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Int. No. 463

By Council Members Barron, Richardson Jordan, Ossé, Avilés, Louis, Hanif, Farías, De La Rosa and Sanchez

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to creating an elected civilian review board and repealing the civilian complaint review board and independent police investigation and audit board

Be it enacted by the Council as follows:

Section 1. Chapter 18-a of the New York city charter is REPEALED and a new chapter 18-a is added to read as follows:

CHAPTER 18-a

ELECTED CIVILIAN REVIEW BOARD

§ 440. Elected Civilian Review Board. a. Declaration of legislative findings and intent. The Council finds that the people of the city of New York require a mechanism for the investigation of complaints of misconduct and possible uses of excessive force by officers and employees of the New York city police

department toward members of the public, and determination of appropriate disciplinary actions that is comprehensive, thorough, and impartial. These investigations must be conducted fairly and independently. Therefore, the Council finds that an independent elected civilian review, comprised solely of members of the public with the authority to investigate allegations of police misconduct, is necessary to ensure independence, thoroughness, and impartiality.

b. Composition of the elected civilian review board.

1. There shall be an elected civilian review board to consist of 17 members of the public who shall be elected from districts comprised of three adjacent city council districts as follows:

District 1 includes city council districts 1, 2, and 3

District 2 includes city council districts 4, 5 and 6

District 3 includes city council districts 7, 9 and 10

District 4 includes city council districts 8, 16 and 17

District 5 includes city council districts 11, 14 and 15

District 6 includes city council districts 12, 13 and 18

District 7 includes city council districts 19, 23 and 27

District 8 includes city council districts 20, 24 and 29

District 9 includes city council districts 21, 22 and 25

District 10 includes city council districts 28, 31 and 32

District 11 includes city council districts 26, 30 and 34

District 12 includes city council districts 33, 35 and 36

District 13 includes city council districts 38, 39 and 40

District 14 includes city council districts 37, 41 and 42

District 15 includes city council districts 43, 44 and 47

District 16 includes city council districts 45, 46 and 48

District 17 includes city council districts 49, 50 and 51

2. Board members shall be elected for a term of four years, coinciding with the terms of office and scheduled elections of city council members. Members shall be eligible for reelection without term limits.

3. Candidates for board member must submit a petition signed by 200 enrolled voters who reside within the district the candidate seeks to represent. No person shall be eligible to hold the office of member of the elected civilian review board if such person (a) has not, at the time such person is elected, resided within New York City for the preceding three years and within the relevant district for the preceding 12 months (b) is less than 18 years of age, (c) has been employed by any police department or law enforcement agency for any length of time, or (d) is an immediate family member of any person who has been employed by any police department or law enforcement agency within the preceding 10 years. No person shall be eligible to hold the office of member of the elected civilian review board for a district in which such person has not, at the time such person is elected to hold such office, resided for at least one year. No member of the board shall hold any other public office or employment.

4. In the event of a vacancy during the term of office, a successor may be nominated by the city council members representing the corresponding city council districts and appointed by a majority of such council members. A board member appointed to fill a vacancy shall serve for the balance of the unexpired term.

§ 441. Powers and duties of the board.

a. The board shall have the power to receive, investigate, hear, make findings and impose discipline upon police officers for police misconduct based on complaints made by members of the public or initiated independently by the board. The board shall investigate any incident involving a serious injury or death caused by an officer. For the purposes of this chapter, the term “police misconduct” means any action taken by a member of the New York police department involving:

1. The use or threat of excessive or unnecessary force;

2. An arrest or threat of an arrest without probable cause;

3. Unlawful searches and seizures of a person or property;
4. Tampering with evidence;
5. Falsifying official reports, giving false testimony to any investigating agency, or perjury;
6. Sexual harassment;
7. Use of abusive or offensive language;
8. Discrimination on the basis of age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, or physical ability;
9. Mistreatment of an individual based on their state of mental health;
10. Discrimination based on an individual's record of criminal history or incarceration with no valid law enforcement purpose;
11. Harassment, discrimination or intimidation of any person in relation to a complaint made to the board;
12. The violation of an individual's constitutional rights;
13. Surveillance, infiltration or disruption of political, social, or religious activities without authorization from the police department; and
14. Violation of any department rules or procedures related to the misconduct defined in this subdivision.

b. For the purposes of imposing discipline and sanctions as part of an officer's employment by the police department, the board shall have the exclusive authority to determine whether to substantiate an allegation of misconduct made pursuant to this chapter and the type of disciplinary action to be imposed on an officer for all such substantiated allegations of misconduct. Disciplinary action may include training, counseling, reassignment, suspension, or dismissal. The board shall promptly notify the commissioner of the police department that the subject officer of a complaint is under investigation by the board. After rendering its

decision, the board shall promptly notify the commissioner whether the board intends to take disciplinary action against such officer. The board shall refer any complaint that constitutes a criminal offense to the appropriate district attorney or prosecutor pursuant to section 444.

c. The board shall promulgate rules of procedure in accordance with the city administrative procedure act and all other applicable laws, including rules that prescribe the manner in which investigations and hearings are to be conducted, determinations on disciplinary actions are to be 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 shall provide for the establishment of panels of no fewer than three members of the board, which shall be empowered to hear, make findings, and determine appropriate disciplinary actions. No finding or determination 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 disciplinary determination. Board members shall not participate in investigations, except as provided in paragraph e of this subdivision.

d. The board shall appoint an executive director, whose duties shall include: the supervision of all investigations and prosecutions before the board; the hiring of civilian employees as necessary to exercise its powers and fulfill its duties, including representation from groups most impacted by police misconduct; develop an annual training program for the board and civilian employees; and any other administrative functions the board may delegate to the executive director.

e. 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. 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, 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.

f. The board shall create a disciplinary matrix, which shall include a fixed range of penalties for each act of misconduct based on the gravity of misconduct, the officer's disciplinary history, and other aggravating and mitigating circumstances. The board shall seek public comment on the disciplinary matrix prior to implementation and shall review the disciplinary matrix no less than every five years.

g. The board shall establish a citywide system for receiving complaints from members of the public at all times.

h. The board shall establish a mediation program through which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.

i. The board shall develop and administer an ongoing program for the education of the public regarding the provisions of this chapter, the method for initiating a complaint, and the duties and actions of the board.

j. Each member of the board shall convene a publicly advertised monthly community assembly within their district that is open to the public. Each such assembly shall include a report by the board member or his or her designee on the work of the board including information and statistics on the number and type of complaints received and actions taken by the board, and an opportunity for community members to comment on issues related to the board. Minutes of each meeting shall be made available to the public on the board's website.

k. The board shall issue to the mayor and city council a semi-annual report, which shall describe its activities and summarize its actions.

§ 442. Cooperation of the police department.

a. The police department shall fully cooperate with investigations by the board and provide to the board and its investigators all requested records and other materials within 30 days of any such request.

b. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board and its investigators, provided that such inquiries are conducted in accordance with department procedures for interrogation of its members.

§ 443. Budget. The appropriations available to pay for the expenses of the elected civilian review board during each fiscal year shall not be less than one percentum of the appropriations available to pay for the expenses of the police department during such fiscal year.

§ 444. Prosecutor.

a. There shall be an independent prosecutor elected to serve for a term of four years, coinciding with the terms of office and scheduled elections of the mayor and city council members, to prosecute criminal offenses committed by police officers.

b. Qualifications. A prosecutor must have resided in New York city for at least the three years preceding their election and must submit a petition supporting her or his candidacy signed by 100 residents of New York city. The prosecutor must be qualified to practice in all courts of this state and must have been so qualified for at least five years preceding their election. The prosecutor shall hold no other office or paid employment.

c. Powers.

1. The prosecutor shall institute, attend, and conduct, on behalf of the people, all criminal cases against police officers acting under color of law arising in New York City and upon violation of the provisions of this charter or the laws of the city or state in the court of original jurisdiction, and on appeal.

2. The prosecutor shall have access to the complaints, arrest reports, investigation reports, and evidence made, kept, or obtained by the New York police department, the board, or other city agencies that maintain records or files concerning the actions of its employees when they act in the capacity of police officers within the scope or course of their employment.

d. Duties.

1. The prosecutor shall give advice or opinions in writing to any member of the board or board staff upon request by such member or staff.

2. The prosecutor shall keep in their office proper books of record and registry of all actions in their charge in which the city or any member of the board is a party or is interested.

3. The prosecutor is authorized, within appropriations available, to appoint such employees as are necessary to exercise its powers and fulfill its duties, and shall appoint a staff of civilian investigators. Hiring of investigators and other staff shall ensure representation of groups most impacted by police misconduct.

4. The prosecutor shall request from the board all cases considered by that board for disciplinary action, for the purposes of review in deciding whether criminal prosecution is warranted.

§ 2. Subdivision a of section 434 of the New York city charter is amended to read as follows:

a. The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department[.], except as provided in chapter 18-a.

§ 3. Chapter 18-b of the New York city charter is REPEALED

§ 4. Section 14-115 of the administrative code of the city of New York is amended to read as follows:

a. Subject to the provisions of chapter 18-a of the New York city charter and subdivision e of this section, [T]the commissioner shall have power, in his or her discretion, on conviction by the commissioner, or by any court or officer of competent jurisdiction, of a member of the force of any criminal offense, or neglect of duty, violation of rules, or neglect or disobedience of orders, or absence without leave, or any conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming an officer, or any breach of discipline, to punish the offending party by reprimand, forfeiting and withholding pay for a specified time, suspension, without pay during such suspension, or by dismissal from the force; but no more than thirty days' salary shall be forfeited or deducted for any offense. All such forfeitures shall be paid forthwith into the police pension fund.

b. Members of the force, except as elsewhere provided herein, shall be fined, reprimanded, removed, suspended or dismissed from the force only: 1. on written charges made or preferred against them, after such charges have been examined, heard and investigated by the commissioner or one of his or her deputies upon such reasonable notice to the member or members charged, and in such manner or procedure, practice,

examination, and investigation as such commissioner may, by rules and regulations, from time to time prescribe [.]; or, 2. after a hearing conducted pursuant to chapter 18-a of the charter.

c. The commissioner is also authorized and empowered in his or her discretion, subject to chapter 18-a of the New York city charter and subdivision e of this section, to deduct and withhold salary from any member or members of the force, for or on account of absence for any cause without leave, lost time, sickness or other disability, physical or mental; provided, however, that the salary so deducted and withheld shall not, except in case of absence without leave, exceed one-half thereof for the period of such absence; and provided, further, that not more than one-half pay for three days shall be deducted on account of absence caused by sickness.

d. Upon having found a member of the force guilty of the charges preferred against him or her, either upon such member's plea of guilty or after trial, the commissioner or the deputy examining, hearing and investigating the charges, in his or her discretion, may suspend judgment and place the member of the force so found guilty upon probation, for a period not exceeding one year; and the commissioner may impose punishment at any time during such period.

e. Upon written notice from the elected civilian review board indicating that an investigation into specific allegations of misconduct made pursuant to chapter 18-a of the charter is pending, the commissioner shall not have the authority to impose discipline against any officer named in such notice for such acts of misconduct. The commissioner's authority to impose discipline for the specified acts of misconduct shall be restored upon subsequent written notice that the elected civilian review board does not intend to take disciplinary action against a named officer.

§ 5. This local law takes effect immediately after it is submitted for the approval of the qualified electors of the city at the next general election held after its enactment and is approved by a majority of such electors voting thereon, except that the provisions of sections 1 through 4 of this local law do not take effect until the last member of the board established by chapter 18-a of the New York city charter, as provided in section 1 of

this local law, takes office.

Session 12

AV

LS 8740

4/11/22

Session 11

D.A.

LS 4928

Int. 2245-2021