

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1997**

No. 91

Introduced by The Speaker (Council Member Vallone) and Council Members Pinkett, Leffler, Clarke, Fisher, White, Robles, Henry, Marshall, Michels and the Public Advocate (Mr. Green); also Council Members Cruz, Eisland, Foster, Harrison, O'Donovan, Povman, Watkins, Williams, Spigner, Koslowitz, Linares and Robinson.

A LOCAL LAW

To amend the New York city charter, in relation to the establishment of an independent police investigation and audit board.

Be it enacted by the Council as follows:

Section 1. **Legislative Findings of Fact and Declaration of Policy.** The Council hereby finds that it is essential to the safety and well-being of the residents of the City of New York that members of the New York City Police Department be held to the highest standard of conduct and integrity in the performance of their professional responsibilities. As a society, we confer upon police officers the power to make arrests and, where necessary, use force, in order to protect public order, prevent crime and apprehend criminals. If the trust and confidence of the public is to be maintained, members of the police force must conduct themselves honestly, in a manner commensurate with the high degree of trust placed in them.

The Council finds that the vast majority of police officers discharge their duties honestly and with integrity. A relatively small number of police officers, however, have been found to engage in serious criminal activities, particularly in connection with the illegal drug trade. This was the finding of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, better known as the "Mollen Commission." In July 1994, after an extensive investigation lasting almost two years, the Mollen Commission issued its final report. Among its key findings, the Commission concluded that the Police Department's internal anti-corruption systems had been allowed to deteriorate to the point where they "minimized, ignored and at times concealed corruption, rather than root it out."

The Commission concluded that the Department must retain primary responsibility for policing itself and maintaining integrity within its ranks. To that end, the Commission recommended a "dual track approach" calling for reform of the Department's internal anti-corruption structure and the creation of an independent police monitor to insure that the structure is working effectively.

The Council finds, as did the Mollen Commission, that once the glare of publicity has dimmed, the Police Department's commitment to zealously root out corruption will eventually diminish unless an independent entity continues to closely monitor the Department's anti-corruption efforts as well as independently investigate allegations of illegal activities. The purpose of this legislation is to create such an independent mechanism based upon the model proposed by the Mollen Commission.

The Independent Police Investigation and Audit Board created herein will have both the power to audit and examine the Police Department's own anti-corruption efforts and the ability to conduct independent corruption investigations backed by the power to issue subpoenas. It is, however, the Council's intention that the Police Department continue to have the primary responsibility for detecting and preventing internal corruption. The Council is also aware of the vital role played by other offices, such as the City's District Attorneys, in exposing and prosecuting acts of official corruption. The Council recognizes the need for cooperation and coordination among the responsible agencies in order to avoid duplication of efforts and interference with ongoing investigations and other legitimate law enforcement activities. For these reasons, the legislation requires the Board to enter into protocols with the Police Commissioner, the District Attorneys and the Civilian Complaint Review Board in order to create a structure in which such cooperation and coordination will be facilitated.

On November 23, 1994, after extensive public debate and consideration, the Council adopted Int. No. 402-A, which created an Independent Police Investigation and Audit Board. The legislation was vetoed by Mayor Giuliani on December 23, 1994. On January 19, 1995, the Council overrode the Mayor's veto, and Int. No. 402-A became Local Law 13 of 1995. Subsequently, Mayor Giuliani instituted a judicial proceeding against the City Council seeking to declare Local Law 13 invalid.

On June 28, 1995, Justice Beatrice Shainswit of the New York State Supreme Court, New York County, held Local Law 13 to be invalid on the ground that, absent a referendum, the Council's power to appoint members of the Independent Police Investigation and Audit Board unlawfully interfered with the Mayor's authority to appoint "officers of the City" pursuant to § 6(a) of the Charter. The court found that the Board's authority pursuant to Local Law 13 to "assist the police department to formulate and implement policies to detect and eliminate corruption" was sufficient to confer the status of "officers of the City" upon Board members, for the purposes of Charter § 6(a).

On January 9, 1997, the First Department of the Supreme Court Appellate Division affirmed the Supreme Court's ruling that Local Law 13 was invalid. The Appellate Division's sole basis for this ruling was that the law interfered with the Mayor's appointment powers under the Charter. The Appellate Division declined to sever the Council's appointment power from Local Law 13, pointing to the fact that the law was adopted without a severability clause. The Court failed to give effect to § 1153 of the Charter, which expressly provides that "[i]f any provision of this charter...shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, it is the purpose and intent of this charter that all other provisions thereof shall nevertheless be separately and fully effective and that the application of any such provision to other persons or situations shall not be affected."

The New York State Court of Appeals has refused to grant the Council leave to appeal the decision of the Appellate Division. It is therefore the intention of the Council

to amend and re-adopt the disputed legislation, curing those purported legal defects found by the two lower courts.

The Council hereby reaffirms its conviction that the creation of an Independent Police Investigation and Audit Board would benefit the police force and enhance the public's trust and confidence in the Police Department. In order to address the issues raised by the courts, the five members of the Board created by this legislation shall be appointed by the Mayor; two of those members shall be designated by the City Council. The chair shall be appointed by the Mayor after consultation with the Speaker of the Council. This appointment structure is based on that of the Civilian Complaint Review Board (Charter § 440(b)(1)) and the Campaign Finance Board (Charter § 1052(a)(1)).

Contrary to the finding of the lower court, it was not the Council's intention to vest the Board with policy-making authority by allowing it to "assist" the Police Department to formulate and implement policies to detect and eliminate corruption. The plain language of the bill, and the statement of legislative intent, made clear that the legislation was not intended to interfere with the Police Commissioner's primary role in investigating corruption and disciplining members, nor the executive authority to manage the Police Department. In order to clarify the Council's intention in this regard, the language of the bill has been amended to permit the Board to make non-binding recommendations to the Police Department regarding the formulation and implementation of anti-corruption policies and programs, similar to its authority to make recommendations for the improvement of the Department's anti-corruption systems.

Finally, an express severability clause is contained in the law, making clear the Council's intention that should any portion of the law be held invalid, the court should use its power to strike only the invalid portion of the law, leaving the rest intact.

§ 2. The New York city charter is amended to add a new chapter eighteen-b to read as follows:

CHAPTER 18-B

INDEPENDENT POLICE INVESTIGATION AND AUDIT BOARD

§ 450. Independent police investigation and audit board; membership. a. There shall be an independent police investigation and audit board, which shall consist of five members of the public, appointed by the mayor, who shall be residents of the city of New York. The members of the board shall be appointed as follows: (i) two members shall be appointed by the mayor; (ii) two members shall be designated by the city council; and (iii) the chair shall be appointed by the mayor after consultation with the speaker of the council. No member of the board shall hold any other public office or employment.

b. The members of the board shall be appointed for terms of three years, except that of the members first appointed, two shall be appointed for terms of one year, of whom one shall have been designated by the council and one shall have been appointed by the mayor, two shall be appointed for terms of two years, of whom one shall have been designated by the council and one shall have been appointed by the mayor, and the chair shall be appointed for a term of three years.

c. 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.

§ 451. Powers and duties of the board. a. The board shall have the power to:

1. perform assessments and audits of the police department's internal systems for detecting, investigating and preventing corruption among uniformed and civilian members of the police department, and make recommendations for the improvement of those systems;

2. make recommendations to the police department in relation to the formulation and implementation of policies and programs to detect and eliminate corruption;

3. undertake independent investigations of possible corruption within the police department; and

4. undertake investigations of possible corruption within the police department at the request of the mayor or the police commissioner.

b. If during the course of any assessment, audit or investigation undertaken pursuant to subdivision a of this section, the board forms a reasonable belief that criminal activity or other wrongdoing has occurred or is occurring, the board shall, as soon as practicable, report the facts that support such belief to the police commissioner and the appropriate prosecuting attorney.

§ 452. Subpoenas. 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 any matter within its jurisdiction pursuant to this chapter. The board may designate those of its employees it deems necessary to administer oaths and to examine persons in connection with any such matter.

§ 453. Board staff. The board is authorized, within appropriations available therefor, to appoint such employees as are necessary to exercise its powers and fulfill its duties.

§ 454. Annual report. The board shall issue to the mayor and the city council an annual report which shall describe its activities and summarize its actions.

§ 455. Cooperation of the police department. a. 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 the investigation of any matter within its jurisdiction pursuant to this chapter, except such records or materials that cannot be disclosed by law.

b. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board in connection with the investigation of any matter within the board's jurisdiction pursuant to this chapter, provided that such inquiries are conducted in accordance with department procedures for interrogation of members.

§ 456. Authority of the police commissioner to investigate corruption to remain unimpaired; law enforcement agencies. The provisions of this chapter shall not be construed to limit or impair the authority of the police commissioner to investigate corruption within the department, or to discipline members of the department. Nor shall the provisions of this chapter be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law or rules and regulations of the department by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency or body.

§ 457. Protocols. *a. Police Department.* Within ninety days after the appointment of the last member of the board pursuant to section four hundred and fifty, the board and the police commissioner shall establish a protocol pursuant to which information shall be exchanged and cooperation between the board and the department facilitated in accordance with the provisions of this chapter. Such protocol shall also provide for means of avoiding and resolving potential disputes arising out of investigations independently undertaken by both the board and the department.

b. District Attorneys. Within ninety days after the appointment of the last member of the board pursuant to section four hundred and fifty, the board shall enter into a protocol with each of the city's district attorneys pursuant to which information shall be exchanged, cooperation between the board and the district attorneys facilitated, and potential disputes arising out of investigations independently undertaken by the board and a district attorney's office shall be avoided and resolved. Any investigation undertaken by the board pursuant to paragraphs three or four of subdivision a of section four hundred and fifty-one shall be conducted in accordance with the provisions of the applicable protocol, if any, entered into pursuant to this subdivision. Provided, however, that the lack of a protocol pursuant to this subdivision shall not prohibit the board from undertaking any investigation authorized by this chapter.

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

§ 458. Severability. If any provision of this chapter, or the local law creating this chapter, or of any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this chapter or local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 3. This local law shall take effect 90 days after its enactment into 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 to The City of New York, passed by the Council on September 30, 1997, disapproved by the Mayor on October 30, 1997 and repassed by the Council members on November 25, 1997 and said law is adopted notwithstanding the objection of the Mayor.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 91 of 1997, Council Int. No. 961) contains the correct text and:

Received the following vote at the meeting of the New York City Council on September 30, 1997: 40 FOR, 7 AGAINST.

Was disapproved by the Mayor on October 30, 1997.

Was returned to the City Clerk on October 30, 1997.

Was reconsidered by the Council on November 25, 1997 and received the following vote of the Council members at a meeting of the Council on November 25, 1997: 41 FOR, 6 AGAINST.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel

The validity of this local law is currently a subject of disagreement between the Mayor and the City Council. This certification is not intended as a legal opinion as to the validity of the local law, other than certifying the truth of the facts presented herein.