

CHAPTER

No. AN ORDINANCE AMENDING CHAPTER 18½, "POLICE," SECTION 2, "PROVIDENCE EXTERNAL REVIEW AUTHORITY (PERA)" OF THE PROVIDENCE CODE OF ORDINANCES

Be it ordained by the City of Providence:

SECTION 1. Chapter 18 ½, Section 2 is hereby amended as follows:

Sec. 18½-2. - Providence External Review Authority (PERA).

- (a) *Established.* There is hereby created a Providence External Review Authority ("PERA" or "authority"). The authority shall create and implement community outreach programs, review policies and procedures of the Providence Police Department and review allegations of misconduct on the part of sworn officers of the city police department, including investigating the same, conducting hearings and making findings of fact with respect to those allegations. The authority by a majority of all its members shall appoint, subject to the approval of the city council, an Executive Director for an initial term of two (2) years, who shall be an attorney-at-law and/or has substantial experience with public administration. Upon expiration of the initial two-year term, the Executive Director shall continue to serve on the authority unless a new Executive Director is appointed to replace them. The Authority shall promulgate rules for the periodic performance review of the Executive Director. The Executive Director shall hire administrative and investigative staff. Investigators hired shall be civilians who have appropriate prior experience or training. "Civilian," for the purpose of this section, is a person who is not now a sworn officer of a law enforcement agency.
- (b) *Scope of authority.* The authority shall:
- (1) Create and implement community outreach programs;
 - (2) Review police department and police academy policies and training procedures and make recommendations for change; and
 - (3) Receive complaints that allege misconduct by a police officer or officers, including, but not limited to, the following:

Use of excessive force. "Excessive force" shall mean the use of greater physical force than reasonably necessary to repel an attacker or terminate resistance, it does not include force that is reasonably necessary to effect a lawful purpose.

Inappropriate language or conduct. "Inappropriate language or conduct" shall mean harsh, violent, profane, or derogatory verbal or nonverbal language or any action that demeans the dignity of an individual, including, but not limited to profanity, racial, ethnic, sexist or racial slurs. *Harassment.* "Harassment" shall mean repeated, unwarranted verbal or physical annoyances, or abuse (whether physical or verbal) threats of demands.

Lost/Missing Property and/or Theft. "Theft" shall mean the taking or concealing of any item or thing of value without the consent of the reasonably perceived rightful owner and with the intent to deprive the rightful owner of that item or thing.

Discrimination. Discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual or gender orientation, disability, age, gender, or economic status.

- (4) Review patterns of police behavior and practice in the aggregate (i.e., city, district, shift level). This includes but is not limited to a review of police stops, searches, use of force, response times, and deployment of technologies.
- (5) Establish an Early Warning System (EWS) to identify officers with potential problems who may need counseling or retraining.
- (6) Periodically audit completed Providence Police Office of Professional Responsibility/Internal Affairs (OPR) investigations and review for thoroughness and compliance with policy and procedures. May make recommendations to reopen cases due to defects in process/procedure, and or new relevant information that may impact the original findings, or other reasonable grounds. May recommend amending findings if PERA does not concur with the OPR findings based on its own interpretation of applicable policy, procedure, and or law or may conduct its own investigation of the incident.
- (7) Perform such other functions as authorized in Section 18 ½-~~34~~ of this Chapter, entitled the “Providence Community-Police Relations Act,” in accordance with the provisions thereof.

(c) *Composition.* The authority shall be comprised of nine (9) members. Of the nine (9) members, one (1) shall be appointed by the mayor, and eight (8) shall be elected by a majority of the members of the city council. In order to establish staggered terms, upon enactment of this section, the mayoral appointee, and two (2) council appointees shall be appointed for a term of one (1) year (expiring December 31, 2018); three (3) council appointees shall be appointed for a term of two (2) years (expiring December 31, 2019); three (3) council appointees shall be appointed for a term of three (3) years (expiring December 31, 2020). Upon expiration of these initial terms each subsequent mayoral and council appointee shall serve for a term of three (3) years. All such three-year terms shall expire at the end of their respective third calendar year (December 31st) notwithstanding the actual date of appointment.

Upon the expiration of a term, members shall continue to serve on the authority until reappointment or a new member is appointed to replace them.

Those interested in serving as an authority member must submit a letter of interest to the City Council President. An interview committee consisting of three City Council members and the Chairperson of the Authority and or the Executive Director shall conduct an in-person interview with the interested party when a vacancy exists.

Interested applicants shall first obtain a BCI background check conducted by the Rhode Island Attorney General’s office and submit the results with their letter of interest. Prior conviction shall not result in automatic disqualification from appointment to the Authority unless the underlying crime or crimes directly relate to the work to be performed as a member of the Authority. All authority members shall have an affirmative obligation to immediately inform the City Council President and the chairperson of the Authority in the event they are arrested during their term as an authority member, and the failure to do so shall result in automatic removal from the Authority.

No member of the Authority shall run for elected office at the municipal, state or federal level, hold an elected office in any capacity, or belong to or be appointed to any partisan organization in any city or town.

There shall be not more than two (2) former law enforcement officers appointed to the authority and not more than one (1) former law enforcement officer shall serve on any hearing panel. No person holding an elective office shall serve as an authority member. No

person currently employed as a law enforcement officer nor any member of his or her immediate family may serve as authority members.

The authority shall elect one (1) member to serve as chairperson and one (1) member to serve as vice-chairperson each to serve for a term of two (2) years.

- (d) *Compensation.* Each member shall be reimbursed for reasonable expenses incurred in the performance of his/her duties, however, no member shall be compensated for services performed.
- (e) *Duties.*
- (1) *Rulemaking notice and hearings.* The authority shall adopt rules governing its operation in accordance with its By-Laws, however any change to the rules must be approved by a vote of a simple majority plus one (1) of active board members. ~~All rules, and any amendments thereto, shall be promulgated after a public hearing, at which interested persons may present written and oral comments on the proposed rules. The authority shall, at least thirty (30) days prior to the date set for the hearing, give notice of its intention to adopt rules by publishing a notice of its intention to promulgate or amend rules in a newspaper of general circulation and by making copies of the proposed rules/changes available to the public.~~
- (f) *Meetings.* All meetings of the authority, any subcommittees and hearing panels shall be held in accordance with applicable law governing open meetings.
- (g) *Removal.* Any member or the Executive Director of the authority may be removed for incompetence, neglect of duty, misconduct or malfeasance by resolution of the city council. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the balance of the unexpired term of appointment by the previously denominated appointing authority.
- (h) *Executive Director.*
- (1) The Executive Director or their designee shall have the discretion to actively monitor any internal police department investigation of any citizen complaint alleging misconduct as defined in subsection (b)(3).
- (2) The Executive Director or their designee shall also have the discretion to monitor any internal investigation by the police department, regardless of external agency involvement, as to which the Executive Director believes it is in the city's best interest for PERA to be involved.
- (3) With an affirmative majority vote by the authority members, the Executive Director or their designee shall have the discretion to monitor potential Community Impact Events, which are investigations or complaints involving sworn police personnel that allege excessive force, bias, disparate treatment or violation of constitutional rights towards a group of citizens, and may decide if the authority will accept this matter as a Community Impact Event.
- (4) Staff and or consultants of the Executive Director shall be hired by the Executive Director and shall serve at the pleasure of the Executive Director. All staff will be hired in accordance with City of Providence hiring practices.
- (5) In the absence of an Executive Director, the Chairperson may assume and delegate duties to assure continuity of work upon notice of such vacancy to the City Council.

- (i) *Budget.* The funding of the Executive Director and all administrative staff and all other portions of PERA budget shall be administered as part of the city council budget and will not fall below 1.5% of the overall Providence Police Department budget.
- (j) *Bi-annual reports.* The authority shall submit to the mayor and the city council a report of its activities not fewer than two (2) times per year. The report shall include, among other topics, data and analysis of complaints and complaint trends and shall be open to the public. It shall further detail all of the authority's expenditures.
- (k) *Policy review.* Upon its own initiative or upon request of the mayor, a member of the city council or the Executive Director; the authority may initiate an examination of police policies, trends, academy training, annual training, technologies, or practices and issue recommendations for change. Within 60 days of receipt of the recommendations by PERA, the chief of police shall provide a written response to PERA detailing the department's decision on implementation of the recommendations. The decision will indicate whether the department has agreed to implement the changes in whole, in part, or rejected the recommendations and will provide an explanation for the decision.
- (l) *Outreach.* Authority shall conduct such outreach activities as necessary to inform the public of the authority and its practices. Any outreach shall be conducted with sensitivity to the diversity of languages and cultures present in the city.
- (m) *Complaint filing.* Any person, including, but not limited to:
- (1) An alleged victim;
 - (2) A witness;
 - (3) A parent, legal guardian, or immediate family of a victim having personal knowledge of alleged misconduct of a city police officer may file a written complaint with the authority by submitting said complaint at a location designated by the authority, including via an online portal. Additionally, upon probable cause, the authority may initiate its own investigation into the alleged misconduct of a police officer.
- (n) *Preliminary review.* Within thirty (30) days of the date on which the complaint is filed the Executive Director shall review such complaint and recommend to the authority:
- (1) The complaint be dismissed;
 - (2) The complaint be forwarded to mediation or to the police department's division of internal investigations and inspections;
 - (3) The complaint be held in abeyance pending the outcome of any ongoing police department internal investigation; or
 - (4) The complaint be transmitted for full investigation.

The authority shall promulgate guidelines delineating those factors to be assessed in making such recommendation.

All complaints shall be kept on file without regard to subsequent action of the Executive Director and the authority and shall be available to the public; provided that the name of the complainant and/or respondent shall be kept confidential to the extent required by law.

- (o) *Dismissal.* Upon dismissal of a complaint the Executive Director shall file written reasons for the same.
- (p) *Mediation.* The authority shall provide an informal mediation process to resolve those complaints of a more minor nature.
- (q) *Investigation.* Upon determination that a full investigation is warranted, the complaint shall be transmitted to an authority investigator. An investigation shall be completed within one hundred twenty (120) days of the date that the complaint was filed. The Executive Director may, upon request of the investigator, extend this deadline by not

more than sixty (60) days. The application of this deadline may be held in abeyance during such time as the Executive Director determines that an investigation might impede or harm a related criminal investigation.

- (r) *Evidentiary hearings.* Upon completion of such investigation, the Executive Director, may request a dismissal from the authority and the chair shall hold a hearing for the proposed dismissal (and in such event the Executive Director shall file a written statement providing reasons for such proposed dismissal) or forward the same to full hearing. The authority shall randomly select an odd numbered panel containing no less than three (3) people-person panel from its members to consider the matter and the chairperson shall designate a foreperson of the panel. At such evidentiary hearing, the authority shall weigh and consider all reliable and credible evidence. The rules of evidence as described in R.I.G.L. §42-35-10 shall be adhered to, with the exception that hearsay evidence will be admissible. The panel shall make all reasonable efforts to complete evidentiary hearings and render a written decision within sixty (60) days of the completion of the investigation. In those instances in which the complainant is otherwise unrepresented by counsel, the authority legal counsel shall present evidence to the panel on behalf of the complainant. The police officer may be represented by counsel and/or union representatives at the hearing. The officer (if unrepresented) or their legal counsel may present evidence and conduct cross-examination of witnesses.
- (s) *Subpoena power.* At the request of legal counsel for either party, or pro se complainants, the Executive Director shall compel the presence of witnesses and/or documents at evidentiary hearings by applying to the city council for the issuance of subpoenas and where appropriate may seek that the city council request the appropriate court sanctions against anyone who fails to comply with any subpoena so issued.
- (t) *Cooperation.* The Executive Director of PERA and or their designee(s) shall be given full user access to the information/records management software used by the police department, including its internal investigations and body worn cameras systems, so that PERA may efficiently review and or audit all police internal investigations as well as complete its own investigations. All users will be subject to the same confidentiality requirements as police users and will not disclose personally identifiable information except as allowed by law. All municipal board, bureaus, commissions, departments, and employees shall respond promptly to any and all lawful requests for municipal information sought for such evidentiary hearings, and for access to data and records for the purpose of enabling the authority to carry out its responsibilities under this chapter. The failure of any official or employee to respond to lawful requests for such information and data shall be deemed an act of misconduct.
- (u) *Findings of fact and determination.* Within thirty (30) days of the completion of an evidentiary hearing, the hearing panel shall issue a written report containing findings of fact; a determination of whether or not the complaint has been sustained by a preponderance of the evidence; if applicable the level of violation described in the disciplinary matrix developed by PERA and the chief of police, and a recommendation of discipline. When a complaint is sustained, the findings of fact and the determination shall be submitted to the chief of police, the city council, and the mayor. The chief shall impose discipline based upon the recommendation of discipline submitted by the authority within a reasonable timeframe not to exceed 60 days level of violation as found in the disciplinary matrix to be promulgated by the authority in accordance with ~~subsection (e)(1).~~ and The chief of police shall also provide the authority, the city council, and the mayor with a written explanation of the reason(s) for his/her disciplinary decision within that timeframe. The hearing panel report and the police chief's explanation for his/her decision shall be available to the public provided that the name of the complainant ~~and/or respondent~~ shall be kept confidential as required by law.

- (v) *Notice to parties.* The authority shall notify the complainant(s) and police officer(s) in a timely fashion of the status or disposition of the complaint.
- (w) *Period of limitation.* No complaint filed more than one (1) year subsequent to the events complained of therein shall be timely.
- (x) If any provision of this section, or its application to any person or circumstances, is held unconstitutional or otherwise invalid, the remaining provisions of this section and the application of the provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected by the invalidity.