



Mayor of Providence

David N. Cicilline

February 1, 2010

I believe that Civilian Review of a Municipal Police Department is important and necessary. In fact, I worked very hard as a legislator and community activist to press for enactment of civilian review and even assisted in drafting some of the original ordinance language. As a trial lawyer, I participated in many civilian complaint hearings and saw first hand how complaints against the police department used to be handled. Much has changed. New leadership, better training, a doubling of the Internal Affairs Division, and a renewed community partnership have reduced tremendously allegations of police misconduct.

Despite these successes, I believe that a Civilian Review process still makes sense. Civilian review of complaints regarding police misconduct is vitally important to safeguard the rights of our citizens and to ensure that our public servants are scrupulous in recognizing the limits of their authority.

I acknowledge the Council's work in reconstituting the Providence External Review Authority. I share the desire to strengthen PERA and to make certain that it can do its work efficiently.

However, and particularly given the subject matter over which it has jurisdiction, it is essential that PERA be legitimate. I have been presented with an ordinance which overlooks the provisions of the Providence Home Rule Charter -- a document which embodies the voice of the citizens of this City. Prior to passing the amended ordinance, the City Council was advised by the City Solicitor that the ordinance violated Section 302(b), which grants to the Executive Branch the right and obligation to appoint "all heads of city departments and agencies with the approval of the city council."

The work of the Providence External Review Authority is too important to be undermined by violating the City Charter. You cannot make good public policy by breaking the law. In light of the Solicitor's opinion, and following her filing of an action in the Superior Court for Providence County seeking a declaratory judgment that the Council's PERA ordinance violates the Providence Home Rule Charter, I have no choice but to veto this ordinance.

A handwritten signature in black ink, appearing to read "D. N. Cicilline", is written over a horizontal line.

David N. Cicilline  
Mayor

City of Providence, Rhode Island 02903  
Phone (401) 421-7740 Fax (401) 274-8240

**City of Providence**

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**CHAPTER 2010-3**

**No. 81**                    **AN ORDINANCE**                    AMENDING CHAPTER 18½,  
"POLICE," SECTION 18½ -2,  
"PROVIDENCE EXTERNAL  
REVIEW AUTHORITY (PERA)"

EFFECTIVE ~~XXXXXX~~ February 4, 2010

*Be it ordained by the City of Providence:*

WHEREAS, The City Council of the City of Providence adopted Resolution No. 187 on April 16, 2009, and amended on July 28, 2009, which created a Special Committee to Study and Make Amendments to PERA; and

WHEREAS, The resolution stated that, "said committee will examine, review and make amendments and/or changes to the ordinance, rules and regulations, personnel and operating budget of the Providence External Review Authority;" and

WHEREAS, Members of the Committee have held meetings over the course of the past six (6) months and have heard testimony from the executive director of PERA, as well as board members of PERA; and

WHEREAS, the Committee recognizes the importance of civilian oversight of law enforcement, as well as the prevalence of civilian review entities in major cities throughout the United States, including Cleveland, OH, Los Angeles, CA, Portland, OR, and Washington, D.C., to name just a few, and;

WHEREAS, the Providence External Review Authority was established in 2002, as one of the recommendations made by the Providence Blue Ribbon Commission whose purpose was to "review and investigate and all aspect of the Providence Police Department;" and

WHEREAS, the creation of the Providence External Review Authority was preceded by a decade of complaints and news reports regarding misconduct, unethical behavior, and criminal investigations among some police officers; and

WHEREAS, Although the establishment of PERA seven (7) years ago was critical and groundbreaking, refinements and reorganization are necessary so that PERA will function more effectively as a civilian oversight body; and

WHEREAS, PERA currently lacks clear qualifications, roles, and responsibilities for the executive director and board members; and

WHEREAS, Some duplication of work exists between PERA and the police department; and

WHEREAS, The number of PERA members is too great to be effective.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PROVIDENCE that:

SECTION 1. The Code of Ordinances of the City of Providence, Chapter 18 ½, "Police," Section 18 ½-2 "Providence External Review Authority (PERA)" is hereby amended to add the following sections:

(a) *Established.* There is hereby created a Providence External Review Authority ("PERA" or "authority"). The authority shall create and implement community outreach programs, review policies and procedures of the Providence Police Department and review allegations of misconduct on the part of sworn officers of the city police department, including investigating the same, conducting hearings and making findings of fact with respect to those allegations. The authority by a majority of all its members shall appoint, subject to the approval of the City Council, an Executive Director for a term of two years, who shall be an attorney-at-law and/or has substantial experience with public administration. The Executive Director shall hire administrative and investigative staffs. Investigators hired shall be civilians who have appropriate prior experience or training. "Civilian," for the purpose of this section, is a person who is not now a sworn officer of a law enforcement agency.

(b) *Scope of authority.* The authority shall:

- (1) create and implement community outreach programs;
- (2) review Police Department policies and training procedures and make recommendations for change; and.

(3) receive complaints that allege misconduct by a police officer or officers, including, but not limited to, the following:

*Use of excessive force.* "Excessive force" shall mean the use of greater physical force than reasonably necessary to repel an attacker or terminate resistance, it does not include force that is reasonably necessary to effect a lawful purpose.

*Inappropriate language or conduct.* "Inappropriate language" shall mean harsh, violent, profane, or derogatory language or any action that demeans the dignity of an individual, including, but not limited to profanity, racial, ethnic, sexist or racial slurs.

*Harassment.* "Harassment" shall mean repeated, unwarranted verbal or physical annoyances, or abuse (whether physical or verbal) threats of demands.

*Theft.* "Theft" shall mean the taking or concealing of any item or thing of value without the consent of the rightful owner and with the intent to deprive the rightful owner of that item or thing.

*Discrimination.* Discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual or gender orientation, disability, age, gender, or economic status.

(c) *Composition.* The authority shall be comprised of nine (9) members. Of the nine (9) selected members, one (1) shall be appointed by the mayor, one (1) shall be appointed by the president of the city council, and seven (7) shall be elected by a majority of the members of the city council, Upon enactment of this section the mayoral appointee, the appointee of the council president, and two (2) council appointees shall be appointed for a term of one (1) year (expiring December 31, 2010); three (3) council appointees shall be appointed for a term of two (2) years (expiring December 31, 2011). two (2) council appointees shall be appointed for a term of three (3) years (expiring December 31, 2012). Upon expiration of these initial terms each subsequent mayoral and council appointee shall serve for a term of three (3) years. All such three year terms shall

expire at the end of their respective third calendar year (December 31<sup>st</sup>) notwithstanding the actual date of appointment.

There shall be not more than two (2) former law enforcement officers appointed to the authority and not more than one (1) former law enforcement officer shall serve on any hearing panel. No person holding an elective office shall serve as an authority member. No person currently employed as a law enforcement officer nor any member of his or her immediate family may serve as authority members.

The authority shall elect one (1) member to serve as chairperson and one member to serve as vice-chairperson each to serve for a term of two (2) years.

(d) *Compensation.* Each member shall be reimbursed for reasonable expenses incurred in the performance of his/her duties, however, no member shall be compensated for services performed.

(e) *Duties.*

(1) *Rulemaking notice and hearings.* The authority shall adopt rules governing its operation. All rules, and any amendments thereto, shall be promulgated after a public hearing, at which interested persons may present written and oral comments on the proposed rules. The authority shall, at least thirty (30) days prior to the date set for the hearing, give notice of its intention to adopt rules by publishing a notice of its intention to promulgate or amend rules in a newspaper of general circulation and by making copies of the proposed rules/changes available to the public.

(f) *Meetings.* All meetings of the authority, any subcommittees and hearing panels shall be held in accordance with applicable law governing open meetings.

(g) *Removal.* Any member of the authority may be removed for incompetence, neglect of duty, misconduct or malfeasance by resolution of the city council. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the balance of the unexpired term of appointment by the previously denominated appointing authority.

(h) Executive Director

(1) The Executive Director shall have the discretion to actively monitor any internal police department investigation of any citizen complaint alleging misconduct as defined in section b (3).

(2) The Executive Director shall also have the discretion to monitor any internal investigation by the police department as to which the Executive Director believes it is in the city's best interest for PERA to be involved.

(3) Staff of the Executive Director shall be hired by the Executive Director and shall serve at the pleasure of the Executive Director.

(i) *Budget.* The funding of Executive Director and all administrative staff and all other portions of PERA budget shall be administered as part of the City Council budget.

(j) *Bi-annual reports.* The authority shall submit to the mayor and the city council a report of its activities not fewer than two (2) times per year. The report shall include, among other topics, data and analysis of complaints and complaint trends and shall be open to the public. It shall further detail all of the authority's expenditures.

(k) *Policy review.* Upon its own initiative or upon request of the mayor, a member of the city council or the executive director; the authority may initiate an examination of police policies, trends, or practices and issue recommendation for change.

(l) *Outreach.* Authority shall conduct such outreach activities as necessary to inform the public of the authority and its practices. Any outreach shall be conducted with sensitivity to the diversity of languages and cultures present in the city.

(m) *Complaint filing.* Any person, including, but not limited to:

(1) An alleged victim;

(2) A witness

(3) A parent, legal guardian, or immediate family of a victim having personal knowledge of alleged misconduct of a city police officer may file a written complaint with the authority by submitting said complaint at a location designated by the authority. Additionally, upon probable cause, the authority may initiate its own investigation into the alleged misconduct of a police officer.

(n) *Preliminary review.* Within thirty (30) days of the date on which the complaint is filed the executive director shall review such complaint and recommend to the authority:

- (1) The complaint be dismissed;
- (2) The complaint be forwarded to mediation or to the Police Department's Division of Internal Investigations & Inspections;
- (3) The complaint be held in abeyance pending the outcome of any ongoing Police Department internal investigation; or
- (4) The complaint be transmitted for full investigation.

The authority shall promulgate guidelines delineating those factors to be assessed in making such recommendation.

All complaints shall be kept on file without regard to subsequent action of the executive director and the authority and shall be available to the public; provided that the name of the complainant and/or respondent shall be kept confidential to the extent required by law.

(o) *Dismissal.* Upon dismissal of a complaint the executive director shall file written reasons for the same.

(p) *Mediation.* The authority shall provide an informal mediation process to resolve those complaints of a more minor nature.

(q) *Investigation.* Upon determination that a full investigation is warranted, the complaint shall be transmitted to an authority investigator. An investigation shall be completed within one hundred twenty (120) days of the date that the complaint was filed. The executive director may upon request of the investigator, extend this deadline by not more than sixty (60) days. The application of this deadline may be held in abeyance during such time as the executive director determines that an investigation might impede or harm a related criminal investigation.

(r) *Evidentiary hearings.* Upon completion of such investigation, the executive director, may request a dismissal from the Authority and the chair shall hold a hearing for the proposed dismissal (and in such event the executive director shall file a written

statement providing reasons for such proposed dismissal) or forward the same to full hearing. The authority shall randomly select a three (3) person panel from its members to consider the matter and the chairperson shall designate a foreperson of the panel. At such evidentiary hearing, the authority shall weigh and consider all reliable and credible evidence. The panel shall make all reasonable efforts to complete evidentiary hearings and render a written decision within sixty (60) days of the completion of the investigation. In those instances in which the complainant is otherwise unrepresented by counsel, the authority legal counsel shall present evidence to the panel on behalf of the complainant. The police officer may be represented by counsel and union representatives, may present evidence and conduct cross-examination of witnesses.

(s) *Subpoena power.* At the request of legal counsel for either party, the executive director shall compel the presence of witnesses and/or documents at evidentiary hearings by applying to the city council for the issuance of subpoenas and where appropriate may seek that the city council request the appropriate court sanctions against anyone who fails to comply with any subpoena so issued.

(t) *Cooperation.* All municipal board, bureaus, commissions, department and employees shall respond promptly to any and all lawful requests for municipal information sought for such evidentiary hearings, and for access to data and records for the purpose of enabling the authority to carry out its responsibilities under this chapter. The failure of any official or employee to response to lawful requests for such information and data shall be deemed an act of misconduct.

(u) *Findings of fact and determination.* Within thirty (30) days of the completion of an evidentiary hearing, the hearing panel shall issue a written report containing findings of fact; a determination of whether or not the complaint has been sustained by a preponderance of the evidence; if applicable the level of violation described in the disciplinary matrix developed by PERA and the chief of police, and a recommendation of discipline. When a complaint is sustained, the findings of fact and the determination shall be submitted to the chief of police. The chief shall impose discipline based upon the level of violation as found in the disciplinary matrix to be promulgated by



the authority in accordance with subsection (e)(1). The chief of police shall, also provide the authority, the city council, and the mayor with a written explanation of the reason(s) for his/her disciplinary decision. The hearing panel report and the police chief's explanation for his/her decision shall be available to the public provided that the name of the complainant and/or respondent shall be kept.

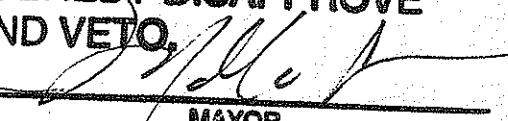
(v) *Notice to parties.* The authority shall notify the complainant(s) and police officer(s) in a timely fashion of the status or disposition of the complaint.

w) *Period of limitation.* No complaint filed more than one (1) year subsequent to the events complained of therein shall be timely.

(x) If any provision of this Ordinance, or its application to any person or circumstances, is held unconstitutional or otherwise invalid, the remaining provisions of this Ordinance and the application of the provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected by the invalidity.

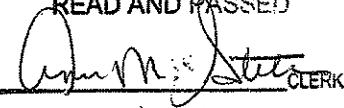
SECTION 2.


Upon the earlier of the following events: 1) ninety (90) days of adoption of this ordinance, or 2) upon the appointment of a majority of the new board members, the term of all members appointed to and/or by the Authority prior to passage of this ordinance shall expire, notwithstanding any prior ordinance setting forth a different length of term. The term of any new appointments made pursuant to 18½ 2 (c) shall take effect upon expiration of the prior board members terms.

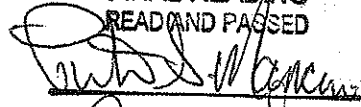
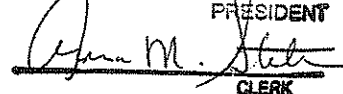
**VETO**  
**I HEREBY DISAPPROVE**  
**AND VETO.**  
  
MAYOR  
DATE: 2/1/10

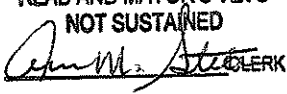
SECTION 3.

This ordinance shall take effect upon passage.

**IN CITY COUNCIL**  
**JAN 07 2010**  
FIRST READING  
READ AND PASSED  
  
CLERK

Effective without the  
Mayor's Signature:  
  
Anna M. Stetson  
City Clerk

**IN CITY COUNCIL**  
**JAN 21 2010**  
FINAL READING  
READ AND PASSED  
  
PRESIDENT  
  
CLERK

**IN CITY COUNCIL**  
**FEB 4 2010**  
READ AND MAYOR'S VETO  
NOT SUSTAINED  
  
CLERK