(s), stenographer, and other employees as needed, all of whom, and their immediate family, shall not be currently or formerly employed or contracted by the Rochester Police Department or any other local, state, or federal law enforcement agencies.
- 8) Board members shall not be currently or formerly employed or contracted by the Rochester Police Department or any other local, state, or federal law enforcement agencies.
- 9) The Board shall have the power to retain legal counsel as needed. The Board's attorney shall not, in the regular course of their legal practice, defend law enforcement officers nor serve as counsel to the City of Rochester or any of its City Councilmembers or employees in defense of any lawsuit arising from an incident before the Board.
- 10) As a condition of employment with the Rochester Police Department, all officers and personnel shall fully cooperate with the Police Accountability Board.
- 11) The Board shall have the power to conduct independent investigations, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline Rochester police officers if complaints of misconduct are sustained.
- 12) The Board shall establish a disciplinary matrix in consultation with the President of the Rochester Police Locust Club and the Chief of Police. The disciplinary matrix shall include clearly delineated penalty levels with specific sanctions and the number of prior sustained complaints. The Board shall consider mitigating and aggravating circumstances when determining officer discipline. The Board shall decide the final version of the disciplinary matrix to be used.
- 13) The Board shall identify major problems or trends within the RPD, evaluate the efficacy of existing RPD policies and practices, and shall establish a program and/or process accessible to the public, that shares the resulting policy suggestions and studies each year.
- 14) The Board shall have the power to investigate the alleged misconduct of specific members of the RPD, even in the absence of a civilian complaint, e.g. media reports, when based on information and belief that an investigation is warranted.
- 15) All Board investigations shall be resolved in a fair and timely manner within ninety (90) business days.
- 16) The operations of the Board shall be transparent and accountable to the public, in accordance with all local, state, and federal law.

**Section Five. Composition.**

- 1) The Police Accountability Board shall consist of eleven (11) members, whose minimum age will be eighteen (18) years old at the time of the appointment; two (2) members must be under twenty-five (25) years of age at the time of election/appointment.
- 2) Members of the Board, appointed and elected, shall serve terms of four (4) years except for the initial Board, which shall serve staggered terms.
- 3) All Board members must be able to show proof of residency in the City for at least one year prior to being appointed or elected to the Board.
- 4) At least three (3) members of the Board shall have a household income of equal to or less than the household median income of the City of Rochester at the time of their election/appointment. These Board members shall be paid a stipend for their service to the Police Accountability Board.
- 5) Members of the Board shall be residents of the City of Rochester and should reflect the City's diverse community with respect to race, gender, disability, age, ethnicity, geography, language, religion, and sexual orientation.
- 6) Members of the Board or their immediate family shall not be currently or formerly employed or contracted by the Rochester Police Department or any other local, state, or federal law enforcement agencies.
- 7) Members of the Board shall not be members of the immediate family of any incumbent elected official of the City of Rochester, nor have any financial ties with either members of the RPD or any incumbent elected official of the City of Rochester; any Board member who files for public elective office shall immediately resign from their position on the Board, and failing such resignation shall be immediately removed by the Board members.
- 8) No practicing attorney or a member of their firm or the immediate family of an attorney who represents a plaintiff or defendant in a police misconduct lawsuit initiated against the Rochester Police Department, the Chief of Police or the Rochester Police Locust Club, shall be a member of the Board.
- 9) Four (4) members of the Board shall be appointed by City Councilmembers representing each district of the City; the appointees must live in the district of their Councilmember.
- 10) Two (2) members of the Board shall be elected as at-large representatives of the City of Rochester.
- 11) One (1) member of the Board shall be appointed by the Mayor.

- 12) Four (4) members of the Board shall be elected by the public to represent each district of the City.
- 13) The Board shall provide for voting in subsequent elections via the internet as the Board sees fit.
- 14) The provisions of Article 23-a of New York State Correction Law shall apply to any election or appointment to the Board.
- 15) The provisions of Article 2, Section 5 and Article 3, Section 30 of the Public Officers Law of the State of New York, regarding vacancies, shall apply to all members of the Board.

**Section Six. Appointment, Election, Vacancy, and Removal.**

- 1) Appointments to the Board shall be made as follows:
  - a) One (1) member shall be appointed by the Mayor. When an appointment by the Mayor has not been made, and a vacancy exists for more than sixty (60) days from the date of the notice of vacancy provided to the Mayor by the PAB Administrator or Chair, such appointment to fill the board vacancy shall be made by City Council.
  - b) Four (4) members shall be appointed by the City Council, with each district Councilmember nominating one member who lives in the district they represent.
  - c) If an appointed member moves out of City, they must resign immediately.
  - d) Should a Councilmember fail or refuse to nominate a prospective member of the Board, and a vacancy exists for more than sixty (60) days from the date of the notice of vacancy provided to the Council by the PAB Administrator or Chair, then the Council as a whole may make such an appointment.
  - e) When the Board vacancy has existed for at least sixty (60) days from the date of the notice of vacancy provided to the City Council and/or the Mayor by the PAB Administrator or Chair, and the City Council has not acted to make an appointment to fill that vacancy, the Board, by a simple majority, shall have the right to nominate person(s) for review and appointment by the City Council.
- 2) Elections to the Board shall be made as follows:
  - a) Four (4) members shall be elected by the residents of the City of Rochester, representing each district of the City, as well as two (2) at large elected seats, serve on the Board.
    - (i) Candidates for the Board shall be elected in a non-partisan election every four (4) years at the same time and place that elections regularly occur.
    - (ii) The signature requirement to be nominated on the ballot for election as a district Board member shall be 300 signatures of the residents within the district in which they live.
    - (iii) Elected Board members may not serve more than two (2) consecutive terms.
    - (iv) The nominating petition shall state that the candidate seeks nomination to election to the Police Accountability Board from the district in which

- they live and will state the address of the candidate.
- (v) A candidate for the Board shall not accept campaign contributions of any kind from outside the district in which they live.
  - (vi) If an elected member moves out of the City, they must resign immediately.
  - (vii) Should an elected Board member resign or be removed from the Board before their term has ended, and a vacancy exists for more than sixty (60) days from the date of the notice of vacancy provided to the City Council by the PAB Administrator or Chair, then the Council as a whole may make such an appointment.
  - (viii) If City Council has not acted to make an appointment to fill that vacancy, the Board, by a simple majority, shall have the right to nominate person(s) for review and appointment by the City Council.
  - (ix) At the next regular election, all elected seats, if they have been filled by appointment (due to vacancy or removal), will be open for election.

### 3) Removal and Vacancies

- a) Board members may not serve concurrently in any other elected office.
- b) If a Board member decides to run for elected office, the Board member must resign immediately.
- b) The Board, by a majority vote of the entire Board, may upon good cause be able to request that the City Council remove a Board member where appropriate.
- c) The Mayor and/or a member of the City Council shall be able to request that the City Council remove a Board member upon good cause.
- d) Public notice shall be made of Board vacancies for the purpose of providing the opportunity to qualified civilians to apply, both in the seating of the first full Board and for all subsequent Board vacancies as they occur.
- e) It shall be the responsibility of the City Council to seek and maintain a balanced composition of the Board.

### 4) Terms

- a) Except for the initial Board members, Board members shall serve staggered four (4) year terms and may be reappointed or elected for another four (4) year term, for a total of eight (8) years, after which, the member shall not be reappointed or elected for at least one (1) year.
- b) A term shall start on January 1<sup>st</sup> of the first year of that term and shall end on December 31<sup>st</sup> of the last year of that term. If a person is appointed to complete the unexpired term of a former Board member, the newly appointed Board member shall be eligible to be appointed to serve two successive four (4) year terms, unless the seat they have occupied is an elected seat. In that case, the seat would be open to candidates running within the four districts of the City or the at-large seats, at the next election cycle.
- c) The initial Board members shall serve the following terms:
  - (i) Four (4) members shall be appointed for one-year terms.
  - (ii) Four (4) members shall be elected for four-year terms.
  - (iii) Two (2) members shall be elected for three-year terms.

- (iv) One (1) member shall be appointed for a three -year term.
- (v) The Mayor's appointment to the initial Board shall be as follows:
  - One (1) appointment for a three-year term.
- (vi) The appointments of district Councilmembers to the initial Board shall be as follows:
  - One (1) appointment for a one-year term from the South District.
  - One (1) appointment for a one-year term from the Northwest District.
  - One (1) appointment for a one-year term East District.
  - One (1) appointment for a one-year term Northeast District.
- (vii) The elected members to the initial Board shall be as follows:
  - Two (2) elected at-large members for three-year terms.
  - One (1) elected for a four-year term from the South District.
  - One (1) elected for a four-year term from the Northwest District.
  - One (1) elected for a four-year term from the East District.
  - One (1) elected for a four-year term from the Northeast District.

### **Section Seven. Officers and Staff.**

- 1) The Board shall elect its Chair, by majority vote, for a one (1) year term, at the first meeting of the calendar year. No individual shall serve more than two (2) consecutive terms as Chair. The Chair will be a voting member of the Board. The first order of business for the newly convened Board is to select such a Chair, who shall then convene a search committee for a PAB Administrator and a committee to establish rules of procedure not provided for herein. The search for a new PAB Administrator shall take place in the first year or when there is a vacancy. The Chair will also be responsible to:
  - a) facilitate meetings of the Board;
  - b) establish committees of Board members as needed;
  - c) work with the PAB Administrator to create agendas for Board meetings; and
  - d) establish a regular rotation of Board members to serve on hearing panels.
- 2) In the absence of a chair, the members of the Board shall select a member to facilitate that meeting unless otherwise provided for in the by-laws. A quorum must be present to conduct business. Unless otherwise specified within the legislation, when a quorum is present, action shall be taken by a vote of the majority of the Board members present.
- 3) Appointment of PAB Administrator
  - a) The Board shall appoint a PAB Administrator in the first year or when there is a vacancy. Public notice shall be made of the PAB Administrator's vacancy for the purpose of providing the opportunity to qualified civilians to apply. The PAB Administrator shall be a resident of the City of Rochester. The City Council, through the annual budgetary process as set forth in Article VI of the Rochester City Charter, 1834, as amended, shall provide for the compensation and benefits for the person appointed to the Board and may be called to report to the City

- Council. The PAB Administrator shall serve at the discretion of the Board.
- b) A Committee of five (5) people shall have the primary responsibility for oversight and annual review of the performance of the PAB Administrator, and may, if necessary, make a recommendation to the Board for the removal of a PAB Administrator for good cause. This committee shall consist of the Board Chair, two (2) additional members of the Board selected by a majority of the Board (provided, however that the two (2) Board members so designated shall consist of one district appointee and one elected district representative), the Mayor or their designee, and the Chair of the City Council Public Safety Committee.
  - c) The PAB Administrator shall not be currently or formerly employed by the Rochester Police Department or any other local, state, or federal law enforcement agency, nor shall any of their immediate family be employed by the Rochester Police Department. Neither shall the PAB Administrator be a member of the immediate family of any incumbent elected official of the City of Rochester, nor have financial interests with either such an elected official or any member of the Rochester Police Department or their immediate family, or have litigation pending against the City of Rochester 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.
  - d) The PAB Administrator shall be responsible, on a full-time basis, for the daily administrative work of the Board which shall include:
    - (i) maintain secure files of Board records;
    - (ii) develop an ongoing account and statistics of Board business, including all data required for monthly, quarterly, and annual reports;
    - (iii) interview complainants or persons seeking information about the complaint process;
    - (iv) make referrals;
    - (v) represent the Board;
    - (vi) assist complainants with filing and presenting their cases to the Board including:
      - interview witnesses and take statements
      - advise complainants regarding requests for subpoenas from the Board
    - (vii) conduct investigations of complaints. The PAB Administrator may also oversee investigations, or portions of investigations, conducted by an investigator, hired by the Board as described below;
    - (viii) create and maintain such forms and processes that may be necessary to document and summarize a complaint and any subsequent investigation, to present a complaint to the board, to track the processing and determination of a complaint, and to identify statistics and trends related to complaints and in reference to the categories of misconduct as defined in Section Three of this law and the demographics of residents of the City of Rochester, including but not limited to race, ethnicity, sex, gender, gender identity and/or expression, sexual orientation, religion, disability, primary or secondary language other than English, immigration or

- (ix) refugee status, and the location in which an incident occurred;
  - (ix) evaluate information in each complaint, summarizing the key facts in each complaint for presentation to the full board and making a recommendation to the board as to whether there is a reasonable basis on which a complaint should proceed to a hearing;
  - (x) provide written notice to complainants regarding the disposition of a complaint and the basis for this determination;
  - (xi) assist the Board in pursuing community and youth engagement;
  - (xii) seek supplemental grant funding for the Board;
  - (xiii) keep regular working and office hours consistent with other City departments;
  - (xiv) research and seek out ongoing training for the Board to assist it in developing further competence;
  - (xv) assist the Board to design and deliver appropriate public education programs;
  - (xvi) track Board expenses, preparing periodic written and oral reports;
  - (xvii) facilitate communication and scheduling for Board meetings and hearings;
  - (xviii) assist the Board in the design and establishment of studies looking at policy and procedural problems within the RPD and establish a program, accessible to the public, that shares the resulting policy suggestions and studies each year;
  - (xix) assist the Board in the initiation and establishment of investigations into the conduct of individual officers, even in the absence of a civilian complaint, when based on information and belief that an investigation is warranted;
  - (xx) provide written notice to the City Council and the Mayor of vacancies within one (1) week of a resignation or removal of a Board member by action of the Council, and at least sixty (60) days prior to the end of a term; and  
other tasks as needed or as directed by the Board and its Chair within the jurisdiction of the Board.
  - (xxi) other tasks as needed or as directed by the Board and its Chair within the jurisdiction of the Board.
- 4) Should the Board deem that the volume or complexity of complaints filed with the Board justify the need for an additional investigator, the Board shall direct the PAB Administrator to submit a request to the City Council to approve the Board's hiring of a qualified investigator on a part time, full time, or contractual basis. Any such person shall be free of any conflict of interest, including but not limited to current or former employment with the Rochester Police Department or any other local, state, or federal law enforcement agency, nor shall any of their immediate family be employed by the Rochester Police Department. The investigator shall conduct investigations at the direction and under the supervision of the PAB Administrator.

## **Section Eight. Powers and Duties.**

### 1) Board and PAB Administrator Training

The Board and the PAB Administrator shall seek and participate in a broad and independent range of ongoing and yearly training as they deem necessary to pursue their duties. Upon appointment or election, Board members and the PAB Administrator shall attend at least one Board meeting as an observer and complete an orientation consisting of annual and as-needed training in, but not limited to, the following:

- a) civil rights, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable use of force;
- b) anti-racism;
- c) implicit bias;
- d) gender identity and sexuality;
- e) disability rights, both physical and mental disabilities;
- f) policies and procedures of the Rochester Police Department;
- g) briefings on new or updated RPD policies and procedures;
- h) human rights law;
- i) Police Accountability Board Ordinance;
- j) state and local law regarding the Freedom of Information Law and the Open Meetings Law.

### 2) Public Information and Education

- a) 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 once each year, for the purpose of inviting public input or comment, and education about the Board process.
- b) 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 officers, and publicize the procedure for filing a complaint with the Board.
- c) The PAB Administrator, on behalf of the Board, shall publish quarterly and yearly reports regarding data on the receipt and determinations of complaints, pursuant to Section Eleven of this ordinance.
- d) The PAB Administrator shall publish annual summaries of any studies conducted on the patterns and practices of the RPD and subsequent recommendations; and
- e) summaries of investigations into the conduct, patterns and practices of individual officers and the investigation's recommendations, pursuant to Section Eleven of this ordinance.

### 3) Receipt, Review, and Response to Complaints

#### a) Initiation of Complaints

- (i) Complaints may be received directly by the Board, or upon referral from the Rochester Police Department's Professional Standards Section. Any complaint received and accepted by the Board shall be immediately

- transmitted to PSS, and any complaint received and accepted by PSS shall be transmitted to the Board within one (1) business day.
- (ii) The Board shall receive initial complaints by telephone, in person, by mail, or email. Initial complaints shall be taken whether signed or anonymous in order to provide the complainant with the opportunity to discuss their options, but the formal review process will not begin without a signed statement. Efforts to simplify the procedure will be made so as not to discourage filing. Professional standards of confidentiality with regard to the written release of information and informed consent will apply to all complaints filed. The Board shall comply with the Civil Rights Law §50-a by maintaining the confidentiality of any and all personnel records received by the Board in the course of their duties.
  - (iii) 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. Complainants shall be apprised by the PAB Administrator and/or the advocacy organization of legal assistance options and the procedure for filing a Notice of Claim with the Corporation Counsel against the City, pursuant to Article IX of the Rochester City Charter, 1834, as amended.
  - (iv) Once the complainant has conferred with an advocacy organization and/or the PAB Administrator, and is willing to proceed, the PAB Administrator shall assist a complainant in writing a complaint.
  - (v) Within ninety (90) days of the receipt of a complaint, the Board shall complete its investigation, determine whether there is reasonable cause to proceed to a hearing, conduct a hearing, and issue its findings and recommendations to the Chief and the Corporation Counsel.
  - (vi) Statements made by complainants, officers, 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.
- b) Investigation of Complaints
- (i) The PAB Administrator, a Board investigator, or a designee of the PAB Administrator shall interview complainants.
  - (ii) The Board shall have the power to investigate complaints of police misconduct independent of and concurrently with any investigation conducted by PSS. Within sixty (60) days of receipt of a complaint by any person regarding police misconduct, PSS shall provide to the PAB Administrator a copy of the full PSS report and recommendation to the Chief, and the entire PSS investigatory case file including any dispatch transcripts related to the allegations in the complaint. The PAB Administrator and the Chief shall endeavor to establish a cooperative relationship between the Board and its staff, and the RPD and its officers and members, to ensure the orderly and efficient flow of information between those two agencies of the City.

- (iii) A complainant may decline to cooperate with a PSS investigation, and may seek review directly from the Police Accountability Board. A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board. Such declination must be made in writing by the complainant, and shall immediately be forwarded to the Chief by the PAB Administrator.
  - (iv) The Chief shall take no action on a complaint, whether received directly by the RPD or by the Board, until receipt of the Board findings and recommendations, or notice that the Board will be taking no action, or ninety (90) days from the receipt of the complaint, whichever occurs first. The Chief retains the authority to discipline members of the RPD and the aforementioned provision shall not be interpreted as a restriction on the authority of the Chief to order disciplinary measures during the ninety (90) day time period as they deem necessary.
- c) Report by PAB Administrator on Investigations of Complaints
- (i) Upon completion of the Board investigation and receipt of the PSS report, case file, and recommendation to the Chief of Police, the PAB Administrator shall make a determination as to whether there is reasonable cause to proceed to a Board hearing on the allegations of misconduct in a complaint. The PAB Administrator shall then present their report and recommendation to the full Board, and provide all Board members with access to the full Board and Professional Standards Section case files.
- d) Reasonable Cause Determination
- (i) Upon review of the report and recommendations from the PAB Administrator, the full Board 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 PAB Administrator to schedule a hearing and notify the complainant and the Chief of Police. If there is not reasonable cause, the PAB Administrator shall notify the complainant and the Chief of Police of this determination.
- e) Hearing Process
- (i) As described above, the Board Chair shall establish a rotation of Board members to serve on hearing panels composed of three (3) members of the Board. Each panel shall consist of at least one (1) elected member and one (1) appointee.
    - Each panel shall select its own Chair on a case-by-case basis.
    - No member may serve on two consecutive panels.
  - (ii) The Board, by majority vote of its members, may authorize the issuance of a subpoena. Such subpoenas may compel the attendance of witnesses, police officers, and/or persons and require the production of such records and other materials as are necessary for the hearing of a complaint, including records of the RPD, other persons, or other agencies. A copy of any subpoena served upon an RPD officer shall also be

delivered to the Chief of Police. 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, Section 8A-1 of the Rochester City Charter, 1834, as amended, to promulgate new rules or utilize existing rules regarding discipline and administration of the officers and members of the RPD to ensure compliance with Board procedure and applicable law.

- (iii) Panel hearings shall be closed to the public.
- (iv) Panel hearings shall be recorded by the Board. No other recordings are permitted.
- (v) Panel hearings shall follow the substantial evidence standard of proof.
- (vi) Both complainant(s) and officer(s) subject to a hearing shall have the right to obtain counsel or other representation and be able to cross examine witnesses. Complainants may represent themselves, retain counsel, use legal assistance options, or other community advocates.
- (vii) Both complainant(s) and officer(s) subject to a hearing shall be questioned by the panel; relevant evidence pertaining to the case before the panel may also be entered into the hearing.
- (viii) Statements made by complainants, 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.
- (ix) The hearing panel shall exclude the complainant, officer(s) who is/are the subject of a complaint, and witnesses from proceedings when the panel receives and considers evidence involving confidential matters that are unrelated to the allegations in the complaint.
- (x) Decisions of the panel shall be made by a majority vote. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisors. Deliberations shall be recorded. The decision shall include findings of fact and recommendations.
  - If the panel finds that the officer engaged in criminal conduct, it shall refer the matter to the Monroe County District Attorney's Office and request that their office initiate an investigation.
  - If the panel finds that the officer engaged in criminal conduct, it can refer the matter directly to the New York State Attorney General's Office and request that their office assign a special prosecutor to initiate an investigation.
  - If a panel finds that misconduct has occurred, the PAB Administrator shall notify the complainant, the officer(s) who were the subject(s) of the complaint, and the Chief of Police, in writing within one (1) business day of the panel's findings and recommendations, by verifiable means.
  - PAB recommendations may include disciplinary sanctions including but not limited to counseling, reprimand, retraining,

suspension, demotion, or dismissal. The panel may recommend that restitution be paid to the complainant by the City for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.

- A panel recommendation regarding restitution shall not include a specific dollar amount, although the Board's records of such cases shall note any estimates or receipts that were provided by the complainant. Restitution shall be the responsibility of the City, as in any case of an indemnified City employee. The Corporation Counsel shall advise the Board of the disposition of cases in which the Board has recommended that restitution be paid. This shall only occur if a complainant has filed a timely Notice of Claim with the City seeking such restitution in accordance with Article IX of the Rochester City Charter, 1834, as amended.
- (xi) The panel shall report its findings and recommendations to the full Board at its next scheduled meeting.
  - (xii) The actions of the Board do not preclude action by the judicial system. A finding or decision by the Board shall not have any collateral effect upon a subsequent administrative or judicial proceeding.
- f) Responses from the Chief of Police
- Within thirty (30) calendar days of the receipt of a recommendation from a hearing panel, the Chief shall provide the Board with a written description of any disciplinary action the Chief has taken with respect to the member(s) in question and the reasons if none were imposed.
- (i) The Chief's response shall include, but is not limited to, the following reason for taking a different action:
    - an analysis of the employee's work history, including any prior disciplinary actions, letters of reprimand, memoranda, command discipline, any prior complaints filed against the employee, and/or any prior complimentary history;
    - the Chief's professional opinion with regard to the case;
    - the existence of any lawsuits arising out of the performance of police duties to which the employee has been a named party, and the outcome of such lawsuits, including those which the employee has been exonerated; and
    - any evidentiary concerns with regard to the investigation.
  - (ii) Within thirty (30) calendar days of the receipt of a recommendation from a hearing panel, the Chief shall inform the complainant, the PAB Administrator, and the Chair of the Public Safety Committee, by certified mail, of the final disposition of the complaint and any discipline imposed or action taken against the named officer(s) in the complaint and in the case where no discipline was imposed or action taken, the Chief shall explain the reasons for their lack of action or discipline.

g) Discipline

- (i) Nothing within this ordinance shall limit the Chief's ability to impose any additional discipline for an officer above and beyond that recommended by the Board.
- (ii) If the Board disagrees with the Chief's imposition of a lower level of discipline or no discipline on a named officer(s), the Board shall inform the Chief, within fifteen (15) days, in writing, of its disagreement and its intent to determine discipline and compel the Chief to impose it.
- (iii) Upon review of the complaint, the Board, through a determination process using an agreed-upon disciplinary matrix, shall decide on the sanction to be imposed. The PAB Administrator shall communicate this to the Chief, in writing, within one (1) day of when the Board reaches its decision.
- (iv) The Board's determination of discipline for the named officer(s) shall be final.
- (v) The Chief shall be compelled to impose the discipline determined by the Board within ten (10) business days of the Board's final decision.
- (vi) If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal with the Board. The Board may decide to accept or decline the appeal, based on the criteria listed in Section Nine, and if accepted, the appeal hearing decision shall be final.

4) RPD Policy and Procedure Oversight and Officer Investigations

- a) The Board may identify, analyze, investigate, and make recommendations about police policies, procedures, practices, or other systemic concerns about police conduct, even without the existence of underlying complaints.
- b) The Board shall have full access to all documents and records held by the City and the RPD that pertain to studies and investigations of any sort conducted by the Board.
- c) The Board shall have the power to conduct investigations into the conduct of specific members of the RPD concerning any allegation of misconduct, even in the absence of a civilian complaint, when based on information and belief that an investigation is warranted.
- d) The Board shall provide copies of any such recommendations to the Mayor, the Chief of Police, the named officer(s) if applicable, and the Chair of City Council's Public Safety Committee.
- e) Thirty (30) business days after such recommendations have been made, the Board will publish them on its website.

**Section Nine. Appeals.**

- 1) If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal, based on the criteria listed below, requesting that the full Board review the complaint, the findings and recommendations made by the hearing panel, and the final disposition of the case.
  - a) The PAB may grant a request for appeal upon a showing by the complainant

- that:
- (i) new and substantive evidence has been found that could alter the decision of the Board;
  - (ii) a policy was misapplied in the evaluation of the complaint;
  - (iii) the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion; or
  - (iv) the findings and recommendations were not consistent with the record of evidence.
- 2) The complainant must make such a request in writing within thirty (30) calendar days of receipt of the Chief's letter notifying the complainant of their final disciplinary decision related to the complaint.
  - 3) It is the Board's discretion whether or not to accept an appeal;
    - a) in the case where an appeal is accepted, the Board must, in writing, give its reasons for accepting the appeal and then inform the complainant, the named officer(s) in the complaint, the Chief, and the Chair of the Public Safety Committee of its decision;
    - b) the case where an appeal is denied, the Board must, in writing, explain its reasons for denying the appeal and then inform the complainant and the Chair of the Public Safety Committee of its decision.
  - 4) The Board shall notify the Chief of the request for an appeal hearing and hold a hearing on the matter at its next regularly scheduled meeting provided that there is a period of at least ten (10) days between the receipt of the request for a hearing and the next Board meeting.
  - 5) The PAB Administrator shall ensure notice is provided to the complainant at least two (2) weeks prior to an appeal hearing.
  - 6) Appeal hearings:
    - a) shall be included in the Board agenda;
    - b) shall be closed to the public; and
    - c) shall be recorded by the Board. No other recordings are permitted.
  - 7) Complainants may submit a written request to delay an appeal hearing for up to two (2) months. Failure to appear at a scheduled hearing may result in the Board acting on a request for appeal without further input from the complainant.
  - 8) The Board will determine a fair structure for the appeal hearings.
  - 9) Board members may ask questions at any time of any witness present. When Board members ask questions, the time limits set forth above are stayed until questioning is completed.
  - 10) New evidence may be accepted by the Board during the appeal hearing.

- 11) Decisions on requests for appeal shall be determined by a majority of Board members present. If the vote ends in a tie, the original findings and recommendations remain in place.
- 12) Upon completion of the Board's review and final determination, the PAB Administrator shall require the Chief to carry out the disciplinary actions determined in this final disposition of the complaint.
- 13) The PAB Administrator shall notify in writing, by certified mail, the complainant, the officer(s) named in the complaint, the Chief, and the Chair of the Public Safety Committee of the results of the appeal hearing and any action taken.

**Section Ten. Independent Legal Representation of the Board.**

The Police Accountability Board shall retain or employ independent legal counsel on a contractual basis to advise and represent the Board. If so retained, the Board's legal counsel shall represent the Board in the courts, shall advise the Board as to any legal matters relating to the ordinance and the Board's duties, responsibilities, and procedures except for Board member and personnel matters which shall remain under the authority of the City's Corporation Counsel. The Board's attorney shall not in the regular course of their legal practice defend law enforcement officers. The Board's attorney shall not participate in, nor serve as counsel to the City or any of its Council members or employees in defense of any lawsuit arising from the incident that is before the Board. The Board's attorney and their immediate family shall not be currently or formerly employed or contracted by the Rochester Police Department or any other local, state, or federal law enforcement agencies and immediate family of any incumbent elected official of the City of Rochester, nor have any financial ties with either members of the RPD or any incumbent elected official of the City of Rochester. Compensation for such legal services shall be established through the annual budgetary process as set forth in Article VI of the Rochester City Charter, 1834, as amended.

**Section Eleven. Police Accountability Board Reports.**

- 1) The PAB Administrator on behalf of the Board shall publish monthly data on the receipt and dispositions of complaints.
- 2) All complaints shall be issued a tracking number, which shall be included in the quarterly and annual reports.
- 3) The PAB Administrator, on behalf of the Board, shall publish public quarterly and annual reports that shall document:
  - a) the total number and type of complaints and the City districts in which they happened;
  - b) the categories of each complaint as defined in Section Three of the local law;
  - c) the public tracking number of each complaint;
  - d) the date, time, and location of each incident, whether there is available video of the incident or not, the name, age, race, and gender of the complainant, and the

- name(s), rank(s), serial number(s), age(s), gender(s), and race(s) of the officer(s); the Board shall comply with local, state, and federal law and redact any information that may not be disclosed publicly.
- e) the number of previous complaints against the named officer(s) within ten (10) years of the incident and whether or not those complaints were sustained.
  - f) 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, e.g. kick, punch, knee strike, handcuffs put on too tightly;
  - g) the number of times pepper spray was deployed per complaint and the total number of times pepper spray was deployed;
  - h) the number of times and types of pain compliance tactics used per complaint and the totals for each use of pain compliance tactic;
  - i) the number of times and types of use where a Taser was deployed e.g. shooting with hits or shooting without hits per complaint and the total number of times and types of use where a Taser was deployed;
  - j) in the event where an officer uses their firearm,
    - (i) the type of weapon used (firearm, brand, type);
    - (ii) number of shots fired;
    - (iii) the range from which the firearm was fired;
    - (iv) injuries sustained by the complainant, animal(s), officer(s), and/or any bystanders;
    - (v) any medical care provided and what type; and
    - (vi) whether the person or animal was killed.
  - l) the number of cases where disciplinary sanctions were recommended;
  - m) the type of sanctions recommended;
  - n) the number of cases where sanctions were imposed;
  - o) the number of cases reviewed by the full Board;
  - p) the number of complaints dismissed during the quarter;
  - q) the number of complainants contacting the Board but not following through with a formal signed complaint;
  - r) the length of time each case was pending before the Board;
  - s) the number of complaints in which the Board recommended that the City provide restitution to the complainant and what type of restitution was recommended; and
  - t) the number of complainants who filed a notice of claim against the City of Rochester while their complaint was being considered by the Board.
- 4) The annual report shall also include information pertaining to appeals:
- a) the number of appeals requested;
  - b) the number of appeals granted;
  - c) the number of appeals denied;
  - d) the dates of filed appeals,
  - e) the dates of appeal hearings before the full Board,
  - f) the number of extensions requested,
  - g) the number of extensions granted;
  - h) the number of extensions denied;

- i) the number of cases overturned on appeal;
  - j) the number of cases where recommended sanctions were imposed after appeal;  
and
  - k) the types of sanctions imposed after appeal.
- 5) The annual report shall also contain the type of recommendations related to changes in police policies, procedures, training, and other systemic improvements. The annual report shall also contain the number of investigations into the patterns and practices of misconduct by individual officers, the recommendations of each investigation, and the imposed discipline for each investigation. Copies of these reports shall be provided to the Mayor, the Chief, and the Chair of the Public Safety Committee by March 31 of each year covering the prior calendar year.
- 6) Quarterly and annual reports shall be posted in an appropriate location on the Board's website hosted by the City.
- 7) After the Board has made a final determination on the complaint, any video associated with any complaint that is brought forth to the Board will be added, with the written consent of the complainant, to a designated location on the Board's website and made public within thirty (30) calendar days after disposition of the complaint. Should the complainant not give consent to publish any video, the Board shall keep copies of all video in the case file, but shall not publish or disclose any video.
- 8) The City shall provide the Board with a website or series of webpages on which the Board shall be able to place information, educational materials and links, videos, reports and forms related to the operation of the Board and its mission. The City shall provide a reliable method by which the PAB Administrator may post or have such content posted on this website, webpages, or social media presence, in a timely manner.

**Section Twelve. Retaliation Prohibited—Penalty.**

No person (civilian or police officer) shall retaliate against, harass, follow, intimidate, electronically record, stalk, punish, or penalize any other person for making complaints with, cooperating with, or assisting the Board or any designee of the Board, in the performance of their duties with regards to the work of the Board. Any person who violates the provisions of the section shall be subject to a fine of not less than \$5,000.00 and not more than \$10,000.00 for each violation, to be paid individually.

**Section Thirteen. Audit and Review.**

- 1) The Board may, by majority vote, perform an annual audit, or direct that an audit be performed, on a random sample of up to 10% of individual civilian complaint investigations involving allegations of use of force. In the event that the Board votes against an audit, City Council, by a majority vote, may perform an annual audit or direct that an audit be performed by the Board. In exceptional circumstances, for the purpose of promoting an enhanced measure of quality assurance in the most

challenging cases, the Board may, by a vote of two-thirds of its members, perform an audit, or direct that an audit be performed, on any individual civilian complaint investigation by the Board.

- 2) The Board, in consultation with the Chief of Police 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.

**Section Fourteen. Severability.**

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

**Section Fifteen. Budget.**

The PAB Administrator shall submit an annual budget to the Mayor and City Council, with the approval of the Board, during the City's annual budgetary process. The proposed budget shall provide for sufficient funding to carry out the powers and duties set forth in the Police Accountability Board Ordinance, including the funding of staff and all necessary operating expenses. The Police Accountability Board shall be funded through the budgetary process of the City of Rochester, pursuant to Article VI of the Rochester City Charter, 1834, as amended.

**Section Sixteen. Effective Date.**

This local law, as amended, shall take effect immediately subject to the provisions of the Municipal Home Rule of the State of New York.

## APPENDIX A

### REVIEW OF OTHER POLICE ACCOUNTABILITY PROCESSES

The National Association of Civilian Oversight in Law Enforcement maintains a current membership of 77 civilian oversight entities.<sup>129</sup> Research for the Police Accountability Board Ordinance included reviews of the available ordinances and bylaws for the civilian review processes of nine cities and one county: Chicago, Illinois; Syracuse, New York; Newark, New Jersey; Oakland, California; New York, New York; Albuquerque, New Mexico; Albany, New York; Austin, Texas; Los Angeles County, California; and Seattle, Washington. The summaries of these civilian review processes are organized and prioritized below to demonstrate which aspects we believe are essential for an accountable and transparent review process and which are not.

#### **Chicago, Illinois – Civilian Police Accountability Council (CPAC):<sup>130</sup>**

This legislation was formally submitted to the Chicago City Council, but has not yet been approved. All of the aspects of this proposed legislation would result in a more accountable and transparent process. CPAC would;

- Be comprised completely of elected members;
- Appoint the Superintendent of Police;
- Re-write the policies and procedures of the Chicago Police Department;
- Investigate police misconduct;
- Investigate all police shootings;
- Have access to police data and reports;
- Have access to demographics on police violence and information obtained in investigations;
- Increase sustain rates through thorough investigations;
- Use the U.S. Constitution and Human Rights Law as the benchmark for misconduct rather than department policy and procedure;
- Have the final authority in the disciplining of officers;
- Have the power to indict officers for their crimes;
- Have its own budget.

This aspect is likely to result in less accountability and transparency:

- Individual elected seats could be manipulated by outside political forces

#### **Syracuse, New York – Citizen Review Board (CRB):<sup>131</sup>**

These aspects are likely to result in more accountability and transparency:

- 11-member board, none of whom may be currently employed by law enforcement. The CRB:
- Is its own city agency with its own budget;

- Has the power to hire outside investigators who may not be currently employed by law enforcement agencies;
- Has the power to hire independent legal counsel if the Corporation Counsel or the Board feel there is a conflict of interest;
- Hears individual complaints through rotating 3-member hearing panels;
- Has the power to issue subpoenas and conduct independent investigations parallel to any investigations by the Syracuse Police Department;
- Sends letters to complainants and named officers regarding their findings and recommendations;
- If Chief of Police does not impose recommended discipline, the Chief must explain his or her reasons to the Board in writing, but the Chief of Police has final power over the disposition of complaints;
- May engage in study and investigation of the Syracuse Police Department's patterns and practices, as well as policies and procedures, and bring recommended changes to city government for consideration.

This aspect is likely to result in less accountability and transparency:

- Chief of Police has final power over the disposition of complaints.

#### **Newark, New Jersey – Civilian Complaint Review Board (CCRB):**<sup>132, 133</sup>

These aspects are likely to result in more accountability and transparency:

- None of the 11-member board may be former employees of the NPD;
- CCRB investigates complaints and issues subpoenas;
- The board's Inspector General may audit the NPD's investigations for fairness;
- The IG and CCRB may make policy recommendations to the NPD;
- CCRB makes findings of fact and recommendations for discipline to the NPD;
- A disciplinary matrix, a predictable, progressive uniform tool, is used to determine police discipline, rather than police administrator discretion;
- If the discipline imposed is less than that recommended, the Public Safety Director may be asked to come before the board to answer questions pertaining to the lower imposed discipline.

These aspects are likely to result in less accountability and transparency:

- The Inspector General may be a former employee of the NPD;
- The CCRB is advisory in its capacity;
- The Public Safety Director has final say over the disposition of complaints and discipline imposed.

#### **Oakland, California – Citizens' Police Review Board (CPRB):**<sup>134</sup>

Likely to result in more accountability and transparency:

- Investigates complaints against police officers;
- Issues subpoenas;

- Makes advisory recommendations to the City Manager regarding disposition of complaints;
- Makes recommendations regarding police policy to the Public Safety Committee;
- Has a non-City attorney legal advisor on staff.

Likely to result in less accountability and transparency:

- Has no power to enforce recommendations.

**New York City, New York - Civilian Complaint Review Board (CCRB) and Office of the Inspector General, New York Police Department (OIG-NYPD):**<sup>135, 136</sup>

Likely to result in more accountability and transparency:

- 13-member CCRB is appointed by mayor, city council and police commissioner; must be residents of city and reflect its diversity;
- CCRB conducts investigations and makes recommendations regarding complaints of police misconduct;
- By a majority vote, CCRB may issue subpoenas to compel testimony and production of materials and documents for use in its investigations;
- Once the CCRB panel has heard the complaint, it makes findings and recommendations, which are passed onto the police commissioner;
- Closed CCRB cases can be re-opened should new evidence or witnesses come forward;
- OIG gathers and reviews facts and data;
- OIG looks for broad-based systemic issues relating to the policies, procedures, practices, and programs of the NYPD;
- OIG analyzes and drafts public reports stating the problem and offering practical and effective recommendations for implementation to address the systemic issue.

Likely to result in less accountability and transparency:

- CCRB and OIG are both advisory in their capacity;
- OIG refers specific police misconduct complaints to the CCRB and/or the Internal Affairs Division of the NYPD;
- When a complaint comes to the CCRB, the chair of the board determines if a panel of at least three members of the board should hear it after the investigation;
- Police commissioner makes final disciplinary determinations in substantiated complaints.

**Albuquerque, New Mexico – Civilian Police Oversight Agency (CPOA) and Police Oversight Board (POB):**<sup>137, 138</sup>

Likely to result in more accountability and transparency:

- Independent city agency;
- At the start of POB meetings, the public is given a chance to speak;

- When a civilian files a complaint, the CPOA executive director, or their designee, investigates the complaint and prepares a report with findings of fact and recommendations to be presented to the POB for consideration;
- POB has access to the investigative file and all information pertaining to the complaint, but may not conduct its own investigation;
- POB takes a majority vote to determine the disposition of complaints: the POB may agree with the facts and recommendations, approve other facts and recommendations, or it may defer action and give the executive director more time for further investigation;
- Has a process for requests for reconsideration regarding findings of fact and recommendations;
- Has an appeal process if the complainant isn't satisfied with the Chief of Police's decision regarding discipline.

Likely to result in less accountability and transparency:

- Chief of Police makes decisions relating to officer discipline.

#### **Albany, New York – Citizens' Police Review Board (CPRB):<sup>139</sup>**

Likely to result in more accountability and transparency:

- 9-member board appointed City Council and Mayor;
- Standing committees: By-laws and Rules, Community Outreach, Police Department Liaison, Public Official Liaison, and Complaint Review;
- CPRB appoints a Monitor to observe the internal affairs investigation of the complaint;
- Full board reviews the responses to the complaint by the Monitor and the Chief of Police or the Mayor;
- Chair of the Complaint Review Committee briefs the CPRB. The board then votes on whether to sustain the complaint;
- CPRB's vote, findings, and recommendations are forwarded to the Chief of Police and complainant but not the named officer.

Likely to result in less accountability and transparency:

- Chief of Police has final power over disposition of the complaint.

#### **Austin, Texas – Office of the Police Monitor (OPM) and Citizen Review Panel (CRP):<sup>140</sup>**

Likely to result in more accountability and transparency:

- Has access to internal affairs' investigative processes and explains the complaint process to the complainant;
- The complainant is allowed to speak directly to the panel, if they so choose.

Likely to result in less accountability and transparency:

- CRP has no investigative power, no subpoena power, and makes purely advisory recommendations based on the very small amount of information that it is allowed to review through the OPM, internal affairs, or the Chief's office;
- Witnesses may not be compelled to speak;
- Officers are not required to cooperate with the CRP;
- The bylaws contain many penalties for alleged CRP breach of confidentiality and bias;
- Chief retains full and final control of complaint dispositions as well as any officer discipline.

**Los Angeles County, CA - Sheriff Civilian Oversight Commission (SCOC) and Office of the Inspector General (OIG):<sup>141</sup>**

Likely to result in more accountability and transparency:

- SCOC reviews and solicits public comment on policies and procedures before making recommendations to county Board of Supervisors and Sheriff;
- SCOC reviews and conducts some oversight of OIG;
- OIG has access to police records through a memorandum of understanding;
- SCOC and OIG partner to review systemic issues and make recommendations;
- Current law enforcement employees may not serve on the SCOC.

Likely to result in less accountability and transparency:

- SCOC does not have subpoena power;
- SCOC does not investigate individual complaints of police misconduct;
- SCOC is advisory only and has no power to impose officer discipline;
- Sheriff or their designee attends SCOC meetings but is not a voting member.

**Seattle, Washington – Office of Professional Accountability (OPA), Office of Professional Accountability Auditor (OPA Auditor) and the Office of Professional Accountability Review Board (OPARB):<sup>142</sup>**

Likely to result in more accountability and transparency:

- Complaints of police misconduct are taken directly by the OPA Director or referred to the OPA for complaint intake;
- OPA Auditor reviews the investigation of the complaint and any recommendations for discipline;
- OPA Director and OPA Auditor must agree on the investigation, findings, and recommendations for discipline, then complaint classification is certified;
- Final classification can be designated in one of three ways: mediation, supervisor action (OPA Director believes supervisor of named employee is best suited to handle situation), or administrative investigation (a violation of policy).

Likely to result in less accountability and transparency:

- OPA Director and staff conduct investigations of complaints using police investigators;
- Chief of Police retains final determination on any sustained complaint where there is a recommendation of discipline;
- In the case that the officer is disciplined, the named employee can ask the OPA Director to reopen the case, file a labor grievance, or file an appeal with Seattle's civil service;
- The OPARB is generally used as a public outreach body and conducts oversight of the OPA's complaint handling process, but is not directly involved with complaints.

## APPENDIX B

### PROPOSED COMMUNITY-BASED DISCIPLINARY MATRIX FOR POLICE MISCONDUCT IN ROCHESTER, NY

A disciplinary matrix is a predictable, progressive, and uniform tool used to determine police discipline in cases of misconduct that reduces the use of discretion by police administrators. Such discretion, as used by many chiefs of police, can lead to disproportionate discipline, favoritism, and conflict between police managers and rank and file officers. The City of Newark instituted a Civilian Complaint Review Board (CCRB) in 2015 as the result of a mayoral executive order<sup>143</sup> after the U.S. Department of Justice (DOJ) completed its 2014 investigation into the unconstitutional policing practices of the Newark Police Division (NPD). In 2016, Newark entered into a final settlement outlined in a consent decree with the DOJ.<sup>144</sup> The Municipal Council of Newark legislated the CCRB as law in 2016. It was established to act as a “safeguard to ensure consistent application of discipline” and was needed to “include aggravating and mitigating circumstances.”<sup>145</sup> The position of Inspector General (IG) was initiated and is appointed by the Mayor as the paid administrator of the CCRB. The consent decree mandated that a disciplinary matrix be utilized.

In 2012, a study<sup>146</sup> was conducted by Jon Shane, a former precinct commander and police trial board member for the Newark Police Department (NPD). The study reviewed how a “rational sentencing structure for imposing internal police discipline” could be used within the NPD. Shane describes the police trial board as, “a triumvirate of command-rank officers who act as fact finders and impose discipline on police officers and civil employees charged with administrative policy violations.” He was in a unique position to gather the data for his study, after serving on the police trial board, having logged 360 hours of police trials involving sworn officers and civilian employees and agency records. He described the system of internal police discipline as “convoluted,” “not predicated on rational management,” and that it contained “unfettered discretion.” Shane concluded that a disciplinary matrix might be a more just system of officer discipline, because of its consistency, uniformity, and progression, rather than a discretionary system. Shane’s disciplinary matrix model, based on the Minnesota Sentencing Guidelines Grid<sup>147</sup> indicates that the distinct structure of a matrix:

- gives a clear indication of what officers can expect for their bad actions
- reduces favoritism and disproportionately harsh sanctions
- potentially increases officer morale and job performance
- potentially decreases the amount of police misconduct
- potentially increases public safety

The authors have created a disciplinary matrix for Rochester based on Shane’s study. This matrix modifies the types of misconduct and the severity of the sanctions referenced in the bargaining agreement between the City of Rochester and the Rochester Police Locust

Club.<sup>148</sup> The disciplinary matrix below represents this reformulation as a rational tool of community-based discipline in response to police misconduct.

An example is in order. Looking at the discipline matrix on page 91, let's assume a complaint against a named officer has been sustained by the Police Accountability Board (PAB). The sustained allegations are: using excessive force and discourtesy.

Excessive force is a Level Three penalty, which carries with it three progressive sanctions:

1. suspension (18-25 days)
2. reduction in rank and suspension (18-25 days) plus 5 days
3. dismissal

Discourtesy is a Level One penalty, with sanctions progressing as follows if the officer has no prior sustained complaints.:

1. written reprimand and/or re-training
2. suspension (7-9 days)
3. suspension (10-12 days)
4. suspension (13-17 days)
5. reduction in rank and suspension (13-17 days) plus 5 days
6. dismissal

The disciplinary matrix takes into account both sustained allegations and then determines that the PAB should use the highest allegation sustained as the starting point. Let's also presume that the named officer has no prior sustained allegations and that there are no mitigating or aggravating circumstances. Based on the officer's clean record, the circumstances around the complaint, and the severity of the penalty, the officer can expect to receive an 18 – 25-day suspension. Since this is the officer's first sustained complaint, the PAB is obliged to give out the lightest penalty possible, which would be an 18-day suspension.

Another example: Level One misconduct involves discourtesy, lack of familiarity with the laws being enforced, and officer attitude and impartiality. In the event that an officer is held to account for such a violation, the PAB can impose discipline in the form of a written reprimand or retraining. Depending on the circumstances surrounding the incident, the officer may benefit more from retraining rather than a written reprimand. The PAB could require training that includes, but is not limited to: anti-racism, de-escalation techniques, how to handle mental health and emotional disturbance issues, awareness of physical and mental disabilities, gender and sexuality issues, and restorative justice skills. If the officer's record already includes three prior sustained complaints and then another discourtesy complaint is sustained, the officer would face a 17-day suspension. In this case, following the matrix, the PAB would impose the maximum sanction based on the record of three prior sustained complaints. If at a later date another sustained complaint for discourtesy is issued against the officer, the sanction would be a reduction in rank and a 22-day suspension.

The proposed PAB ordinance for Rochester could emerge as an innovative national model by utilizing a disciplinary matrix to determine the consequences to be faced by police

officers named as perpetrators of misconduct. The new ordinance recommended by the authors empowers the PAB to compel the Chief of Police to impose sanctions on officers where complaints have been sustained and when the Chief and Board fail to agree on recommended disciplinary outcomes. This matrix would eliminate the use of discretion on the part of the police administration, which has been shown in many cases to be unable to impose appropriate levels of discipline upon its officers.

### **Disciplinary Matrix Chart Key**

#### Penalty Levels:

Level 1: REP / TRAIN = written reprimand and/or specific retraining, e.g., anti-racism training, retraining on specific police procedures, and de-escalation tactics.

Level 2: SUS = suspension from duty in days

Level 3: RED = reduction by a single rank for superior officers and investigators; +5 days' suspension from upper limit of previous grade of suspension

Level 4: DIS = dismissal

Multiple charges across the penalty levels shall require the sanction to start at the highest charge sustained.

#### Prior record penalty guide:

0 = presumption in favor of minimum penalty

1 = presumption in favor of medium penalty

>3 = presumption in favor of maximum penalty

#### Use of prior sustained findings:

Prior record of sustained findings shall not be considered if the finding is more than five (5) years old from the date of the incident.

#### Aggravating Circumstances (increase penalty by one grade, same level)

Use or threat of use of force during the incident against the complainant;

Injuries sustained by the complainant;

Collusion or complicity of officer(s);

Officer intoxication from alcohol or altered state due to use of controlled substances;

Prior judicial (civil and criminal) proceedings that resulted in a verdict against the name officer(s); and

The number of civil lawsuits against the named officer(s) that ended in settlements.

#### Mitigating Circumstances (reduce penalty by one grade, same level)

Following advice from a superior officer;

Ignorance;

Mistake of fact; and Necessity

Discipline must be imposed within an eighteen (18) month period from the date of the incident.

### DISCIPLINARY MATRIX

Penalty Level	OFFICER MISCONDUCT	Number of Sustained Complaints in Officer's Prior Record					
		0	1	2	3	4	5
Level 4 Dismissal (DIS)	Conviction for state-codified felony	DIS					
	Aiding or abetting another member in illegal						
	Perjury (criminal, civil, or administrative						
	Tampering with or destruction of evidence						
	Altering, delaying, or falsifying reports						
	Sexual Assault	RED +5 days	DIS				
	Coerced confession						
	Use of controlled substances on duty						
	Driving while intoxicated						
	Disobedience to laws, ordinances and rules						
Retaliation	SUS 18 – 25 days	RED +5 days	DIS				
Using excessive force							
Unauthorized strip/body cavity search							
Intimidation							SUS 13 – 17 days
Failure to administer medical attention for ill or injured persons							
Level 2 Suspension (SUS)	Harassment / stalking	SUS 10 – 12 days	SUS 13 – 17 days	SUS 18 – 25 days	RED +5 days	DIS	
	Unlawful search and seizure						
	Conviction for state-codified misdemeanor						
	Civilian property damage or destruction						
	Unlawful entry of home or business						
	Unauthorized discharge of a firearm						
	Carrying unauthorized firearm or weapon						
	Use of badge or position for personal gain						
	Violation of pursuit policy						
	Failing to answer subpoena						
Intoxicated while on duty							
Level 1 Written Reprimand and/or Retraining (REP / TRAIN)	Discourtesy (swearing, rudeness, insolent language)	REP / TRAIN	SUS 7 – 9 days	SUS 10 – 12 days	SUS 13 – 17 days	RED +5 days	DIS
	Failure to have familiarity with the laws, ordinances and rules						
	Attitude and impartiality						

## **APPENDIX C**

### **SYRACUSE CITIZEN REVIEW BOARD POLICIES AND PROCEDURES FOR COMPLAINTS**

#### **Section 1. General Policies Regarding Complaints**

(1) Complaints may be received directly by the CRB, or upon referral from the Syracuse Police Department Office of Professional Standards. Any complaint received and accepted by the CRB shall be immediately transmitted to Office of Professional Standards, and any complaint received and accepted by Office of Professional Standards shall be transmitted to the CRB within one (1) business day.

(2) The CRB shall receive initial complaints by telephone, in person, by mail or email. Initial complaints shall be taken whether signed or anonymous in order to provide the complainant with the opportunity to discuss his or her options, but the formal review process will not begin without a signed statement.

(3) The CRB Administrator shall assist a complainant in writing a complaint. Complainants shall be apprised of legal assistance options and the procedure for filing a Notice of Claim with Corporation Counsel against the City pursuant to the General Municipal Law.

(4) ) A complainant may decline to cooperate with the Office of Professional Standards investigation, and may seek review directly from the Citizen Review Board. A complainant may, at any time, decline to have his/her complaint investigated and reviewed by the CRB. Such declination must be made in writing by the complainant.

(5) Conciliation shall be offered at each stage of the Board review process until the commencement of a hearing.

(6) Within 60 days of the receipt of a complaint, the CRB shall complete its investigation, determine whether there is reasonable cause to proceed to a hearing, conduct a hearing, and issue its findings and recommendations to the Chief and the Corporation Counsel.

#### **Section 2. Investigations & Subpoena Power**

(1) The Board shall have the power to investigate complaints of police misconduct independent of and concurrently with any investigations conducted by Office of Professional Standards.

(2) The CRB Administrator, a CRB investigator or a designee of the CRB Administrator shall interview complainants, witnesses, and subject officers.

(3) The CRB Administrator, a CRB investigator or a designee of the CRB Administrator shall collect any and all evidence and documentation relevant to the complaint in the course of the investigation.

(4) The Board, by majority vote of its members, may authorize the issuance of a subpoena. Such subpoenas may compel the attendance of witnesses and/or persons and require the production of such records and other materials as are necessary for the hearing of a complaint including records of the SPD, other persons, or other agencies. A copy of any subpoena served upon a Syracuse Police Officer shall also be delivered to the Chief of Police. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the

New York Civil Practice Law and Rules.

(5) The CRB Administrator shall complete an investigative report that details the findings of the investigation.

### **Section 3. Hearing Panels**

(1) Three-member CRB Hearing Panels shall hear cases and make findings of fact and recommendations for discipline to the Chief of Police.

(2) The precise procedures for the CRB Hearing Panels are outlined in the CRB's Hearing Panel Policies and Procedures and the CRB ordinance, Local Law 11 of 1993, as amended.

### **Section 4. Board Findings and Recommendations**

(1) Decisions of the CRB hearing panels shall be made by majority vote. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisers. The decision shall include findings of fact and may include recommendations.

(2) If the panel finds that the officer may have engaged in criminal conduct, it may refer the matter to the district attorney and request that he/she initiate an investigation.

(3) After hearing the testimony of all involved parties and reviewing all the available evidence, the panel shall state a finding of one of the following:

- a. Unfounded: the investigation indicates the alleged act did not occur.
- b. Exonerated: the investigation indicates the act occurred but that the act did not constitute misconduct.
- c. Insufficient Evidence: the investigation discloses insufficient evidence to clearly prove or disprove the allegation.
- d. Sustained: the investigation discloses that the act did occur and constitutes misconduct.

(4) If a panel finds that misconduct has occurred it may recommend disciplinary sanctions including but not limited to counseling, reprimand, suspension, retraining, demotion or dismissal.

(5) The panel may also recommend that restitution be paid to the complainant by the city for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.

(6) The panel shall report its findings in mandated reporting periods in accordance with Section Seven, Subsection 2, paragraph (d) of local law 11 of 1993 as amended.

## **APPENDIX D**

### **SYRACUSE CITIZEN REVIEW BOARD PANEL HEARING POLICIES AND PROCEDURES**

**Revised and Updated June 2014**

The purpose of the CRB hearing is to provide a safe forum in which complainants, police officers, and witnesses can offer their account of the incident which resulted in a complaint being filed and to give the board the opportunity to pose questions to the involved parties. The hearing is designed to promote fairness and trust in the CRB process.

1. A three-member Hearing Panel rotation shall be established by the full Board to hear each case that the Board has voted to move to a panel hearing. Each panel shall be composed of one mayoral appointee, one council at-large appointee, and one council district appointee. Each panel shall select its own Chairperson.
2. Appearance at the hearing shall be optional for complainants, witnesses, and subject officers. However, the board strongly recommends that all parties take part in the panel hearing.
3. Testimony at the hearing can be offered by complainants, officers, or witnesses to supplement or correct any prior statements.
4. Statements made by complainants, officers, 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.
5. Although no participants in the hearing shall be sworn in under oath or affirmation, all participants in the hearing will agree to tell the truth to the best of their recollection. Before testifying, every witness shall be required to declare that he or she will testify truthfully.
6. The Board, by majority vote of its members, may authorize the issuance of a subpoena to compel the attendance of complainants, witnesses, or officers as well as to require the production of such records or other materials as are necessary for the hearing of a complaint including records of the SPD, other persons, or other agencies.
7. Panel hearings shall not be open to the public.
8. Panel hearings shall not be recorded verbatim by any means or method.
9. Panel hearings shall follow the substantial evidence standard of proof.

10. Both complainants and officers subject to a hearing shall have the right to obtain counsel and to cross examine witnesses. For the purposes of a CRB hearing, a witness shall be defined as anyone who offers testimony at the hearing. Complainants may represent themselves, retain counsel to represent them, or use legal assistance options in the community. Cross-examination of any witness shall be limited to approximately 15 minutes but may be abbreviated or extended at the discretion of the panel chair. If there are multiple complainants or officers participating in the hearing, every complainant and officer (or their legal counsel) will be allowed to cross-examine any witness for approximately 15 minutes per witness, which may be abbreviated or extended at the discretion of the panel chair.

Questions posed during cross-examinations shall be limited in scope and must be directly relevant to the case. Individuals conducting the cross-examinations shall not be allowed to intimidate or have the effect of intimidating a witness. Questions allowed during cross-examinations shall be limited to the following criteria:

- a. to clarify facts presented under direct testimony
- b. to identify contradictory testimony that speaks to a witness' credibility
- c. to identify circumstances which may have interfered with a witness' ability to observe the incident
- d. to assess the mental or physical state of the witness at the time of observation

Objections during the course of questioning by cross-examiners shall not be allowed. The panel chair shall not allow any questioning of witnesses that violates the principles specified in the hearing policies and procedures.

Reference to a complainant's criminal record or an officer's complaint or disciplinary record may be noted and may be considered by the panel. However, no questions relating to a complainant or officer's past record shall be allowed during cross-examination.

11. Prior to the commencement of the hearing, the panel members shall receive a copy of the administrator's investigative report as well as a copy of the entire case file.

12. The hearing shall proceed as follows:

- a. The chair of the panel shall convene the hearing.
- b. All panel members, the CRB administrator, and any complainants, witnesses, or officers present shall be introduced by name and identified as complainant, witness, or subject officer.
- c. The complainant, if present, shall be offered the first opportunity to testify. The complainant(s) shall provide a description of the events that are the basis of the complaint. At the conclusion of the complainant's testimony, the officer or the officer's legal counsel may cross-examine the complainant(s) within the limits specified in paragraph #10 above. Members of the hearing panel may then pose questions to the complainant(s) at the conclusion of the cross-

- examination.
- d. Any subject officer, if present, shall be the next individual to testify. The officer shall provide a description of the events that are the basis of the complaint. At the conclusion of the officer's testimony, the complainant or the complainant's legal counsel may cross-examine the officer(s) within the limits specified in paragraph #10 above. Members of the hearing panel may then pose questions to the officer(s) at the conclusion of the cross-examination.
  - e. Any third party witness(es), if present, shall be the next individuals to testify. The witness(es) shall share with the panel any and all knowledge that they possess relevant to the complaint that is currently before the panel. At the conclusion of the witness' testimony, the complainant or the complainant's legal counsel may cross-examine the witness within the limits specified in paragraph #10 above. The subject officer or the subject officer's legal counsel may then cross-examine the witness within the limits specified in paragraph #10 above. Members of the hearing panel may pose questions to the witness(es) at the conclusion of the cross-examinations. Third party witnesses shall be in the hearing room only when they are testifying, being cross-examined, or being questioned by the panel.
  - f. The panel chairperson shall function as the hearing administrator during panel hearings. The role of the hearing administrator will be to resolve any procedural points of contention that arise during the hearing by fairly and impartially enforcing the CRB's hearing policies and procedures.
  - g. The hearing panel shall exclude the complainant(s), officer(s), or witness(es) from the proceeding when the panel receives and considers evidence involving confidential matters that are unrelated to the allegations in the complaint.
  - h. After all witnesses have testified and been cross-examined, the officer or the officer's legal counsel shall have the opportunity to make a closing statement in which any objections or rebuttals to prior testimony may be cited. Next, the complainant or the complainant's legal counsel shall have the opportunity to make a closing statement in which any objections or rebuttals to prior testimony may be cited.
  - i. The hearing shall then conclude and the panel members shall convene in private to deliberate.
13. Decisions of the panel shall be made by majority vote. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisors. The decision shall include findings of fact and may include recommendations for discipline. If the panel finds that the officer may have engaged in criminal conduct, it may refer the matter to the district attorney and request that he/she initiate an investigation.
14. After hearing the testimony of all involved parties and reviewing all the available evidence, the panel shall state a finding of one of the following:

- a. Unfounded: the investigation indicates the alleged act did not occur.
  - b. Exonerated: the investigation indicates the act occurred but that the act did not constitute misconduct.
  - c. Insufficient Evidence: the investigation discloses insufficient evidence to clearly prove or disprove the allegation.
  - d. Sustained: the investigation indicates that the act did occur and constitutes misconduct.
15. If a panel finds that misconduct has occurred the CRB Administrator shall notify the Chief of Police, the officer(s) who were the subject(s) of the complaint, and the complainant, in writing within one (1) business day of the panel's findings and recommendations, by verifiable means. Such recommendations may include disciplinary sanctions including but not limited to counseling, reprimand, suspension, retraining, demotion or dismissal. The panel may also recommend that restitution be paid to the complainant by the city for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.
16. The panel shall report its findings in mandated reporting periods in accordance with Section Seven, Subsection 2, paragraph (d) of local law 11 of 1993 as amended.

The actions of the Board do not preclude action by the judicial system. A finding or decision by the Board shall not have any collateral effect upon a subsequent administrative or judicial proceeding.

## APPENDIX E

### PROPOSED LEGISLATION

#### CIVILIAN POLICE ACCOUNTABILITY COUNCIL CHICAGO, ILLINOIS

##### **Draft Legislation for an elected Civilian Police Accountability Council enabling prosecution of criminal police abuse of human rights<sup>149</sup>**

The Chicago Alliance Against Racist and Political Repression, together with representatives of many community-based organizations, has drafted a proposal for establishing a democratic, elected, Civilian Police Accountability Council (CPAC) in Chicago. Attorneys working with the CAARPR Task Force on Police Crimes is perfecting this proposal. It includes a strong prosecutorial component - CPAC may petition the Chief Judge of the U. S. District Court to allow criminal charges before a sitting Grand Jury when police commit a crime such as battery, unlawful arrest, racial profiling, torture, rape, and murder when committed by police officers. Illinois has abolished the death penalty. It should strive to abolish the arbitrary use of deadly force by police.

The draft legislation is a work in progress. Obtain the text at [www.StopPoliceCrimes.com](http://www.StopPoliceCrimes.com) and comment. Highlights of the proposed legislation include:

- Establish an elected CPAC over the Chicago Police Department. It shall have the authority to:
  - o Appoint the Superintendent of Police.
  - o Re-write the police rule book, including all use of force guidelines, Standard Operating Procedures, Rules, and General Orders.
  - o Investigate police misconduct.
  - o Investigate all police shootings, including all police involved shootings that kill unarmed people.
  - o Provide increased transparency of all investigations, including police involved shootings, and greater statistical analysis of demographic information of complaints by type and victim.
  - o Increase rates at which complaints are sustained based on thorough investigations of all allegations of police misconduct and violations of the US Constitution and Human Rights' law.
  - o Be the final authority regarding discipline in the Chicago Police Department. o Indict police officers for crimes they commit.
  - o Establish its own budget
- CPAC will replace the current rubber-stamp Police Board.
- CPAC will take over the job of the Independent Police Review Authority (IPRA) and eliminate it.
- CPAC will reduce bias and guarantee fair treatment of victims of police misconduct.

- CPAC will be elected by Police District and will have racially and ethnically equitable and proportional representation from each district.

The bill creating CPAC may be strengthened by adding some additional measures:

- CPAC should make simple complaint forms available to anyone, at City Hall, all public libraries, and all Police Department District Headquarters.
- CPAC should Encourage UN Human Rights Commission to audit Chicago Police standards and their implementation.
- CPAC can establish a democratically constituted Police Pension Review Board
- CPAC can assign a Civilian to be Chief of the Internal Affairs division, as in New Orleans.
- CPAC can create of a successor/ leadership program within the ranks for the Superintendent of police.
- CPAC can increase community outreach and involvement in our police districts and departments.

For information contact: Chicago Alliance Against Racist and Political  
Repression 1325 S. Wabash Ave. Suite 105  
Chicago IL 60605  
312-939-2750

Or email [contact@naarpr.org](mailto:contact@naarpr.org) or visit [www.StopPoliceCrimes.com](http://www.StopPoliceCrimes.com), or [www.naarpr.org](http://www.naarpr.org)

## ABOUT THE AUTHORS

The research and writing of “The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York,” is an extension of the authors’ activism as members of the anti-police brutality group Enough Is Enough. In 2013, Benny Warr, a disabled Black man using a motorized wheelchair, who had committed no crime, was beaten by police officers in Rochester, New York. In response, members of the community rose up and said, “Enough Is Enough!” Enough racial profiling, enough police excessive use of force, enough ineffective civilian review processes, enough lack of disciplinary consequences for police misconduct, enough suffering for poor people of color targeted by police. From this protest, Enough Is Enough was born.

Barbara Lacker-Ware, a freelance grant writer and co-owner of Elf Editing & Writing Services, is an activist with Enough Is Enough and Rochester ACTS; she is a member of Shades of Sisterhood. Barbara lives in Irondequoit, New York, with her husband Michael; they have a son and daughter in Chicago. Barbara may be contacted about this document at PABROC17@gmail.com.

Ted Forsyth is a full-time activist with the Flying Squirrel Community Space and Enough Is Enough. He is a journalist with Rochester Indymedia. Currently, Ted is writing a book reviewing 52 years of police violence in Rochester and the community’s efforts to attain justice. Ted lives in Rochester, NY, with his wife and their daughter. Ted may be contacted about this document at PABROC17@gmail.com.

## END NOTES

<sup>1</sup> See for example, Rochester City Council Ordinance No. 2016-286, paying damages of \$6,962,374 to settle the case of Peacock vs. City of Rochester et al, 9/14/16.

<sup>2</sup> Deborah Foster, "The 'Few Bad Apples' Theory of Police Reform Is Deadly Wrong" Human Development Project, 7/4/16.

<sup>3</sup> Kristian Williams, *Our Enemies in Blue: Police and Power in America*, Third Edition, pages 90-119, 2015.

<sup>4</sup> Ta-Nehisi Coates, "The Case for Reparations," *The Atlantic*, p. 4-7, 5/21/14.

<sup>5</sup> Editorial Board, "'Redlining' an Ugly Reality in Rochester," *Democrat & Chronicle*, January 20, 2015.

<sup>6</sup> City of Rochester Bureau of Communications, Uniformed Officers Lists, 2014 and 2015.

<sup>7</sup> Brad Heath, "Racial Gap in U.S. Arrest Rates: 'Staggering disparity,'" *USA Today*, 11/19/14.

<sup>8</sup> Meaghan McDermott, "Black Arrest Rate High in Rochester Area," *Democrat & Chronicle*, 11/19/14.

<sup>9</sup> The Rochester Police Department (RPD) *General Order Manual* 2015, p. 321, states:

### I. DEFINITIONS

A. Appropriate Force - The reasonable force, based upon the totality of the circumstances known by the member, to affect an arrest, overcome resistance, control an individual or situation, defend self or others, or to prevent a subject's escape.

B. Force - Any intentional physical strength or energy exerted or brought to bear upon or against a person for the purpose of compulsion, constraint, or restraint.

### II. POLICY

A. Members may use only that level of physical force necessary in the performance of their duties within the limits established by Article 35 of the New York State Penal Law, and consistent with the training and policies of the Rochester Police Department. The appropriateness of force used is dependent on the "totality of the circumstances" at the moment the force is used. The use of deadly physical force will be governed by GO 340.

<sup>10</sup> New York State Penal Law §35.30 Justification: use of physical force in making an arrest or in preventing an escape states a police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that:

(a) The offense committed by such person was: (i) a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person; or (ii) kidnapping, arson, escape in the first degree, burglary in the first degree, or any attempt to commit such a crime; or

(b) The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefor or attempting to escape from custody, such person is armed with a firearm or deadly weapon; or

(c) Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.

<sup>11</sup> Martin Kaste, "Police Are Learning to Accept Civilian Oversight, But Distrust Lingers," WXXI Broadcast, 2/21/15

<sup>12</sup> Eduardo L. Calderon and Maria Hernandez-Figueroa, *Citizen Oversight Committees in Law Enforcement*, Center for Public Policy, California State University at Fullerton, 2013.

<sup>13</sup> City of Syracuse, "A local law of the City of Syracuse amending local law 11 of 1993 which established a citizen review board," Section One, Purpose, 2011.

<sup>14</sup> *Ibid*, Section Seven, Powers and Duties, (3) Receipt, Review, and Response to Complaints, (c) Investigation of Complaints.

<sup>15</sup> *Ibid*, (f) Hearing Process, (2).

<sup>16</sup> *Ibid*, (f) Hearing Process, (5).

<sup>17</sup> City of Syracuse, Citizen Review Board, Fourth Quarter & Annual Report, 2015.

<sup>18</sup> Syracuse uses a substantial evidence standard of proof. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (*Richardson v. Perales*, 402 U.S. 389, 1971. A

"practical test" for determining whether substantial evidence exists is to "measure the evidence against the standard of sufficiency such as to require a court to submit it as a question of fact to a jury" *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181, 379 N.E.2d 1183, 408 N.Y.S.2d 54, 1978.

<sup>19</sup> Rochester currently uses a preponderance of the evidence standard of proof. The preponderance of evidence is evidence that proves it is more likely than not that the facts presented are true. If the balance is 51% in favor (or not in favor) of the fact being true (or not true), it is proven by a preponderance of the evidence.

<sup>20</sup> Invisible Institute, Citizens Police Data Project, [www.invisible.institute/police-data](http://www.invisible.institute/police-data), 2015.

<sup>21</sup> Ted Forsyth, "A Comparative Analysis of the Police Advisory Board and the Civilian Review Board," (unpublished), page 27, 2015.

<sup>22</sup> City of Rochester Resolution 77-18, 1977.

<sup>23</sup> "Former Chief in Rochester Found Guilty," *New York Times*, February 26, 1992.

<sup>24</sup> The Center for Dispute Settlement (CDS) has been involved in civilian oversight since 1977, according to Civilian Review Board (CRB) annual reports, 2001-2015, page 2.

<sup>25</sup> A Request for Proposal process was instituted by the City of Rochester in 2012, but the Center for Dispute Settlement has been the only organization contracted to administer the Civilian Review Board per contract from 2013 to date.

<sup>26</sup> City of Rochester Resolution 92-40, 10/1/92.

<sup>27</sup> City of Rochester Resolution 95-8, 2/2/95.

<sup>22</sup> CRB Annual Report 2015, page 27.

<sup>29</sup> Professional Standards Section (PSS) Annual Reports prior to 2002 are not available, per Freedom of Information Law (FOIL) Request to the Rochester Bureau of Communications.

<sup>30</sup> CDS CRB Annual Reports 2011 page 6, 2012 page 7, 2013 page 8.

<sup>31</sup> Sgt. John DiVincenzo, Rochester Police Department (RPD) PSS, in a meeting with the Coalition for Police Reform (CPR), 10/28/15.

<sup>32</sup> Transcription of Court Proceedings in case of *Benny T. Warr and Nina M. Warr vs. Anthony R. Liberatore, Joseph M. Ferrigno, II, Mitchell Stewart, II, James M. Sheppard and City of Rochester*, United States District Court for Western District of New York, pages 11-15, 8/25/15.

<sup>33</sup> Lt. Mark Simmons, RPD PSS meeting with CPR, 10/28/15.

<sup>34</sup> Ibid.

<sup>35</sup> Most municipalities accord disciplinary power to the chief of police, although many civilian review agencies would prefer to place discipline of officers under civilian control. Los Angeles has instituted a Police Commission, which employs an Inspector General (IG), who "has oversight over Department's internal disciplinary process... The staff receives copies of every personnel complaint filed, and tracks selected cases along with any resultant litigation." The IG "audits selected investigations and conducts systemic reviews of the disciplinary system to ensure fairness and equity. Although the Commission, by Charter, does not have the authority to impose discipline, it receives regular reports and can investigate particular cases."

<sup>36</sup> City of Rochester, Civilian Review Board Recommendations 2012 by Committee, provided by Ryan Acuff and Jennifer Banister, community participants in the Commission.

<sup>37</sup> Ibid.

<sup>38</sup> A Notice of Claim is a document that may be filed with an entity prior to engaging in a civil lawsuit.

<sup>39</sup> Regardless of how or where civilians make initial complaint, they must be interviewed by PSS, usually at their office, 492 Lyell Avenue, Rochester, NY.

<sup>40</sup> Case findings are required to be sent to complainants within 18 months.

<sup>41</sup> This is mischaracterized. No disciplinary details are ever provided to the complainant. The only updates they receive are that the case is still under review and then what the final determination was.

<sup>42</sup> PSS Annual Reports are uploaded to the City of Rochester RPD website.

<sup>43</sup> This requirement to be a mediator makes it much harder for the average Rochester resident to serve on the CRB, due to training cost, time, and travel.

<sup>44</sup> CDS Job Announcement, Community Advocate for Police Community Relations (Program Manager), 12/10/12.

<sup>45</sup> PSS Lt. Mark Simmons and Sgt. John DiVincenzo, Sgt. Chris Kavanaugh, at a meeting with the Coalition for Police Reform (CPR), 10/28/15

<sup>46</sup> City of Rochester Resolution 92-40, Section 9, 10/1/92.

<sup>47</sup> James P. Smith, Records Access Officer, Bureau of Communications, September 2015.

<sup>48</sup> Lt. Mark Simmons, PSS meeting with CPR 10/28/15.

<sup>49</sup> James P. Smith, Records Access Officer, in response to FOIL request #60622, 11/2/16.

<sup>50</sup> Sgt. Chris Kavanaugh, PSS meeting with CPR 10/28/15.

<sup>51</sup> Sgt. John DiVincenzo, PSS meeting with CPR 10/28/15.

<sup>52</sup> PSS annual reports refer to “citizens,” but any civilian, US citizen or not, can file a complaint against the police.

<sup>53</sup> Russell Davis, interviewed by Ted Forsyth of Rochester IndyMedia on 10/25/11.

<sup>54</sup> Both authors have accompanied complainants to the PSS office and witnessed the process of making complaints.

<sup>55</sup> Authors interviewed several individuals who prefer not to be named for fear of further retaliation.

<sup>56</sup> Civil rights attorney who prefers to remain anonymous.

<sup>57</sup> PSS Annual Report 2013, page 8.

<sup>58</sup> PSS Annual Report 2014, page 8.

<sup>59</sup> See CRB Annual Reports from 2006-08 and 2012-15, “Road Show Presentations.”

<sup>60</sup> Sgt. Chris Kavanaugh, PSS meeting with CPR 10/28/15.

<sup>61</sup> This is stated several times in each – in 2011: pages 3, 7, 10-11; in 2012 & 2013: pages 2-3, 7, 10-11; in 2014: pages 2-3, 12; in 2015: 2-4, 13.

<sup>62</sup> City of Syracuse, Syracuse Citizen Review Board Annual Reports, 2012-2015.

<sup>63</sup> Syracuse uses a substantial evidence standard of proof. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (*Richardson v. Perales*, 402 U.S. 389, 1971. A “practical test” for determining whether substantial evidence exists is to “measure the evidence against the standard of sufficiency such as to require a court to submit it as a question of fact to a jury” *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181, 379 N.E.2d 1183, 408 N.Y.S.2d 54, 1978. Rochester currently uses a preponderance of the evidence standard of proof. The preponderance of evidence is evidence that proves it is more likely than not that the facts presented are true. If the balance is 51% in favor (or not in favor) of the fact being true (or not true), it is proven by a preponderance of the evidence.

<sup>64</sup> City of Rochester, Civilian Review Board Recommendations 2012 by Committee, provided by Ryan Acuff and Jennifer Banister, community participants in the Commission.

<sup>65</sup> City of Rochester, “Request for Proposals, Civilian Complaint Process, Rochester Police Department,” issue date 11/8/12.

<sup>66</sup> City of Rochester, City Council Ordinance No. 2012-434.

<sup>67</sup> A FOIL request to the City of Rochester records office yielded no information on this issue.

<sup>68</sup> Center for Dispute Settlement, Action for a Better Community, Urban League of Rochester and Baden Street Settlement, Ordinance No. 2015-410, Rochester City Council, 12/15/15.

<sup>69</sup> Rochester Police Department, Request for Proposals, Police Complaint Services, page 2, Section 1, Scope of Services, 1.2 Issuing Office, 9/28/15.

<sup>70</sup> City of Rochester, “Request for Proposals, Civilian Complaint Process, Rochester Police Department,” Section 2, General Instructions to Agencies, B. Scope of Services, #4. b., issue date 11/8/12.

<sup>71</sup> Merriam Webster Dictionary, 2016.

<sup>72</sup> CRB Annual Reports, 2000-2015.

<sup>73</sup> City of Rochester City Council Ordinance Nos. 2013-431 and 2014-322.

<sup>74</sup> City of Rochester City Council Ordinance No. 2015-410.

<sup>75</sup> City of Rochester, “Request for Proposals, Civilian Complaint Process, Rochester Police Department,” Section 2, General Instructions to Agencies, B. Scope of Services, #7, issue date 11/8/12.

<sup>76</sup> Ibid.

<sup>77</sup> City of Rochester City Council Ordinance Nos. 2013-431, 2014-322, and 2015-410.

<sup>78</sup> City of Rochester, “Request for Proposals, Civilian Complaint Process, Rochester Police Department,” Section 2, General Instructions to Agencies, B. Scope of Services, #7, issue date 11/8/12.

<sup>79</sup> City of Rochester, Police Community Relations Program: Civilian Review Board 2016 Second Quarter Report, January 1, 2016 through June 30, 2016, page 10.

<sup>80</sup> Resolution 92-40 states that from a “pool of eligible board members” trained by CDS, the “Mayor will name” a group of “individuals to serve as Chairs of the CRB,” Sections 2 and 3, 10/1/92.

<sup>81</sup> Center for Dispute Settlement (CDS) proposal submitted to the RPD, Section 1.3, E., 10/8/15.

<sup>82</sup> United States Census Bureau American Fact Finder estimates 2001-2015.

<sup>83</sup> CRB Annual Reports, 2001 and 2015.

<sup>84</sup> United States Census Bureau, 2000 and 2010.

<sup>85</sup> CDS proposal submitted to RPD, Section 1.3, D., 10/8/15,

<sup>86</sup> CRB Annual Report 2012, page 6.

<sup>87</sup> City of Rochester Resolution 92-40, Section 2, 10/1/92.

<sup>88</sup> City of Rochester Resolution 95-8, 2/2/95.

<sup>89</sup> City of Rochester Resolution 95-8, 2/2/95: "Whereas, in 1992, after a thorough investigation of the police review process, City Council created the Civilian Review Board (CRB), a body composed of civilian volunteers who have been trained by the Center for Dispute Settlement in mediation techniques and police procedures; and Whereas, each CRB panel is made up of three trained volunteers who review the investigation of a complaint against a Rochester police officer, issue a finding and forward the finding to the Chief of Police for consideration."

<sup>90</sup> CDS proposal submitted to RPD, Sections 2.1.6 and 2.1.7, 10/8/15.

<sup>91</sup> Lo, Bernard and Marilyn J. Field, *Conflict of Interest in Medical Research, Education, and Practice*, Institute of Medicine of the National Academies, April 2009.

<sup>92</sup> Fischbach, Ruth, and Joyce Plaza, "Responsible Conduct of Research," Center for Bioethics, Columbia University, 2016.

<sup>93</sup> In 2015, that amount was \$145,700, according to City Council Ordinance No. 2015-410, Authorizing agreement with the Center for Dispute settlement, Inc. to provide complaint management services.

<sup>94</sup> RPD General Order Manual, Rules of Conduct, Discipline, Order #301, Section II, 2015.

<sup>95</sup> PowerPoint presentation handout, PSS meeting with CPR 10/28/15.

<sup>96</sup> Lt. Mark Simmons, PSS meeting with CPR 10/28/15.

<sup>97</sup> Lt. Michael Callari, PSS meeting with CPR 4/10/15.

<sup>98</sup> PowerPoint presentation handout, PSS meeting with CPR 10/28/15.

<sup>99</sup> Uniformed officer lists provided ages only for 2012; these ages were repeated as identical in subsequent years.

<sup>100</sup> For example, PSS Annual Report 2015, pages 6-9.

<sup>101</sup> Notes taken in open court by Barbara Lacker-Ware, United States District Court for the Western District of New York, *Benny T. Warr and Nina M. Warr vs. Anthony R. Liberatore, et al.*, 4/30/15.

<sup>102</sup> PSS Annual Reports, Citizen Complaints, Departmental Investigations, Command Discipline, Satellite Issues, 2003-15

<sup>103</sup> There is no definition of "discourtesy" in the RPD *General Order Manual*. A doctoral research publication by Demosthenes Long, *Understanding Police-Citizen Conflict: A Neighborhood Environmental Perspective*, defines "discourtesy" as "inappropriate behavior or verbal conduct by an officer, including rude or obscene gestures, vulgar words, and curses," 2012, page 15.

<sup>104</sup> RPD *General Order Manual*, 2015.

<sup>105</sup> The reader may note that according to CRB and PSS annual reports of complaint allegations, only 2% were sustained, but disciplinary reports indicate 3% were sustained and disciplined. Perhaps this is due to the four complaints not addressed in the disciplinary reports.

<sup>106</sup> PSS Annual Reports 2003-2015, Departmental Investigations, Command Discipline, Satellite Issues.

<sup>107</sup> Sandra Peddie and Adam Playford, "For Their Eyes Only: police misconduct hidden from public by secrecy law, weak oversight," *Newsday*, 12/18/13.

<sup>108</sup> United Kingdom government website, [New regulations prevent police officers retiring or resigning to avoid dismissal - News stories - GOV.UK](http://www.gov.uk/government/organisations/home-office)[www.gov.uk/government/organisations/home-office](http://www.gov.uk/government/organisations/home-office), 1/12/15.

<sup>109</sup> PSS Annual Report 2003, pages 3-6.

<sup>110</sup> PSS Annual Reports 2003-2015, Departmental Investigations, Command Discipline, Satellite Issues.

<sup>111</sup> RPD *General Order Manual*, 2015.

<sup>112</sup> *Ibid*, Article 20, Section 1, pages 28-30.

<sup>113</sup> *Ibid*, Article 20, Section 1, #16, page 30.

<sup>114</sup> *Ibid*, Article 20, Section 1, #13, page 30.

<sup>115</sup> K. Williams, *Our Enemies in Blue: Police and Power in America*, pages 227-228.

<sup>116</sup> *Ibid*, page 228.

<sup>117</sup> Patrick Flanigan, "Criticism Hounds Police Oversight," *Democrat & Chronicle*, 3/11/01.

<sup>118</sup> The Committee on Open Government is a unit housed in the New York Department of State that oversees and advises the government, public, and news media on Freedom of Information, Open Meetings, and Personal Privacy Protection Laws. The Committee offers guidance in response to phone inquiries, prepares written legal advisory

opinions, and provides training to government and other interested groups. Recommendations to improve open government laws are offered in an annual report to Governor and the State Legislature.

<sup>119</sup> Robert Freeman, 2014 Annual Report, Committee on Open Government, page 3.

<sup>120</sup> Robert Freeman, Advisory Opinions, New York State Committee on Open Government, FOIL-AO-17794, 9/1/09 and FOIL-AO-19088, 11/20/13.

<sup>121</sup> New York Civil Service Law § 50-a: Personnel records of police officers, firefighters and correction officers.

<sup>122</sup> Lt. Mark Simmons, PSS meeting with CPR 10/28/15.

<sup>123</sup> Police commander at meeting held by Mayor Lovely Warren and RPD in City council chambers November 2015.

<sup>124</sup> Police Chief Michael Ciminelli at a meeting with CPR and police officials, 11/6/15.

<sup>125</sup> Verbal accounts to the authors by complainants who chose not to be identified for fear of further retaliation.

<sup>126</sup> Ibid.

<sup>127</sup> City of Rochester website, <http://www.cityofrochester.gov/Priorities.aspx?id=8589966705>.

<sup>128</sup> See for example, Rochester City Council Ordinance No. 2016-286, paying damages of \$6,962,374 to settle the case of *Peacock vs. City of Rochester et al*, 9/14/16.

<sup>129</sup> National Association of Civilian Oversight in Law Enforcement (NACOLE), [www.nacole.org](http://www.nacole.org)

<sup>130</sup> Chicago Alliance Against Racist and Political Repression, Civilian Police Accountability Council proposed legislation for Municipal Code of Chicago, 2015.

<sup>131</sup> City of Syracuse, “A Local Law of the City of Syracuse Amending Local Law 11 of 1993 which Established a Citizen Review Board”; and “Citizen Review Board Panel Hearing Policies and Procedures, Revised and Updated,” June 2014.

<sup>132</sup> City of Newark, Mayoral Executive Order, 4/30/15.

<sup>133</sup> City of Newark, Consent Decree between the City of Newark and the United States Department of Justice, 3/30/16.

<sup>134</sup> City of Oakland, Ordinance No. 12454, 11/12/02.

<sup>135</sup> New York City Charter, Chapter 18-A, Civilian Complaint Review Board (CCRB); Memorandum of Understanding Between the CCRB and the NYPD of the City of New York concerning the Processing of Substantiated Complaints; and Rules of the Civilian Review Board, 2013.

<sup>136</sup> New York City Department of Investigation, *The Office of the Inspector General for the NYPD First Annual Report*, March, 2015.

<sup>137</sup> City of Albuquerque, Code of Ordinances, Part 1: Civilian Police Oversight Agency, 2015.

<sup>138</sup> City of Albuquerque, Civilian Police Oversight Agency, Policies and Procedures, 2015.

<sup>139</sup> City of Albany, By-Laws and Rules of the Citizens’ Police Review Board of the City of Albany, NY, 2000.

<sup>140</sup> City of Austin, Citizen Oversight of the Austin Police Department, 2001.

<sup>141</sup> County of Los Angeles, charter of the County of Los Angeles, Title 3, Advisory Commissions and Committees; and Division 3, Departmental Provisions, Chapter 6, 12/9/16.

<sup>142</sup> City of Seattle Legislative Information Service, Ordinance amending Seattle Municipal Code, 7/21/08.

<sup>143</sup> City of Newark, Mayoral Executive Order, April 30, 2015.

<sup>144</sup> City of Newark, Consent Decree between the City of Newark and the United States Department of Justice, March 30, 2016.

<sup>145</sup> City of Newark, Mayoral Executive Order, April 30, 2015.

<sup>146</sup> Shane, Jon, *Police Employee Disciplinary Matrix: An Emerging Concept*, Police Quarterly, March 2012.

<sup>147</sup> See <http://mn.gov/sentencing-guidelines/guidelines/currentguidelines.jsp>.

<sup>148</sup> City of Rochester and Rochester Police Locust Club, Inc., Contract Agreement July 1, 2013-June 30, 2016.

<sup>149</sup> The draft legislation is used here in the interest of brevity. The full ordinance proposed and submitted to Chicago City Council is 20 pages and may be found at <http://naarpr.org/wp-content/uploads/2016/07/Council-Ready-Proposed-Legislation.pdf>.

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## **COMMENTS BY HAL PHILLIPS BEFORE THE CHARTER REVISION COMMISSION: MAY 2, 2019**

I'd like to thank the Commission for the consideration that you've given to ranked choice voting, an important reform that I've long felt New York City needs. I've come here tonight to make a brief case for why this should extend beyond citywide elections and include local elections.

I've researched the results for city council primaries in 2017 and 2013 in which three or more candidates ran, meaning ranked choice voting could potentially have been used. What I found is that in 2017 and 2013 combined, there were 40 city council primaries with three or more candidates. Of those 40, 30 were won by a candidate who received under 50%. Twelve were won by a candidate who received under 40%. And three of these primaries were won by a candidate who received under 30% of the vote. Those three were all in 2013, when we had a large number of open seats, as we will again in two years. In five elections, the winning candidate won less than one third of the vote, and in one election, the winning candidate actually won less than a quarter of the vote.

With no disrespect intended toward any of the winning candidates, this seems obviously and shockingly anti-democratic. We have elected officials in office today who were voted against by a vast majority of their constituents, yet were still deemed elected. That is an obviously broken system. I'm deeply concerned that in 2021, when term limits will create dozens of open seats, we will once again have official winners who didn't even win one-third of the vote. I also suspect that given some recent trends, including the ability of social media to amplify the voices of candidates who might previously have been overlooked, we will see more and more elections with a large number of competitive candidates, which under our current system means more and more split votes. If we want our election results to reflect the will of the voters, it is vital that we reform our process before we once again elect people to office with less than three-quarters of the vote.

To: 2019 NYC Charter Revision Commission

Thank you for holding the public hearing on May 2<sup>nd</sup> at Brooklyn Borough Hall.

Below is a fuller version of my presentation to you at this hearing.

My name is Marion Yuen. I am a resident of Midwood, Brooklyn, a licensed real estate broker and green infrastructure professional.

Last year, I submitted written input in which I urged the Commission to take on Nature as our partner and friend.

We are in 2019, and scientists tell us that there are about 12 years before our planet's climate would very likely cross an irreversible threshold. Really, we all have heard news reports that, in some locations and for some of the earth's inhabitants, life has already crossed an irreversible threshold.

This Commission has the unique opportunity to see all its work, not just land use matters, in the context of environmental degradation and global climate change. You have the historic responsibility to recommend a 2019 version of the Charter of the Forest. As you know, in 1217, the English Charter of the Forest was confirmed as complement to the Magna Carta upon which much of U.S. law is based.

The recently passed Climate Mobilization Act and the City Council's Intro. 1399 to create a Department of Sustainability and Climate Change are wonderful beginnings. At the same time, the totality of this year's Charter revisions needs to be seen in the context of the existential challenges that irreversible environmental degradation and global climate change bring right up to our faces.

Last week, at a town hall meeting, a well-intentioned and highly respected elected official promised to fight till climate change is no more. Such formulation is based on mistaken understanding that climate change is something or somebody we can beat up, if we tried hard enough.

A changing climate is part of nature. But human actions have pushed our planet's climate out of balance at a run-away pace. Legislation to reduce greenhouse gas emissions might slow down the pace of change a bit.

As we approach the irreversible threshold, we will find that more and more aspects of our lives are affected by the rapid climate changes – including public health, increasing inequity, conflict and crime. So, it is impossible to pre-define which and how our municipal services would be impacted or disrupted.

I want to illustrate what I mean. Many lower-priced eateries (not just take-outs) and food pantries serve all food in disposable plates and containers – not only to economize but possibly to comply with health regulations with less effort. Each disposable plate was made using energy and water; after use, it goes to the land fill. Washing durable dishes produces grey water (which also results from laundry, hand washing, bathing, etc.), and this grey water is processed in wastewater treatment plants using energy at taxpayers' expense and contributing to greenhouse gas emissions. If grey water (not water from toilets) were fed in large scale to vegetation as an integral part of NYC's infrastructure, the resulting evapotranspiration would produce cooling of our city blocks, ameliorate Urban Heat Island effect, and lessen our dependence on air conditioners.

Environmental degradation and global climate change have direct, secondary, indirect, rippling and circular effects. They form the context in which we live in 2019.

But here is the good news. In this great City, we have a lot of creativity and talent. We already have many tools and techniques that can put us on a trajectory back to the environment when Native Americans and other species lived on this land in harmony with Nature – a trajectory that does not require the tearing down of NYC's iconic buildings or the much needed housing.

We can and must work with Nature to tap into her regenerative systems and her power. Humans cannot do it alone. Why fight Nature? Nature will be our friend and partner if we let her.

Therefore, I urge the Commission to adopt **Addressing climate change AND Restoring our City's relationship with Nature** as the **rubric**, the headline, of this round of Charter revision.

Thank you.

Marion Yuen