

## **Proposed Legislation City of Olean Civilian Police Oversight Committee (OCPOC)**

### Draft CITY OF OLEAN CIVILIAN REVIEW BOARD

Public complaints against members of the police department.

(A) The people of the City of Olean require a mechanism for the investigation of complaints of misconduct and possible uses of excessive force by Olean, New York Police Department officers and employees toward members of the public and determination of appropriate disciplinary actions that are comprehensive, thorough, and impartial. These investigations must be conducted fairly and independently. An independent Civilian Police Oversight Committee (“OCPOC” or “Board”) is hereby established as a body composed solely of members of the public with the authority to investigate allegations of police misconduct as provided in this Section.

(B) Appointment of City of Olean Civilian Police Oversight Committee (OCPOC) Members.

1. The Civilian Police Oversight Committee shall consist of seven (7) members, appointed by the Mayor of the City of Olean. Maximum effort shall be made to ensure that one member is chosen from each ward throughout the City. Initial appointments from Wards 1, 3, and 5 shall serve two year terms; initial appointments from Wards 2, 4, 6, and 7 shall serve four year terms. All subsequent terms will be 4 year appointments. The members should be committed to equality before the law and justice. The members should not have the appearance of impropriety, actual bias or a conflict of interest to the OCPOC. Residents of City of Olean

18 years of age or older are eligible to be a candidate for the Board in the ward where they reside, without regard to sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, or physical ability. Persons who are currently employed by the City of Olean Police Department (“OPD”), or are immediate family members of an OPD employee, or who were employed by OPD are not eligible to be candidates or to serve as OCPOC members. No member of the Board shall be a City of Olean official or employee. These community members should be diverse, inclusive, and representative of the “marginalized community”.

2. In order to stand for appointment to the OCPOC, a prospective candidate is required to have resided in City of Olean, New York for the preceding one (1) year.
3. In the event of a vacancy on the Board during the term of office of a member by reason of recall, death, resignation, or otherwise, a successor from the same ward, if possible, shall be selected the Mayor. The position will be filled as described in Sections B1, B2, & B3 and the successor shall serve the remaining term of the replaced member.

(C) Powers and duties of the City of Olean Civilian Police Oversight Committee.

1. The OCPOC will be responsible for reviewing police policies and procedures, also assist in carrying out the City of Olean Police Department’s Mission Statement, along with the Department’s goals and objectives, by recommending any changes that shall be made to further enhance the relationship between the police and the community.

2. The OCPOC shall have the power to receive, investigate, hear, make findings, and take action upon complaints by members of the public, including employees of the OPD or any City of Olean governmental agency or department, against members of the police department that allege police misconduct. These include but not limited to:

- a. Using unnecessary or excessive force in the performance of duties;
- b. Conducting a false arrest or unlawfully detaining any person;
- c. Conducting an unlawful search or seizure, or unlawful surveillance;
- d. Tampering with evidence;
- e. Falsifying official and/or unofficial reports and or giving false testimony to OPD, OCPOC, or other government body.
- f. Conducting unauthorized investigations, surveillance, infiltration, or disruption of lawful political, social, economic, religious organizations, or their members, for their political, social, economic, or religious views; or conducting unauthorized investigations or surveillance of individuals for their political, social, economic, or religious views;
- g. Threatening to arrest or to detain any person without a justifiable legal basis;
- h. Threatening to use force against any person without a justifiable legal basis;
- i. Discriminating on the basis of age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation,

gender identity and expression, record of criminal conviction and incarceration, physical ability, or state of mental health in the enforcement of the law (evidence of a past or present pattern of discriminatory conduct shall be admissible on the question of the officer's intent);

- j. Using abusive or insulting language including, but not limited to derogating a person's age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, physical ability, or state of mental health;
- k. Sexually harassing, verbally or physically, any person;
- l. Engaging in abusive or offensive conduct in relation to a person's age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, physical ability, or state of mental health;
- m. Failing to provide any person their post-arrest rights as guaranteed by the laws and the constitutions of the state of New York and of the United States;
- n. Committing perjury;
- o. Engaging in, soliciting, or arranging for the harassment of or discrimination against any person in relation to a complaint they have filed with the OCPOC; a family member or associate of such person; an individual who has provided or is about to provide

any facts or evidence in any proceeding before the OCPOC; or a member or staff of the Board, their family member, or associate because of the Board's performance of its duties;

p. Violating any police department policy or procedure that falls within the jurisdiction of the OCPOC as set forth in this Section.

3. The OCPOC will establish its OWN Mission Statement, policies, procedures, and track statistics of all reports.

4. The Board shall initiate investigations without a civilian complaint in response to evidence of officer misconduct. Board shall investigate all cases of officer-inflicted serious bodily harm, officer-involved deaths, and officer-involved shootings. The City Attorney shall subpoena for the OCPOC.

5. The OCPOC shall promulgate rules of procedure in accordance with the Charter of the City of Olean, NY, which prescribe the manner in which investigations are to be conducted and determinations made and the manner by which a member of the public is to be informed of the status of their complaint. Such rules shall provide for the establishment of panels of no fewer than three (3) members of the Board, which shall be empowered to supervise the investigation of complaints, and to hear, make findings, and determine action on such complaints. These rules of procedure will ensure due process to the charged officer. The accused will be notified of the allegations that have been made and will be entitled to legal counsel. 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 recommendation.

6. To address the cases in which disciplinary action is warranted, the OCPOC shall use the most current matrix as a disciplinary matrix, which shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior substantiated complaints. The OCPOC may opt to recommend that a combination of sanctions be imposed in cases of repeated offense and/or drastic consequence. The OCPOC shall review the disciplinary matrix for updating on contract renegotiations. As part of developing the disciplinary matrix and periodically reviewing it, the Board will seek comment, suggestions and testimony from concerned agencies, organizations and the public.

7. Determinations by the OCPOC may include that allegations are unsubstantiated and no action is required, or that disciplinary action is warranted according to the disciplinary matrix. Such disciplinary actions may include mandatory counseling and/or re-training; suspension; reassignment; or dismissal. When there is the potential for criminal charges against the police department officer or employee, the results of the OCPOC investigation and findings will be submitted to the Independent Prosecutor.

8. The findings and determinations of the Board and the basis therefore shall be submitted to the police chief for recommendation.

9. The OCPOC shall establish procedures and accessible means for members of the public residing throughout the city to report complaints against members of the police department on a 24-hour/day basis.

10. The OCPOC as a body or any duly constituted

subcommittee shall compel the attendance of witnesses and require the production of such records and other materials as are relevant for the investigation of complaints submitted pursuant to this Section, including the power to issue subpoenas. The OCPOC members, by majority vote, shall delegate the board's power to the City Attorney to issue and seek enforcements of the subpoenas to compel the attendance of witnesses and production of records.

11. The Board shall establish a community and police collaborative mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.

12. The OCPOC shall have the responsibility of informing the public about the Board and its duties and shall develop and administer an ongoing program for the education of the public regarding the provisions of this chapter, how to initiate a complaint, and the work accomplished by the Board.

13. The Board shall convene a monthly public meeting, open to all interested persons. Each public meeting will offer an opportunity for community members to discuss police- and community-related issues and to comment and present complaints and proposals relating to the Board and its work.

a. The time and place of the public meeting shall be publically advertised and ensure that meeting notification and outreach gives particular emphasis to persons most affected by police misconduct, including people of color, women, LGBTQ+ and, immigrants, the undocumented, persons who have been imprisoned, political and union activists, and

the disabled.

b. The Board member, or their designee, shall present a report on the work of the OCPOC, including information and statistics on the number and type of complaints received and actions taken by the Board.

c. Minutes of each Board Meeting shall be taken and shall be made available to the public upon request.

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

15. The Board is authorized, within appropriations available, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The Board shall have the ability to hire investigators or others as appropriate.

16. In order to fulfill its mandate as an effective mechanism for accountability of police conduct to the communities they serve, the OCPOC shall be funded at an annual amount of not less than the amount needed to appropriately support the OCPOC set herein.<sup>1</sup>

(D) Cooperation of police department.

1. It shall be the duty of the police department and all officers to cooperate fully with investigations by the OCPOC and to provide to the OCPOC and its investigators upon request records and other materials necessary for the investigation of complaints submitted pursuant to this Section, except such records or materials that cannot be disclosed by law. All such OCPOC requests must receive a written response within 30-

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<sup>1</sup> The OCPOC will determine their annual budget from the data collected from (complaints, overall operation cost etc,) over a period of time necessary to collect said data. not to exceed 2 years.

days.

2. The police chief 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 the investigation of complaints submitted pursuant to this Section, provided that such inquiries are conducted in accordance with department procedures for interrogation of its members.

3. The police chief shall take under consideration the decisions made by the OCPOC pursuant to their findings upon investigation of complaints and shall report the completion of each action to the Board. The police chief shall impose the discipline within five (5) days of receipt of the Board's decision. The police chief may request an extension. The police chief will provide the board with a written documentation of the discipline imposed within 30 days of receiving the Board's determination.

(E) Authority of police chief.

The provisions of this Section shall not be construed to limit or impair the authority of the police chief to discipline members of the department, except as outlined in this Section pursuant to the OCPOC's investigation and issuing of determinations regarding complaints submitted to it. Nor shall the provisions of 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, except as specified in section (c)1 and 2.

(F) Investigation or prosecution of members of the police department by other authorized parties.

The provisions of this Section shall not be construed to prevent or hinder the investigation or prosecution of members of the police department for violations of law by any court of competent jurisdiction, a grand jury, attorney, or other authorized officer, agency, or body.

(G) Establishment of a legal consultant who is an attorney to work in conjunction with the OCPOC.

1. The Legal Consultant will recommend a special prosecutor to the OCPOC.
2. The Legal Consultant must be qualified to practice law in the State of New York.
3. The powers and duties of the Legal Consultant shall be as follows:
  - a. The Legal Consultant shall institute, attend, and conduct, on behalf of the people, all criminal cases against police officers acting under color of law arising in City of Olean, New York and upon violation of the provisions of this Charter or the ordinances of the City in the court of original jurisdiction, and on appeal.
  - b. Whenever it shall be authorized by the laws of this state, the Legal Consultant shall prosecute on behalf of the people, any or all offenses committed by police officers acting under color of law arising upon violation of the laws of the State and appeals arising therefrom.
  - c. The Legal Consultant shall draw complaints for offenses committed against the laws of this State, prosecute all recognizance and bail bonds forfeited in such offense cases, and prosecute all actions for

the recovery of fines, penalties, and forfeitures accruing to the City of Olean in said cases.

- d. The Legal Consultant shall give advice or opinions in writing to any member of the OCPOC or to the Board itself upon request by such a member or by the Board.
- e. The Legal Consultant 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 OCPOC is a party or is interested.

4. The Legal Consultant, with Common Council approval, is authorized, within appropriations available, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The Legal Consultant will appoint a staff of special civilian investigators. Hiring of investigators and other staff shall ensure representation of groups most impacted by police misconduct.

5. The Legal Consultant shall have access to the complaints, arrest reports, investigation reports, and evidence made, kept, or obtained by the City of Olean police department, the OCPOC, 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.

6. The Legal Consultant shall request from the OCPOC all cases considered by that Board for disciplinary action, for the purposes of review in deciding whether criminal prosecution is warranted.

7. The office of the Legal Consultant is separate, apart from, and independent of the City Attorney's office, the police

department, and the City Council. The City Council shall not have control of litigation undertaken by the Legal Consultant pursuant to this Charter.

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