

MINUTES OF CITY COUNCIL

Type: Special Meeting  
Date: Tuesday, November 24, 2020 at 5:00 P.M.  
Place: 1St Floor Council Conference Room

PLEDGE OF ALLEGIANCE

ROLL CALL

Martha Lopez	District 1 Council Member - Present
Albert A. Tarantino Jr	District 2 Council Member - Present
Yadira Ramos Herbert	District 3 Council Member - Present
Ivar Hyden	District 4 Council Member - Present
Sara R. Kaye	District 5 Council Member - Present
Elizabeth M. Fried	District 6 Council Member - Present
Noam Bramson	Mayor - Present

The meeting was called to order at 5:00 PM by Mayor Noam Bramson

1. REPORT BY NEW ROCHELLE POLICING REVIEW COMMITTEE

Mayor Noam Bramson expressed his sincere gratitude to Council Member Yadira Ramos-Herbert, City Council's representative on the Committee and the non voting facilitator; and to members of the New Rochelle Policing Review Committee, the professional staff, and Police Department representatives for their participation in the review process.

Members of the Committee, introduced by Council Member Yadira Ramos-Herbert, presented specific goals and recommendations as outlined in the attached report.

Mayor Bramson stated that recommendations will be considered by City Council and, along with the Police Commissioner, the Deputy Commissioner, and staff, will further discuss recommendations at the December 1, 2020, Committee of the Whole Session when conclusions will be reached. In accordance with the Executive Order issued by Governor Andrew M. Cuomo, a report will be submitted to the State no later than April, 2021. Therefore, following discussions and the required Public Hearings, City Council's recommendations will be formally submitted.

Mayor Bramson requested that a timetable be provided.

2. SPECIAL MEETING (BUDGET SESSION) - TUESDAY, NOVEMBER 24, 2020, AT 5:00 P.M.

Mayor Bramson stated that any proposed changes/amendments to the 2021 Budget Estimate are appropriate for consideration.

ADJOURNMENT

The meeting was adjourned at 6:20 P.M.

November 24, 2020

---

Michelle Oliveros, City Clerk

City of New Rochelle  
City Clerk

---

**MEMORANDUM**

TO: Honorable Mayor and City Council  
THRU: Charles B. Strome, III, City Manager  
FROM: Michelle Oliveros, City Clerk  
DATE: November 24, 2020  
SUBJECT: REPORT BY NEW ROCHELLE POLICING REVIEW COMMITTEE

---

**DISCUSSION ITEM**

City of New Rochelle  
City Clerk

---

**MEMORANDUM**

TO: Honorable Mayor and City Council  
THRU: Charles B. Strome, III, City Manager  
FROM: Michelle Oliveros, City Clerk  
DATE: November 24, 2020  
SUBJECT: SPECIAL MEETING (BUDGET SESSION) - TUESDAY, NOVEMBER 24,  
2020, AT 5:00 P.M.

---

**DISCUSSION ITEM**

HONORABLE MAYOR, MEMBERS OF THE CITY COUNCIL, AND THE CITY  
MANAGER:

A Special Meeting (Budget Session) of the City Council is hereby called, by order of Mayor Noam Bramson (revised notice), pursuant to Article III, Section 7 of the City Charter, to be held on Tuesday, November 24, 2020, at 5:00 P.M., in the Council Conference Room and/or the Council Chamber, City Hall, 515 North Avenue, New Rochelle, New York 10801, for the purposes indicated as follows:

Report by New Rochelle Policing Review Committee

Any overflow/City Council discussion of proposed 2021 Budget

Very truly yours,

Michelle Oliveros  
City Clerk

MO:MLS

**New Rochelle Policing Review Committee Report**

*Initial Report Submitted on November 4, 2020*

Attachment: New Rochelle Policing Review Co\_201109093400 (2162 : SPECIAL MEETING - BUDGET SESSION)

**TABLE OF CONTENTS**

Summary	3-4
Background	5
Use of Force and Training	6-8
Data Disclosure and Transparency	9-10
Community Engagement	11-12
Oversight/Discipline/Complaints	13-14
Equipment	15
Other (Hiring and For-Profit Components)	16-17

## SUMMARY

Transparency and trust, these two words were repeated throughout the New Rochelle Policing Review Committee's ("committee") meetings and at each of the community input meetings. This report provides the committee's recommendations for ways the New Rochelle Police Department ("NRPD") can improve transparency and trust with the community it is charged to serve and protect.

The committee would be remiss in not acknowledging a 2015 report from a community group charged by the New Rochelle City Council to review community policing. Both the 2015 and 2020 committees were convened by the City Council and the 2020 report also falls under Governor Cuomo's Executive Order No. 203. The 2015 and 2020 committee reports explicitly focus on the need to improve trust, transparency and accountability between the community and NRPD. The 2020 report also provides recommendations related to use of force, training, data, transparency, oversight and civilian complaints and equipment. This report is divided by each topic and addresses the committee's goal, background, summary of recommendations and anticipated cost.

It bears repeating that it was the shocking killing of George Floyd and subsequent protest that motivated the Governor's Executive Order. Governor Cuomo stated, "The protests taking place throughout the nation and in communities across New York in response to the murder of George Floyd illustrate the loss of community confidence in our local police agencies — a reality that has been fueled by our country's history of police-involved deaths of black and brown people."

The committee also wants to acknowledge that the fatal shooting of Kamal Flowers in New Rochelle this summer has heightened the urgency and the need for a vigorous community review and engagement with the City and NRPD. In the words of the Equal Justice Initiative, "*We must truthfully confront our history of racial injustice before we can repair its painful legacy.*"

While the Governor's Order requires the committee's plan to be offered for public comments and presented to the local legislative body for adoption by April 1, 2021 the committee is submitting this report on October 30, 2020, at the request of the City Manager, in an effort to align recommendations requiring funding with New Rochelle's 2021 budget process. Given the Governor's order's deadline the committee considers this a preliminary report and specifically reserves the right to submit a supplemental report and recommendations based on future developments with Westchester County<sup>1</sup> and New Rochelle.

As part of preparing the 2020 report, there were a series of documents that formed a starting point for the committee's review. Those foundational documents should be read in tandem with this report. These documents consist of the following:

1. New Rochelle Police Department – Special Report to the City Council presented in July 2020<sup>2</sup>
2. Governor Cuomo's Executive Order Number 203<sup>3</sup>

<sup>1</sup> The County Executive has authorized the formation of a Police Reform Task Force which may issue recommendations that impact this committee's final recommendations.

<sup>2</sup>[https://docs.google.com/gview?url=https%3A%2F%2Fnewrochelle.granicus.com%2FDocumentViewer.php%3Ffile%3Dnewrochelle\\_8b487e1c68b8bf72701ca1ff602eace5.pdf%26view%3D1&embedded=true](https://docs.google.com/gview?url=https%3A%2F%2Fnewrochelle.granicus.com%2FDocumentViewer.php%3Ffile%3Dnewrochelle_8b487e1c68b8bf72701ca1ff602eace5.pdf%26view%3D1&embedded=true) (page 134 and a copy of the 2015 NRCCP report is found on page 169)

<sup>3</sup>[https://docs.google.com/gview?url=https%3A%2F%2Fnewrochelle.granicus.com%2FDocumentViewer.php%3Ffile%3Dnewrochelle\\_8b487e1c68b8bf72701ca1ff602eace5.pdf%26view%3D1&embedded=true](https://docs.google.com/gview?url=https%3A%2F%2Fnewrochelle.granicus.com%2FDocumentViewer.php%3Ffile%3Dnewrochelle_8b487e1c68b8bf72701ca1ff602eace5.pdf%26view%3D1&embedded=true) (page 243-244)

3. Governor Cuomo's New York State Police Reform and Reinvention Collaborative: Resources and Guide for Public Officials and Citizens<sup>4</sup>

In closing, many hours were spent by volunteer committee members, City Staff and NRPD reviewing policies and engaging in challenging, but thoughtful conversations rooted in the desire to serve New Rochelle and enhance the trust between the community and NRPD. The committee looks forward to seeing the timely implementation of the recommendations that come from this report.

---

<sup>4</sup> <https://www.governor.ny.gov/news/governor-cuomo-announces-new-guidance-police-reform-collaborative-reinvent-and-modernize>



## BACKGROUND

Charles B. Strome III, New Rochelle City Manager, convened the committee in response to a request by the New Rochelle City Council and in response to Governor Andrew Cuomo's Executive Order No. 203. The committee was charged to examine the following topics:

- Use of force policy and training;
- Data disclosure and transparency;
- Community engagement;
- Oversight/Discipline/Complaint procedures;
- Equipment and
- Other Issues.

After a citywide request for applications to serve on the committee, the committee was formed on August 13. Once formed, the committee met six times, hosted five community input meetings<sup>5</sup> beginning in August 2020 through October 2020. The primary goal of the committee was to review the aforementioned matters and submit recommendations to the City Council for consideration as part of the 2021 budget process. It is anticipated that the Committee will continue to hone its recommendations and submit a supplemental report within the next few months.

**Committee Members:** Lisa Burton, Alvin Clayton, Kwamain Dixon, Natasha Fapohunda, Robin Frankel, Nat Harris, Carmelo Hernandez, William Iannuzzi, Jason Labate, Wynter Parham, Wendell Sears, Emma Silva, Jabari Skeene and Steven Sonet.

**Staff Representatives:** Mayor Noam Bramson, City Manager Charles B. Strome III, NRPD Commissioner Joseph Schaller, NRPD Deputy Police Commissioner Robert Gazzola and Chief of Staff/Corporation Counsel Kathleen Gill were non-voting participants. Council Member Yadira Ramos-Herbert represented the City Council and acted as a non-voting facilitator of the committee.

---

<sup>5</sup> Community input meetings were virtually held on 8/31/2020, 9/1/2020, 9/2/2020, 10/7/2020 and 10/28/2020.

## USE OF FORCE AND TRAINING

### Goal:

“It is important to engage both internal and external stakeholders in the development and implementation of your police department’s training materials and curricula. Incorporating members of the community in this process can strengthen the overall quality of your training program while reinforcing public trust and ensuring that your training and education programs reflect the values of your community (Cuomo, 2020, p.90).”<sup>6</sup>

### Background:

Many of our neighbors of color reported personal experiences that reduced and impacted trust with the NRPD. The July 2020 special report identifies many ways the NRPD has provided or participated in a number of community-based programs but there is not an example of a structured, formal collaboration between the NRPD and the community to proactively address use of force and training policies.

The committee suggested NRPD implement the Active Bystandership for Law Enforcement (ABLE) Project, a holistic program and training designed to support a culture of peer intervention and active bystandership to prevent misconduct, reduce officer mistakes, and promote officer wellness. In response to the recommendation the NRPD expressed some reservations. The reservations were based on the following: many of the concepts are already part of the NRPD training program, the additional allotted training time that would be mandated and the specific structure of the course that is required to be followed with some elements in contrast with what NRPD is mandated to teach.

### Summary of Recommendation:

1. The committee recommends NRPD participate in rigorous and robust training that focuses on advancing procedural justice practices, emotional intelligence, community-oriented policing, and specifically addresses the role of race in officer’s perceptions of risk and their decision making in potentially dangerous interactions with citizens.
2. The committee strongly recommends implementation of the Implicit Bias training that was delayed due to COVID-19 and refreshes ICAT.
3. The committee recommends NRPD consider the implementing universal crisis intervention training for all officers.
  - a. The committee recommends NRPD engage in robust training on when and how to engage Clergy Rapid Response Team.
  - b. The committee recommends NRPD explore other potential community crisis responders with a focus on de-escalating outcomes.
  - c. The committee recommends the City Council join any County level shared services model for crisis responders.
4. The committee recommends NRPD implement the (ABLE) Project:

<sup>6</sup> Cuomo, A. (2020). *New York State Police Reform and Reinvention Collaborative: Resource Guide for Public Officials and Citizens*, p. 90.

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police\\_Reform\\_Workbook81720.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police_Reform_Workbook81720.pdf)

- a. The ABLE Project is a unique and model program. The training itself is evidence based and tested, demands a commitment by the police agencies to cultural change, and is supported by a broad cross section of both police and community groups.
  - b. Yonkers has been accepted<sup>7</sup> into the ABLE program which suggests the NRPD has an opportunity to join the ABLE Project and become a leader in embracing progressive training and proven practices to advance cultural change within policing in Westchester County.
5. The committee recommends collaboration between NRPD and community members to “co-produce” and update policies and training programs in a manner that reflects clear roles and responsibilities to achieve community centered safety goals, violence reduction and address key problem areas. Special consideration should be paid to Use of Force and De-escalation policies to reflect norming best practices, including the ban of intentional neck and chokeholds.
  - a. As noted in the special report, since 1983, the NRPD has successfully received accreditation from the New York State Division of Criminal Justice Services. Receiving accreditation requires a review and audit of policies every three-five years for compliance. The NRPD responded “We agree with the Committee that policies should be regularly reviewed and updated.”
  - b. The committee recommends leveraging this process to include community stakeholders any time policies are revised as this will help facilitate the “co-production” and by extension trust between the community and the NRPD.
6. The committee recommends the creation of a *Serious Incident Review Board* comprising of sworn staff and community members to review cases involving officer involved shootings and other serious incidents that have the potential to damage community trust or confidence in the agency.
  - a. NRPD responded this has merit and will be further explored.

**Anticipated Cost:**

The committee and community will learn the 2021 allocation as part of the budget process and encourages the allocated funding to be focused on the training as detailed above.

1. In 2020, the City budgeted \$91,150 for training<sup>8</sup> and in 2018 \$33, 591 was the actual amount spent towards NRPD training and development. We will learn the 2019 actuals as part of the 2021 budget process.
2. ABLE Project training is free to accepted police departments and requires a dedicated program manager who will roll out, promote, and reinforce the program.

<sup>7</sup> On October 1, 2020 Yonkers Police Department announced it was accepted to participate in the ABLE Project <https://www.yonkersny.gov/Home/Components/News/News/6985/3218?backlist=%2Ffive%2Fpublic-safety%2Fpolice-department>

<sup>8</sup> 2020 Adopted Budget and the Police Budget can be found on pages 149-172. <https://www.newrochelleny.com/DocumentCenter/View/11735/2020-Adopted-Budget>

- a. There are staffing costs in adding an additional eight-hour training to the existing in-service training program that would fall under overtime expenses and in preparing reports for the program, the committee recommends this investment.
3. Co-producing policies and trainings will not come at a significant financial cost.

## DATA DISCLOSURE AND TRANSPARENCY

### Goal:

“Transparency is one of the four pillars of procedural justice and is critical to ensuring accountability. Without a full picture of law enforcement policies, procedures, and activity, the public cannot meaningfully evaluate the performance of law enforcement. Even a well-functioning department risks losing public confidence when it does not engage in meaningful transparency. Departments should consider various ways to make law enforcement practices more transparent to the public. Data is an important tool for improving accountability because it provides the public with insight into police activity and can be leveraged to inform data-driven policies (Cuomo, 2020, p71).”<sup>9</sup>

“Data collection and utilization will allow the New Rochelle Police Department to identify and proactively address any disparate impact on racial, ethnic and/or gender groups. Data can also support “data-driven and intelligence-led policing efforts (Id., p.74).”<sup>10</sup>

### Current Status:

The NRPD produces an annual report every year, reporting the Department’s record of criminal activity and enforcement activity. The annual report is published in May of the year following the year referenced in the report. The report includes information about current staffing and the racial and gender composition of the staffing.

The report does not include the racial, ethnic or gender composition of people who are arrested, suspects, victims, complainants or other people involved in incidents. This type of information who NRPD stops or investigates currently exists in 4 different databases but the records management systems have never been engineered to provide/or aggregate this information.

The NRPD webpage is a part of the City’s overall webservice but is not utilized to its full potential. The webpage does not provide translation and this limits the ability for Spanish speaking residents to engage with information provided.

In order to file a complaint against an officer, a resident must print the form and either deliver it in person or mail in the completed form.

---

<sup>9</sup> Cuomo, A. (2020). *New York State Police Reform and Reinvention Collaborative: Resource Guide for Public Officials and Citizens*, p. 71.

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police\\_Reform\\_Workbook81720.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police_Reform_Workbook81720.pdf)

<sup>10</sup> Cuomo, A. (2020). *New York State Police Reform and Reinvention Collaborative: Resource Guide for Public Officials and Citizens*, p. 74.

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police\\_Reform\\_Workbook81720.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police_Reform_Workbook81720.pdf)

**Summary of Recommendations:**

1. The committee recommends that the NRPD update its website and allow public access to monthly reports that detail racial, ethnic, gender and location data related to all police stops, crime data, complaint data, vehicle and traffic law and daily activity logs.
  - a. The committee recommends the hiring of a data entry clerk who will aggregate the information in a manner that allows monthly digital access.
2. The committee recommends all information shared on the NRPD website be provided in English and Spanish.
  - a. The committee also recommends that the NRPD should proactively collaborate with the appropriate City Department (for example the communications department) to continuously monitor the languages spoken by residents of New Rochelle.
  - b. As new languages become prevalent in our community efforts should be made to translate these materials into the emerging languages in our community.
3. The committee recommends all complaints concerning a member of the NRPD should be:
  - a. capable of being filed through an on-line fill-in form;
  - b. tracked to a final disposition with a detailed explanation of the ultimate result and
  - c. available to the public with legal necessary redaction.
  - d. all identifying information of complainants should be held confidential and restricted to only those with the need to investigate, resolve or adjudicate such complaints and subject to a strictly enforced retaliation policy which confirms that any retaliation against any complainant will result in disciplinary action and possible termination by the offending officer. The retaliation policy should be clearly stated on the complaint form.
4. The committee recommends that the NRPD should proactively seek opportunities to participate in neighborhood and community meetings. These meetings should have staggered start times and days, accept written comments/questions (via an online portal), the recording of meetings and should be advertised.
5. The committee recommends a comprehensive data management overhaul be undertaken to analyze the following but not limited to collection, maintenance, analyzing, and disclosure practices.
  - a. Numerous examples of departments with transparent data practices can be found particularly by those departments under consent decrees. The creation of easily accessible public dashboards will bring benefit to both community and police.
6. For all stops by a police officer, the committee recommends that all officers are required to give their name, badge number, reasons for the stop and a card with instructions for filing a complaint.

**Anticipated Cost:** The implementation of these recommendations will require the hiring of one administrator (approximately \$70,000 annually), as well as the direct costs associated with website upgrade, software upgrade and technology that facilitates virtual meetings/conference calls.



## COMMUNITY ENGAGEMENT

### Goal:

The committee's goal is to ensure NRPD is leveraging technology and community policing models to ensure regular and real time engagement between the community and NRPD.

### Background:

In 2015, the City Council directed the City Manager to convene a committee focused on community policing ("NRCCP"). One of NRCCP's recommendations was to increase the number of officers in the department as a way to improve community policing.

The rise of social media changes the way members of the community receive information. Hiring someone who is skilled at bolstering information on social media will ultimately permit connecting with a wider audience in a more immediate manner. Engagement can include communicating change in policies, community programs, positive news and developments about the department and sharing information in times of crisis. Adaptation to new means of communication is key to community engagement.

New Rochelle is rich with many community and non-profit organizations who are all key stakeholders in the community but there is not a point person to help facilitate engagement with and across all of the organizations in a robust and organized manner.

The committee has observed certain streets that are in proximity to Peter Bracey Apartments and Heritage Homes (formerly known as Hartley Houses) have become "hot spots" in New Rochelle. These areas have become prone to shootings and quality of life disruptions. The New Rochelle Municipal Housing Authority manages Peter Bracey Apartments and used to manage Hartley Houses. While Heritage Homes is now managed by a private company, the residents of Peter Bracey and Heritage share many of the same concerns. The committee identifies community engagement and facilitated partnership with NRPD as a key ingredient in proactively addressing hot spots.

### Summary of Recommendation:

1. Communication modalities have changed and social media is the key way to share information. The committee recommends the hiring a staff member who is trained to permit a more robust social presence without violating NRPD Rules and Regulation sections 3.1, 3.2 and 3.4.
2. Increase personnel to permit improvement of community policing, specifically to address "hot spots" but to also increase engagement with members of the public and community stakeholders.
  - a. The committee recommends the hiring of a community stakeholder liaison. The liaison will be responsible for implementing strategic initiatives to foster better police/community relations. The individual will work closely with the Youth Bureau and other various City/State agencies to ensure better communication between City, State, Federal agencies and the community stakeholders.
  - b. The committee recommends the hiring of police officers and community members who will allow the creation of relationships that will reduce crime in hot spot areas, including 5 police officers assigned solely to Peter Bracey and Heritage Homes. These officers

should be trained in community service model practices that will help to build trust and engagement between the residents and the police.

- i. The reinstatement of Resident Security Officers (“RSO”) who are residents from the community to serve as liaisons with NRPD and helped to reduce crime.
  1. One committee member recalls a time where NRPD trained residents, provided a small stiped and walkie talkie and in turn these RSO’s served as liaisons with NRPD.
  2. City Staff reports the funding from this program was from the Housing Authority and not NRPD.
  3. While the NRPD was not responsible for operating the program, the model, one of intentional and proactive engagement and training with members of the community is a model the committee recommends the NRPD seek to implement.
- ii. The institution of a “Cure Violence” program where leaders in the community are trained to change norms, respond to shootings, organize the community and mediate violence and proactively address areas with high risk.<sup>11</sup>
- iii. The institution of a Credible Messengers<sup>12</sup> program, in which formerly incarcerated community members with street credibility receive mediation training (for disturbances/disputes/suspicious person/trespassing/juvenile disturbance calls not related to mental health issues) and are able to connect with and motivate the most at-risk young people to successfully challenge and transform destructive thinking, attitudes and actions

**Anticipated Cost:**

Different models will yield different costs.<sup>13</sup>

1. The committee recommends a combination of police and civilian hires and reserves the right to submit a supplemental report to provide updated cost assessments.
2. The committee also recommends approaching this request as a 5-year plan where every year additional resources are folded into the budget.

<sup>11</sup> <https://cvg.org/>

<sup>12</sup> <https://cmjcenter.org/>

<sup>13</sup> One proposal includes hiring 5 additional police officers and the costs of a new police officer ranges from \$100,000 (in year 1) to \$150,000 in year 6. However, other models rely on incorporating community stakeholders in a way that empowers them with budgetary and physical resources to serve as a bridge/liasion to the NRPD.



## OVERSIGHT/DISCIPLINE/COMPLAINTS

### Goal:

The committee's goal is to remove barriers to reporting police misconduct and to ensure transparency should a police officer violate a policy.

### Background:

Ossining recently adopted legislation permitting the creation of a Civilian Review Board.<sup>14</sup> The legislative intent behind adopting the legislation was to ensure public confidence in the "effectiveness and integrity of investigations."<sup>15</sup>

"[Civilian review boards] may have the power to review investigative findings of Internal Affairs bureaus, to conduct their own investigations, to leverage various investigative tools, including subpoenas, and/or to impose discipline. Some entities also have the power to weigh in on key policy decisions (Cuomo, 2020, p.64)."<sup>16</sup>

### Summary of Recommendation:

The committee recommends the creation of an all-civilian structure with discipline power. There are different models that can exist and the committee submits the following as part of the consideration:

1. Model #1: The committee recommends this civilian committee assist in determining policy for the police department, share policy and policy changes in publicly accessible formats, hold public disciplinary hearings, discipline and dismiss police officers and participate in hiring decisions of the Police Commissioner. This group would also receive, investigate and resolve all civilian complaints against police in 120 days, access crime scenes, subpoena witnesses and files with penalties for non-compliance and interrogate officers less than 48 hours after an incident where deadly force is used and other powers.
2. Model #2: *Serious Incident Review Board* which is discussed on page 6 of this report.
3. Model #3: If as part of its police reform task force or county level legislation, Westchester County establishes a Civilian Review Board the committee recommends New Rochelle seek the participation in the County level review board.
4. Model #4: The creation of the Office of an Inspector General which is not a part of NRPD but is an office within City Hall charged with investigating and resolving complaints or allegations of misconduct.

<sup>14</sup> <https://ecode360.com/6422319> (Village of Ossining, NY – Chapter 7 Civilian Police Complaint Review Board, July 25, 2000).

<sup>15</sup> Id.

<sup>16</sup> Cuomo, A. (2020). *New York State Police Reform and Reinvention Collaborative: Resource Guide for Public Officials and Citizens*, p. 64.

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police\\_Reform\\_Workbook81720.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police_Reform_Workbook81720.pdf)

**Anticipated Cost:**

Different models will yield different costs and this matter would require amendments to the collective bargaining agreement.

## EQUIPMENT

### Goal:

The goal is to permit access and transparency of engagement with police officers and members of the community.

### Background:

“In-car and body-worn cameras (BWCs) are frequently recommended, and are mandated for some police forces, as monitoring mechanisms to ensure accountability (Cuomo, 2020, p. 79).”<sup>17</sup>

### Summary of Recommendation:

1. The committee recommends body cameras for all officers and supervisors operating in the field as well as in-car cameras for all marked and unmarked vehicles.
2. The committee recommends the footage for these cameras should be stored and retained in a way that is easily accessible to third parties such as the NYS Attorney General’s Office and requests from the public.
3. The committee also recommends digitizing all police employment records and civilian complaints.
4. The committee recommends an affirmative declaration from NRPD that they will not purchase or look for grants to purchase military grade weapons including rubber bullets, chemical gases

### Anticipated Cost:

The anticipated cost is \$1,193,037 over a five-year period to purchase and install body and in-car cameras. The total five-year cost is approximately \$1,443,037 and the City Staff reports there is a pending State grant that will provide approximately \$250,000 towards the cost.

1. City Staff report the initial capital cost of the body cameras is \$381,271 in the first year.
  - a. Body cameras will cost approximately \$210,666 each year in the second through fifth year.
2. City Staff report the initial capital cost for in-car cameras for the entire NRPD fleet (marked and unmarked vehicles) will cost approximately \$129,846 in the first year.
  - a. The capital cost for in-car cameras is \$31,314 each year in the second through fifth year.
  - b. The total five-year cost for in-car cameras for the entire NRPD fleet (marked and unmarked) is \$255,102.
3. Additional costs to be determined based on personnel assessment to facilitate aforementioned recommendations.
4. Additional costs to be determined to facilitate digitizing of records and complaints.

---

<sup>17</sup> Id., page 79.

## OTHER

### HIRING

#### Goal:

Increase numbers underrepresented groups, including female and BIPOC officers.

#### Background:

NRPD relies on the NYS Civil Service exams for its hiring pool. NRPD also requires 60 college credits (although some military service is considered as a substitute). NRPD has agreed the workforce demographic should more closely represent to the community. Although preference is given to New Rochelle residents and minority candidates, there remain barriers to a representative police force, not helped by the fact that especially in minority communities, policing is often not seen as an appealing career choice in the current climate.

#### Summary of Recommendations:

1. Examination of civil service policies
  - a. Does this require advocacy to state representatives?
  - b. Consider tools available to advance practices that focus beyond cognitive abilities to measure key personality traits, community-oriented skills and capabilities.
  - c. Explore opportunities for candidates to earn hiring “points” from a range of desirable attributes, specifically focused to mitigate disparate impact that minority or working class, or low-income candidates may have in the process.
  - d. Consider current educational requirements thoughtfully and whether they present a barrier or can be adjusted in other ways to get more qualified candidates in the door while still incentivizing the attainment of higher education and its corresponding benefits for officers.

#### Anticipated Cost:

The committee has just started the process in analyzing the potential costs and reserves the right to submit an additional report once its review is complete.

### FOR PROFIT COMPONENT

#### Goal:

The underlying purpose of the NRPD is to serve and protect the citizens of the City. This purpose should not be subverted by using the resources of the NRPD to generate income through aggressive ticketing practices.

**Background-**The Committee became aware during our meetings with the public that there exists a perception that certain areas of the City are targeted with aggressive ticketing practices while other areas are essentially ignored. This perception only adds to the distance between the NRPD and certain segments of the residents of the City.

**Summary of Recommendations:**

1. Examine City records to discern whether the concern is of merit or merely anecdotal.
2. Determine whether alternate side of the street parking is in fact required for street cleaning purposes.

**Anticipated Cost:**

Unknown, but it seems clear that less aggressive tactics will result in less revenue.

Charles B. Strome III  
City Manager  
(914) 654-2140



515 North Avenue  
New Rochelle, NY 10801  
Fax: (914) 654-2174

Email – Cstrome@newrochelleny.com

City of New Rochelle  
New York

November 10, 2020

**TO: HONORABLE MAYOR AND COUNCIL**

**FROM: CHARLES B. STROME, III, CITY MANAGER**

**SUBJECT: STAFF RESPONSES TO POLICE REVIEW COMMITTEE REPORT**

In August of this year, Governor Cuomo issued Executive Order number 203 (New York State Police Reform and Reinvention Collaborative) which required local government to convene a committee of local stakeholders for a “fact based and honest dialogue about the public safety needs of their community”. In response, I, as City Manager, convened the Police Review Committee. After several Committee meetings, subcommittee meetings and public comment meetings, the Committee has submitted the attached report to me. This memorandum will provide my comments on this report and its recommendations. I am submitting this memorandum as the executive order requires the City to develop a plan in response to the Committee report, offer the proposed Plan in draft form for public comment and ratify or adopt the plan by April 1, 2021.

To end, I will list the Committee’s recommendations below and provide my comments and recommendations in **BOLD** immediately after each Committee recommendation.

**USE OF FORCE AND TRAINING:**

1. The Committee recommends NRPD invest in rigorous and robust training that focuses on advancing procedural justice practices, emotional intelligence, community-oriented policing, and specifically addresses the role of race in officer’s perceptions of risk and their decision making in potentially dangerous interactions with citizens.

**STAFF RESPONSE:** As highlighted in the Training Section of the *New Rochelle Police Department – Special Report to the City Council, July 2020*, all of our training is progressive. Training components are building blocks are reiterated throughout all of our programs and years. Topics such as procedural justice, community policing, accountability, and communicating with the public are continually touched upon. NRPD remains committed to this and is willing to work to enhance such training.

Attachment: CMRESPONSE (2162 : SPECIAL MEETING - BUDGET SESSION)

2. The Committee strongly recommends implementation of the Implicit Bias training that was delayed due to COVID-19 and refreshes ICAAT.

**STAFF RESPONSE: NRPD has already conducted internal Implicit Bias training and plans to implement the outside implicit bias training that was planned prior to COVID-19 as soon as practical.**

3. The Committee recommends NRPD consider the implementation of universal crisis intervention for all officers.
  - a. The Committee recommends NRPD engage in robust training on when and how to engage the Clergy Rapid Response Team.

**STAFF RESPONSE: This is currently underway.**

- b. The Committee recommends NRPD explore other potential community crisis responders with a focus on de-escalating outcomes.

**STAFF RESPONSE: Although this would be difficult to achieve locally (the City government has no role in public health, it is a County function), the NRPD and the City staff strongly support that the County reestablish the County Crisis Intervention Team to assist local police agencies in responding to calls that deal with mental health cases where the team's expertise would be very helpful in de-escalating outcomes.**

- c. The Committee recommends the City Council join any County level shared services model for crisis responders.

**STAFF RESPONSE: See answer to (b.) above.**

4. The Committee recommends NRPD implement the (ABLE) Project:
  - a. The ABLE Project is a unique and model program. The training itself is evidence based and tested, demands a commitment by the police agencies to cultural change and is supported by a broad cross section of both police and community groups.

**STAFF RESPONSE: The ABLE program has been reviewed by our Training Unit, a Lieutenant, Sergeant and Detective. They attended a two-day virtual executive seminar with representatives of the EPIC and ABLE programs. While the program has merit, many of its concepts have already been incorporated into our training. Participation requires that our training officers attend in a "train the trainer" course. Anticipated costs would include registration fees, travel expenses (if training is not provided virtually), and the personnel's time. All Department members would then be required to attend an 8-hour (one day) training session. Depending on staffing, that would likely require overtime to backfill openings. After the initial 8-hour training, officers would be required to attend an**

annual 2-hour refresher course. Additionally, ABLE requires participating agencies to create and submit reports to the program’s administrative staff. It is unknown how burdensome that would be on our Training Staff, however, it will require the time of one or more of our staff to complete. Our Training Unit does not subscribe to the one-size fits all type of training programs and is best situated when we develop our programs through collaborative efforts while using the positive concepts from developed programs to enhance our existing training programs. We are certainly open to new approaches and ideas but most “new” programs repackage older proven concepts and techniques. Based on the fact that many of the concepts are already part of our training programs, the additional allotted training time that would be mandated, and the specific structure of the course that is required to be followed with some elements in contrast to what we already are required to teach (Ex. The topic “Use of Force” is heavily regulated by Federal and State Law), it is not recommended that we participate in the ABLE program.

- b. Yonkers has been accepted into the ABLE program which suggests the NRPD has an opportunity to join the ABLE Project and become a leader in embracing progressive training and proven practices to advance cultural change within policing in Westchester County.

**STAFF RESPONSE:** NRPD representatives have reached out to the Yonkers PD to have further discussions about how they are using the ABLE program. (Note: Later in their report, the Committee suggests the ABLE Project training is free to accepted police departments and requires a program manager who will roll out, promote, and reinforce the program. It should be noted that in addition to the cost for the program manager, the initial training is an 8-hour program which equates to 1 additional day per year per officer which would require a significant expenditure of overtime funds in addition to the administrative costs of the program.)

- 5. The Committee recommends collaboration between NRPD and community members to “co-produce” and update policies and training programs in a manner that reflects clear roles and responsibilities to achieve community centered safety goals, violence reduction and address key problem areas. Special consideration should be paid to Use of Force and De-escalation policies to reflect norming best practices, including the ban of intentional neck and chokeholds.
  - a. As noted in the special report, since 1983, the NRPD has successfully received accreditation from the New York State Division of Criminal Justice Services. Receiving accreditation requires a review and audit of polices every three-five years for compliance. The NRPD responded “We agree with the Committee that policies should be regularly reviewed and updated.”

**STAFF RESPONSE:** I am not sure what the Committee is recommending here. Currently, the NRPD policies are regularly reviewed and updated. Additionally, intentional neck and chokeholds have been banned in the NRPD for quite some time.



- b. The Committee recommends leveraging this process to include community stakeholders any time policies are revised as this will help facilitate the “co-production” and by extension the trust between the community and the NRPD.

**STAFF RESPONSE:** Having community review of policies “any time” they are revised is unworkable and unrealistic. As far as the general concept of “stakeholder” review, if the City Council wants to create such a review committee that would review policies on a regular (annual) basis and make recommendations, that is a policy decision Council is within its purview to create.

- 6. The Committee recommends the creation of a “Serious Incident Review Board comprising of sworn staff and community members to review cases involving officer involved shootings and other serious incidents that have the potential to damage community trust or confidence in the agency.

**STAFF RESPONSE:** NRPD reiterates its previous statement that his proposal has merit and can be further explored.

#### **DATA DISCLOSURE AND TRANSPARENCY**

- 1. The Committee recommends that the NRPD update its website and allow public access to monthly reports that detail racial, ethnic, gender and location data related to all police stops, crime data, complaint data, vehicle and traffic law and daily activity logs
  - a. The Committee recommends the hiring of a data entry clerk who will aggregate the information in a manner that allows monthly digital access

**STAFF RESPONSE:** It is estimated that the cost of such a position would be approximately \$70,000 (salary and benefits) annually and this position is not included in the City Manager’s proposed 2021 budget. However, the City Manager and NRPD would support a budget amendment to add this position as part of the 2021 adopted City budget.

- 2. The Committee recommends all information shared on the NRPD website be provided in English and Spanish.
  - a. The Committee also recommends that the NRPD should proactively collaborate with the appropriate City Department (for example the communications department) to continuously monitor the languages spoken by residents of New Rochelle.
  - b. As new languages become prevalent in our community efforts should be made to translate these materials into the emerging languages in our community.

**STAFF RESPONSE:** Staff has no objection to this recommendation given appropriate resources. It should be noted that another City Department other than the PD should handle 2a. if it is implemented.

3. The committee recommends all complaints concerning a member of the NRPD should be:
  - a. capable of being filed through an on-line fill-in form;
  - b. tracked to a final disposition with a detailed explanation of the ultimate result and
  - c. available to the public with legal necessary redaction.
  - d. all identifying information of complainants should be held confidential and restricted to only those with the need to investigate, resolve or adjudicate such complaints and subject to a strictly enforced retaliation policy which confirms that any retaliation against any complainant will result in disciplinary action and possible termination by the offending officer. The retaliation policy should be clearly stated on the complaint form.

**STAFF RESPONSE: Staff has no objection to the on-line fill-in form and in fact this recommendation is already in process.**

4. The committee recommends that the NRPD should proactively seek opportunities to participate in neighborhood and community meetings. These meetings should have staggered start times and days, accept written comments/questions (via an online portal), the recording of meetings and should be advertised.

**STAFF RESPONSE: NRPD currently participates in neighborhood and community meetings whenever we are asked to participate. Neighborhood and community meetings are generally scheduled by the particular neighborhood association involved. Unless a community liaison position is created somewhere in the City organization, it is difficult to envision the Police Department being able to proactively schedule these types of appearances.**

5. The committee recommends a comprehensive data management overhaul be undertaken to analyze the following but not limited to collection, maintenance, analyzing, and disclosure practices.
  - a. Numerous examples of departments with transparent data practices can be found particularly by those departments under consent decrees. The creation of easily accessible public dashboards will bring benefit to both community and police.

**STAFF RESPONSE: In 2018, the NRPD implemented a new CAD (Dispatch) system at a cost of over \$1 million. While it is practical to look to enhance that system with some of these recommended features, replacing the CAD system at this time would not be practical.**

6. For all stops by a police officer, the committee recommends that all officers are required to give their name, badge number, reasons for the stop and a card with instructions for filing a complaint.

**STAFF RESPONSE: If recommendation 3 above under this category is implemented (and it is in process), staff does not see the need to take this additional step.**

**COMMUNITY ENGAGEMENT:**

1. Communication modalities have changed and social media is the key way to share information. The committee recommends the hiring a staff member who is trained to permit a more robust social presence without violating NRPD Rules and Regulation sections 3.1, 3.2 and 3.4.

**STAFF RESPONSE:** The Police Department has no objection to this recommendation however, as City Manager, I would advise that the creation of such a position would have to be considered in the context of the entire City budget which, as proposed, does not anticipate this cost.

2. Increase personnel to permit improvement of community policing, specifically to address “hot spots” but to also increase engagement with members of the public and community stakeholders.

- a. The committee recommends the hiring of a community stakeholder liaison. The liaison will be responsible for implementing strategic initiatives to foster better police/community relations. The individual will work closely with the Youth Bureau and other various City/State agencies to ensure better communication between City, State, Federal agencies and the community stakeholders.

**STAFF RESPONSE:** See staff response above relative to City budget.

- b. The committee recommends the hiring of police officers and community members who will allow the creation of relationships that will reduce crime in hot spot areas, including 5 police officers assigned solely to Peter Bracey and Heritage Homes. These officers should be trained in community service model practices that will help to build trust and engagement between the residents and the police.

**STAFF RESPONSE:** Although the NRPD Command Staff would welcome the hiring of 5 additional police officer positions, the City Manager reports that an additional 5 police officer positions would amount to a cost that is not sustainable in the City’s current budget and financial situation. This can always be considered at a future date if and when that financial situation changes in a positive direction.

- i. The reinstatement of Resident Security Officers (“RSO”) who are residents from the community to serve as liaisons with NRPD and helped to reduce crime.
  1. One committee member recalls a time where NRPD trained residents, provided a small stiped and walkie talkie and in turn these RSO’s served as liaisons with NRPD.
  2. City Staff reports the funding from this program was from the Housing Authority and not NRPD.

3. While the NRPD was not responsible for operating the program, the model, one of intentional and proactive engagement and training with members of the community is a model the committee recommends the NRPD seek to implement.

**STAFF RESPONSE:** Staff is willing to work with the various housing developments to enact such a program. However, having said that, the cost of the program could not be sustained in the current City budget and we are unaware of any outside funding sources (State and Federal government) which have programs that would fund such a program. We are willing to help identify funding sources if, in fact, they do exist.

ii. The institution of a “Cure Violence” program where leaders in the community are trained to change norms, respond to shootings, organize the community and mediate violence and proactively address areas with high risk.

**STAFF RESPONSE:** The City Manager recently worked with local clergy to form the Clergy Rapid Response Team which is designed to perform some of the functions recommended here.

iii. The institution of a Credible Messengers<sup>12</sup> program, in which formerly incarcerated community members with street credibility receive mediation training (for disturbances/disputes/suspicious person/trespassing/juvenile disturbance calls not related to mental health issues) and are able to connect with and motivate the most at-risk young people to successfully challenge and transform destructive thinking, attitudes and actions

**STAFF RESPONSE:** Staff is unaware of a program such as this and would have to do additional research in order to comment on it in a complete manner.

#### **OVERSIGHT/DISCIPLINE/COMPLAINTS:**

The committee recommends the creation of an all-civilian structure with discipline power. There are different models that can exist and the committee submits the following as part of the consideration:

1. Model #1: The committee recommends this civilian committee assist in determining policy for the police department, share policy and policy changes in publicly accessible formats, hold public disciplinary hearings, discipline and dismiss police officers and participate in hiring decisions of the Police Commissioner. This group would also receive, investigate and resolve all civilian complaints against police in 120 days, access crime scenes, subpoena witnesses and files with penalties for non-compliance and interrogate officers less than 48 hours after an incident where deadly force is used and other powers.

**STAFF RESPONSE:** While the creation of such a review board would be a policy determination made by the City Council, there is no doubt that doing so would violate the City Charter and be subject to either Impact or Collective Bargaining negotiations. (Please see attached legal opinion from the City’s outside legal counsel on this issue.)

2. Model #2: *Serious Incident Review Board* which is discussed on page 6 of this report.

**STAFF RESPONSE:** As stated previously, staff has stated that this recommendation has merit and should be pursued further.

3. Model #3: If as part of its police reform task force or county level legislation, Westchester County establishes a Civilian Review Board the committee recommends New Rochelle seek the participation in the County level review board.

**STAFF RESPONSE:** If Westchester County moves forward with the creation of a countywide Civilian Review Board, staff would consider participating. However, it is anticipated that the County would face the same bargaining impediments detailed above in the legal memo from our outside labor counsel.

4. Model #4: The creation of the Office of an Inspector General which is not a part of NRPD but is an office within City Hall charged with investigating and resolving complaints or allegations of misconduct.

**STAFF RESPONSE:** The City Manager's proposed 2021 budget includes the creation of an Inspector General position which would be housed in the Law Department and would conduct independent investigations involving all City employees, including the Police Department.

**EQUIPMENT:**

1. The committee recommends body cameras for all officers and supervisors operating in the field as well as in-car cameras for all marked and unmarked vehicles.

**STAFF RESPONSE:** This is included in the City Manager's proposed 2021 Budget.

2. The committee recommends the footage for these cameras should be stored and retained in a way that is easily accessible to third parties such as the NYS Attorney General's Office and requests from the public.

**STAFF RESPONSE:** It is anticipated that this recommendation would be included as part of the NRPD's Body Cam and Dashboard Cam program which should be completely purchased and implemented sometime in 2021.

3. The committee also recommends digitizing all police employment records and civilian complaints.

**STAFF RESPONSE:** Staff does not object to this but would have to review with the City's IT team to determine if it is feasible and the cost of such a program.

4. The committee recommends an affirmative declaration from NRPD that they will not purchase or look for grants to purchase military grade weapons including rubber bullets and chemical gases.

**STAFF RESPONSE:** The NRPD does not agree with this recommendation. The Department currently has what might be considered military grade weapons (M4s and MP5's capable of fully automatic fire), and chemical gases. The rifles give the Department the capacity to respond effectively to an active shooter and similar threats. The Department has chemical gases which might be deployed as the most effective and least lethal means of dislodging a barricaded suspect or dispersing an unruly group of people. It should be noted that this equipment is not routinely carried by officers on patrol and is held in reserve for special circumstances as described above. Additionally, the use of any gases needs supervisory approval before they can be used.

**OTHER:**

1. Examination of civil service policies a. Does this require advocacy to state representatives?

b. Consider tools available to advance practices that focus beyond cognitive abilities to measure key personality traits, community-oriented skills and capabilities.

c. Explore opportunities for candidates to earn hiring "points" from a range of desirable attributes, specifically focused to mitigate disparate impact that minority or working class, or low-income candidates may have in the process.

d. Consider current educational requirements thoughtfully and whether they present a barrier or can be adjusted in other ways to get more qualified candidates in the door while still incentivizing the attainment of higher education and its corresponding benefits for officers.

**STAFF RESPONSE:** The great majority of these recommendations would require amendment to the State Civil Service Laws and are not under the control of the City government. We would be happy to participate in efforts to amend State Civil Service Law to provide additional flexibility to hiring agencies in the State. As for d., this policy is currently under review by the NRPD and City Administration.

**FOR PROFIT COMPONENT:**

The Committee became aware during our meetings with the public that there exists a perception that certain areas of the City are targeted with aggressive ticketing practices while other areas are essentially ignored. This perception only adds to the distance between the NRPD and certain segments of the residents of the City.

1. Examine City records to discern whether the concern is of merit or merely anecdotal.
2. Determine whether alternate side of the street parking is in fact required for street cleaning purposes.

**STAFF RESPONSE:** Staff would be happy to review our ticketing practices to determine if there is aggressive ticketing. However, I would point out that a significant amount of revenue derived from ticketing (moving violations) goes to the State of New York, not the City of New Rochelle so if there is aggressive ticketing occurring, it is not resulting in any significant revenue to the City. The majority of revenue the City keeps from tickets is from parking tickets and the great majority of parking tickets are issued by Community Service Officers, not sworn Police Officers. As for alternate side of the street parking to facilitate street cleaning, I am not sure that this really is a matter for this report. It was mentioned by one member of the public during one meeting. In my experience, residents of the streets that have alternate side parking in order to facilitate street sweeping would not be in favor of removing those restrictions and foregoing the sweeping of their streets.



## LAW OFFICE OF VINCENT TOOMEY

VINCENT TOOMEY\*  
CHRISTINE A. GAETA\*  
THOMAS J. MARCOLINE\*\*

3000 MARCUS AVENUE  
LAKE SUCCESS, NEW YORK 11042

516-358-5690  
FAX 516-775-0237

SENIOR COUNSEL  
HEATHER P. HARRISON

\*ALSO MEMBER CONNECTICUT BAR  
\*\*ALSO MEMBER MASSACHUSETTS BAR

TO: KATHLEEN GILL, Corporation Counsel

FROM: VINCENT TOOMEY, Labor Counsel

RE: POLICE DISCIPLINE OPINION

DATE: NOVEMBER 9, 2020

---

Pursuant to Executive Order 203 issued by Governor Cuomo on June 12, 2020, all local governments that maintain police departments must conduct a study of their department with the purposes of addressing the particular needs of the communities served by police agencies; promoting community engagement, trust, fairness, and legitimacy; and addressing any racial bias and disproportionate policing in communities of color. Local governments throughout the State have, in accordance with that Executive Order, established committees to assist the local government in reviewing existing policies and practices and implementing changes. The local legislative body, in this case the New Rochelle City Council, must also act upon proposed changes by April 2021. Our Office has been assisting local governments throughout the region in reviewing existing policies, proposed changes and advising on what aspects of those policies would be subject to collective bargaining. The City has two police unions: the Police Benevolent Association ("PBA"), which represents Police Officers and Detectives, and the Superior Officers Association ("SOA"), which represents Sergeants, Lieutenants and Captains. Both New Rochelle police unions have attempted in past years to negotiate with the City over disciplinary matters. The City has denied those requests. You have asked for our opinion on the bargaining implications which may arise if the City wishes to establish a Civilian Complaint Review Board (CCRB).

Collective bargaining in New York State is governed by a section of the Civil Service Law known as the Taylor Law. The New York State Public Employment Relations Board ("PERB") is responsible for administering and enforcing the Taylor Law. The Taylor Law divides subjects of bargaining into three categories: (1) mandatory subjects of bargaining that require the public employer to bargain over and prohibits unilateral changes relating to those subjects; (2) nonmandatory or permissive subjects, which the employer can bargain over but is not required to; and (3) prohibited subjects of bargaining which cannot be bargained over. Most subjects are mandatory, thus limiting the rights of public employers to implement changes without the consent of the union(s).



The Taylor Law encourages bargaining over most subjects and courts have held that there is a presumption in favor of collective bargaining. *See City of Watertown v. State of N.Y. Pub. Empl. Relations Bd.*, 95 N.Y.2d 73 (2000). Prohibited subjects are exceedingly rare and usually involve matters where the State legislature or the courts have clearly articulated public policy grounds which preempt collective bargaining. *See Watertown*, (“To be sure, where a statute clearly ‘forecloses negotiation’ of a particular subject, that subject may be deemed a prohibited subject of bargaining” citing *Matter of Board of Educ. V. N.Y. State Pub. Empl. Relations Bd.*, 75 N.Y. 2d 660 (1990)).

Employee discipline has been found by PERB to be a mandatory subject of bargaining over which most public employers must bargain and cannot implement changes without the consent of the unions representing their employees. *See Auburn Police Local 195*, 10 PERB 7016 (1977). There are, however, limited exceptions to that rule. Courts have held in several significant cases that police discipline, including investigations, disciplinary procedures and the review of disciplinary determinations, is preempted in certain jurisdictions. *See, e.g., Matter of Patrolmen’s Benevolent Assn. of City of N.Y., Inc. v. New York State Pub. Empl. Relations Bd.* 6 N.Y. 23d 563 (2006); *City of Schenectady v. New York State Pub. Empl. Relations Bd.*, 30 N.Y. 3d 109 (2017); *City of Mount Vernon v. Cuevas*, 289 A.D.2d 674 (3d Dept. 2001). Those jurisdictions would be local governments which had legislation governing police discipline in effect by either state or local law prior to 1941. That year was selected since the New York State Legislature enacted legislation in 1941 which made collective bargaining available over employee discipline for governments that did not reserve police discipline to local control. As of this date, the Court of Appeals and other appellate courts, have found that collective bargaining over police discipline is prohibited for Town and Village police departments within Westchester County that are governed by the Westchester County Police Act. *See Town of Harrison Police Benevolent Assoc., Inc. v. Town of Harrison Police Dept.*, 69 A.D. 3d 639 (2d Dept. 2010); *see also Matter of Patrolmen’s Benevolent Assn. of City of N.Y., Inc. v. New York State Pub. Empl. Relations Bd.*, 6 N.Y. 3d 563 (2006); *Matter of Town of Greenburgh*, 94 A.D. 2d 771 (2d Dept. 1983). That holding was extended by other court decisions to all Town and Village police departments throughout New York State.

The City of New Rochelle, like the other cities in Westchester County and the County itself, is not governed by the Westchester County Police Act. Instead, most of the cities in the County, based upon their population, are subject to the Second Class Cities Act.

The Second Class Cities Act has been found by the New York Court of Appeals to reserve the subject of police discipline to the local government provided that there was a City Charter that was adopted in accordance with the Second Class Cities Law. The Second Class Cities Law provides as follows on the subject of police discipline: “[t]he commissioner of public safety shall have cognizance, jurisdiction, supervision and control of the government, administration, disposition and discipline of the police department.” SECOND CLASS CITIES LAW § 131. *See City of Schenectady v. New York State Pub. Empl. Relations Bd.*, 30 N.Y. 3d 109 (2017)

The New Rochelle City Charter has a provision regarding the retention of control over disciplinary matters. It is in fact, similar to the language contained in the Town Law and Village Law, the Westchester Police Act and the New York City Charter, which is applicable to the New York City Police Department. The New Rochelle City Charter provides at Section 58 that the Police Commissioner shall have charge and control of the administration and discipline of the Police Department. All courts which have reviewed that or similar language have come to the conclusion that police discipline is reserved to local control.

Reserving local control over police discipline is of vital importance. If the subject of police discipline is not reserved to local control by virtue of a preexisting reservation of rights (in effect prior to 1941), then it becomes a negotiable subject. Jurisdictions which do not have local control reserved to them have been forced to collectively bargain disciplinary procedures. Without exception, that has resulted in a diminution of the ability of police chiefs and commissioners to properly maintain discipline. Negotiable subjects include having disciplinary cases decided by labor arbitrators rather than hearing officers appointed by the Police Commissioner. Labor arbitrators are often hesitant to terminate police officers even if there is a demonstrated pattern of misconduct. For example, the City of Minneapolis Police Department has labor arbitrations over police disciplinary cases. Police officials in Minneapolis and throughout Minnesota, where negotiations over police discipline is permitted, have cited labor arbitration as among the reasons they have been forced to retain police officers with negative disciplinary histories. That is the very reason police unions fight to have their disciplinary cases decided by arbitrators.

You have advised me that the City's Police Reform Committee is exploring options such as a Civilian Complaint Review Board (CCRB). While that concept may be well intentioned, and is in the general spirit of ensuring that police officers are properly disciplined, the creation of a CCRB would require a change to the City Charter as it would divest the Police Commissioner of some of the authority granted to him or her by the Charter. While Charter change may be legally possible, such changes are rare and, in this instance, could have the unintended and ironic consequence of making police discipline a mandatory subject of bargaining. The reason for that is that the Charter change would essentially reverse the exemption from collective bargaining which is based upon the Police Commissioner having control over that subject by virtue of a Charter provision in effect before 1941. In jurisdictions where collective bargaining is permitted over police discipline, PERB has held that implementation of CCRB procedures, including participation in and the review of disciplinary determinations, cannot be implemented without the consent of the unions. See *City of Syracuse*, 30 PERB 4623 [1997]; *City of Rochester*, 27 PERB 7003 (1994).

For the foregoing reasons, implementation of a CCRB is not recommended. While there is no perfect discipline system, the City of New Rochelle has maintained effective discipline over its police for many years. Termination of police officers for misconduct in most jurisdictions is relatively rare and dismissals for incompetence are virtually unheard of. That is not the case in New Rochelle. My Office has been prosecuting police disciplinary cases for over three decades in numerous counties, cities, towns and villages. Among them, New Rochelle has the strongest reputation for maintaining proper discipline where warranted, including two cases where former

PBA Presidents have been terminated for misconduct or incompetence. That level of discipline was required in those cases but likely would not occur in other jurisdictions, especially those with collectively bargained disciplinary procedures which would result from not having a preexisting reservation of disciplinary rights prior to 1941 or changing a City Charter provision after that date to permit a CCRB.

I would be pleased to discuss this subject with you, the City Manager or anyone you designate. Please let me know if you have any questions.

cc: Chuck Strome, City Manager