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September 3, 2021

**CONFIDENTIAL TREATMENT AND FOIL EXEMPTION REQUESTED**

**Via Email (patrick.beath@cityofrochester.gov)**

Mr. Patrick Beath  
Deputy Corporation Counsel  
City of Rochester, New York - Law Department  
City Hall - Room 400A  
30 Church Street  
Rochester, New York 14614

Re: Police Accountability Board

Dear Mr. Beath:

We represent the Rochester Police Accountability Board (the "PAB").

We understand that certain units of the City of Rochester have improperly designated the PAB as a department or subunit of the City Council and assumed that the President of the City Council acts as, among other things, (1) the PAB's "appointing authority" for purposes of hiring staff and negotiating salaries; (2) the supervisor of the PAB Executive Director for purposes of routine administrative tasks; and (3) the PAB's department head for purposes of creating new staff positions and submitting budget proposals.

The most recent example of this improper designation and delegation of authority came in an email from Tassie R. Demps, Director of Human Resources Management, August 30, in which Ms. Demps stated that because the City Council President is the "appointing authority" for the PAB, the PAB must send the candidates it selects for hire to the City Council President for approval, and only upon the City Council President's acceptance of such candidates will the Department of Human Resources Management issue a conditional offer of employment and begin the pre-hire process. We have attached this email to this letter for your reference.

The City's designation of the PAB as a department or subunit of City Council and the delegation of authority over the PAB to the City Council President in these instances is contrary to the express

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terms of the City Charter and impedes the PAB's ability to carry out its mandate. On behalf of the PAB, we write to request that the City recognize the PAB's independence and autonomy from City Council and the PAB's Board, Chair or Executive Director as its "appointing authority" and act to ensure all its departments, including the Department of Human Resources Management, act in conformity therewith.

As a general matter, nothing in the Charter states or suggests that the PAB was intended to operate as a department or subunit of the City Council. Section 18-3 of the Charter states that the PAB is "an independent office of municipal government" and an "autonomous office of the City." Furthermore, the Charter does not grant the City Council any authority over the PAB's daily or administrative activities. The City Council's power with respect to the PAB under the Charter is limited to (1) nominating and appointing members of the PAB,<sup>1</sup> (2) confirming the PAB's choice of Executive Director,<sup>2</sup> and (3) approving certain contracts entered into by the PAB and the PAB's proposed budget.<sup>3</sup> Similarly, nothing in the Charter requires the PAB to report to the City Council. The Charter states that the Executive Director of the PAB will report to the PAB's Board, and it only requires that the PAB provide a copy of its annual report to the City Council and Office of the Mayor.<sup>4</sup>

The Charter designates the PAB's Board—not the President of the City Council—as the "appointing authority" for the PAB's Executive Director and its staff. Section 18-2 of the Charter defines the Executive Director as the "highest ranking staff hired by the Police Accountability Board, with ultimate responsibility for making managerial decisions." Section 18-6(C) of the Charter states that the PAB Executive Director, once confirmed, "report[s] to" and "serve[s] at the discretion of the Board" and is "responsible . . . for the daily administrative work of the Board", including the "hiring and supervising" of PAB staff. The PAB recognizes that it must adhere to the policies of the City's Human Resources Department and other applicable City laws when hiring staff. However, nothing supports the designation of the President of the City Council as the "appointing authority" for the PAB and no City law or rule requires the PAB to receive approval from the City Council or its President when hiring or supervising PAB staff.

Similarly, the President of the City Council is not the Executive Director's "supervisor" or "bureau head." Section 18-6(C)(1) of the Charter states that the Executive Director serves "at the discretion of the Board." The Executive Director reports to the PAB's Board, not to the City Council. The City Council President is also not the "department head" of the PAB. As an initial matter, the City Council is not an Administrative Department under the Charter. However, even if City Council were an Administrative Department, as discussed above, the PAB is not a unit of, nor does it report to, the City Council.

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<sup>1</sup> Section 18-4 of the Charter.

<sup>2</sup> Section 18-6 of the Charter.

<sup>3</sup> Sections 18-10 and 18-13 of the Charter.

<sup>4</sup> Section 18-11(D) of the Charter.

The PAB has been charged with “ensur[ing] public accountability and transparency over the powers exercised by sworn officers of the Rochester Police Department.”<sup>5</sup> In addition to impeding the PAB’s ability to perform routine tasks necessary to its ability to function, the City’s improper designation of the PAB as a department or subunit of City Council and the City Council President as the PAB’s “appointing authority” will have a negative impact on the public’s perception of the independence of the PAB’s investigations and recommendations. It is critical to the PAB’s ability to carry out its mandate that it is—and be treated as—an independent and autonomous city agency.

On behalf of our client, we write to request that the City and its departments, including the Department of Human Resources Management, recognize the PAB’s independence and autonomy from City Council and the PAB’s Board, Chair or Executive Director as its “appointing authority” with the power to direct matters relating to its daily and administrative functions, including, but not limited to, the hiring and supervision of staff. We are happy to partner in whatever way necessary to ensure all such improper designations are corrected quickly. We look forward to your prompt response.

Very truly yours,



Philip Urofsky

CC: Shani Mitchell, Municipal Attorney, City of Rochester, NY  
(via email: shani.mitchell@cityofrochester.gov)  
Loretta C. Scott, President, Rochester City Council  
(via email: loretta.scott@cityofrochester.gov)

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<sup>5</sup> Section 18-1 of the Charter.

**From:** [Demps, Tassie R.](#)  
**To:** [Reynolds, Conor D.](#)  
**Cc:** [Miller, Thomas J.](#); [Antonetti, Rosabel](#); [Scott, Loretta C.](#)  
**Subject:** RE: Next Steps & A Question - PAB Advertising and Hiring Process  
**Date:** Monday, August 30, 2021 12:49:31 PM

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Conor,

Please see the below process for moving forward with the advertising and filing of the PAB positions that were approved at the Civil Service Commission Meeting on August 26<sup>th</sup>:

### ***PAB Positions Classified***

- ✓ For the positions that were classified by the Civil Service Commission at their meeting on 8/26/21, the PAB can move forward with sending requests to DHRM to begin advertising for the individual positions. Upon receipt of those request, DHRM will move forward with advertising the positions on the City's website.

### ***Process for Advertising & Applying PAB Positions***

- ✓ All positions will be advertised on the City's website for (10) ten business days. During this advertisement period, online applications will be accepted on the City's website and paper applications will be accepted in the main HR Office at City Hall, Room 103A.
- ✓ Upon the close of the advertising period, DHRM will review the applications received by the application deadline to determine which applicants meet the minimum qualifications for the position that was advertised. Only the applications of the individuals who were deemed to have met the minimum qualifications on the advertisement will be sent to the PAB for review and to determine which qualified applicants they would like to proceed with interviewing.
- ✓ Please note that **only** applications received by DHRM during the advertising period and then sent to the PAB from DHRM are permitted to be considered for the positions.
- ✓ Upon the selection of a candidate, the PAB will be required to send their nomination to City Council President Loretta Scott, who serves as the Appointing Authority for the City Council & Clerk's Office. Upon the acceptance of each nomination by Council President Scott, DHRM will move forward with issuing conditional offers of employment and to commence the individuals pre-hire process (i.e. background check, drug test, pre-employment paperwork, etc.).
- ✓ Once each chosen candidate has successfully completed all of their pre-hire requirements, DHRM will notify the PAB at which time a start date can be solidified.

**Additional PAB Positions for Review and Consideration at the September 23<sup>rd</sup> Civil Service Commission Meeting**

- ✓ Requests for all additional PAB positions desired to be created at this time must be submitted to DHRM no later than Wednesday, September 9<sup>th</sup> for review / approval.

We can discuss the above further at our meeting this week on Thursday (9/2).

Tassie

Tassie Demps, EMBA,PHR **HUB**  
Director of Human Resource Management  
City of Rochester  
City Hall - Room 103-A  
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Rochester, NY 14614  
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**From:** Reynolds, Conor D. <Conor.Reynolds@CityofRochester.Gov>  
**Sent:** Friday, August 27, 2021 4:54 PM  
**To:** Demps, Tassie R. <Tassie.Demps@CityofRochester.Gov>  
**Cc:** Miller, Thomas J. <Thomas.Miller@CityofRochester.Gov>; Antonetti, Rosabel <Rosabel.Antonetti@CityofRochester.Gov>  
**Subject:** Next Steps & A Question

Tassie & Tom,

Thanks again for all your help getting the new positions approved of by the Civil Service Commission. For this first wave of positions we just got approved – is there a date for when the actual postings will go out and get posted on the City’s jobs portal? Is there any additional information you need from PAB on that front, like how long we’re looking to hold the jobs open for? (The answer to that is “review on a rolling basis,” if that’s an option – if not, we can set a preliminary close date!).

Have a great weekend!

Best,

**Conor Dwyer Reynolds**  
**Executive Director | Police Accountability Board**  
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