

AN ORDINANCE TO CREATE A NEW CHAPTER 37 OF THE CODE OF THE CITY OF
SARATOGA SPRINGS, NY ENTITLED “CIVILIAN REVIEW BOARD”

BE IT ORDAINED by the City Council of the City of Saratoga Springs, NY, as follows:

SECTION 1: A new Chapter 37 of the Code of the City of Saratoga Springs, entitled
“Civilian Review Board,” is hereby enacted to read:

CHAPTER 37
CIVILIAN REVIEW BOARD

37-1 FINDINGS AND PURPOSE

The Saratoga Springs Police Department (the Department) exists to help create and maintain a safe environment for the citizens of and the visitors to our community. In order to fulfill that role, the Department must have the trust and respect of the community. The Civilian Review Board (CRB) is intended as an aid to maintaining that trust and respect.

The trust and confidence of the community in its law enforcement personnel are essential for the smooth operation of the Department. The members of the Department, both sworn and civilian, are part of the community. The community as a whole relies on its trust and confidence in law enforcement as part of the foundation of a free and secure society. When that trust and confidence is drawn into question or broken, prompt, appropriate and effective procedures must be available to resolve any issues that may have arisen.

Our society entrusts its police departments with extraordinary authority. An encounter with law enforcement can profoundly impact the life of the person affected, whether that person is an individual in need of assistance; a victim of or witness to criminality; or a person accused or suspected of wrongdoing. Members of law enforcement must accept that their authority is granted to them by the people they serve. Accordingly, the public is entitled to openness and transparency from the Department as an integral component of a relationship grounded in mutual trust and respect.

A system that facilitates communication between the Department and the people it serves, especially when grievances arise, is essential for the maintenance of trust and confidence in the Department by the community. With this in mind, the following is ordained, established and implemented:

There shall be a Civilian Review Board (CRB) whose purpose is to receive, process and, whenever possible, amicably resolve grievances regarding the conduct of employees of the Department. The CRB shall also act as a vehicle for generating and expressing informed opinions relating to public policy regarding law enforcement in our City. The CRB should represent a fair cross-section of the Saratoga Springs community with regard to age, sex, sexual orientation, cultural background and socio-economic background. The members of the CRB shall be individuals of good character who must, at all times, remain unbiased and impartial regarding matters of law enforcement in our community so that the work of the CRB will be, and will be perceived as, even-handed, just, fair and proper by all stakeholders, including by members of the Department.

The CRB shall consist of five members, one of whom shall be its Chair. No member may be employed by the Department in any capacity during his or her tenure on the CRB, and no member may be an elected official. The Chair must have some prior experience in adjudicatory proceedings or decision-making and be capable of presiding over administrative hearings, though the Chair need not be an attorney. Members must be at least eighteen years of age; must have their primary residence in Saratoga Springs; and must have resided in Saratoga Springs for at least six consecutive months prior to the date of appointment, with periods of vacation, military deployment or hospitalization deemed not to constitute interruptions of continuous residence. At least one member shall be between the ages of 18 and 25 at the time of appointment. No one may serve as a member of the CRB who has been convicted of a felony within the ten years preceding the submission of an application for membership; however, a Certificate of Relief issued pursuant to the Executive Law or a Sealing Order issued pursuant to the Criminal Procedure Law shall remove this disability. No one may serve as a member of the CRB who has been convicted of a crime involving fraud or moral turpitude within the ten years preceding the submission of an application for membership.

INITIAL APPOINTMENT OF CRB MEMBERS

The Chair of the CRB shall be appointed by the Mayor, subject to ratification by at least two additional City Council members. The Chair shall serve a two-year term. The mayor shall make the appointment of the CRB Chair first. The remaining members of the City Council shall then draw lots for the order in which they will each make one of the remaining appointments. Each appointment shall be subject to ratification by at least two additional City Council members. If no CRB member between the ages of 18 and 25 shall have been appointed by the

time of the appointment of the last CRB member, the City Council member chosen to make the final appointment shall appoint an individual between the ages of 18 and 25 to serve on the CRB.

Members of the CRB other than the Chair shall serve staggered three-year terms. No one may serve on the CRB for more than six years. When the CRB is first empaneled, the two Members appointed after the Chair shall serve three-year terms; the next Member appointed shall serve an initial two-year term; and the final Member appointed shall serve an initial one-year term. Vacancies occurring prior to the expiration of a Member's term shall be filled by appointment by the City Council member presiding over the Department whose Commissioner shall have appointed the CRB Member whose seat is vacant, subject to ratification by at least two additional City Council members. Subsequent appointments and/or re-appointments shall be made by the City Council member presiding over the Department whose Commissioner shall have appointed the CRB Member whose term of office shall have expired, subject to ratification by at least two additional City Council members.

The existence of an open position or positions on the CRB shall be announced as an agenda item at a regularly scheduled City Council meeting. Appointments shall be made at least 30 days following the date of the City Council meeting at which the open position was announced. The City Council shall adopt an application form, to be completed and signed by the applicant, which shall be publicly posted on the City website and available for public inspection and copying at the Office of the City Clerk at least ten days prior to the date of the City Council meeting at which an appointment is scheduled to be made. The Chair and members of the CRB shall file an oath of office with the Office of the City Clerk prior to the commencement of their participation on the CRB.

The Chair or any member of the CRB may be removed for cause by a majority vote of the City Council at a regularly scheduled meeting of the City Council.

The Office of the Mayor shall be responsible for providing adequate budget and training to ensure proper functioning of the CRB.

The CRB shall have the authority to create forms and promulgate internal procedural rules consistent with the City Charter and City Code. Copies of any such forms and procedural rules shall be made publicly available by posting on the City website.

PROCEDURE:

1. In order for the CRB to properly investigate a complaint, the complaint should be made as soon as possible, but not more than 90 days after the incident in question. That time period may be extended for good cause shown.

2. Upon receiving a complaint from a resident of the City, the Department shall make a good faith effort to resolve the issue but shall immediately upon receiving the complaint, advise the complainant that s/he may, at any time, have the complaint, which shall be reduced to writing, filed with the CRB. All complaints shall be recorded in the police log and flagged there in a way to distinguish them from other entries.

Complainants shall be given a form upon which to record their complaint. The form shall have a check box and shall state that when checked, the complaint shall be registered with the CRB. Two weeks from the date of the filing of complaints which have been filed with the CRB, a letter shall be sent to the Complainant asking if the complaint has been resolved. The letter shall contain a form which, if checked by the Complainant, shall indicate their desire to actively engage the CRB's grievance procedure, a copy of which shall be attached to the form.

3. Once the CRB has been advised of the desire of the Complainant to actively engage the CRB, the Department shall conduct an investigation of the complaint and shall create a thorough and complete file of the investigation including all records, statements, evidence and other documents relied upon by the Department in reaching its conclusion regarding the disposition of the complaint. The Department shall identify all records in the file which it will rely upon if the matter is to proceed to an administrative hearing and shall provide copies of those records to the Complainant. The Department shall complete its investigation and compilation of records within three weeks of the date when the CRB will have notified the Department in writing of the Complainant's request for the CRB's active involvement.
4. Thereafter, should the Complainant agree, one of the Members of the CRB shall conduct a preliminary meeting between the Complainant, who may obtain representation, and a Department representative. At that time, an attempt shall be made to secure a voluntary resolution of the grievance by the CRB member's mediation of the dispute. The members of the CRB shall rotate mediation assignments. Where the CRB member serving in a mediation role concludes that they have been given information during mediation which may influence their capacity to serve in a neutral capacity, they shall recuse themselves from future deliberations of the CRB regarding the disposition of the grievance giving rise to the mediation. Where the parties cannot reach a voluntary settlement of the complaint, the neutral CRB member may, at the conclusion of the mediation, decide that the grievance is so lacking in merit as to be ineligible for appeal to the next step in which case s/he shall so advise the CRB which shall vote on whether or not the grievance should be dismissed.
5. Where no resolution of the grievance has been obtained and the matter not declared ineligible for appeal, the CRB shall schedule an administrative due process hearing at which time the parties shall present evidence in support of their respective positions. Absent good cause shown, the Department shall be precluded from offering documentary evidence which was not previously shared with the Complainant at the preliminary meeting.

The administrative hearing shall be conducted in a manner which will satisfy the due process requirements of a proceeding held under the New York State Administrative Procedure Act, including but not limited to the swearing of witnesses and the issuance of administrative subpoenas to compel the testimony of witnesses, the production of documents, or both. The relaxed rules of evidence for an administrative proceeding, including the admissibility of hearsay, shall apply. Should circumstances warrant, the CRB shall enjoy the discretion to ask questions of its own, to allow testimony in a narrative fashion, or to employ any reasonable means of eliciting the truth without placing an undue burden on either side in the controversy. The hearing shall normally be a private proceeding; a record shall be kept, however, of all testimony adduced and all evidence presented. The parties shall cooperate to all reasonable extents at the hearing, and the CRB shall have discretion to draw an adverse inference against any party or witness who fails to cooperate reasonably with the proceeding.

6. Thereafter the CRB, by majority vote, shall set forth in writing its findings of fact and its final conclusions and shall make an advisory recommendation to the Commissioner of Public Safety with regard to the disposition of the Complaint. The Conclusions and Recommendations shall be made available to the public.

Should the CRB member who has performed the mediation at Step Three recuse him- or herself from further deliberations by the CRB regarding a pending grievance, the Chair shall refrain from voting on the CRB's findings and conclusions regarding that grievance in order to prevent a tie vote. The Chair shall, however, continue to perform all other duties of the position.

In making its recommendations and releasing them publicly, the CRB shall be cognizant of prior, pending or impending legal proceedings, shall adjust the timing of the CRB process as appropriate, and shall strive to protect information that should remain confidential.

The CRB shall operate in an expeditious manner so as to reduce interference in the Department's business. While the CRB operates at arm's length from the Department, its overall purpose is to enhance the efficiency of the Department's operations by providing assurance to the public, through its oversight of the Department, that it operates in a fair and just manner.

POWERS AND DUTIES OF THE COMMISSIONER OF PUBLIC SAFETY

The Commissioner of Public Safety (the Commissioner) shall have no authority to review any interlocutory procedural or substantive determination of the CRB. The Commissioner's authority over the proceedings of the CRB shall be limited to a review of and action upon the CRB's advisory Conclusions and Recommendations.

The Commissioner shall be provided with the full record of any hearings which result in advisory Conclusions and Recommendations by the CRB. Within a reasonable time of receipt of the advisory Conclusions and Recommendations and record, and after having provided at least 30 days for the Complainant, the Department, or both to submit written briefs, should either or both so desire, the Commissioner shall issue a written Decision. That decision, which shall be made available to the public, shall include a specific determination as to whether the record provides a sufficient basis for the CRB's advisory Conclusions and Recommendations as well as a specific determination as to whether the CRB's advisory Conclusions and Recommendations are in accord with the weight of the evidence admitted at the hearing. In making this latter determination, the Commissioner shall give reasonable deference to the CRB's assessment of the credibility of any witnesses who may have testified before it; however, the Commissioner retains the authority to review both factual findings and legal conclusions made by the CRB.

The Commissioner's Decision shall adopt, reject, or modify the advisory Conclusions and Recommendation of the CRB. The Decision shall clearly set forth the reasons for which the advisory Conclusions and Recommendations are adopted, rejected, or modified. The Decision shall respect, whenever applicable, the strictures of any collective bargaining agreement which may limit the scope of the Commissioner's authority. For purposes of any potential judicial review of the CRB's actions under Article 78 of the Civil Practice Law and Rules, the Decision of the Commissioner shall be considered the final administrative determination.

Nothing in this Ordinance shall be read as a limitation, abridgement or infringement of any rights or powers conferred by the Saratoga Springs City Charter.

This ordinance shall take effect the day after publication as provided by the City Charter of the City of Saratoga Springs, New York.

ADOPTED: