

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 47

Introduced by Council Members Gibson, Kallos, Constantinides, Louis, Chin, Rosenthal, Rivera and Gennaro.

A LOCAL LAW

To amend the New York city charter and the administrative code of the city of New York, in relation to clarifying that the New York city civilian complaint review board has the power to investigate bias-based policing and racial profiling, requiring such board to investigate past professional conduct by members of the police department determined to have engaged in acts of bias and to make remedial recommendations and requiring the police department to engage an external consultant to perform a review of certain past work done by the equal employment opportunity division of the police department

Be it enacted by the Council as follows:

Section 1. Paragraphs 1, 3 and 6 of subdivision c of section 440 of the New York city charter, paragraphs 1 and 3 as amended by a ballot question approved by the voters in the 2019 general election and by local law number 215 for the year 2019 and paragraph 6 as added by local law number 1 for the year 1993, are amended to read as follows:

1. The board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority *including bias-based policing and racial profiling*, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The board shall also have the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is

the subject of a complaint received by the board, if such statement was made during the course of and in relation to the board's resolution of such complaint. The findings and recommendations of the board, and the basis therefor, shall be submitted to the police commissioner. 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shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.

3. The board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of matters within its jurisdiction pursuant to this [section] *chapter*. The board may request the corporation counsel to institute proceedings in a court of appropriate jurisdiction to enforce the subpoena power exercised pursuant to this [section] *chapter*, and the board itself may, subject to chapter 17 of the charter, institute such proceedings. The board may, subject to any conditions it deems appropriate, delegate to and revoke from its executive director such subpoena authority and authority to institute proceedings.

6. The board shall issue to the mayor and the city council a semi-annual report which shall describe its activities and summarize its actions. *Such report shall include, for each investigation initiated pursuant to section 441, such investigation's date of initiation, current status and any date of completion or termination, a description of any investigative findings and recommendations set forth in a written statement of final determination and a description of any written reports from the police commissioner in response to a written statement of final determination.*

§ 2. Paragraphs 1 and 2 of subdivision d of section 440 of the New York city charter, as amended by a ballot question approved by the voters in the 2019 general election and by local law number 215 for the year 2019, are amended to read as follows:

1. It shall be the duty of the police department 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 investigations undertaken pursuant to this [section] *chapter*, except such records or materials that cannot be disclosed by law.

2. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board and its civilian investigators in connection with investigations undertaken pursuant to this [section] *chapter*, provided that such inquiries are conducted in accordance with department procedures for interrogation of members.

§ 3. Chapter 18-A of the New York city charter is amended by adding a new section 441 to read as follows:

§ 441. Investigating past professional conduct by members of the police department. a.

Definitions. As used in this section, the following terms have the following meanings:

Act of bias. The term “act of bias” means an act stemming from a specific incident:

(i) that is motivated by or based on animus against any person on the basis of race, ethnicity, religion, gender, sexual orientation or disability, and

(ii) that the board is empowered to investigate pursuant to paragraph 1 of subdivision c of section 440.

Board. The term “board” means the civilian complaint review board.

Covered entity. The term “covered entity” means the police department, the board, the commission on human rights, the department of investigation, a court of competent jurisdiction or any other officer or body designated by the board.

b. 1. The board: (i) shall conduct an investigation of past conduct in the course of performance of official duties by a current or former member of the police department whom a covered entity has found, in a final determination reached after such member was afforded an opportunity to respond to the relevant allegations, to have engaged in a severe act of bias, regardless of whether such member was on or off duty when engaging in such act, if the date that such investigation commences would be less than five years after such final determination was made; and (ii) may conduct an investigation of past conduct in the course of performance of official duties by a current or former member of the police department whom a covered entity has found, in a final determination reached after such member was afforded an opportunity to respond to the relevant allegations, to have engaged in an act of bias other than a severe act of bias, regardless of whether such member was on or off duty when engaging in such act, if the date that such investigation commences would be less than five years after such final determination was made.

2. For the purposes of initiating such investigations, the board shall define what constitutes a severe act of bias and, in consultation with each covered entity, what constitutes a covered entity’s final determination that such a member engaged in an act of bias or severe act of bias, provided that off-duty conduct may be the basis for initiating such investigation only if (i) such conduct could have resulted in removal or discipline by the police department, (ii) the board reasonably believes such conduct has had or could have had a disruptive effect on the mission of the police

department, and (iii) the police department's interest in preventing actual or potential disruption outweighs the member's speech interest.

3. Within 10 days after making or changing a definition made pursuant to paragraph 2 of this subdivision, the board shall communicate such definition or change to each covered entity and shall make such definition or change publicly available online.

4. If a covered entity that is an agency makes a final determination that such a member engaged in an act of bias or a severe act of bias, such covered entity shall promptly provide notice to the board in a time, form and manner designated by the board in consultation with such covered entity.

5. Within 120 days after the effective date of sections one through four of the local law that added this section, each covered entity that is an agency shall, to the extent practicable, provide the board with a written list of such members whom such covered entity has finally determined to have engaged in an act of bias or severe act of bias before such effective date and on or after January 1, 2016; provided that such list shall be provided in a form and manner, and shall include such additional information, as the board may require in consultation with such covered entity.

6. At least once every 4 months after the effective date of sections one through four of the local law that added this section, the board shall request from each covered entity that is not an agency, except a court with jurisdiction within the state of New York, information about final determinations made by such entity that such a member engaged in an act of bias or severe act of bias, including final determinations made on or after January 1, 2016.

7. The board shall consult with the law department to obtain information about final determinations by a covered entity that is a court with jurisdiction within the state of New York

that such a member has engaged in an act of bias or severe act of bias, including final determinations made on or after January 1, 2016.

c. The board shall determine the scope of past conduct in the course of performance of official duties by such member to investigate based on the member's professional rank and assigned roles and the nature of the member's act of bias. The board shall investigate all or a representative sampling of such member's past conduct within such scope beginning from the date of hire by the police department until and including, for a former member of the police department, the last day of employment by the police department, or, for a current member of the police department, the date of initiation of an investigation pursuant to this section.

d. 1. Within 10 days after the board initiates such investigation, the board shall provide written notice to the member being investigated and to the relevant covered entity.

2. Within 10 days after the completion of such investigation, the board shall provide a written statement of final determination to the member being investigated. Such statement shall include (i) the investigation's details, when it was initiated and concluded, the identity of its subject and a summary of the materials reviewed by the board during the investigation; (ii) the board's investigative findings, including the identification of any threat to the safety of an individual or the public and whether the board found evidence of any additional past acts of bias committed in the course of performance of official duties; (iii) if applicable, any recommendations of the board for remedial action, including training, discipline, where consistent with section 75 of the civil service law, or both; and (iv) if applicable, a statement that the board has determined to terminate the investigation and an explanation why.

3. *The board shall provide an opportunity for the member being investigated to answer in writing, within a time period established by rule, any findings or recommendations made by the board. If such member timely submits such an answer, the board shall consider it and determine whether to revise any such findings or recommendations in response.*

4. *Within 10 days after finalizing the written statement of final determination pursuant to paragraphs 2 and 3 of this subdivision, the board shall submit such written statement to the police commissioner, any other parties to whom notice was sent pursuant to paragraph 1 of this subdivision and any other appropriate agency or official as determined by the board. Within 120 days after receiving such written statement, the police commissioner shall report to the board in writing on any action taken or planned to be taken in response, including the level of discipline and any penalty imposed or to be imposed upon such member, as well as any other remedial action. If such action taken or planned to be taken differs from that recommended by the board, the police commissioner shall provide in such written report a detailed explanation for deviating from the board's recommendations and an explanation of how the final disciplinary or remedial decision was determined, including each factor the police commissioner considered in making such decision. If the police commissioner takes action in response to such written statement of final determination after such 120-day period, the police commissioner shall provide an updated version of such written report to the board within 30 days after taking such action.*

e. 1. *The board may, subject to any conditions it deems appropriate, delegate to and revoke from its chair or executive director any responsibility or authority assigned by this section to the board.*

2. *The board may, subject to any conditions it deems appropriate, designate a third party to assist with any investigation conducted under this section. Any such third party shall keep confidential and is prohibited from disclosing except to the board any information it obtains in the course of such investigation, except as otherwise required by law.*

f. The board shall, in accordance with subdivisions b, c and d of this section, promulgate rules that further prescribe the manner in which the board is to conduct investigations, present findings, make recommendations, provide notice and provide an opportunity for the member being investigated to be heard.

g. This section shall not be construed to limit or impair the police commissioner's authority to discipline members of the police department at any time. Nor shall this section be construed to limit the rights of members of the department with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise.

h. This section shall not be construed to prevent or hinder any investigation or prosecution undertaken by any covered entity.

§ 4. Subdivision a of section 14-190 of the administrative code of the city of New York, as added by local law number 68 for the year 2020, is amended to read as follows:

a. The department shall maintain a centralized system that is used to record, track, review[,] and evaluate officer activity and to identify officers who may be in need of enhanced training, monitoring[,] or reassignment. Such system shall collect and utilize, at a minimum, the following:

(i) information reported pursuant to section 7-114;

(ii) complaints received and results of investigations *based on such complaints* conducted by the civilian complaint review board pursuant to section 440 of the charter;

(iii) complaints received and *results of* investigations conducted by the department, including but not limited to investigations conducted by the internal affairs bureau, and any disposition resulting from any such investigation;

(iv) complaints received pursuant to section 804 of the charter;

(v) use of force incidents and incidents of excessive force, as those terms are defined in section 14-158;

(vi) arrests and summonses for violations of sections 240.20, 195.05 and 205.30 of the penal law;

(vii) judicial or departmental determinations that detentions of individuals were not legally justified;

(viii) criminal arrests or investigations of an officer, to the extent known to the department;

(ix) judicial determinations that an officer's testimony is not credible;

(x) vehicle pursuits and collisions involving department equipment;

(xi) violations of the department's patrol guide;

(xii) disciplinary actions and ongoing disciplinary proceedings; [and]

(xiii) non-disciplinary corrective actions[.]; *and*

(xiv) *results of investigations conducted by the civilian complaint review board pursuant to section 441 of the charter.*

§ 5. a. The police department shall, in accordance with this section, engage an independent, external consultant to perform an independent, full and complete review of all, or a statistically

significant sampling of, work performed and cases handled by the equal employment opportunity division of the police department between October 1, 2017 and October 31, 2020, inclusive, to determine whether such work performed and cases handled by such division were done in accordance with the purpose, mission and protocols of such division as described by the police department in any policies of the police department and any publicly published materials.

b. The police department shall fully cooperate with such review and provide such assistance as such external consultant may request, including by providing such external consultant with any and all materials containing policies of the police department that describe the purpose, mission or protocols of such division. The police commissioner shall ensure that all members of the police department and other persons acting on behalf of such department respond to inquiries by such external consultant in connection with such review.

c. The agreement under which the police department engages such external consultant shall require and provide as follows, in addition to including any other terms and provisions the police department may determine to be appropriate:

1. Except as otherwise provided in this local law or as otherwise required by law, such external consultant and its employees, agents and representatives shall keep confidential and are prohibited from disclosing outside such external consultant any information such external consultant obtains in the course of such review.

2. Within 30 days after the conclusion of such review, such external consultant shall make publicly available online and submit to the mayor, police commissioner and speaker of the council a written report summarizing the findings of such review. Such report shall include recommendations for improving the function of such division with respect to its purpose, mission

and protocols and for remedying instances in which such division did not fulfill such purpose or mission or follow its protocols, excluding any recommendations that such division reinvestigate or otherwise reconsider particular past work or cases handled by such division.

3. Such external consultant may make recommendations to the police commissioner that such division reinvestigate or otherwise reconsider particular past work or cases handled by such division.

d. Within 120 days after receiving such report from such external consultant, the police commissioner shall make publicly available online and submit to the mayor and speaker of the council a written statement on the actions that the police department has taken or plans to take in response to the findings and recommendations in such report. In any instance where the action taken or planned to be taken in response to such report differs from that recommended in such report, the police commissioner shall provide in such statement a detailed explanation of the reasons for deviating from such recommendation. If the police commissioner takes any action in response to such report after such 120-day period, and such action was not described in a prior statement prepared by the police commissioner pursuant to this subdivision, the police commissioner shall make publicly available online and provide to the mayor and speaker of the council an updated version of such statement within 10 days after taking such action.

e. Nothing in this section shall require the publication of information that is protected by law.

f. Before making any report available to the public pursuant to this section, the police department or an external consultant engaged by such department shall remove any individual's name, all personal identifying information as defined by subdivision a of section 10-501 of the

administrative code of the city of New York and any information that, in conjunction with information available to the general public, may result in the disclosure of an individual's identity.

§ 6. a. Sections one through four of this local law take effect 270 days after they become law, except that the New York city civilian complaint review board shall take such measures as are necessary for the implementation of such sections, including the promulgation of rules, before such date.

b. Section five of this local law takes effect 30 days after it becomes law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on March 25, 2021 and returned unsigned by the Mayor on April 26, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 47 of 2021, Council Int. No. 2212-A of 2021) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.