

CITY OF GENEVA LOCAL LAW NO. 2 -2020

**Local Law Amending the Geneva City Charter
To Establish a Police Accountability Board**

BE IT ENACTED, by the City Council of the City of Geneva as follows:

The Geneva City Charter, as amended, is hereby further amended by adding the following new Article XV entitled "**Police Accountability Board**".

Article XV Police Accountability Board

§ 15-1 PURPOSE

The Geneva City Council shall establish a civilian-controlled process to fairly investigate and make determinations respecting complaints of misconduct involving sworn officers of the Geneva Police Department. The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Geneva Police Department patterns, practices, policies, and procedures. The Police Accountability Board shall ensure public accountability and transparency over the powers exercised by sworn officers of the Geneva Police Department. The Police Accountability Board shall provide a non-exclusive alternative to civil litigation.

§ 15-2 ESTABLISHMENT AND JURISDICTION

There is hereby established an independent office of municipal government to be known as the Police Accountability Board. It shall be an autonomous office of the City separate from the City Police Department and other local, state, and federal law enforcement agencies. The members of the Board, shall be appointed through legislation approved by the City Council according to the guidelines established for service on said board. The Board shall be independent of the GPD and shall investigate and adjudicate complaints of misconduct against GPD Officers. The Board shall have the power to conduct independent investigations, consistent with powers granted to the City Manager in § 4.4 and the Geneva City Council in § 3-13, including but not limited to the power to use subpoenas to compel testimony and the production of evidence, and any disciplinary power as deemed permissible under State law. Based on information and belief that an investigation is warranted, the Board shall have the power to conduct an investigation, even in the absence of a civilian complaint.

The Board shall have the power to investigate any and all conduct, acts, or omissions by any GPD Officer as outlined below. The Board shall have the power to review and recommend changes to GPD regarding GPD policies, procedures, patterns, practices and training.

§ 15-3 BOARD COMPOSITION, APPOINTMENT, VACANCY, AND REMOVAL.

The Police Accountability Board shall consist of nine (9) members appointed by City Council. Members of the Board shall serve terms of three (3) except for the initial Board, which shall serve staggered terms, pursuant to Section 3-2.

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, unless that such employment was three (3) or more years prior to the member's appointment.
- 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, at least one (1) duly licensed attorney in good standing, and at least two (2) duly ordained members of the clergy.
- F. The residency requirement may be waived only for the purposes of appointing a Board member to fulfill the professional representation of licensed mental health professionals or a licensed attorney in good standing.
- E. 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.

2. Appointment Process

- A. Appointments to the initial Board shall be made within sixty (60) days from the effective date of this Local Law as follows:
 - 1) The Mayor shall appoint one (1) member.

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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 thirty (30) 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.

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.

4. Vacancies and Removal

A. After the initial nine (9) member Board has been established, when any member vacates the Board, the Board shall notify the Mayor, Council, and the Community Compact Committee. 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. A Board member who no longer resides in the City shall resign immediately.

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- D. By a two-thirds (6 out of 9) majority vote, the Board may request that Council remove a Board member for failure to adhere to the policies and/or inadequate attendance at meetings. The Council may remove the member by a majority vote.

§ 15-4 POWERS AND DUTIES

1. Investigations, Disciplinary Matrix, Power to Recommend Discipline, Review and Assessment of Regulations, Cooperative Relationships
 - A. The Board shall have the power to conduct independent investigations, the power to use subpoenas to compel testimony and the production of evidence, and the power to recommend discipline according to an established disciplinary matrix) if a complaint of misconduct is sustained. Confidential information shall be guarded and protected in accordance with State law.
 - B. The Board shall establish a disciplinary matrix in conjunction with the Chief of the Geneva Police Department and City Manager.
 - C. The Board shall review and assess GPD policies, procedures, patterns, practices and training and recommend changes to the GPD. Written acknowledgment of receipt of recommendations will be sent to the Board and City Manager from the Chief of Police within sixty (60) days with a detailed listing of what items are and are not being implemented.
 - D. The Board and the Chief shall establish a cooperative relationship to ensure the orderly and efficient flow of information.

§ 15-5 PROCEDURES

1. Initiation of Complaints
 - A. Complaints may be received directly by the Board, or upon referral from the Mayor, the Council, any Councilmember, or the Chief.
 - B. The Board shall receive complaints by telephone, in person, by mail, email or web form. Complaints shall be received and considered whether submitted under signature or anonymous. All complaints shall be reduced to writing. If the complainant does not wish to do so, the person referring the complaint may do so in their place. Efforts to simplify the procedure shall be made to encourage filing. No complaint will not be processed solely on the basis of a procedural error. Professional standards of confidentiality with regard to the written release of information and informed consent will apply to all complaints filed. With respect to the confidentiality of all interested parties, the Board shall comply with all local, state, and federal law.
 - C. The Board shall inform complainants of their legal assistance options and the procedure for filing a Notice of Claim with the Corporation Counsel against the City, pursuant to Article VII of the City Charter.

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2. Board Investigation of Complaints
 - A. Subsequent to a complaint being received, the Police Accountability Board shall interview complainants, witnesses and GPD Officers, and gather relevant evidence.
 - B. Subpoenas may be issued upon the affirmative vote of a majority of the Board at any time during the review and adjudication processes. Such subpoenas may compel the attendance of witnesses, GPD Officers, GPD employees, and/or persons, and require the production of records and other materials, including records of the GPD, other persons, or other agencies. A copy of any subpoena served upon a GPD Officer or employee shall also be delivered to the Chief. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.
 - C. The Chief shall use the authority granted by Article IX of the City Charter to promulgate new rules or utilize existing rules regarding discipline and administration of GPD Officers to ensure compliance with Board procedure and applicable law. GPD Officers and employees shall be notified of their rights against self-incrimination under *Garrity v. New Jersey*, 385 U.S. 493 (1967) before any testimony is taken from them.
 - D. One (1) police officer holding the rank of Captain or higher shall be made available by the Chief to the Board at the Board's request to serve as a consultant or advisor should questions arise from members of the Board regarding specific police practices, policies, or general orders. The officer so assigned shall not be the Commanding Officer of the Officer(s) involved in the case being reviewed.
 - E. A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board. Such declination must be made in writing by the complainant, and shall be forwarded to the Chief by the Board.
 - F. Statements made by complainants, GPD Officers or employees, or witnesses are subject to the panel's determinations of weight and credibility.
 - G. The Chief shall take no action on a complaint, whether received directly by the GPD or by the Board, until receipt of the Board findings and decision, or notice that the Board has determined no disciplinary action is appropriate. Nonetheless, the Chief shall retain the authority to suspend or terminate the employment of an GPD Officer during the investigation and adjudication of a complaint against the GPD Officer.

3. Reasonable Cause Determination

Upon completion of the review of the material from the Board investigation, the Board members will determine whether or not there is reasonable cause to proceed to a hearing. If there is reasonable cause to proceed, the Board shall schedule a hearing and notify the complainant and the Chief. If there is not reasonable cause, the Board shall notify the complainant and the Chief of this determination.

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4. Hearing Process

- A. Upon majority vote of the Board membership in a duly published open meeting, the Board may determine to go into Executive Session so that they may conduct its hearing.
- B. At least six (6) Board members should be in attendance to conduct a hearing.
- C. Board hearings shall be recorded and transcribed by the Board. No other recordings or transcriptions are permitted.
- D. Decisions made by the Board will be documented in a Notice of Decision delineating the findings of fact and reasoning of the Board. If a Board member dissents from the majority's decision, the dissenter shall provide a written delineation of their findings of fact and reasoning.
- E. Notice of Decisions shall be provided to all parties with any confidential information redacted, pursuant to all local, state, and federal law.
- F. Both complainant(s) and GPD Officer(s) subject to a hearing shall have the right to obtain counsel or other representation and call witnesses on their own behalf. All due process rights delineated in NYS Civil Service Law Section 75 shall apply.
- G. Complainants and GPD Officers subject to hearings may be questioned by the Board at the Board's discretion; relevant evidence pertaining to the case before the Board may also be entered into the hearing.
- H. Statements made by complainants, GPD employees, Officers, or witnesses are subject to the Board's determination of weight and credibility.
- I. Decisions of the Board shall be made by a majority vote pursuant to preponderance of the evidence standard of proof. Deliberations of the Board shall be confidential and confined to the Board members and their legal advisor(s). The decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the GPD Officer(s) pursuant to the disciplinary matrix.
 - a. If the Board 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 initiate an investigation.
 - b. The Board shall notify the complainant and the Chief, in writing within five (5) business days of the Board's findings and decision. It shall be the responsibility of the Chief to notify the GPD Officer(s) who were the subject(s) of the Board's findings and decision.
 - c. If a Notice of Board Decision contains a dissenting opinion, the complainant may appeal to the City Manager for review of the Board's findings. The complainant's appeal requesting City Manager review must be in writing and received by the Board no more than 30 days after the Notice of Board Decision was sent to the complainant.

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- d. Board decisions may include disciplinary sanctions including but not limited to counseling, reprimand, retraining, suspension, demotion, or dismissal.
- e. Board decisions will be made part of the employee's personnel file and cannot be removed.
- J. The findings and decisions of the hearing will be reported to any Board members not in attendance of the hearing at the next scheduled meeting.
- K. Board members who were not present for the hearing of a particular case are disqualified from voting on that case.
- L. The actions of the Board shall not preclude action by the criminal or civil justice system.
- M. Within thirty (30) days of the receipt of a Notice of Board Decision, the Chief shall provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix.

§ 15-6 DISCIPLINE

1. Before conducting any hearings, the Board shall establish a disciplinary matrix per § 15-4. This shall not limit the Chief's ability to impose any additional discipline for a GPD Officer above and beyond that recommended by the Board.
2. The Board shall notify the complainant and the Chief in writing within five (5) business days of the Board's final decision of disciplinary recommendation.
3. The Chief will provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix within thirty (30) days.

§ 15-7 POLICY ASSESSMENT

At least annually, the Board shall review and assess GPD policies, procedures, patterns and practices and recommend changes with input from the community.

1. The Board 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.
2. The Board shall send its policy recommendations to the Chief, the City Manager, and City Council.
3. The Board'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.

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4. Within thirty (30) days of receiving the recommendations, the Chief shall provide the Board, the Mayor, and Council with a written explanation of why the Chief agrees or disagrees with the policy recommendations.
5. The Chief shall provide a timeline to the Board indicating implementation of each recommendation or an explanation of the decision not to implement said recommendation.
6. The Board shall publicize whether or not the policy recommendation(s) have been implemented.

§ 15- 8 COMMUNITY OUTREACH

1. The Board shall conduct outreach to community members, groups, and nonprofit organizations. The Board shall provide language access for limited and non-English proficient individuals. The Board shall provide reasonable accommodations in accordance with the federal, state, and local law to individuals with disabilities.
2. Complaint forms and instructions shall be made available by GPD Officers and employees, at the Public Safety Building and City Hall, at the Geneva Public Library, at Board meetings, and on the City of Geneva website.
3. In addition to regular monthly business meetings that include review of complaints, the Board shall invite public input or comment, and provide information education about the Board process and its work.
4. The Board shall work with the Community Compact Committee to establish and pursue ways to interact with and solicit input from youth, present educational programs designed to promote public awareness of the Board process, give the public information about their rights and responsibilities regarding encounters with law enforcement employees, and publicize the procedure for filing a complaint with the Board.
5. The City shall provide the Board with a webpage on which the Board shall post information, including but not limited to: educational materials, links, videos, reports, and forms related to the operation of the Board and its mission.
6. The Board shall survey complainants and the public to assess satisfaction and identify concerns with the Board's investigative and adjudicative processes.

§ 15- 9 CONFLICT 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.

§ 15- 10 LEGAL REPRESENTATION

1. The City Attorney shall advise and represent the Board as it would other public boards in accordance with the duties under Section 7.5 of the City Charter.
2. The Board may use its discretion to contract for independent legal counsel, as it deems appropriate.

§ 15- 11 RETALIATION PROHIBITED

Retaliation by GPD Officers and employees against complainants, witnesses, Board members, GPD Officers and employees, or any other person related to their participation or involvement with the Board shall be prohibited. Retaliation includes but is not limited to: disparate treatment, harassment, intimidation, stalking, threats, and assaults. If a complaint of retaliation is sustained by the Board, disciplinary action shall be taken based upon the disciplinary matrix. The Chief will also be notified of the misconduct. Any other City employee who engages in retaliation as defined above shall also be subject to discipline.

§ 15- 12 POLICE ACCOUNTABILITY BOARD REPORTS

1. The Board 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 Board 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 happened;
 - B. The public tracking number of each complaint;
 - C. Detailed information that is legally available to the Board, including the number of previous complaints against the GPD Officer(s) named therein

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within ten (10) years of the incident and whether or not those complaints were sustained; the Board 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 their firearm, report shall include:
- i. the type of weapon used (firearm, brand, type); b) number of shots fired; c) the range from which the firearm was fired; d) injuries sustained by the complainant, animal(s), GPD Officer(s), and/or any bystanders; e) any medical care provided and what type; whether the person or animal was killed;
 - i The number of cases where the panel's disciplinary decision was enforced by the Chief and the type of sanctions imposed;
 - ii The number of cases where the Chief disputed the disciplinary decision of the panel;
 - iii The number of cases reviewed by the Board, the number of complaints found not to have reasonable cause to be heard, the number of complainants contacting the Board but not following through with a formal signed complaint, the length of time each case was pending before the Board, and the number of complainants who filed a notice of claim against the City while their complaint was being considered by the Board.
 - iv The recommendations related to changes in GPD patterns, practices, policies, and procedures;
 - v Whether the prior year's recommended changes have been implemented;
 - vi A summary of complainant and public survey data with an assessment of if and how Board policies should change to accommodate concerns.

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