



Executive Office, City of Providence, Rhode Island

VINCENT A. CIANCI, JR.

MAYOR

July 1, 2002

The Honorable Michael R. Clement
City Clerk
City Hall
Providence, Rhode Island 02903

Dear Mr. Clerk:

Pursuant to Sections 302(f) and 412 of the Providence Home Rule Charter of 1980, I hereby disapprove and veto the Ordinance entitled "Providence External Review Authority (PERA)." This ordinance as drafted clearly seeks to set in motion a disciplinary procedure to address police misconduct.

Although I favor citizen review and participation in monitoring the comportment of police officers in carrying out their law enforcement duties, I am also fully cognizant of my responsibility as Mayor to see to it that an ordinance of this nature is consistent with the provisions of the Home Rule Charter and existing statutory law.

At my request, the City Solicitor has examined the legal aspects of the ordinance vis-à-vis existing statutory law. He has advised me that a state statute, namely, the Law Enforcement Officers' Bill of Rights ("Bill of Rights"), is the exclusive remedy for police officers who are under investigation or subject to interrogation for any reason which can lead to disciplinary action, demotion and dismissal. The City Solicitor has further advised that the "Bill of Rights" delineates the procedural and substantive rights to which the law enforcement officer is entitled, including notice, a hearing at which he can present and cross-examine witnesses and the ultimate right to review by the Superior Court. As a result of his examination and analysis of the pertinent law, the Solicitor has counseled me that there clearly exists a conflict with the procedural and substantive provisions of the Bill of Rights and the ordinance as adopted by the City Council.

The Honorable Michael R. Clement

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Consequently, I am constrained to exercise my power to veto the ordinance in its current form. To do otherwise would subject the city to engaging in an exercise in futility which would be unnecessarily costly to the taxpayer and yet fail to effectively address the purpose of providing citizen oversight of police misconduct. However, I would approve an ordinance which conforms with the statutory provisions prescribed in the Bill of Rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent A. Cianci, Jr.", written in a cursive style.

VINCENT A. CIANCI, JR.

Mayor of Providence

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER

No.

AN ORDINANCE

ENTITLED PROVIDENCE EXTERNAL
REVIEW AUTHORITY (PERA)

FINANCE
REFERRED TO COMPTROLLER
FIRST READING
IN CILA CONFERENCE

Approved

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:

- (a) Use of excessive force;
- (b) Inappropriate language or attitude;
- (c) Harassment;
- (d) Failure to provide adequate or timely services.
- (e) Theft; and
- (f) 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.

No.

CHAPTER
AN ORDINANCE

THE COMMITTEE ON

Ordinance

Recommends

- P. Hays to be held

Ann M. Stetson

CLERK

3-25-02

4-11-02 P. Hays held

THE COMMITTEE ON

Ordinance

Recommends

- Approval as Amended

Ann M. Stetson

CLERK

5-15-02

IN CITY COUNCIL
SEP 6 2002

FIRST READING
REFERRED TO COMMITTEE ON

Ordinance
Michael R. Clement
CLERK

Councilmen Hasset, Allen, Aponte, Jackson, Igliozzi,
Councilwoman Noller, Councilwoman Yocoy, Council President Lombardi, Councilwoman Romano

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, three 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.

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 one (1) appointee of the Council President and four (5) council appointees 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 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 such number of 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, save for rules governing the Authority's internal operations, 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.

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 and (3) 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.

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 response 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. To the extent permitted by law, said report shall be available to the public when agreed to by the police officer, the complainant, and the City. 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. 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.

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. This Ordinance shall take effect upon its passage.

IN CITY COUNCIL
JUN 6 2002
FIRST READING
READ AND PASSED

CLERK

IN CITY
COUNCIL
JUN 20 2002
FINAL
READ A...

CLERK

*I hereby disapprove
and veto this ordinance pursuant to
Sec. 302(F) and 412 of the Home Rule Charter
Vincenta L. Mancini Mayor July 1-02*