

**CITY COUNCIL
ATLANTA, GEORGIA**

20-O-1445

AN ORDINANCE

BY COUNCILMEMBERS ANDRE DICKENS, JOYCE M. SHEPERD, MARCI COLLIER OVERSTREET, ANTONIO BROWN, MATT WESTMORELAND, JENNIFER N. IDE, AMIR FAROKHI, AND ANDREA L. BOONE

AN ORDINANCE TO AMEND THE ATLANTA CITY CODE PART II, CODE OF ORDINANCES - GENERAL ORDINANCES, CHAPTER 2 - ADMINISTRATION, ARTICLE XV1 - BOARDS, COUNCILS, COMMISSIONS AND AUTHORITIES, DIVISION 11- CITIZEN REVIEW BOARD TO INCREASE MEMBERSHIP AND EXPAND THE AUTHORITY OF THE ATLANTA CITIZEN REVIEW BOARD(“ACRB”); AND FOR OTHER PURPOSES.

WHEREAS, the Atlanta Citizen Review Board (ACRB) was established pursuant to Ordinance 07-O-014, adopted by the City Council on May 5, 2007, and approved as law May 13, 2007, to provide citizen oversight of misconduct accusations against sworn members of the police and corrections departments in the City of Atlanta; and

WHEREAS, pursuant to Ordinances 10-O-0773, adopted May 17, 2010 and approved as law May 26, 2010 and 16-O1072, adopted on March 21, 2016 and approved as law March 30, 2016, the ACRB was granted subpoena powers and other procedural authority to expand its oversight; and

WHEREAS, oversight of the City’s law enforcement is more important than ever, to restore citizen’s trust and confidence that officers sworn to serve and protect are held accountable for allegations and specific acts of misconduct; and

WHEREAS, by further expanding the authority of the ACRB to directly discipline officers or recommend the discipline of officers that department leaders strongly enforce will build public confidence in the process; and

WHEREAS, the procedures and process for oversight must include components to ensure that investigations of alleged misconduct are thorough and fair; and

WHEREAS, the investigative process must be transparent to provide assurances to the public that incidents are independently examined, and outcomes are effectively communicated; and

WHEREAS, the proposed amendments serve to enhance the ACRB’s oversight responsibilities, streamline the investigative process, and include provisions for providing resolutions; and

WHEREAS, the changes also increases the board membership to add a member from a youth serving organization, clarify criteria for membership and incorporates a process for the members to provide input on the hiring of recruits; and

WHEREAS, the proposed amendments are designed to increase accountability and efficiency and create a citizen review board structure and process citizens can trust with their complaints.

THE CITY COUNCIL OF THE CITY OF ATLANTA , GEORGIA HEREBY ORDAINS, as follows:

SECTION 1: Chapter 2 - Administration, Article XV1 - Boards, Councils, Commissions and Authorities, Division 11- Citizen Review Board is amended as follows:

Sec. 2-2201. - “Establishment of the Atlanta Citizen Review Board”, is amended to add,

(5) (a) The Chair or the Executive Director may assign Board members to a Review Panel consisting of at least three (not to exceed five) Board members to any case for review which has been fully investigated, and such other matters as the full Board may determine by resolution. For any constituted Review Panel, the Chair shall designate a Chairperson. The Review Panel, in lieu of and with the full authority of the full Board, has the authority to investigate citizen complaints and to conduct complaint investigation reviews of the City’s Police Department and Department of Corrections, and such other matters as authorized under Chapter 2, Article XVI, Division 11, Section 2-2201, et seq of the City of Atlanta Code of Ordinance and the ACRB Policies & Procedures Manual and Bylaws.

Sec. 2-2202. - “Definitions” is amended as follows (additions in underlined text):

"Board" shall mean the Atlanta Citizen Review Board as established in section 2-2201 of this chapter and includes any Review Panel established by ordinance.

Add,

“*Department*” shall mean the Atlanta Police Department or the Department of Corrections of the City of Atlanta or both.

“*Reconsideration*” shall mean a process that allows a citizen or officer to request a review of a panel decision to the full board in limited circumstances. The granting of reconsideration is within the discretion of the Board.

“*Resolution Review*” shall mean a final decision process for the determination of an ACRB complaint decision in disagreement with an APD disagreement.

“*Reviewer*” shall mean the individual charged with resolving the disagreement between the ACRB and APD final complaint decisions.

Sec. 2-2203. - “Appointment of members” is amended as follows (additions in underlined text):

(a) The 14 members of the board shall be appointed as follows and said appointments shall be confirmed by the city council:

(14) One member shall be appointed from a Youth-Serving Organization

Sec. 2-2204. - “Composition of board” is amended as follows (additions in underlined text):

(d) No attorney, member of his or her firm, or the immediate family of an attorney, who represents a plaintiff, defendant, witness, or a person or entity involved in civil or criminal matter involving the City of Atlanta, Atlanta Police Department or the Atlanta Department of Corrections presently or within three years shall be a member of the Board.

(e) At least two members of the Board shall be between the ages of 18 and 30 at the time of appointment.

(f) At the February meeting of the board, the chair of the board will be elected by the board from among its members.

(g) To enable the board to conduct its work, the board is hereby authorized to hire its own executive director and appropriate investigative and clerical staff. Additional staff support to the board shall be provided by the office of the mayor, the city attorney, the police department and department of corrections upon the request of the board.

Sec. 2-2211. - "Compensation; conflict of interest; removal" is amended as follows (additions in underlined text):

- (c) A member of the Board may be recommended for removal for good cause. Good cause may be found for the following:
- incompetence,
 - neglect of duty,
 - misconduct,
 - unexcused absences,
 - malfeasance, or
 - failure to participate in training requirements.
- (d) Every Board member shall complete the review of at least 80% of the cases assigned to that member. Any member with an unexcused absence from review of more than 20% of the cases during any Calendar Year (January 1 through December 31) may be removed from the Board. An excused absence may be granted by the Chair or the Executive Director if the Board member notifies the Chair or the Executive Director prior to the scheduled review hearing, and as soon as reasonably possible, for the following reasons:
- (1) An unforeseen event,
 - (2) Illness or health related issues,
 - (3) Traveling out of town,
 - (4) Religious observances, or
 - (5) Conflict of interest.

Sec. 2-2212. - "Quorum; voting" is amended as follows (additions in underlined text):

- (a) Five (5) members of the Board, and three (3) members of a Review Panel, shall constitute a quorum for a Board meeting.

Sec. 2-2213. - "Powers and duties of the board" is amended as follows (additions in underlined text):

- 3) Each board member shall file a quarterly written report with the board member's appointing entity. The executive director shall maintain a record of all board member written reports to appointing entities.
- (c) The board shall have the power to conduct investigations and hold public hearings.
- (1) In the interest of promoting public confidence or where circumstances suggest doing so, the OPS or Chief, may, by written request, assign an allegation or allegations of misconduct to the ACRB to assume sole responsibility for the investigation and review of said allegation(s) of misconduct. Subject to a motion for reconsideration, infra, Board findings as to any allegation of misconduct shall be binding on a Department.

- (2) The Board shall also investigate, review and hold a public hearing for all incidents, including those in which no allegation of misconduct is made, involving an officer's discharge of a firearm, an officer's discharge of a stun gun or taser in a manner that results in death or serious bodily injury, where a person has died or sustained serious bodily injury while in police custody, and all incidents of an "officer-involved death."
- (d) The Board otherwise shall have full discretion to select appropriate individual incidents to review from any person with personal knowledge of alleged misconduct committed by either the Atlanta Police Department or Department of Corrections. Additionally, the Board shall have the discretion to review broader issues to study which may be of concern to the community, the Police Department and Department of Corrections, or the chiefs of police and corrections; provided, however, that the Board shall, to the best extent possible, minimize duplication of effort between the Board and any other existing agencies which have jurisdiction over the same matter. The Mayor, the President of City Council, City Council members and the chiefs of police and corrections, and other responsible officials shall ensure that all such agencies cooperate to the greatest extent possible in the performance of their respective activities, studies, and operations.
- (o) Within 30 days of the submission of a recommendation for action by the Board to the chief of police or corrections, the Chief of Police or the Chief of Corrections shall respond in writing regarding which recommendations are accepted, rejected, held due to a pending OPS investigation or will be implemented with modifications. The responses from the chief of police and chief of corrections shall provide a legal or factual justification or indicate a managerial prerogative that clearly states the reason for the acceptance, rejection, or implementation with modifications of the board's recommendations. For those recommendations held by the chief of police or chief of corrections because the investigation has not been completed, the Police Department and Department of Corrections shall provide a status update in writing every 45 days from the date of the initial notification letter. Once a final decision is reached, the chief of police or chief of corrections shall respond to the Board no later than 90 days with a final decision and action on the recommendation.
- (1) Absent clear error, a Chief shall make all disciplinary decisions, consistent with the department's established disciplinary matrix and guidelines.
- (2) Non-compliance with a deadline enables the full Board, by two thirds vote, to request the Chief to personally appear before the Board for further explanation or to address questions from the Board.
- (3) If a Chief's written response disagrees with a finding of fact or refuses to follow a recommendation, the full Board, by two thirds vote, may request reconsideration, as provided herein.
- (p) The Board may operate a mediation program to handle certain complaints against police and corrections officers that will allow for greater understanding of incidents between citizens and officers.
- (7) If, after agreeing to participate in mediation, the complainant fails or refuses to participate in mediation in good faith and/or fails to attend the mediation session at the appointed date and time without a valid excuse, the Executive Director may dismiss the complaint.
- (8) If, after agreeing to participate in mediation, a subject officer fails or refuses to participate in mediation in good faith, such failure or refusal may constitute misconduct and grounds for disciplinary action.

- (q) The board shall make recommendations to the Chief of Police on the employment suitability of all applicants for employment as police recruits. These recommendations shall involve observation by one (1) ACRB Board member or staff member of the applicant interview.

Add Section 2-215- entitled “Reconsideration” as follows:

- (a) Complainants, affected Officers, a Chief and a Department may file a written motion for reconsideration of a Final Finding and Recommendation or Decision of the full Board or Review Panel.
- (b) The full Board, by two thirds vote, may file a written motion for reconsideration of any action by a Chief whereby the Chief’s written response disagrees with a finding of fact or a Board recommendation is rejected, held due to a pending OPS investigation or will be implemented with modifications.
- (1) A written motion for reconsideration must be filed within thirty (30) days of the date of the mailing or personal delivery of a) the Final Finding and Recommendation or Decision of the full Board or Review Panel or b) within thirty (30) days of the date of the mailing or personal delivery of the determination of the Chief that a Board recommendation was rejected, held due to a pending OPS investigation or will be implemented with modifications.
- (2) The motion for reconsideration must allege newly discovered material, relevant evidence not previously available to the alleged aggrieved party, or material, relevant mistake of fact or law.
- (3) No oral argument is permitted on a motion for reconsideration.
- (c) A motion for reconsideration to the Board may be granted or denied by the Director, or, if deemed appropriate by the Director, submitted to the full Board and granted or denied by a majority vote of the full Board. If granted, in the discretion of the Director, the case may be remanded for additional investigation by the Board’s staff and a Final Finding and Recommendation by the Board or submitted, without further investigation, to the full Board for a Final Finding and Recommendation.
- (d) A motion for reconsideration to the Chief, after consultation with the City Attorney, may be granted or denied by the Chief. If granted, the Chief may modify the prior determination or remand the case to the Board. The Executive Director, in his or her discretion, may require additional investigation by the Board’s staff and a Final Finding and Recommendation by the Board or submit, without further investigation, the case to the full Board for a Final Finding and Recommendation.
- (e) Motions for reconsideration must be decided within twenty-eight (28) days of the date of the mailing or personal delivery of the motion for reconsideration. Non-compliance shall result in the granting of the motion for reconsideration with the relief as requested by the filing party.
- (f) No person or entity shall file a second motion for reconsideration.

Add Section 2-2216- entitled “Resolution Review” as follows:

- (a) The ACRB and APD may use the resolution review process to settle disagreements between final ACRB/APD complaint investigation decisions and related outcomes. Resolution review shall only be available after a reconsideration has concluded.

- (b) Selection Agreement: Reviewer shall be selected upon agreement of the ACRB and the APD. If agreement is not made within 60 days of approval of this amendment by the Council, ACRB and APD must appear before Council to explain the reasoning for the lack of agreement and related discussion. If the APD and ACRB have not reached agreement within thirty (30) days of their appearance before the Council, the power to select the Reviewer goes to the Council President.
- (c) Compensation: Paid equally out of the ACRB and the APD budgets.
Pay \$100/hour
- (d) Term of Contract: Two-year term with option to extend for one year, upon agreement of the ACRB and APD.
- (e) Matters shall be referred to resolution review, upon the filing of a Notice to Move to the Resolution Review by either ACRB or APD being delivered to either ACRB or APD.
- (f) Resolution Review Time limit: Thirty (30) days from date of receipt of ACRB/APD complaint, files and supporting documents, the Reviewer shall meet with the parties. Seven days before this meeting, the parties, City Attorney, APD and ACRB may submit a Position Statement to the Reviewer.
- (g) Reviewer Decision: Decisions are binding on all parties.
- (h) Decisions that may be brought before the Reviewer:
 - a. Disagreement with Sustained, Not Sustained, Exonerated or Unfounded allegation.
 - b. Disagreement with the penalty imposed on a sustained allegation.
- (i) Reviewer may remand investigations to the departments for additional work with a 30-day time limit for resubmission. Failure to re-submit investigations will cause the reviewer decision to be based on the original record submitted.
- (j) Notices: All notices shall be strictly followed.
 - a. Notice to Move to Resolution Review (provided within five (5) days of the conclusion of the reconsideration)
 - b. Notice of Filing Resolution Review and supporting documentation (filed with ten (10) days of the conclusion of the reconsideration)
 - c. Notice of Response to Filing of Resolution Review and supporting documentation (provided within five (5) days after receipt of Notice of Filing of Resolution Review.
 - d. Record - The Resolution Review record shall be limited to the complaint investigation file, reconsideration file, and the ACRB and APD Position Statements.
- (k) Withdrawal of Resolution Review: Either party may withdraw their Filing of Resolution Review and provide Withdrawal of Resolution Review of such withdrawal at any time. The moving party's Withdrawal of Resolution Review operates allows the nonmoving party's decision stand as the conclusion of the matter.

SECTION 2: That all ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby repealed.