



**ALBANY COMMON COUNCIL
PUBLIC SAFETY COMMITTEE
Kelly Kimbrough, Chair**

Meeting called by: Kelly Kimbrough, Chair Date: 1-25-21 Time: 5:30PM

**Chief Auditor Dr. Applrys
Brett William, Assist. Corporation Counsel
Ava Avery, Director of Government Law Center, Albany Law
Center
Greg McGee, Albany Police Department
Sgt. Jim Lewis, Albany Police Department
Commander Anthony Battuello, Albany Police Department
Nairobi Vives, Community Police Review Board (CPRB)**

Invitees/Speakers

Committee Members Present: Kimbrough, Chair Balarin Frederick Hoey Igoe

Present:

Council Members

Present: Robinson, Fahey, Johnson and Ellis

City Personnel

Present: Danielle Gillespie and John-Raphael Pichardo

Minutes

Agenda Item:

LOCAL LAW J of 2020

A LOCAL LAW AMENDING ARTICLE XLIV (GENERAL PROVISIONS) OF PART 33 (COMMUNITY POLICE REVIEW BOARD) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE OPERATION OF THE CPRB

Points of Discussion:

- The Chair and President Pro Tem Kimbrough called meeting to order.
- Council member Richard Conti provide justification for Local Law J of 2020
- Research Counsel John-Raphael Pichardo walked us through recent amendments:

LOCAL LAW J of 2020

A LOCAL LAW AMENDING ARTICLE XLIV (GENERAL PROVISIONS) OF PART 33 (COMMUNITY POLICE REVIEW BOARD) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE OPERATION OF THE CPRB

BE IT ENACTED by the Common Council of the City of Albany as follows:

Section 1. Article XLIV (General Provisions) of Part 33 (Community Police Review Board) of Chapter 42 (Departments and Commissions) of Part I of the Code of the City of Albany is amended to read as follows:

§ 42-332. Legislative findings; purpose.

A. The Common Council hereby finds and declares that abuse of authority, incivility, rudeness, prejudice or discrimination based upon race, gender, color, national origin, economic status, religion, age, sexual orientation, marital or domestic partner status, or mental or physical ability has no place in the actions, customs, practices, policies or procedures of the City of Albany Police Department.

B. The Common Council further finds and declares that it is in the public interest of the City of Albany to have an independent mechanism to fairly review the conduct of law enforcement officials.

C. The Common Council further finds and declares that the conduct of law enforcement officials is subject to public, departmental and executive scrutiny and accountability.

D. The Common Council further finds and declares that an effective program to improve the relationship between the community and the Albany Police Department requires certain independent authority and power to review the handling of complaints of police misconduct.

E. The purpose of this Part 33 is to create an independent review body with respect to complaints of misconduct by officers of the Albany Police Department. The remedies created by this Part 33 are in addition to any others provided by common law or statute. Its goals are to improve communication between the Police Department and the community, to increase police accountability and credibility with the public and to create a complaint review process that is free from bias and informed of actual police practices.

§ 42-333. Definitions.

For purposes of this Part, the following words and phrases shall have the meanings described in this section:

CHIEF

The Chief of Police of the Albany Police Department.

COMPLAINT

A written statement concerning police conduct which is either submitted to the Community Police Review Board for filing with the Albany Police Department or filed directly with the Albany Police Department.

CPRB

The Community Police Review Board.

GENDER

Shall have the same meaning as set forth in section 48-25 (Definitions) of Article III (Omnibus Human Rights Law) of Chapter 48 (Equal Opportunity Protections) of this Code.

GOVERNMENT LAW CENTER

The Government Law Center of Albany Law School.

MEDIATION

A structured dispute resolution process in which a neutral third party assists the disputants by facilitating a nonbinding intervention.

OFFICER

Any sworn police officer of the City of Albany Police Department affected by an individual's complaint.

PROFESSIONAL STANDARDS

The Professional Standards Unit of the City of Albany Police Department.

§ 42-334. CPRB establishment; appointment of members; funding.

A. There is hereby established a Community Police Review Board (CPRB) comprised of nine members, five of whom shall be appointed by the Common Council and four of whom shall be appointed by the Mayor.

B. Members shall be appointed for three-year terms; provided, however, that:

(1) Of members initially appointed by the Common Council: one shall be for a term of one year; two shall be for a term of two years; and two shall be for a term of three years.

(2) Of members initially appointed by the Mayor: one shall be for a term of one year; one shall be for a term of two years; and two shall be for a term of three years.

C. No member of the CPRB shall serve for a period which exceeds two full consecutive terms; provided, however, that a member may be considered for reappointment to the CPRB after one year of nonmembership.

D. Members shall continue to serve on the CPRB until their successors have been appointed.

E. Annually, the members of the CPRB shall elect from their membership a member to serve as Chair.

F. Upon submission to the Common Council, the annual proposed City of Albany operating budget shall include a separate appropriation to fund CPRB operations in an amount which is not less than one-percent of the total proposed budget of the Albany Police Department.

§ 42-335. Removal of members; filling of vacancies.

CPRB members may be removed [~~from the CPRB~~] at any time for cause by a [~~2/3~~] two-thirds vote of the Common Council. Any vacancy occasioned by resignation, death or removal of a member shall be filled within 60 days in the same manner as the predecessor to fill the unexpired term.

§ 42-336. Qualifications of members.

Members of the CPRB shall reside in the City of Albany and possess a reputation for fairness, integrity and responsibility and have demonstrated an active interest in public affairs and service. The Common Council and the Mayor shall endeavor to reflect community diversity in their appointments, including income level, race, ethnicity, age, gender, sexual orientation and experience, and shall, in their appointments, solicit recommendations from the community. Officers (as defined in the City of Albany Charter), current employees of the City of Albany and the immediate relatives of officers and employees shall not be eligible for appointment.

§ 42-337. Quorum.

Five members of the CPRB shall constitute a quorum. Five votes shall be required for any action.

§ 42-338. Bylaws and rules.

The CPRB, with the advice and assistance of the Government Law Center, shall adopt, and the Common Council shall approve, rules and bylaws for the transaction of CPRB affairs, including the manner of calling and giving notice of special meetings and the appointment and duties of any special committees.

§ 42-339. Training and orientation of members.

The Government Law Center shall coordinate and conduct training and orientation of CPRB members and recommend for adoption by the Common Council written standards for orientation of appointees and continuing training of all CPRB members. Completion of the orientation program concerning the goals, powers and procedures of the CPRB is required before a member may participate as a voting member. In addition, graduation from the Albany Police Department's Community Police Academy (the curriculum of which shall include training in the laws applicable to public record concerns, internal affairs investigations, confidentiality issues and liability statutes; training in police procedures; participation in ride-alongs; defensive tactics training; firearms familiarization; and emergency vehicle operations) within six months of the start of the member's term is required. Further, the Government Law Center shall provide to CPRB members, and the members shall undergo, continuing education on issues related to the interaction between civilians and police officers from the perspectives of both the complainant and the police officer and shall additionally include a review and update of relevant federal and state statutory amendments and case law. Further, at least one member of the CPRB shall be designated to become a member of the National Association of Civilian Oversight of Law Enforcement, and at least one member shall attend its annual conference.

§ 42-340. Recommendations, reports, data collection and analysis.

A. The CPRB may make recommendations to the Common Council and the Mayor regarding police policies and practices relevant to the goals of community policing and the exercise of discretionary authority by police officers.

B. The Government Law Center shall submit an initial evaluation of the process provided for in this Part 33, one year after the establishment of the CPRB.

C. The Government Law Center, on behalf of the CPRB, shall file quarterly and annual reports with the Common Council and the Mayor which contain statistics and summaries of complaints, including a comparison of the CPRB's findings with the final determinations of the Department. The Government Law Center shall contract with one or more local colleges, universities or research institutions to conduct surveys of complainants concerning the level of their satisfaction with the process and to conduct surveys of the community to get feedback concerning the CPRB and the Police Department. The results of those surveys shall be reported to the CPRB, the Chief and the Common Council. In addition, the Government Law Center shall collect data concerning alleged offenses and offenders and report this data to the Chief. The Chief shall analyze and use the data concerning repeat alleged offenses and offenders to implement an "early warning system" to track repeat alleged offenses and offenders reported to CPRB and the Police Department.

D. The Chief shall issue a quarterly report to the CPRB on disciplinary investigations and action taken within the department and resolutions thereof. Such reports shall include both individualized information about specific cases and aggregate information. Additionally, the CPRB is authorized to request a report from the Chief on whether disciplinary action was taken in any specific case.

§ 42-341. Member responsibilities.

CPRB members shall:

A. Maintain absolute confidentiality with respect to confidential or privileged information they receive and maintain a thorough knowledge of the legal protection accorded to police records, including the penalties imposed for violations.

B. Obey all laws respecting individuals' rights of privacy and confidentiality of records.

C. Not remove any Police Department, Professional Standards, personnel or other confidential files, records or tapes from City offices.

D. Excuse themselves from participating in the review of any complaint in which they have a personal, professional or financial conflict of interest.

E. Conduct themselves at all times in a manner that will maintain public confidence in the fairness, impartiality and integrity of the CPRB and refrain from making any prejudicial comments with respect to the CPRB, complainants or police officers.

F. Participate in orientation and training programs in accordance with § 42-339 of this Part.

§ 42-342. Filing of complaints.

Complaints concerning police conduct shall be filed with the Police Department or submitted to the CPRB for filing with the Police Department as provided in this section. The CPRB may designate one or more locations for the submission of complaints for filing with the Police Department.

A. Complaints shall be lodged in writing using the City of Albany Police Department Complaint Form as approved by the CPRB for that purpose and shall be signed by the complainant. Complaint forms shall be printed in English and Spanish and shall be available at any City of Albany Police Department facility, the City Department of Administrative Services, the City Clerk's office and any other location designated by the CPRB.

B. A copy of each complaint submitted to the CPRB for filing with the Police Department shall be forwarded to the Police Department within two working days of its receipt; additionally, a copy of each complaint submitted to the Police Department (other than those submitted by the CPRB) shall be provided to the CPRB within two working days of receipt by the Department. Upon receiving a complaint, the CPRB shall notify the complainant of the City's mediation program established in accordance with § 42-346 of this Part 33.

C. Complaints shall be filed within ~~[six months]~~ 180 days of the date of the incident giving rise to the complaint. Complaints filed after ~~[six months]~~ 180 days of the alleged misconduct shall, however, be returned, or accepted and reviewed by the CPRB upon a majority vote of its members to do so. The complainant shall be notified by the Board of the decision as to whether the complaint be returned, or accepted and reviewed.

D. The CPRB shall have full access to information about any officer involved in the events that are the subject of a complaint, including information about prior complaints involving that officer and any action taken in response to those complaints. It shall be within the discretion of the CPRB whether to discuss in a public meeting, or include in the CPRB's findings, or otherwise make public, such information.

E. When a complaint is filed, and the Department is in the possession of any audio or video footage pertaining to the incident (including, but not limited to, body camera footage and dash-board camera footage), the Department shall make such footage available for any members of the CPRB upon request. If the Department fails to make the footage available within fourteen days of the request, it shall forward a notice to the CPRB and the Common Council

explaining the delay. It shall be within the discretion of the CPRB whether to discuss in a public meeting, or include in the CPRB's findings, or otherwise make public, such information.

§ 42-343. Review of complaints.

Review of the complaint shall proceed as provided in this section.

A. Professional Standards shall investigate every complaint filed. The Chief shall file with the CPRB [~~quarterly~~] monthly reports on the status of the investigation of each complaint.

B. In the event that a complaint alleges the use of excessive force or a violation of civil rights, the definition of which shall include complaints pertaining to sexual orientation, the CPRB shall appoint an individual to:

(1) Observe and monitor the Professional Standards investigation of such complaint from the outset of the investigation; and

(2) Report to the CPRB and the Chief as to the conduct of the investigation. Such report may recommend additional witnesses whose statements should be taken, additional questions which should be answered and additional documents or other evidence which should be reviewed. Such report may cite deficiencies, if any, in the investigation, including whether the number of witnesses questioned by Professional Standards, the scope of the questions asked of them and the review of documents or other evidence was sufficient. The individual shall be selected on a rotating basis from the panel of investigators established in accordance with Subsection **H** of this section.

C. Professional Standards, with the advice and assistance of the Government Law Center, shall develop procedures and practices for the conduct of investigations of complaints, including procedures and practices for briefing and communicating with the appointed individuals referenced in Subsection **B** of this section. The Government Law Center shall periodically review and make recommendations to Professional Standards with regard to such procedures and practices.

D. Professional Standards shall begin its investigation of each complaint immediately upon receipt of the complaint. If Professional Standards fails to conclude its investigation within 60 days of receipt of the complaint, it shall advise the CPRB and the Common Council in writing of the status of the investigation and the estimated time for the conclusion of the investigation. Thereafter, Professional Standards shall advise the CPRB and the Common Council in writing of the status of the investigation every 30 days until the conclusion of the investigation.

E. Within 10 working days of the conclusion of the Professional Standards investigation, the Chief of Police shall submit a preliminary report of the Department's findings to the CPRB.

F. After review and deliberation of the preliminary report of the Department's findings, the CPRB shall:

(1) Render its finding pursuant to § **42-344** of this Part **33**; or

(2) Request that Professional Standards conduct further investigation of the complaint; or

(3) Obtain further case-specific information from the Chief, including written materials, audio- or videotapes and related documents.

G. In the event that the CPRB is dissatisfied with the extent and/or the quality of the further investigation referenced in Subsection **F(2)** of this section, it shall promptly inform the Mayor, the Common Council, and the Chief, in writing, of the specific deficiency in the investigation. At that point, the Mayor and the Chief shall be responsible for reviewing

the investigation in full to gather whatever additional information may be necessary to meet the requirements of the CPRB. The Mayor and the Chief shall have three weeks to respond to the CPRB. Such process shall allow the full force and authority of the Office of the Mayor, including the ability to compel employee testimony, to be provided on behalf of the CPRB. The Mayor and the Chief shall have three weeks to respond to the CPRB.

H. In the event that the CPRB is dissatisfied with the extent and/or the quality of the Mayor's and the Chief's review of the investigation, or does not receive a timely response in accordance with subsection G of this section, it shall promptly inform the Common Council, in writing, of the specific deficiency in the investigation. In such event, the CPRB may ~~[seek authorization from the Common Council to]~~ conduct~~[, on the Common Council's behalf,]~~ an investigation with the services of an outside independent investigator. The investigator shall be selected on a rotating basis from a panel of investigators comprised of certified investigators, attorneys, retired judges and the like who are recommended by the Government Law Center and approved by the Common Council and the Mayor. The Government Law Center, the Common Council and the Mayor shall endeavor to reflect community diversity in this panel of investigators. The use of an outside independent investigator, however, shall be limited to complaints alleging use of excessive force or civil rights violations, the definition of which shall include complaints pertaining to sexual orientation. Outside independent investigators shall have access to the same information to which the CPRB shall have access. Furthermore, in the event that the CPRB is dissatisfied with the extent and/or the quality of the Mayor's and the Chief's review of the investigation of a complaint alleging the use of excessive force or the violation of civil rights, it may ~~[request that the Common Council use its subpoena power pursuant to Article 4, Section 407, of the City Charter]~~ issue subpoenas to call witnesses, upto and including APD employees, and victims, and require the production of documents for purposes of the CPRB's review of the extent and quality of the investigation. The ~~[Common Council]~~ CPRB shall use its subpoena authority in a manner consistent with applicable legal requirements and appropriate safeguards for confidentiality and due process.

§ 42-344. Findings of the CPRB.

A. The CPRB, after review and deliberation of an investigation, shall, by majority vote, make one of the following findings on the case:

- (1) Sustained: where the review discloses sufficient facts to prove the allegations made in the complaint.
- (2) Not Sustained: where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.
- (3) Exonerated: where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.
- (4) Unfounded: where the review shows that the act or acts complained of did not occur or were misconstrued.
- (5) Ineffective Policy or Training: where the matter does not involve guilt or lack thereof, but rather ineffective departmental policy or training to address the situation.
- (6) No Finding: where, for example, the complainant failed to produce information to further the investigation; or where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; or where the complainant withdrew the complaint; or where the complainant is unavailable to clarify the complaint~~[- or where the officer is no longer employed by the City].~~

B. If the CPRB fails to render a finding referenced above within 60 days of its receipt of the preliminary report of the Department's findings, the complaint file shall be returned to the Chief for disposition of the matter, unless the CPRB shall advise the Chief, the complainant and the affected officer in writing of the reason for the delay in rendering its

finding. In such case, the CPRB shall provide the Chief, the complainant and the affected officer with monthly updates on the status of the complaint. In any event, if the CPRB fails to render a finding referenced above within 120 days of its receipt of the preliminary report of the Department's findings, the complaint file shall be returned to the Chief for disposition of the matter.

§ 42-345. Final determination.

At the conclusion of its review, the CPRB shall make its finding known to the Chief, the affected officer and the complainant within 30 days. The Chief of Police shall review the Department's preliminary report in light of the CPRB's finding and then make the Department's final determination known to the CPRB, the affected officer and the complainant. In the event that the Department's final determination is inconsistent with the CPRB's finding, the CPRB may request that the Chief provide a written explanation of the Department's final determination.

§ 42-346. Mediation process.

A. A mediation process shall be established and coordinated by the Government Law Center in accordance with this section.

B. Mediation shall be conducted at no cost to the complainant or officer by highly trained and experienced mediators selected from a list compiled by the Government Law Center and approved by the Common Council and the Mayor. The Government Law Center, the Common Council and the Mayor shall endeavor to reflect community diversity in this list of mediators. The Government Law Center shall develop an appropriate training curriculum which each mediator shall be required to complete. Each mediator shall be a graduate of the Albany Police Department's Community Police Academy. In addition, the Government Law Center shall provide to the mediators, and the mediators shall undergo, continuing education on issues related to the interaction between civilians and police officers from the perspectives of both the complainant and the police officer.

C. Upon receipt of complaint, unless the case involves an allegation of excessive force, an alleged violation of civil rights or an allegation of criminal conduct against an officer, or the complaint is a result of an incident that involves an arrest, or if there was an injury to either party, or if there was property damage by an officer, the complaint will be considered appropriate for mediation.

D. An eligible complaint shall be reviewed for potential recommendation for mediation by the Board and by the Chief or his designee. Five members of the Board will be contacted by the Government Law Center and a decision made as to appropriateness for mediation by a majority of those five members. A decision regarding mediation shall be made within two business days by both the Board and the Chief. If either the Board or the Chief finds a complaint inappropriate for mediation, then the matter shall be referred to OPS for investigation consistent with this article.

E. If the Board and the Chief recommend a complaint for mediation, both the complainant and the officer will have the option of electing to continue with the mediation process. If either party declines mediation, then the matter shall be referred to OPS for investigation consistent with this article.

F. If the parties agree to mediate, then the complaint will not be investigated by the Police Department regardless of the outcome of the mediation.

G. If the parties agree to mediate, the process shall follow the mediation protocols adopted by the Board.

H. Every reasonable effort shall be made to schedule mediation during an officer's normal working hours.

I. Mediators shall conduct mediation sessions with officers and complainants at times and places agreed upon by the parties.

J. In conducting the mediation, the mediators may not impose an outcome on the parties.

K. Mediation sessions shall be closed to the public. Matters discussed shall be confidential.

L. Statements and records disclosed during mediation may not be disclosed or introduced in evidence during any judicial or administrative proceeding, and mediators may not be compelled by a subpoena to give testimony or produce anything related to the mediation.

M. Upon the completion of the mediation process, the CPRB shall issue a finding of "Mediated," and the allegations shall be deleted from the officer's CPRB history.

§ 42-347. Meetings.

A. The CPRB shall hold its first meeting within 30 days after a quorum of its members has completed the orientation program. At that meeting, the CPRB shall fix the time and place for its regularly scheduled meetings.

B. The CPRB may conduct both public and closed meetings as allowed or required by the Open Meetings Law.

C. The Chief shall designate a representative from Professional Standards to attend meetings of the CPRB and to provide information and advice to the CPRB. The representative shall not be viewed as a member of the CPRB.

D. Officers and complainants may attend meetings of the CPRB.

E. The Government Law Center shall provide all staff services to the CPRB, including the maintenance of CPRB files and records. Furthermore, the Government Law Center shall be responsible for the preparation of CPRB reports and review findings and recommendations referenced in this Part.

§ 42-348. Suspension of proceedings.

Upon the written recommendation of the Corporation Counsel, the Common Council [~~or~~] and the Mayor concurrently may suspend the CPRB review of any complaint where a separate criminal investigation is underway or where a civil action against the City is underway or pending. Upon the conclusion of such separate proceedings, the CPRB may resume or undertake its review.

§ 42-349. Information sharing.

The CPRB shall forward, in writing, to the Chief any new case-specific information it obtains during the course of an investigation concerning an incident or practice subject to a complaint. Similarly, during the course of a CPRB review, the Chief shall forward to the CPRB, in writing, any new case-specific information the Chief obtains after the conclusion of the Professional Standards investigation and the submission of the Department's preliminary report to the CPRB referenced in § 42-343 of this Part concerning an incident or police practice subject to a complaint.

§ 42-350. Community outreach.

The CPRB, with the assistance of the Government Law Center, shall inform the public about the CPRB and its duties. It shall develop and administer an ongoing program for the education of the public as to the mission and purposes of the CPRB process and the law established by this Part, which shall include the use of informational pamphlets and seminars.

§ 42-351. Construction of Part.

The purposes of this Part favor resolution of ambiguity toward the goal of promoting public documentation and openness in the resolution of complaints of misconduct by police officers. This Part shall be deemed to supersede and repeal any and all provisions of local laws or local administrative orders which are inconsistent or conflict with any provisions of this Part. No report, finding or determination made pursuant to this Part shall in any way conflict with or abridge the rights of complainants or officers guaranteed by the United States Constitution, the New York State Constitution or any federal or state law, rule, regulation or administrative order.

§ 42-352. Severability.

If any clause, sentence, paragraph, sections or part of this Part 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, sections or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 2. This local law shall take effect upon final passage, public hearing and filing with the Secretary of State.

- Council members Frederick, Igoe, Balarin, Fahey asked questions in which Council member Conti, President Pro Tem Kimbrough and Research Counsel Pichardo answered.
- Council President Corey Ellis spoke on the legislation
- Assistant Corporation Counsel Brett Williams spoke on the behalf of Corporation Counsel position on Local Law J of 2020 amendments
- The chair opened up public comment
- Chief Auditor Dr. Applyrs, Lauren Manning, Greg McGee, Sgt. Jim Lewis, Commander Anthony Battuello, Barry Watson and Larry Becker made statements in which President Pro Tem Kimbrough and Council member Conti responded to
- Council members Igoe, Hoey, Frederick and Johnson spoke on the legislation
- Local Law J of 2020 will be further reviewed on at the February 8 meeting

Adjourn:

The Chairperson asked for a motion to adjourn at 9:30pm, which was duly made, seconded, and passed.

This meeting was held following Governor Cuomo's executive order 202.1. It live streamed on Facebook <https://www.facebook.com/albany.commoncouncil/> using Zoom as the meeting platform.

Link to video recordings: