



## Legislation Text

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### **ORDINANCE AMENDING TITLE II, CHAPTER 2, OFFICE OF THE MAYOR AND AGENCIES, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY 2000, AS AMENDED AND SUPPLEMENTED, BY CREATING AND ESTABLISHING A CIVILIAN COMPLAINT REVIEW BOARD.**

**WHEREAS**, on July 22, 2014, the City of Newark and the United States Department of Justice (“DOJ”) and the United States Attorney for the District of New Jersey entered into an Agreement in Principle, which contemplates the negotiation of a Consent Decree with the DOJ to resolve the United States’ investigation of the Newark Police Department (NPD), which is the subject of findings publicly released on July 22, 2014; and

**WHEREAS**, the investigative findings of the DOJ showed, *inter alia*,

...a pattern or practice of constitutional violations in the Newark Police Department’s stop and arrest practices, its response to individuals’ exercise of their rights under the First Amendment, the Newark Police Department’s use of force, and theft by officers. The investigation also revealed deficiencies in the Newark Police Department’s systems that are designed to prevent and detect misconduct, including its systems for reviewing force and investigating complaints regarding officer conduct...The City of Newark is diminished, and the Newark Police Department rendered less effective, by these patterns and practices of unconstitutional conduct.

Investigation of the Newark Police Department, United States Department of Justice, Civil Rights Division, United States Attorney’s Office, District of New Jersey, July 22, 2014, at page 1; and

**WHEREAS**, the Agreement in Principle contained the following paragraph:

The City is establishing and will fund a civilian oversight entity for the NPD to assist NPD both in adhering to the Agreement and to foster positive relations between NPD and the Newark community. The City will establish a mechanism through which it will work with the community to determine the appropriate form and scope of oversight, within the parameters set forth in the Agreement. The Independent Monitor of the Agreement will evaluate and report on the City’s establishment and ongoing implementation of a civilian oversight entity.

City of Newark and United States of America Agreement in Principle.

**WHEREAS**, the Decree will provide for an independent monitor to assess and guide implementation of reforms in various areas, including the investigation of misconduct complaints and

discipline; and

**WHEREAS**, the establishment of a civilian oversight entity is a critical part of the implementation of reforms and creating protections for the citizenry, as well as instilling confidence in the resolution of the investigation and providing transparency of the process.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

**SECTION 1: Title II, Administration, Chapter 2 Office of the Mayor and Agencies, of the Revised General Ordinances of the City of Newark, New Jersey 2000, as amended and supplemented, be further amended, to establish a Civilian Complaint Review Board and shall read in its entirety as follows:**

**CIVILIAN COMPLAINT REVIEW BOARD**

**I. ESTABLISHMENT AND STRUCTURE; CIVILIAN COMPLAINT REVIEW BOARD**

1. Established - Civilian Complaint Review Board

There is established in the Office of the Mayor, a Civilian Complaint Review Board to address and participate in the resolution of complaints filed by citizens against the Department of Public Safety, Division of Police and/or its officers and members. Public complaints against members of the NPD shall be investigated and discipline, if any, shall be recommended to the Public Safety Director by a Civilian Complaint Review Board.

2. Structure - Civilian Complaint Review Board

The Civilian Complaint Review Board will have the following structure:

(a) Members, Selection Process

The Civilian Complaint Review Board (hereinafter referred to as the “CCRB” or the “Board”, shall consist of eleven (11) members of the public, all appointed by the Mayor with advise and consent of the Municipal Council: One (1) of which shall be the appointment, by the Mayor, of the City of Newark’s Inspector General, three (3) shall be elected members of the Municipal Council or their designees, who shall be nominated by the Municipal Council and recommended to the Mayor; the Mayor shall accept nominations from the seven (7) organizations, one (1) from each of the organizations listed below, which individuals shall be members or representatives in good standing with said organizations, for consideration for appointment to the Board by the Mayor with the advice and consent of the Municipal Council.

- i. American Civil Liberties Union (“ACLU”) - New Jersey
- ii. National Association for the Advancement of Colored People (“NAACP”) -

New Jersey

- iii. People's Organization for Progress ("POP")
- iv. La Casa de Don Pedro
- v. Ironbound Community Corporation ("ICC")
- vi. Newark Anti Violence Coalition ("NAVC")
- vii. Representative of the Clergy (referring to any person who provides moral, spiritual, or philosophical guidance as a profession.)

In selecting representatives to serve on the CCRB, nominators are encouraged to consider potential members' professional experience in law, civil rights or law enforcement. Nominators shall provide the Mayor with the resumes and any other submissions that establish the nominee's qualifications to be appointed to the Board and such information shall be provided to the Municipal Council for its review and consideration. In the event any of the organizations, for any reason, declines to recommend a member or any one or more of the organizations cease to exist, the Mayor may designate another organization which may in turn recommend a representative in good standing for membership which appointment shall be with the advice and consent of the Municipal Council. The Mayor shall retain the authority to remove an organization and its representative for cause and designate another organization which can then recommend a representative in good standing for membership on the CCRB which appointment shall be with the advice and consent of the Municipal Council. Any member of the clergy appointed to the Board shall represent the public interest and may not render decisions based on any personal religious belief.

(b) Chairperson, Term of Membership

The Mayor shall designate one of the members to be the Chairperson. The Inspector General shall not be eligible to serve as Chairperson of the Board. The term of the members shall be three years, except that of the members first appointed, five (5) shall be appointed for terms of one year, the Municipal Council members shall be appointed for terms of two years and the Inspector General shall be a permanent appointment to the Board.

(c) Restrictions and Inspector General

No member of the Board, excluding the Inspector General, shall be former employees of the NPD. The Inspector General shall serve as the administrative head of the Board, assist the Board with supervision of civilian employees, supervise intake and communications on behalf of the Board with complainants and victims, as well as serve as a voting member. The Inspector General shall provide such assistance as the Board needs to receive complaints, perform investigations, hire and assign civilian staff, and ensure the training of Board members and staff.

The Inspector General shall review completed investigations, sit in on ongoing cases and may ask questions and may make policy recommendations to the Board as a whole. The Inspector General shall also serve in an audit role, reporting on the

fairness of investigations conducted (by the NPD) as opposed to the behavior of individual officers. Any civilian staff used to assist the Inspector General in to his audit role, shall not engage in investigations.

(d) Vacancy

In the event of a vacancy on the Board during the term of office of a member, by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.

## **II. BUDGET**

The Board shall be allocated, on an annual basis, an operating budget which shall be proposed by the Mayor in the City's Annual Budget and adopted by the Municipal Council of the City of Newark. During the first quarter of the year, the Board shall submit a proposed annual operating budget to the Mayor and annual financial statements for consideration at a budget hearing to be conducted by the Mayor and/or the Business Administrator. The Mayor and/or Business Administrator of the City of Newark shall determine, upon conclusion of the hearings, the appropriation for the CCRB to be included in the years' corresponding City budget and shall be a line item in the Department of Public Safety, Division of Police Budget.

Within forty-five (45) days of the first full sitting Board, the Board shall submit to the Mayor a proposed budget to cover initial costs and expenses related to the hiring, and training of employees and Board members, secure necessary infrastructure and equipment, conduct a public awareness campaign, and otherwise implement the requirements of this Ordinance. This allocation shall be a onetime appropriation in an amount that shall not exceed \$500,000.00 subject to Municipal Council and State of New Jersey, Division of Local Government Services/DCA approval pursuant to terms of the Memorandum of Understanding between the State of New Jersey and the City of Newark for Transitional Aid.

## **III. POWERS AND DUTIES OF THE CIVILIAN COMPLAINT REVIEW BOARD**

i. The Board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public (including, but not limited to complaints made by other police officers or personnel) against uniformed and sworn personnel of the NPD that allege misconduct involving inappropriate behavior or actions, including but not limited to excessive use of force, abuse of authority, unlawful arrest, unlawful stop, unlawful searches, discourtesy or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, age, sexual orientation, gender identity or expression, and disability, theft, and any other categories protected under law. Any member of the public is intended to have the broadest possible meaning and interpretation.

ii. At the conclusion of the Newark Police Division's investigation of a Complaint or behavior, the Board shall have the power to conduct a review of the findings,

conclusions and recommendations of the Division of Police (Investigation Review). The Board shall report its findings of the Investigation Review to the Public Safety Director. A semi-annual report of the Investigation Reviews shall be submitted to the Mayor, Public Safety Director and the Municipal Council. The Board may utilize all the powers set forth in this Ordinance to carry out the Investigation Reviews.

iii. The jurisdiction of the Board shall be concurrent with that of the NPD to investigate complaints or behavior.

iv. The Board shall have the power and authority to consider and make recommendations to the Public Safety Director, Mayor, Municipal Council, and the public with regard to policies and procedures concerning the general investigation of complaints by the Division of Police as well as its Internal Affairs procedures. The Board shall also have the power and authority to investigate and make recommendations regarding practices and/or patterns of behavior that are problematic with regard to the interaction of the Division of Police with the public at large, public safety concerns, failures of communication with the public, or any other area regarding police practices and policy or police-community relations.

The findings and recommendations of the Board, and the basis therefore, including those that may relate to suggested general policies and procedures not specific to any particular investigation or complaint shall be submitted to the Public Safety Director. No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation with regard to a particular complaint, but such findings or recommendations shall be grounded in a residuum of some competent support or evidence.

v. Changes and/or amendments to the rules of procedures and/or the rules of the Board set forth in Paragraph V of this Ordinance may be proposed by the Board. A public hearing of the Board shall be convened to accept public comments of the proposed changes and/or amendments. The proposed changes and/or amendments as recommended by the Board shall be submitted to the Mayor and/or the Administration of the City of Newark no later than 10 days after the public hearing was held. The Mayor and/or the Administration shall review the proposal and may make changes and amendments to the proposal prior to submitting it to the Municipal Council for approval which shall be no later than 45 days after receipt from the Board. The proposal shall be submitted by the Mayor and/or the Administration to the Municipal Council for review and approval. The rules of procedure shall prescribe the manner in which investigations are to be conducted and recommendations 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 subcommittees or panels, which shall consist of not less than three members of the Board, which shall be empowered to supervise the investigation of complaints, and to hear, make findings and recommend action on such complaints. No such subcommittee or panel shall consist exclusively of members designated by the Municipal Council.

vi. The Board may require the production of such records and other materials

as are necessary for the investigation of complaints submitted to the board, pursuant to this section through the issuance of subpoenas. Upon a majority vote of members of the Board, the Board may issue subpoenas ad testificandum and duces tecum, which may be served, to the extent permitted by law.

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

viii. The Board is authorized, within appropriations available to it, to appoint and train such civilian employees as are necessary to exercise its powers and fulfill its duties, which employees shall be employees of the City of Newark. Board members shall receive the same training as provided to civilian employees.

ix. The Board shall issue to the Mayor and the Municipal Council a semi-annual report which shall describe its activities and summarize its action.

The Board shall have the responsibility of informing the public about the Board and its duties, and shall develop and administer an on-going program for the education of the public regarding the Board. The Board shall hold public meetings and shall regularly report to the public on its activities and other policing information it determines to be in the public interest. It shall adopt rules to delineate its public reporting requirements. Those initial rules are set forth in this Ordinance.

x. The Board shall use an established discipline matrix and guidelines to recommend discipline for outcomes resulting from investigations and complaints filed with the Board and/or the NPD. Said discipline matrix and guidelines shall act as safeguards to ensure the consistent application of discipline and should include aggravating and mitigating factors. The discipline matrix and guidelines should be developed by the Public Safety Director and affected bargaining units, in consultation with the CCRB, and must accord with any Consent Order or Judgment with the United States Department of Justice.

xi. The Board shall provide its findings of fact to the Public Safety Director and, absent clear error, the Public Safety Director shall accept those findings of fact. The Board shall also make disciplinary recommendations, and the Public Safety Director shall make all disciplinary decisions based on the CCRB's findings of fact, absent clear error, and consistent with the matrix and guidelines.

#### **IV. COOPERATION OF THE DIVISION OF POLICE AND DEPARTMENTS**

a. It shall be the duty of the Department of Public Safety, Division of Police to provide such assistance as the Board may reasonably request, to cooperate fully with investigations by the Board, and to provide to the Board upon request records and other materials which are necessary for the investigation of complaints submitted pursuant to this section, except such records or materials that cannot be disclosed by law.

b. The Public Safety Director, with the assistance of the Police Chief, shall ensure that officers and employees of the NPD appear before and respond to inquiries of the Board and its civilian investigators, if any, in connection with the investigation of complaints.

c. In any case substantiated by the Board in which the Public Safety Director finds clear error in the findings of fact or intends to impose discipline that is of a lower level than that recommended by the Board or by the NPD's Police Trial Board, the Public Safety Director shall notify the CCRB in writing, prior to the imposition of such discipline, detailing the specific reasons for the decision not to accept the CCRB's findings of fact, or to impose the discipline recommended by the CCRB or the Police Trial Board. The Board may then request that the Public Safety Director appear in person before the Board for further explanation or to address questions from the Board. The Public Safety Director shall cooperate with requests to appear before the Board.

d. The provisions of this Ordinance shall not be construed to limit or impair the authority of the Public Safety Director to discipline members of the NPD nor obviate the responsibility of the NPD to investigate citizen complaints or incidents to which NPD is made known, involving uniformed and sworn members of the NPD, and to promptly inform the CCRB of all such complaints or incidents. Nor shall the provisions of this section be construed to limit the rights of members of the NPD 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.

e. The provisions of this Ordinance shall not be construed to prevent or hinder the investigation or prosecution of a member of the NPD for violations of law by any court of competent jurisdiction, a grand jury, county or state prosecutor or any other authorized officer, agency or body.

f. The processing and review of civilian complaints shall not be deferred because of any pending or parallel disciplinary proceeding or criminal investigation unless such request for deferment is made by the office of a county prosecutor or a state or federal law enforcement agency or prosecutor or by a court order.

g. The Public Safety Director shall ensure that any adverse action by a member of the NPD towards an individual which is due to an action taken to exercise his or her rights to file a misconduct complaint, or which likely would deter an individual from exercising their rights or making or supporting a complaint, is prohibited.

h. All City officials and departments shall fully cooperate with the implementation of this Ordinance.

## **V. RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD**

### **SUBCHAPTER A - INTRODUCTION**

#### **§1-01 Definitions.**

As used in this Chapter:

**Chair.** "Chair" shall mean the Chair of the Civilian Complaint Review Board by the Mayor.

**Civilian Complaint Review Board.** "Civilian Complaint Review Board" or "Board" shall mean the entity established by this Ordinance.

**Investigation Reviews.** "Investigation Reviews" shall mean the review by the Board of the findings and recommendations and investigation process of the Division of Police at the conclusion of an investigation of a complaint or behavior conducted by the Division of Police.

**Mediation.** "Mediation" shall mean an informal process, voluntarily agreed to by a complainant and the subject officer and conducted with the assistance of a neutral third party, engaged in for the purpose of fully and frankly discussing alleged misconduct and attempting to arrive at a mutually agreeable resolution of a complaint.

**Public Safety Director and/or Director.** "Public Safety Director" shall mean the Director of the City of Newark Department of Public Safety.

**Public Safety Department, Division of Police or NPD.** "Division of Police, "Newark Police Division" or "NPD" shall mean the City of Newark Department of Public Safety, Division of Police.

§1-02 Jurisdiction.

(a) The Board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by any member of the public (including, but not limited to complaints made by other police officers or personnel) against uniform and sworn members of the NPD that allege misconduct involving inappropriate behavior or actions, including, but not limited to, excessive use of force, abuse of authority, unlawful arrest, unlawful stop, unlawful searches, discourtesy or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, age, sexual orientation, gender identity or expression and disability and theft. Any member of the public is intended to have the broadest possible meaning and interpretation.

(b) The findings and recommendations of the Board, and the basis therefore, regarding case investigations and recommendations, including those that may relate to suggested general policies and procedures not specific to any particular investigation or complaint, shall be submitted in writing to the Public Safety Director.

(c) It is the express intent of this Ordinance to give the Board the power and authority to consider and make recommendations to the Public Safety Director with regard to policies and procedures concerning the general investigation of complaints by the Division of Police as well as its internal affairs procedures, and with regard to evidence of practices or patterns of behavior or practice that is problematic with regard to the interaction of the Division of Police with the public at large, as well as any failures of communication with regard thereto.

(d) At the conclusion of the Newark Police Division's investigation of a Complaint or behavior, the Board shall have the power to conduct a review of the findings, conclusions and recommendations of the Division of Police (Investigation Review). The Board shall report its findings of the Investigation

Review to the Public Safety Director. A semi-annual report of the Investigation Reviews shall be submitted to the Mayor, Public Safety Director and the Municipal Council. The Board may utilize all the powers set forth in this Ordinance to carry out the Investigation Reviews.

## **SUBCHAPTER B - INITIAL PROCEDURES**

### **§1-03 Filing Complaints.**

Written complaints may be sent to the Board's offices by mail, email or submitted in person at that office during operating hours. The Board shall schedule evening and weekend hours as it deems appropriate. Written complaints may be completed and filed on forms furnished by the Board. The Board will accept written complaints filed at local precincts and forwarded by the Division of Police. The Board will also accept complaints submitted through the CCRB's website and by such other methods as the Board may determine.

### **§1-04 Telephone or In-Person Complaints.**

Telephone complaints will be received during normal business hours at the Board office. Complainants may also report complaints in person at the Board office during operating hours. Complaints may also be filed at public locations to be designated by the Board. The Board shall also schedule evening and weekend hours as it deems appropriate. The Board will also accept complaints submitted through its voicemail system or by such other methods as the Board may determine.

### **§1-05 Referrals of Complaints.**

Where the Board receives allegations about persons or matters falling within the sole jurisdiction of another City Department (and not that of the Board), the Board or the Chair shall immediately refer such allegations to such other City Department.

### **§1-06 Notification to the Department of Public Safety, Division of Police.**

With respect to complaints about officers and matters within the Board's jurisdiction, the Board shall notify the Division of Police of the actions complained of within a reasonable period of time after receipt of the complaint. The Board's notice to the Division of Police shall indicate that: (1) the Board will contemporaneously initiate a parallel investigation of the Complaint or behavior with the Division of Police; and/or (2) the Board will not investigate the Complaint or behavior but will conduct an Investigation Review upon the Division of Police's conclusion of its investigation as provided for in Section III (ii) of this Ordinance.

### **§1-07 Complainant Confidentiality**

During the investigatory process, neither the identity of, nor personally-identifiable information about, complainants or witnesses shall be released beyond the CCRB staff, Board members, and NPD staff engaged in the specific investigation of the complainant's allegation. If the complaint is substantiated and is referred to a CCRB hearing, the complainant's identity may be released in the course of any public hearing about the alleged misconduct.

## SUBCHAPTER C - FACT-FINDING PROCESS

### §1-08 Statement of Policy.

The procedures to be followed in investigating complaints shall be such as in the opinion of the Board will best facilitate accurate, orderly and thorough fact-finding.

### §1-09 Method of Investigation of Complaints.

In investigating a complaint, Board investigatory personnel may utilize one or more of the methods set forth in this subchapter, and any other techniques not enumerated here, as may be useful in conducting an investigation.

### §1-10 Obtaining Documentary and Other Evidence.

(a) The Board may make written or oral requests for information or documents.

(b) A panel established pursuant to §1-13, may interview the complainant, the subject officer or witnesses.

(c) The panel may make field visits for purposes such as examining the site of alleged misconduct and interviewing witnesses.

(d) Upon a majority vote of members of the Board, the Board may issue *subpoenas ad testificandum* and *duces tecum*, which may be served, to the extent permitted by law.

(e) The panel may obtain records and other materials from the Division of Police which are necessary for the investigation of complaints submitted to the Board, except such records and materials that cannot be disclosed by law. In the event that requests for records or other evidence are not complied with, the panel may request issuance of a subpoena duces tecum or a subpoena ad testificandum.

(f) All of the foregoing, excluding requests for subpoenas, may be undertaken by Board investigators.

### §1-11 Conduct of Interviews.

(a) It is the intent of these Rules not to alter the rights afforded to police officers by the NPD in standing orders or other rules and procedures or in collective negotiation contracts with respect to interviews so as to diminish such rights, if any, including but not limited to any existing right to notice of an interview, the right to counsel, and the right not to be compelled to incriminate oneself.

(b) A member of the Division of Police who is the subject of a complaint shall be given two business days' notice prior to the date of an interview, to obtain and consult with representatives. A member of the Division of Police who is a witness in an investigation of a complaint shall be given a period of time, up to two business days, to confer with their representatives.

(c) All persons interviewed may be accompanied by up to two (2) individuals to act as their representative, inclusive of their chosen counsel. Such counsel or representative may advise the

person interviewed as circumstances may warrant, but may not otherwise participate in the proceeding.

(d) Prior to the commencement of the interviewing of a police officer, the following statement shall be read to such officer:

You are being questioned as part of an official investigation of the Civilian Complaint Review Board. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New Jersey, the Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel or such other representative present at each and every stage of this investigation, however that person may not unduly interfere or disrupt the proceedings.

(e) Interviews shall be scheduled at a reasonable hour, and reasonable requests for interview scheduling or rescheduling shall be accommodated. If possible, an interview with a police officer shall be scheduled when such officer is on duty and during daytime hours. Interviews may be conducted at the Board's offices or other locations designated by the Board.

(f) The interviewer shall inform the interviewee of the name and position of the person in charge of the investigation, name and position of the interviewer, the identity of all persons present at the interview, whether the interviewee is a subject or witness in the investigation, the nature of the complaint and information concerning all allegations, and the identity of witnesses and complainants, except that addresses need not be disclosed and confidential sources need not be identified unless they are witnesses to the alleged incident.

(g) The interviewer shall not use off-the-record questions, offensive language or threats, or promise of reward for answering questions.

(h) The interviewer shall regulate the duration of question periods with breaks for such purpose as meals, personal necessity and telephone calls. The interviewer shall record all recesses.

(i) Interviews shall be recorded by the CCRB. No other recordings are permitted.

(j) If an interviewee needs an interpreter, he or she shall advise the interviewer of such need as soon as possible after being notified of the date and time of the interview. A qualified interpreter will be obtained from an official registry of interpreters or another reliable source.

(k) Reasonable accommodations shall be made for persons with disabilities who are participating in an interview. Persons requiring such accommodations shall advise the Board of such need as soon as possible after being notified of the date and time of the interview.

## **SUBCHAPTER D - DISPOSITION OF CASES**

### **§1-12 Assignment of Cases.**

The Chair shall assign to a panel consisting of at least three Board members, or may assign to the full Board for review, all cases which must be fully investigated. Panel membership shall be

determined by the Chair, but no such panel shall consist exclusively of members designated by the Municipal Council.

#### §1-13 Panel or Board Review of Cases.

(a) The panel or the Board shall review the investigatory materials for each assigned case, and prepare a report of its findings and recommendations.

(b) The panel or the Board may, if it deems appropriate, return a case to investigative staff for further investigation or a panel may, upon approval of the Board, conduct additional fact-finding interviews in accordance with the provisions of §1-10.

(c) Panel findings and recommendations shall be referred to the full Board for its consideration.

#### §1-14 Case Dispositions.

(a) No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints filed with the Board, be the basis for any such finding or recommendation with regard to an individual complaint. This rule shall not be an impediment to any recommendations or findings made with regard to overall patterns or practice of inappropriate behavior, policies or procedures, which may in part rely on complaints, no matter their disposition, filed with the Division of Police, the Board or both.

(b) Panels or the Board shall employ a "preponderance of the evidence" standard of proof in evaluating cases, and their findings shall be grounded in and by competent support or evidence.

(c) A report of the findings and recommendations with respect to each case investigation reviewed shall be prepared and transmitted to the Public Safety Director. Where the disposition of one or more allegations is "Substantiated," as defined in subdivision (d) of this section, such report shall be forwarded in writing within five business days of such substantiation and shall include appropriate pedigree information regarding the subject officer, the case number and any other control or serial number assigned to the case, and a summary of the pertinent facts.

(d) The following categories of case investigation dispositions shall be used in reports to the Public Safety Director:

(1) Substantiated: the acts alleged did occur and did constitute misconduct.

(2) Unsubstantiated: there was insufficient evidence to establish whether or not there was an act of misconduct.

(3) Exonerated: the acts alleged did occur but did not constitute misconduct.

(4) Unfounded: the acts alleged did not occur.

(5) Complaint Withdrawn: the complainant voluntarily withdrew the complaint.

(6) Complainant Unavailable: the complainant could not be located following at least four

attempts to contact the complainant by telephone, certified mail, in-person visit, and electronic communication, respectively.

(7) Complainant Uncooperative: the participation of the complainant was insufficient to enable the Board to conduct a full investigation.

(8) Officer Unidentified: the Board was unable to identify the officer who was the subject of the allegation.

(9) Referral: the complaint was referred to another City Department.

(10) No Jurisdiction: the complaint does not fall within the jurisdiction of the Board.

(11) No Prima Facie Case: the complaint does not state a prima facie case.

(12) Mediated: the parties to the mediation agreed that the complaint should be considered as having been resolved through mediation.

(13) NPD Disciplinary Action Accepted as Sufficient.

(14) Other articulated reasons: as from time to time determined by the Board.

§1-15 Cases Closed without a Full Investigation.

(a) The Board may close without conducting a full investigation any case falling within categories (5) through (14) of §1-14(d); provided, however, a justification for the action is stated on the record (for example, what are the circumstances relating to the withdrawal of the Complaint).

(b) Prior to the closure of any case under § 1-14(a), Board members must be afforded an opportunity to review such case and vote in a public session.

(c) The Board at the outset of its operation shall adopt guidelines to handle requests for withdrawal.

## **SUBCHAPTER E - ADMINISTRATIVE PROSECUTION**

§1-16

Police Department Procedures and Disciplinary Practices

(a) The Public Safety Director shall retain in all respects the authority and discretion to make final disciplinary determinations.

(b) The Division of Police shall provide all reasonable assistance requested by the CCRB, including training and guidance in both legal and administrative matters.

(c) The CCRB may during the course of an investigation, contact the Division of Police, Office of Professional Standards or such equivalent department or office to request the assistance of employees of the Division of Police in the evaluation, preparation and investigation of the complaint.

In such instances, the Division of Police, Office of Professional Standards or such equivalent department or office shall arrange for the Division of Police to provide reasonable assistance to the CCRB.

(d) Nothing concerning the authority and/or process of the CCRB shall constrain or change in any way the obligations of the Division of Police to conduct appropriate and timely investigations of NPD uniform and sworn members of NPD and to be compliant and consistent with the requirements of N.J.S.A. 40A:14-147.

#### §1-17 Other Matters Relating to Administrative Prosecutions.

(a) The CCRB shall forward to the Public Safety Director a report of the CCRB reflecting the results of its review of every complaint. The CCRB shall include all relevant forms, memoranda and background information to assist the Public Safety Director in making a final disciplinary determination.

(b) The CCRB shall provide its findings of fact to the Public Safety Director and, absent clear error, the Public Safety Director shall accept those findings of fact and consider the CCRB's recommended discipline. Clear error exists when the CCRB's findings of fact are based upon obvious and indisputable errors and cannot be supported by any reasonable interpretation of the evidence. The Public Safety Director may ask the CCRB for additional investigative or background information in its possession. The Public Safety Director may also request further investigation or development of the record to enable him or her to make a final disciplinary determination.

(c) Based on the CCRB's findings of fact, absent clear error, the Public Safety Director shall make all disciplinary decisions, consistent with the matrix and guidelines.. In any case substantiated by the Board in which the Public Safety Director finds clear error in the findings of fact or intends to impose discipline that is of a lower level than that recommended by the Board or by the Police Trial Board, the Public Safety Director shall notify the CCRB prior to the imposition of such discipline. Such notification shall be in writing and shall include a detailed explanation of the reasons for deviating from the Board's or, as the case may be, the Police Trial Board's, recommendation or findings of fact, including but not limited to each factor the Public Safety Director considered in making his or her decision. The Board may then request that the Public Safety Director appear in person before the Board for further explanation or to address questions from the Board. The Public Safety Director shall cooperate with requests to appear before the Board.

(d) The Board shall publish on its publicly-accessible website and shall submit to the Mayor and the Municipal Council a quarterly report identifying each instance in which the Public Safety Director finds clear error in the findings of fact or imposes discipline that is of a lower level than recommended by the Board or the Police Trial Board, and include a copy of the Public Safety Director's written, detailed explanations with redaction of any personally identifiable information.

## **SUBCHAPTER F - MISCELLANEOUS MATTERS**

#### §1-18 Meetings of the Board.

(a) The full Board shall meet at least one time each month, at which meeting it shall consider cases referred to it and conduct any other business.

(b) If a case has been referred to the Board, the Board may take such action as it deems appropriate, including, but not limited to, making its own findings and recommendations, remanding the case to a referring panel for further consideration or action, and remanding the case for further investigation.

#### §1-19 Panel and Board Meetings: General Matters.

(a) If a Board member has a personal, business or other relationship or association with a party to or a witness in a case before a panel to which such member has been assigned, the member shall disclose this situation to the Chair, and shall request that the case be transferred to another panel. If a Board member has such relationship in a case before the full Board, the member should recuse himself or herself from deliberations or action in connection with that case.

(b) Board members must be present at a meeting of the Board or a panel in person or, subject to such limitations as the Board may by resolution from time to time determine, by videoconference in order to register their votes.

#### §1-20 Public Meetings.

(a) The Board shall hold meetings open to the public no less than once every other month. At such meetings, the Board shall provide a public report on Board activities, without disclosing personally identifiable information about a complainant prior to a CCRB hearing, including but not limited to:

- a. The disposition of cases referred to it by CCRB staff in the prior month;
- b. The disposition of cases in which the CCRB recommended discipline to the Public Safety Director, and what discipline, if any, the Public Safety Director issued to the officer found to have committed misconduct in the prior month;
- c. The number of complaints received in the prior month, the type of misconduct alleged in those complaints, and the investigatory status of those complaints;
- d. Any practices or policy investigations ongoing or completed, as well as any policy recommendations made pursuant to the Board's authority to investigate practices or patterns of behavior and NPD policies;
- e. Efforts to promote the CCRB's function, availability, and processes to the public during the prior month.

(b) The Board shall have the authority to conduct public hearings related to issues of public concern with NPD policies, patterns, or practices. The Board may choose to summon the Public Safety Director or other employees of the NPD to testify at such hearing.

(c) At each monthly public meeting, the Board shall include a public comment period during which

members of the public may address the Board on issues germane to the Board's jurisdiction.

- (d) The minutes of each public Board meeting shall be posted on the CCRB's website within a reasonable time following the meeting.

§1-21 Public Reporting.

- (a). The Board shall publish on its public website on a quarterly basis:

- a. The number of complaints it receives;
- b. The race, ethnicity, gender, and age of the complainant;
- c. The precinct(s) in which the misconduct is alleged to have taken place;
- d. The basic facts of the complaints (with personally identifiable information redacted);
- e. The disposition of each complaint;
- f. The recommended discipline, if any, for each complaint;
- g. The discipline issued by the Public Safety Director, if any, for each complaint;
- h. Any other information the Board shall determine is relevant to carry out the Board's duties and responsibilities.

- (b). The Board shall request from the NPD and publish on a quarterly basis:

- a. The number of stops made by NPD officers during the previous quarter, including data disaggregated by:
  - i. the date, time, location and police district of the pedestrian or vehicle stop;
  - ii. the perceived race, ethnicity, gender, and age of the person stopped, and whether the person stopped was of limited English proficiency, and if so, whether interpretive services were offered, provided that the identification of these characteristics shall be based on the observations and perceptions of the NPD officer making the stop and the information shall not be requested of the person stopped, unless otherwise required by law;
  - iii. an explanation of the reason for the stop;
  - iv. whether a frisk of the individual took place as a result of the stop, and an explanation of the legal justification for the frisk;
  - v. whether a search (beyond a frisk) of the individual or, if applicable, the vehicle, took place as a result of the stop, and an explanation of the legal justification for the

- search;
- vi. the scope of any search conducted;
  - vii. whether any contraband was discovered or seized in the course of the search, and if so, the nature of the contraband;
  - viii. the disposition of the stop, such as a warning, a summons, or an arrest;
  - ix. if a summons was issued or an arrest made, the violations, offenses, or crimes charged (including Criminal Code section or other section of law);
  - x. whether any force was used during the stop, frisk or search, and the type of force used;
- b. The number of use of force incidents by the NPD, including data disaggregated by:
- i. the race, gender, ethnicity, and age of the civilian;
  - ii. the type/brief description of force used
  - iii. the reason for use of force
  - iv. the civilian injuries that took during incident involving use of force, if any;
  - v. the officer injuries that took place during incident involving use of force, if any.
- c. Any reporting request of and to be provided by the NPD's Internal Affairs Unit shall be in accordance with New Jersey Attorney General Guidelines and in conformance with all applicable governing laws, rules and regulations.
- d. The number of arrests made during the previous quarter by the NPD, including data disaggregated by:
- i. The date, time, location, and police district of the arrest;
  - ii. the race, ethnicity, gender, and age of the arrestee;
  - iii. the offense charged (including Criminal Code section, or other section of law);  
and
  - iv. whether the arrest came in response to a specific report or complaint made by a person to the NPD or 911 system.

- e. The amount of money the City of Newark expended in settlements or judgments to resolve tort, civil rights, or other legal claims filed against the NPD, as well as the basic facts associated with those claims to the extent permitted by law or not otherwise restricted from disclosure.

(c). The Board shall publish an annual report, available on its public website, compiling the aforementioned statistics for each calendar year and identify any significant trends, patterns, areas of concern, or areas of excellence, within the NPD's practices.

#### §1-22 Communications with and Notifications to Complainants Regarding

##### Status of Complaints.

(a) Within seven business days of the receipt of a complaint, the Board shall notify a complainant by telephone or letter that the Board has received his/her complaint, and shall identify the case number.

(b) The Board shall, within seven business days of sending to the Public Safety Director its findings and recommendations in a case, write to the Complainant with such findings and recommendations.

#### §1-23 Training.

The Board and such employees as it may retain shall obtain such training necessary to fulfill its responsibilities set forth herein. Such training shall be predominately obtained from such independent, third party bodies or institutions that have experience with regard to internal affairs and civilian review investigations and audits. A policy as to training shall be adopted by the Board at the outset of its operation and updated annually. The cost of such training shall be set forth in the Board's budget proposal as required by Section II.

#### §1-24 Conflicts.

If a Board member has a personal, business or other relationship or association with a party to or a witness in a case before the panel to which such member has been assigned, the member shall disclose this situation to the Chair, and shall request that the case be transferred to another panel. If a Board member has such relationship in a case before the full Board, the member shall recuse herself or himself from deliberations or action in connection with that case.

Any Board member shall recuse herself or himself from a case that involves an individual, association, corporation or other entity from which the member received a campaign contribution, individually, or in the aggregate, in an amount required to be reported pursuant to N.J.A.C. 19:25-10.

**SECTION 2:** Any prior ordinances or parts thereof inconsistent herewith shall be amended and supplemented to conform to the provisions contained herein.

**SECTION 3:** If any part of this ordinance is declared unconstitutional or illegal, the remaining provisions shall not be affected and shall continue in full force and effect.

**SECTION 4:** This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

**STATEMENT**

This ordinance amends and supplements Title II, Chapter 2, Office of the Mayor and Agencies, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, by creating a Civilian Complaint Review Board.