

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2005-62

No. 588

AN ORDINANCE AN ORDINANCE IN AMENDMENT OF ORDINANCE No. 614, CHAPTER 2002-39, ENTITLED "PROVIDENCE EXTERNAL REVIEW AUTHORITY" (PERA)

EFFECTIVE ~~NOVEMBER~~ December 25, 2005

Be it ordained by the City of Providence:

PROVIDENCE EXTERNAL REVIEW AUTHORITY (PERA) established.

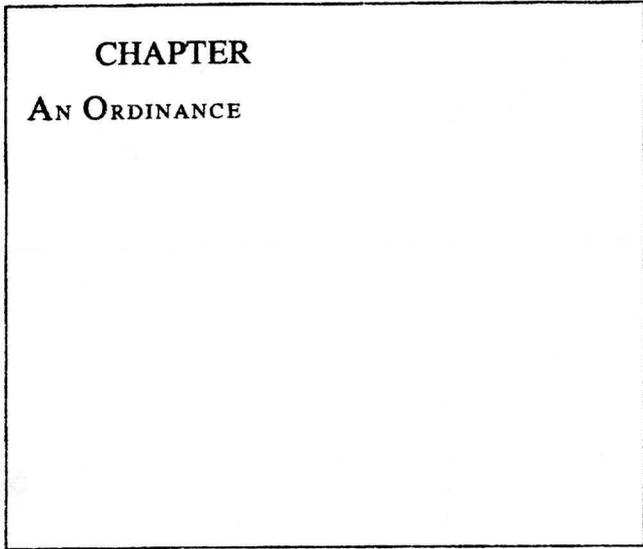
SECTION 1. There is hereby created a Providence External Review Authority ("PERA" or "Authority") The Authority shall review all allegations of misconduct on the part of sworn officers of the Providence Police Department, shall investigate the same, conduct hearings and make findings of fact with respect to those allegations. The Authority shall hire administrative and investigative staffs. The administrative staff shall include an executive director who may be an attorney-at-law and/or has previous experience with public administration. Investigators hired by the Authority 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.

SECTION 2. Scope of Authority. The Authority shall receive complaints that allege misconduct by a police officer or officers, including, but not limited to, the following:

RECEIVED
CITY OF PROVIDENCE
NOV 25 2005

No.

CHAPTER
AN ORDINANCE



IN CITY COUNCIL
OCT 26 2005

FIRST READING
REFERRED TO COMMITTEE ON
ORDINANCES

Cairi Besler
CLERK

THE COMMITTEE ON

Advisories
Recommends
Ann M. Stebbins

10-25-05 (amendment) Cr 4
CLERK

THE COMMITTEE ON
ORDINANCES

Approves Passage of
The Within Ordinance as Amended
Ann M. Stebbins
CLERK

11-10-05

Amendments Aperte, By Request

(a) 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.”

(b) 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.”

(c) Harassment. Harassment shall mean “repeated, unwarranted verbal or physical annoyances, or abuse (whether physical or verbal) threats of demands.”

(d) 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.”

(e) 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.

SECTION 3. Composition. The Authority shall be comprised of twenty (20) members which shall be randomly selected to serve on hearing panels comprised of five (5) members each. Of the twenty (20) selected members, three (3) shall be appointed by the Mayor, two (2) shall be appointed by the President of the City Council, and one (1) shall be appointed by each member of the Providence City Council, excluding the Council President and one(1) member shall be appointed by the Executive Director of the Providence Human Relation Commission.

Upon enactment of this Ordinance one (1) mayoral appointee, one (1) appointee of the Council President, and five (5) council appointees shall be appointed for a term of one (1) year; one (1) mayoral appointee, one (1) appointee of the Council President, and five (5) council appointees shall be appointed for a term of two (2) years. One (1) mayoral appointee, and four (4) council appointees and one (1) appointee and one (1) appointee by the Executive Director of the Providence Human Relations Commission shall be appointed for a term of three (3) years. Upon expiration of these initial terms each subsequent mayoral and council appointee shall serve for a term of three (3) years.

There shall be not more than three (3) 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 member to serve as chairperson for a term of two years and shall engage an executive director of this authority, a legal counsel, and investigators as may be required.

SECTION 4. 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.

SECTION 5. Duties - (a) 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.

SECTION 6. Meetings. All meetings of the Authority, any sub-committees and hearing panels shall be held in accordance with applicable law governing open meetings.

SECTION 7. 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.

SECTION 8. 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.

SECTION 9. 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.

SECTION 10. 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.

SECTION 11. Complaint Filing. Any person, including, but not limited to:

- (a) an alleged victim;
- (b) a witness
- (c) a parent, legal guardian, or immediate family of a victim having personal knowledge of alleged misconduct of a Providence Police Officer shall

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.

SECTION 12. 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 either: (1.) the complaint be dismissed; (2) the complaint be forwarded to mediation or (3) The complaint be transmitted for full investigation. The Authority shall promulgate guidelines delineating those factors to be assessed in making such recommendation.

Deleted: and

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. .

SECTION 13. Dismissal - Upon dismissal of a complaint the Executive Director shall file written reasons for the same.

SECTION 14. Mediation - The Authority shall provide an informal mediation process to resolve those complaints of a more minor nature.

SECTION 15. 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.

SECTION 16. Evidentiary hearings. Upon completion of such investigation, the Executive Director, may dismiss the complaint (and in such event he/she shall file a written statement providing reasons for such dismissal) or forward the same to full hearing. The Authority shall randomly select a five (5) 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.

SECTION 17. 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 Providence 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. SECTION 18. 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 respond to lawful requests for such information and data shall be deemed an act of misconduct.

SECTION 19. 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 Section 5(a). 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.

SECTION 20. 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.

SECTION 21. Period of Limitation. No complaint filed more than one (1) year subsequent to the events complained of therein shall be timely.

SECTION 22. 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 23. This Ordinance shall take effect upon its passage.

IN CITY COUNCIL
DEC 1 2005
FIRST READING
READ AND PASSED

Causee B. Bostwick CLERK
Justicia

IN CITY COUNCIL
DEC 15 2005
FINAL READING
READ AND PASSED

Robert A. Young ACTING PRESIDENT
Causee B. Bostwick CLERK
Justicia

Effective without the Mayor's Signature:

Michael R. Clement
Michael R. Clement
City Clerk