

OCTOBER 22, 2020

SELECTED COMMENTS ON GENEVA LOCAL LAW 1-2020
GIBSON, DUNN & CRUTCHER LLP (GDC),
COUNCIL 82 & CITY ATTORNEY
GDC comments revised

Table of Contents

§ 15-1. Definitions.....	3
§ 15-2. Findings, Goals, and Purpose.....	4
§ 15-3. PAB Composition, Appointment, Removal and Vacancy.	5
§ 15-4. PAB Member Responsibilities	9
§ 15-6. PAB Training, Procedures, Recommendations and Reports, Outreach....	11
§ 15-7. Initiation of Complaints.....	14
§ 15-8. GPD Procedure for investigating Complaints.	16
§ 15-9. PAB Procedure for Review of GPD Determinations of Complaints.....	17
§ 15-10. PAB Determinations:.....	19
§ 15-12. Suspension of proceedings.	21
§ 15-16. Legal Representation.....	25
§ 15-17. Retaliation Prohibited.....	26

§ 15-1. Definitions.

For purposes of this chapter, the following words and phrases used therein shall have the meaning described in this section:

“Chief” — Chief of the Geneva Police Department.

“Complaint” — A written statement concerning police conduct which is submitted by a member of the public to the PAB or the GPD.

“GPD “ -- The Geneva Police Department.

“immediate family” — Spouse, domestic partner, child, stepchild, mother, father, mother-in-law, father-in-law, aunt, uncle, and grandparent.

“Officer” — Sworn member of the City of Geneva Police Department.

“PAB” or “Board”— Police Accountability Board.

“Review—PAB Review of GPD investigations.

Gibson, Dunn & Crutcher LLP suggestions

Capitalize “Immediate”

EJB

Formatting issues Capitalize Officer, Local Law, throughout document

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions

§ 15-2. Findings, Goals, and Purpose.

1. The Geneva City Council finds the best interests of Geneva's citizens will be furthered by establishing a PAB with authority to review GPD investigations of public complaints of officer misconduct and to engage in other activities set forth in this Chapter.
2. The goals of this Chapter are to reduce racial inequities in policing in the City, to assure accountability of GPD officers, to increase transparency of GPD operations, and to improve GPD's credibility.
3. The Geneva City Council finds establishing an open, fair, and impartial process for review of investigations will further these goals.
4. The Geneva City Council finds that the PAB may create and employ a disciplinary matrix in making recommendations to the Chief for discipline subject to collective bargaining agreements and New York State Law.
5. The Geneva City Council finds that the PAB should have authority to assess GPD patterns, practices, policies, and procedures and make recommendations to improve its operations.
6. The establishment of a PAB in this Chapter notwithstanding, the sole authority to discipline officers shall remain vested in the Chief or his or her delegates, under the supervision of the City Manager pursuant to City Charter section 9.2 or amendments thereto, the New York State Constitution, the New York State Civil Service Law, Section 891 of the Unconsolidated Laws of the State of New York and Collective Bargaining Agreements between the City and the officers.

Gibson, Dunn & Crutcher LLP suggestions

Insert "the applicable" in "4" before "collective"

Capitalize collective bargaining agreements in line 4

Capitalize officer in third line of "6" and throughout

Council 82 Comments

Use of disciplinary matrix infringes on Chief's authority to impose discipline and violates City Charter section 9.2, and New York State Civil Service and Taylor Laws

Selected Public Comments

EJB comments

Insert "Section 891 of the Unconsolidated Laws of the State of New York"

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions

§ 15-3. PAB Composition, Appointment, Removal and Vacancy.

The PAB shall consist of nine (9) members appointed by City Council. Members of the Board shall serve terms of three (3) years except for the initial Board, which shall serve staggered terms, as set forth in subdivision 3 below.

1. Qualifications

- A. Members of the Board shall be residents of the City of Geneva for a minimum of twelve (12) months at the time of appointment to the Board.
- B. Members of the Board shall reflect the City's diverse community, including, but not limited to: age, race, creed, color, national origin, gender, gender identity or expression, sexual orientation, disability, marital status and source of income.
- C. Members of the Board and their immediate family shall not be currently or formerly employed by the GPD. No more than one (1) member of the Board at a time may be a former law enforcement employee with an agency other than the GPD or an immediate family member of a person formerly employed in non-GPD law enforcement.
- D. Board members shall not be current (or within the immediately preceding three (3) year period) City elected officials or immediate family of any incumbent elected official representing/serving any district or municipality in the State of New York. No practicing attorney or their immediate family who represents or has represented a plaintiff or defendant in a police misconduct lawsuit initiated against the GPD within the past ten (10) years shall be a member of the Board. Board members may not represent a complainant or a GPD Officer at Board hearings.
- E. The Board should endeavor to contain at least two (2) licensed mental health professionals, and at least one (1) duly licensed attorney in good standing, and one member of the clergy.
- F. Upon a PAB member moving out of the City, the City Clerk shall notify him/her that his/her seat on the PAB is vacant.
- G. 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.

Gibson, Dunn & Crutcher LLP suggestions

Item "B" insert "aspire to" after "shall" and before "reflect"

Item "E" insert "(1)" after "one" and before "member"

Item "F" delete "seat on the PAB" and replace with "status as a Board member is "terminated"

Council 82 Comments

Section lacks requirements of application, experience, educational requirements, background check,

If criminals are not excluded from serving on the PAB, allowing them to obtain any of the information the PAB may ultimately obtain regarding GPD patterns, practices, policies, and procedures, is simply like giving inmates blueprints to law enforcement procedure

EJB comments

NYS Correction Law section 752 prohibits discrimination against persons convicted of one or more criminal offenses. A blanket prohibition against appointment of such persons to the PAB is not allowed. Section 753 sets forth factors to be taken into account when appointment of a person convicted of one or more criminal offenses is being considered. The City Council would be allowed to vet the propriety of appointing such persons to the PAB.

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions.

2. Appointment Process

- A Appointments to the initial Board shall be made by the City Council within ninety (90) days from the effective date of this Local Law as follows:
- 1) The Mayor shall appoint one (1) member.
 - 2) Council shall appoint three (3) members; one (1) appointee from each of the three Supervisory Districts: District 1 (Wards 1 & 2); District 2 (Wards 3 & 4); District 3 (Wards 5 & 6).
 - 3) The Geneva Community Compact Committee will nominate ten (10) individuals from the community at large, two (2) for each of its five (5) Board seats, within sixty (60) days from the effective date of this local law, from which Council shall confirm and appoint one (1) such individual for each of the five (5) member-seats at Council's discretion.

Gibson, Dunn & Crutcher LLP suggestions

Item 1) replace with "One (1) member nominated by the Mayor"

Item 1) ~~replace with "One (1) member nominated by the Mayor"~~— This is not quite what we meant and the proposed language did not come from Gibson Dunn. Instead, the Mayor can nominate people but the City Council needs to have the freedom to not select the mayoral nominee otherwise it is functionally the same as having the Mayor appoint someone. We suggest adding a subsection "B" stating "The City Council retains full authority to appoint members of the Board. The City Council must consider but is not required to appoint individuals nominated by the City Council and the Geneva Community Compact Committee to the Board." You also may want to consider different language for subsection 1. Again, because the City Council cannot be required to appoint the Mayor's nominee, the law leaves ambiguity as to who the City Council would appoint to that seat if they do not appoint the Mayor's nominee. As currently envisioned, that seat could go to anyone.

Item 2) ~~Delete Council shall appoint" and capitalize "three"~~—Insert "City" at the beginning of the sentence

Item 2) Delete Council shall appoint" and capitalize "three".

EJB comments

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions.

Item 3) Delete and replace with the following language

Five (5) individuals from the community at large. The Geneva Community Compact Committee may submit names of individuals to be appointed by the City Council for these positions. The Geneva Community Compact Committee may also nominate individuals to these five (5) inaugural PAB positions to initial at large PAB positions within sixty (60) days of the effective date of this local law.

Same comment as Item 1 above; this is not quite what we meant and the proposed language did not come from Gibson Dunn. It is fine for the Community Compact Committee to nominate individuals beyond the initial PAB positions. We have edited your proposed language above to better reflect our thoughts.

15-3 CONT'D

3. Terms

- A The first term of the initial Board commences when all nine (9) Board members are appointed and ends on December 31st of the following year.
- B Except for the initial Board, members shall serve staggered three (3) year terms and may be reappointed for another three (3) year term, for a total of six (6) years, after which, the member shall not be reappointed for at least three (3) years.
- C Except for the initial Board, each term shall commence on January 1st and end on December 31st. The members shall be appointed for terms of three (3) years, except the first nine (9) members appointed. Of the first nine (9) members appointed: a) three (3) members shall be appointed for terms of one (1) year, of whom one (1) shall have been designated by Council, and two (2) shall have been designated by the Community Compact Committee; b) three (3) members shall be appointed for terms of two (2) years, of whom one (1) shall have been designated by the Council, and two (2) shall have been designated by the Community Compact Committee; c) three (3) members shall be appointed for terms of three (3) years, of whom one (1) shall have been designated by the Mayor, one (1) shall have been designated by the Community Compact Committee, and one (1) shall have been designated by Council.

Gibson, Dunn & Crutcher LLP suggestionis

Item B replace "three (3)" with "six(6)"

Item "C" sub item a) delete "have been" and replace with "be";

Item "C" sub item b) replace "shall have been designated by the Community Compact Committee" with "shall be appointed from the community at large" replace "shall have been designated by the

Item "C" sub item c) replace "first" with "initial", replace "shall have been designated by the" "shall have been designated by the Mayor with the phrase replace "shall have been nominated by the May

Item "C" sub item – These appointment procedures run into the problem noted above re restricting the appointment powers of the City Council and the suggested language is not from Gibson Dunn. Instead, consider tying it to the categories in 15-3(2). For example, consider replacing "one (1) shall have been designated by Council, and two (2) shall have been designated by the Community Compact Committee" in subsection C(a) to "one (1) shall be from the pool of individuals described in Section 15-3(2)(A)(2), and two (2) shall be from the pool of individuals described in Section 15-3(2)(A)(3)"

EJB

Item "C" Insert "shall be for staggered terms" at end of second sentence.

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions.

4 Vacancies and Removal

- A. After the initial nine (9) member Board has been established, the Board shall notify the Mayor, Council, the City Manager, and the Community Compact Committee that a board position is vacant. The vacant position shall be filled in the same manner by which it was initially filled, within sixty (60) days of the vacancy. The Board member appointed shall complete the unexpired term of the former member.
- B. A Board member seeking public office shall resign their seat at the time they announce their candidacy or file their petitions, whichever happens first.
- C. Board members who no longer reside in the City shall be notified by the City Clerk that their status as a Board member is terminated effective the date they no longer reside in the City.
- D. Inadequate attendance at meetings shall be defined as failure to attend three consecutive board meetings or four(4) meetings during a a one year period, without good cause.
- E. The Board may request that Council remove a Board member for failure to adhere to the policies and/or inadequate attendance at meetings by a two-thirds vote of the entire Board. The Council may remove the member by a majority vote.

Gibson, Dunn & Crutcher LLP suggestions

Item 4 A, insert "the City before the word "Council"

Item 4 A, delete "that" and replace with "if"

Item 4 A, capitalize "board"

Item 4 B, insert "candidacy" before the word "petitions"

Item 4 C delete see 15-3 1 F

Item 4 D typos Replace with:

"Inadequate attendance at meetings shall be defined as failure to attend three (3) consecutive Board meetings or four (4) Board meetings in total during a one-year period without good cause, as good cause is applied for City Council meetings and absences."

Item 4 E replace with:

"The City Council may remove a Board member by a majority vote for failure to adhere to the policies and/or inadequate attendance at meetings by a two-thirds vote of the entire Board."

This language is not from Gibson Dunn. The issue is with limiting the City Council's removal powers, but the language above includes a vote by the Board. Instead, consider: "The City Council may remove a Board member by a majority vote for failure to adhere to the Board's policies and/or inadequate attendance at meetings. The Board may request that the City Council remove a Board member for failure to adhere to the Board's policies and/or inadequate attendance at meetings by a two-thirds vote of the entire Board."

EJB comments

commends adopting Gibson, Dunn & Crutcher LLP suggestions.

§ 15-4. PAB Member Responsibilities

PAB members shall:

1. Conduct themselves at all times in a manner that will maintain public confidence in the fairness, impartiality, and integrity of the PAB.
2. Obey all laws and ordinances of the City.
3. Obey all laws protecting individual rights to privacy and confidentiality of records.
4. Recuse themselves from participating in the review of any complaint in which they have a personal, professional, or financial conflict of interest.

Gibson, Dunn & Crutcher LLP suggestions

none

Council 82 Comments

add language "5. Shall avoid ex parte discussion of any matter that comes before the PAB

Selected Public Comments

EJB

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions.

§ 15-5 Conflicts of Interest

1. No Board Member shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest. Any conflict of interest prohibited by Article 18 of the General Municipal Law or by the City of Geneva Code of Ethics shall disqualify a member. Board members may not represent a complainant or a GPD Officer before the Board.
2. If a Board member has a personal, business or other financial relationship with a party to or a witness in a matter before the Board, the member shall disclose the situation to the Chairperson and shall recuse themselves from deliberations or action in connection with that case.

Gibson, Dunn & Crutcher LLP suggestions

Item "2", replace "a" with "any" before "matter"
second line Chairperson should be lower case.

EJB comments

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions.

§ 15-6. PAB Training, Procedures, Recommendations and Reports, and Outreach.

1. **Training.** The PAB shall seek and participate in a broad and independent range of training necessary to pursue the duties and responsibilities of the PAB as approved and funded by the City.

Training resources will be recommended by the City Manager on consultation with the PAB. Such Training resources may include individuals and organizations such as law enforcement entities, attorneys, and any national, state, or local resources with expertise and experience in civilian complaints, investigation, police policies, auditing/monitoring, and other appropriate skills and knowledge. The PAB and staff orientation and ongoing training may include but not be limited to, the following subjects:

- A. Federal, state, and local law and regulations relevant to law enforcement operations, investigation of police misconduct, and discipline of law enforcement officers.
- B. Implicit bias and anti-racism;
- C. Gender identity and sexuality;
- D. Disability rights, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities and traumatic brain injuries;
- E. Classism, poverty and homelessness;
- F. trauma-informed policing and crisis intervention, including GPD Officer well-being;
- G. patterns, practices, policies, and procedures of the GPD;
- H. discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance;
- I. GPD “ride alongs”, access to GPD training procedures and manuals.

Gibson, Dunn & Crutcher LLP suggestions

Replace “on” between “Manager” and “consultation” with “in”

Delete “and staff” between “PAB” and “orientation”

Insert new “B.” “Racial Profiling”

Old “B.” now “C.” Implicit bias.

Insert new “D.” “Anti-racism”

Old “C.” now “E.” Gender identity and sexuality;

Re-letter “F”, “G”, “H”, “I”, “J”, and “K” capitalize first word of each item

Old “I”, now “K” Replace “ride alongs” with “ride-alongs”; replace “,” with “;”; move “access to GPD training procedures and manuals.” to new subsection “L”

Council 82 Comments

the Local Law should contain a requirement for an orientation program and the completion of that program concerning the goals, duties, powers, procedures, and ethics of the PAB before a member can participate. In addition, PAB members should be required to graduate from a Citizens' Police Academy within six months of the start of a member's term.

EJB

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions.

§ 15-6. Cont'd

2. PAB Procedures.

- A. The PAB shall have the authority to decide its rules of operation and its manner of transacting business, subject to City Council Review, Federal, State and Local laws, and to the rules set forth in B, C, D, E and F below.
- B. The PAB shall hold regular monthly business meetings.
- C. Five members of the PAB shall constitute a quorum. A quorum must be present to conduct business. Five votes shall be required for any action by the PAB.
- D. The PAB shall hold its initial meeting within 60 days after the initial appointments are made. At its initial meeting, the PAB shall select a chairperson and a vice-chairperson and fix the time and place for its regularly scheduled meetings.
- E. The PAB shall hold an annual meeting in January of each year to select a chairperson and a vice-chairperson, and conduct such other business as may be required.
- F. The PAB may conduct both public and closed meetings as allowed or required by the New York State Public Officers Law, Article 7, known as the "Open Meetings Law."

Gibson, Dunn & Crutcher LLP comments

Item A make lowercase: "Federal", "State", and "Local"

Item D replace "60" with "sixty (60)"

EJB

Item A, add words, "and approval" after Review

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions.

§ 15-6. Cont'd

3. PAB Recommendations and Reports.

- A. The PAB shall file annual reports with the City Council, City Manager and the Police Chief which contain statistics and summaries of citizen complaints, including a comparison of the PAB's findings with the final determination of the City of Geneva Police Department.
- B. The PAB may make recommendations to the City Council and the Police Department regarding law enforcement, crime, crime prevention, and improved relations between the GPD with the community.

Gibson, Dunn & Crutcher LLP suggestions

Item "A". Insert "the" before "City Manager".
Replace "City of Geneva Police Department" with "GPD".

Item "B". Replace "Police Department" with "GPD".

Insert new "C" with the following language:

"The PAB's first annual report shall be filed within twelve (12) months of its initial meeting, and subsequent annual reports shall be filed within twelve (12) months thereafter."

EJB comments

Recommends adopting Gibson, Dunn & Crutcher LLP suggestions.

§ 15-7. Initiation of Complaints.

1. Every effort shall be made to simplify the procedure for submitting complaints.
2. Complaints may be submitted anonymously.
3. Complaints will be received, processed, investigated, and assigned a tracking number, notwithstanding procedural errors.
4. Complaints may be submitted directly to the PAB, or referred to the PAB by the Mayor, the Council, any Councilmember, or the Chief.
5. Complaints may be submitted by telephone to a number to be publicized, in person by delivery to a member of the PAB, or other persons designated by the PAB, by mail addressed to the PAB,, 47 Castle Street, Geneva, New York 14456, or by email or web form.
6. All complaints shall be reduced to writing. If the complainant does not wish to or is unable to do so, the PAB, or the person receiving or referring the complaint shall prepare a summary of the complaint on the complainant's behalf. In such event, the person preparing the summary of the complaint shall allow the complainant to read it or have it read it to him or her and shall provide the complainant with a copy.
7. Formal PAB review procedures concerning a complaint of misconduct described below will not commence without the complaint having been signed by the complainant or a PAB member.
8. Complaints shall be dated stamped on receipt by the PAB, and an acknowledgement shall be provided to the complainant.
9. The PAB shall comply with all local, state, and federal confidentiality, privacy and informed consent laws concerning complaints.
10. The PAB shall inform complainants of their legal assistance options and the procedure for filing a Notice of Claim against the City pursuant to Article VII of the City Charter.

Gibson, Dunn & Crutcher LLP comments

Capitalize "complaint" when preceded by "the" throughout

Item 5, delete additional "," before "47"

Item 6, insert "," after "referring the complaint"

Item 6, delete additional space after "behalf"

Item 6, insert following at end:

“, except where the complainant has elected to remain anonymous”

Item 9, delete additional space after "PAB"

Item 9, insert "," after privacy

Council 82 Comments

Section 15-7. 2. permits complaints to be submitted anonymously and without the requirement that it be submitted under the penalty of perjury, punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. By allowing this, Section 15-7. 2. has removed the only barrier to prevent the filing of false, malicious, harassing, or invalid complaints. Sections 15-7. 6. and 15-7. 7. go even further astray by allowing a PAB member to write the complaint on a complainant's behalf and to sign the complaint for him or her. This is the equivalent of PAB members initiating complaints because there is no way to verify that another person other than the PAB member really intended to file a complaint in the manner it was written or even if that person exists. Without identifying the complainant, it puts the credibility of the PAB member at issue and makes it impossible for this review process to be open, fair, and impartial. Section 15-5. 1. also states "Board members may not represent a complainant or GPD Officer before the Board" and Section 15-3. 1. D. states "Board members may not represent a complainant or a GPD Officer at Board hearings. "2 By writing complaints and signing them, PBA members are representing complainants or being their advocates.

This violates Article 16.3 of Local 3471 's Collective Bargaining Agreement, "[t]he member of the force shall be informed of the nature of the investigation before any interrogation commences, including the names of the complainant(s)." Further, GPD Officers have the right to know who is accusing them of misconduct, especially if it could harm them financially or cost them their jobs.

Selected Public Comments

EJB

Recommend adopting Gibson, Dunn & Crutcher LLP suggestions

Recommend consideration of Council 82 comments.

Item "5" delete one comma after third PAB

Include time limitation 18 months?

§ 15-8. GPD Procedure for investigating Complaints.

1. Within five (5) days after the PAB receives a complaint, it shall provide a copy, with all documentation, to the Chief who shall immediately commence an investigation. The GPD investigation shall be completed within thirty (30) days of receipt by it. For good cause shown, and on notice to the PAB, the City Manager may grant extensions of the time to complete the GPD investigation. The PAB shall conduct no investigation pending completion of the GPD investigation.
2. If the Chief finds that the GPD Officer(s) may have engaged in criminal conduct, he or she shall refer the matter to the Ontario County District Attorney's Office or the New York State Attorney General's Office and request that their office(s) initiate an investigation.
3. The Chief shall share with the PAB all evidence considered by the GPD with the findings and determinations of the GPD internal investigation, unless prohibited by law.
4. The Chief may suspend an officer pursuant to the Civil Service Law and applicable Collective Bargaining Agreements, pending completion of the procedures set forth in this Chapter.
5. Within five (5) days of completion of the GPD investigation, the Chief shall provide a copy to the PAB of the results of the GPD investigation, including all documentation relied on. Notwithstanding any of the above, the Chief's actions shall comply with New York State Civil Service Law, and Collective Bargaining Agreements between the City and the officers.

Gibson, Dunn & Crutcher LLP suggestions

Item "1", insert ",", after "Chief"

Item "4.", Capitalize "officer", and insert "New York State" before "Civil Service Law".

Item "5.", Insert "the" before New York State Civil Service Law".

Council 82 Comments

Selected Public Comments

EJB

Recommend adopting Gibson, Dunn & Crutcher LLP suggestions

Item "5.", Insert "applicable" before "Collective Bargaining Agreements".

Chief requests 60 days to complete GPD investigation.

§ 15-9 PAB Procedure for Review of GPD Determinations of Complaints.

1. After the PAB receives the Chief's determination referred to in section 15-8 subd "5", the PAB may, by majority vote, decide to conduct its own supplementary investigation.
2. The PAB is empowered to interview complainants, witnesses, and GPD Officers (subject to *Garrity v. New Jersey*, 385 U.S. 493), and gather other relevant evidence.
3. In conducting its investigation, the PAB shall avoid, as much as possible, repeating or duplicating the GPD investigation.
4. In furtherance of its investigation, the PAB, may, by majority vote, issue subpoenas signed by the chairperson directing witnesses to appear for interviews and evidence to be produced regarding the Complaint. PAB subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.
5. Interviews of witnesses and GPD officers shall be recorded.
6. All due process rights, including the right of any witness to have legal counsel present, shall be respected.
7. In deciding whether to subpoena witnesses and documents, the PAB shall consider avoiding unnecessary duplication and cost.
8. After its investigation is complete, the PAB shall make a determination regarding the Complaint to the Chief.
9. The Chief shall await completion of the PAB investigation, determination and recommendation for discipline, if any, before imposing discipline on an officer, unless the law or exceptional circumstances requires discipline to be imposed earlier. The Chief may consider but is not bound by the PAB recommendation. Notwithstanding any of the above, the Chief's actions shall comply with New York State Civil Service Law, Section 891 of the Unconsolidated Laws of the State of New York and Collective Bargaining Agreements between the City and the officers.

Gibson, Dunn & Crutcher LLP suggestions

Item "1." Insert the following language at the end of the item:

"The PAB shall provide the Chief prompt notice of the outcome of this vote, including, whether the PAB will conduct its own supplementary investigation."

Item "3.", replace "possible" with "practical".

Item "9.", Capitalize "Officers".

Insert "the" before "New York State Civil Service Law".

Council 82 Comments

1. 15-9-9 Impacts the chief's authority to impose discipline. This impact, involving the use of any disciplinary matrix, violates Section 9.2 of the City Charter, New York State Civil Service Law Sections 75 and 76 and Article 19 of Local 3471 's Collective Bargaining Agreement regarding the handling and determination of discipline. This impact would also warrant an improper practice charge under the Taylor Law, Civil Service Law Section 200 et seq., concerning a unilateral change to disciplinary procedures without negotiating.
2. Sections 15-9. 1., 2., 4., and 6. give the PAB the authority to conduct its own supplementary investigation of a misconduct complaint, including issuing subpoenas, interviewing complainants, witnesses and GPD officers, and gathering "other relevant evidence." Further, it is up to the PAB alone to decide whether its own investigation is repetitive or duplicative of the GPD investigation that will already have been done under Section 15-8. Here, the PAB 's purpose has changed from

reviewing GPD investigations of complaints of officer misconduct to actively investigating such complaints. There is no question that Section 15-9. violates City Charter sections 3.13, 4.4 and 9.2 which grants investigative authority to the City Council, the City Manager, and the Chief of Police respectively by encroaching on that authority. In addition, Section 15-8. 1. violates City Charter section 9.2 by changing the Chief's authority to conduct investigations of public complaints and limiting his time frame to only thirty (30) days unless "good cause" is shown for an extension of time to complete his investigation. Further, Article 16 of Local 3471 's Collective Bargaining Agreement makes it clear that interrogations of GPD officers are performed by superior officers designated by the Chief or City Manager in accordance with the procedures laid out in the remainder of Article 16, which includes the right to union representation under Article 16.5. The PAB is not in the chain of command of the GPD. Therefore, it is a violation of Article 16 for any PAB member to question a GPD officer and provides grounds to quash any subpoena seeking such testimony.

3. The time delays in initiating and determining discipline violate Local 3471 's Collective Bargaining Agreement An officer should not and does not have to wait for the PAB review process to play out in its entirety before disciplinary charges are rendered and/or resolved. Rather, discipline is and must be a process completely independent from the PAB. Article 19 is not constrained by the functions of the PAB. Nor should Local Law 1-2020 be read or applied to constrain Article 19. To the extent any provision can be read or applied that way, it is a violation of Article 19 and must be changed.

EJB

Item "9.", Insert "applicable" before "Collective Bargaining Agreements".

Recommend adopting Gibson, Dunn & Crutcher LLP and Charles King suggestions.

§ 15-10. PAB Determinations:

1. After completing its review of the Chief's determination and its own review and investigation, if any, the PAB shall make a determination as follows:
 - A. The Complaint is Sustained: where its review and deliberation disclosed sufficient facts to support the allegations made in the complaint.
or
 - B. The Complaint is Not Sustained: where the review fails to disclose sufficient facts to prove or disprove the allegation made in the Complaint.
or
 - C. The Officer(s) is Exonerated: where the acts which provide the basis for the Complaint occurred but the review shows that such acts were proper.
or
 - D. The Complaint is Unfounded: where the review shows that the act or acts complained of did not occur or were misconstrued.
or
 - E. No Finding: where the investigation of the Complaint failed to produce information to continue the investigation; where the investigation revealed that another agency was responsible and the Complaint or Complainant has been referred to that agency; where the Complainant withdrew the complaint; where the Complainant is unable to clarify the Complaint.
2. The PAB determination shall be completed within thirty (30) days of receipt of the Chief's determination. Extension of the time to complete the PAB determination may be granted by the City Manager on notice to the Chief and for good cause shown.
3. Decisions of the PAB shall be made by a majority vote of the entire Board.
4. Deliberations of the PAB shall be confidential and confined to the PAB members and their legal advisor(s).
5. The PAB shall issue a Notice of Decision as described in Section § 15-11.

Gibson, Dunn & Crutcher LLP suggestions

Item "1. A." Capitalize second "Complaint".

Item "1. E." Capitalize "complainant".

EJB

Recommend adopting Gibson, Dunn & Crutcher LLP suggestions

Item 1 should be amended for consistency to include all possible determinations and definitions under GPD GO 300 and definitions.

1. Exonerated
2. Unfounded
3. Not sustained
4. Sustained
5. Misconduct noted
6. Training issue
7. Withdrawn by complainant
8. No findings
9. Policy issue/ Failure

§ 15-11. Procedures After PAB Determination Is Made.

1. Complaint determinations made by the PAB will be documented in a Notice of Decision setting forth the findings of fact and reasoning of the PAB. If a PAB member dissents from the majority's decision, the dissenter(s) may provide a written statement of his/her/their findings of fact and reasoning.
2. PAB Notice of Decisions shall be provided to all parties with any confidential information redacted pursuant to all local, state, and federal law.
3. If the PAB finds that the GPD Officer(s) may have engaged in criminal conduct, it shall refer the matter to the Ontario County District Attorney's Office or the New York State Attorney General's Office and request that their office(s) initiate an investigation.
4. The PAB shall notify the complainant and the Chief, in writing within five (5) business days, of the PAB's findings and recommendations. It shall be the responsibility of the Chief to notify the GPD Officer(s) who were the subject(s) of the PAB's findings and decision.
5. PAB determinations may include disciplinary recommendations to the Chief, including but not limited to counseling, reprimand, retraining, suspension, demotion, or dismissal.
6. There shall be no appeal from the PAB determination.
7. Within ten (10) days of the receipt of a PAB Notice of Decision, the Chief shall make his or her final determination, including regarding disciplinary action, if any.
8. The Chief shall provide the PAB with a written explanation of his or her decision to discipline or not discipline any Officer(s) and a description of the discipline imposed, if any, and shall explain why, if said disciplinary action differs from that recommended by the PAB, his or her decision differs from the PAB recommended discipline. Notwithstanding any of the above, the Chief's actions shall comply with New York State Civil Service Law, Section 891 of the Unconsolidated Laws of the State of New York and Collective Bargaining Agreements between the City and the officers.
9. Upon provision of the written explanation referred to in subdivision "7" above, the Chief may initiate disciplinary proceedings, if any, pursuant to the City Charter, the Civil Service Law, and applicable Collective Bargaining Agreements.
10. The Chief maintains full authority to decide discipline subject to the City Charter, the New York State Civil Service Law, Collective Bargaining Agreements between the City and the officers. The authority of the PAB is at all times limited to an advisory role.

Gibson, Dunn & Crutcher LLP suggestions

Item "2." Add "s" at the end of "Notice" and delete "s" at the end of "Decisions"

Items "8." Add "the" in front of "New York State Civil Service Law"; add ", after "State of New York", capitalize "Officers".

Item "9." Delete quotation marks around "7"; insert "New York State" before "Civil Service Law"

Item "10." Add the word "and" before "Collective Bargaining Agreements"

Council 82

PAB determinations will affect discipline imposed in violation of CBAs, New York State Civil Service and Taylor Law.

Item "10." Insert "In Matters of Police Discipline" at start of item.

EJB

Recommend adopting Gibson, Dunn & Crutcher LLP and Charles King suggestions
Recommend careful consideration of Council 82 comments.

§ 15-12. Suspension of proceedings.

All proceedings on the Complaint by the GPD and the PAB shall be suspended pending completion of an investigation of the circumstances of the Complaint by the Ontario County District Attorney's Office or the New York State Attorney General's Office.

Gibson, Dunn & Crutcher LLP suggestions

Second line. Delete "pending completion" and insert in its stead "upon notice"
Insert at end of paragraph:

"until completion of such investigation, at which point GPD
and/or PAB can restart proceedings if appropriate as provided
for in this Article XV. "

EJB

recommend adopting Gibson, Dunn & Crutcher LLP suggestions

§ 15-13. Review of GPD Policies and Procedures

1. At least annually, the PAB shall review and assess GPD policies, procedures, patterns and practices and consider recommending changes with input from the community.
2. The PAB may from time to time recommend to the Chief a discipline matrix to be used in disciplining GPD officers. Said recommended matrix shall be sent to the Chief, the City Manager and City Council. The Chief shall consider the recommended matrix subject to New York State Civil Service Law, and Collective Bargaining Agreements between the City and the officers, and shall respond in writing to the PAB, addressing the PAB's recommendations. Any Matrix recommended by the PAB shall be referred to the Collective Bargaining Units for their consideration and approval prior to its use by the Chief
3. Subject to confidentiality laws and regulations, the PAB shall have regular and unrestricted access to body camera footage in order to review, apart from the public portion of its meeting, the operations of GPD employees for the purpose of reviewing adherence to adopted policies and the development of, or modification to, existing policies or trainings for the improvement and efficacy of the department's operations.
4. The PAB shall send its policy recommendations to the Chief, the City Manager, and City Council.
5. The PAB's recommendations may address, but are not limited to: conduct and policies exhibiting bias against individuals based on race, gender, sexual orientation, perceived sexual orientation, gender identity, disability and perceived disability; use of force both lethal and non-lethal; de-escalation policies; vehicle and foot pursuits; use of canines; failure to acknowledge and/or accommodate the needs of people with disabilities including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities, traumatic brain injuries; and human rights issues.
6. Within thirty (30) days of receiving the recommendations, the Chief shall provide the PAB, the Mayor, and Council with a written explanation of why the Chief agrees or disagrees with the policy recommendations.
7. The Chief shall provide a timeline to the PAB indicating implementation of each recommendation or an explanation of the determinations not to implement said recommendation.
8. The PAB may make public whether its recommended policy recommendation(s) and/or matrix(s) have been implemented.

Gibson, Dunn & Crutcher LLP suggestions

Item "1." add new sentence at end

"Any recommendations or analysis shall be included in the PAB's annual report".

Item "2." Delete additional space before "Said"

Add "," after "City Manager"

Insert "the" before "New York"

Capitalize Matrix in last sentence.

Add phrase "of GPD Officers" to last sentence after phrase "Collective Bargaining Units"

Insert "." after "Chief"

Item "3." Add "Officers and" after "GPD" and before "employees"

Replace "departments" with "GPD's".

Item "4." Add "the" before "City Council."

Item "5." Add "and" before traumatic

Item "6." Add "the City" prior to the word "Council".

Item "7." Delete "s" at the end of "determinations"

Item "8." Add "(es)" to the end of "matrix" and insert "by the Chief" after "implemented"

Council 82 Comments

Item "3". gives the PAB the authority to have "regular and unrestricted access to body camera footage" in order to review operations of GPD employees for the purpose of the development or modification of existing GPD policies or trainings and GPD officers' adherence to these new policies. Pursuant to GPD General Orders 409, Section VIII D. , the Chief or his designee is the only person to allow the release or viewing of body worn camera recordings to non-departmental personnel pursuant to applicable New York State laws.

These provisions go far beyond the review of GPD investigations of complaints of officer misconduct, they also clearly infringe upon the authority of Chief to efficiently operate his department as set forth in City Charter section 9.2.

EJB

recommend adopting Gibson, Dunn & Crutcher LLP suggestions

Item "3." Must be modified to satisfy GPD Chief's concerns regarding "regular and unrestricted access to body camera footage" and the justification for the proposed access.

Supports Council 82 concerns about this section.

§ 15-14. Public Reporting.

1. The PAB shall publish monthly data on the receipt and dispositions of complaints.
2. All Complaints shall be issued a public tracking number, which shall be included in the annual report.
3. The PAB shall provide an annual report to the City Council, made available to the general public on the City's website, documenting:
 - A. The total number and type of complaints and the Wards in which they occurred;
 - B. The public tracking number of each complaint;
 - C. Detailed information that is legally available to the PAB, not subject to privilege or privacy protection, including the number of previous complaints against the GPD Officer(s) named therein within ten (10) years of the incident and whether or not those complaints were sustained; the PAB shall comply with local, state, and federal law and redact any information that may not be disclosed publicly;
 - D. 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, the number of times pepper spray was deployed, the number of times and types of pain compliance tactics used, the number of times and types of use where a Taser was deployed;
 - E. In the event that a GPD Officer uses his/her firearm, the report shall include:
 - i.) the type of weapon used (firearm, brand, type); ii.) the number of shots fired; iii.) the range from which the firearm was fired; iv.) injuries sustained by the complainants or GPD Officer(s), and/or any bystanders or animals; v.) any medical care provided and what type; and vi.) whether the person or animal was killed;
 - F. The number of cases where the PAB's disciplinary recommendation was enforced by the Chief and the sanctions imposed by the Chief;
 - G. The number of cases where the Chief rejected the PAB's disciplinary recommendation;
 - H. The number of cases reviewed by the PAB; the number of complainants contacting the PAB but not following through with the complaint; the length of time each case was pending before the PAB; and, the number of complainants who filed a notice of claim against the City while their complaint was being considered by the PAB.
 - I. The PAB's recommendations related to changes in GPD patterns, practices, policies, and procedures;
 - J. Whether the prior year's recommended changes have been implemented; and ,
 - K. A summary of complainant and public survey data with an assessment of if, and, how GPD policies should change to accommodate concerns.

Gibson, Dunn & Crutcher LLP suggestions

Item "J" Delete "," after "and"

Item "K" Delete "," after "if" and after "and"

EJB

none

§ 15-16. Legal Representation.

1. The City Attorney shall advise and represent the PAB as it would other City Departments and Boards in accordance with its duties under Section 7.5 of the City Charter.
2. If a conflict of interest arises regarding representation of the PAB by the City Attorney, it may request assignment of special counsel to advise and represent it.

EJB

Renumber section to §15-15

§ 15-17 Retaliation Prohibited

Retaliation by GPD Officers and employees against complainants, witnesses, PAB members, GPD Officers and employees, or any other person related to their participation or involvement with the PAB shall be prohibited. Retaliation includes but is not limited to: disparate treatment, harassment, intimidation, stalking, threats, and assaults.

Complaints of retaliation shall be provided to the Chief and the City Manager for investigation and possible discipline

EJB

Renumber section to §15-16

GPD chief requests this be a bilateral prohibition.

§ 15-17. Severability.

If any clause, sentence, paragraph, section or part of this Article shall be adjudged by any court of competent jurisdiction to be invalid or otherwise unenforceable, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 15.19. Effective Date.

This local law shall take effect twenty (20) days after it is filed as provided in Section Twenty Seven of the New York State Municipal Home Rule Law.