



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
MARTIN J. WALSH

November 16, 2020

TO THE CITY COUNCIL

Dear Councilors:

I hereby transmit for your approval an Ordinance establishing the Office of Police Accountability and Transparency, amending the City of Boston Code, Chapter 11, with the insertion of a new Section 2-16. The purpose of this Ordinance is to provide the structure necessary to ensure accountability, transparency, and fairness in the Boston Police Department's policies and their application to Boston's residents, as well as in alleged cases of police misconduct, through the creation of an independent oversight office.

On June 12, after the killing of George Floyd, I committed to reviewing the Boston Police Department's use of force policies, implementing police reform and combating systemic racism in law enforcement. Data makes clear that historically Black, Indigenous, and People of Color ("BIPOC") in the United States have been disproportionately subjected to police violence and misconduct, questionable and intrusive investigatory stops, and disparate treatment at the hands of law enforcement.

The Boston Police Department has a well-earned reputation as one of the best, if not *the* best, models of community policing in the nation, and has been working in deep collaboration with community stakeholders for decades to deepen trust and accountability. Our City and our Department do not rest on their laurels but are always striving to improve. This ordinance represents a major leap forward by creating a new structure to ensure the fair and equitable treatment of every resident, and officer, regardless of race, ethnicity, gender identity, sexual orientation, national origin and more.

This Ordinance establishes the Office of Police Accountability and Transparency, independent of the Boston Police Department, to investigate complaints of police misconduct, ensure that the Boston Police Department's internal affairs review process is fair and thorough, and review Boston Police Department's existing and proposed rules and policies that may perpetuate racism and discrimination, when applied to members of the public. The OPAT Office would support the functions of related advisory boards and panels established to provide independent investigation and review of policing in Boston, namely the Internal Affairs Oversight Panel and Civilian Review Board, established on November 12. This Ordinance also establishes a three person OPAT Commission with the power of subpoena, demonstrating an unprecedented commitment to ensuring strong, effective, and independent oversight into matters of alleged police misconduct and disparate treatment. I urge your Honorable Body to act favorably on this proposed ordinance without delay.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Walsh', followed by a long horizontal line extending to the right.

Martin J. Walsh
Mayor of Boston

CITY OF BOSTON

IN CITY COUNCIL

AN ORDINANCE ESTABLISHING AN OFFICE OF POLICE ACCOUNTABILITY AND TRANSPARENCY

Be it ordained by the City Council of Boston, as follows:

SECTION 1. The City of Boston Code, Ordinances, is hereby amended in Chapter XII by inserting the following new section after existing Section 12-15:

12-16 OFFICE OF POLICE ACCOUNTABILITY AND TRANSPARENCY

12-16.1 Purpose

This Ordinance is to establish an Office of Police Accountability and Transparency in the City of Boston, that is independent of the Boston Police Department, to investigate complaints of police misconduct, ensure that the Boston Police Department's internal affairs review process is fair and thorough, and review Boston Police Department's existing and proposed rules and policies that may perpetuate racism and discrimination, when applied to members of the public, based on race, ethnicity, gender identity, sexual orientation, youth, advanced age, housing status, substance use, mental and/or behavioral health, and/or national origin. The purpose of the OPAT is to provide a single point of entry for individuals with concerns or complaints related to the Boston Police Department and its officers and sworn personnel to be heard and responded to, and to provide the staffing and legal authority necessary to support the work of the OPAT and its related advisory boards and panels to undertake independent investigation and review of policing in Boston.

12-16.2 Definitions

As used in this section the following terms shall have the meanings as indicated unless a different meaning appears from the context:

“BIPOC” shall refer to the member(s), individually and collectively, of Black, Indigenous and People of Color.

“BPD” shall refer to the Boston Police Department.

“Commissioner” shall refer to any of the three (3) members of the OPAT Commission.

“CRB” shall refer to the member(s), individually and collectively, of the City of Boston's Civilian Review Board, a nine-member board established by Executive Order dated November

12, 2020, and tasked with reviewing complaints of misconduct by Boston Police Department personnel.

“Executive Administration” shall refer to the division of the OPAT comprised of employees responsible for carrying out the work and policy directives of the OPAT;

“Executive Director” shall refer to the person appointed to oversee the Executive Administration of the OPAT, who shall have the powers of a department head and shall also serve as a member of the OPAT Commission.

“FIO” shall refer to Field Investigation and Observation data collected by the BPD during a stop and frisk, a consensual encounter with an individual, or an observation of an individual for intelligence purposes.

“Internal Affairs” shall refer to the division within BPD responsible for conducting internal investigations of officer conduct.

“IAOP” shall refer to the member(s), individually and collectively, of the City of Boston’s Internal Affairs Oversight Panel, a five-member panel reconstituted from the former Community Ombudsman Oversight Panel by Executive Order dated November 12, 2020, and tasked with reviewing completed investigations of the Boston Police Department Internal Affairs Division.

“Police Commissioner” shall refer to the police commissioner in charge of the Boston Police Department.

“OPAT” shall refer collectively to the OPAT Commission and OPAT Executive Administration.

“OPAT Commission” shall refer to the Office of Police Accountability and Transparency Commission established by this ordinance.

“OPAT Staff” shall refer to the personnel, individually and collectively, of the Executive Administration.

“Ordinance” shall refer to this ordinance establishing the City of Boston Office of Police Accountability and Transparency.

12-16.3 Establishment of OPAT Commission.

There shall be in the City a Commission known as the Office of Police Accountability and Transparency Commission, hereinafter referred to as the OPAT Commission. The OPAT Commission shall be comprised of three (3) Commissioners, each appointed by the Mayor as follows: one Commissioner shall be the person appointed by the Mayor as the Executive Director of the OPAT Executive Administration

as set forth in Section 2-16.4; one Commissioner shall be the person appointed by the Mayor as the Chair of the Civilian Review Board; and one Commissioner shall be the person appointed by the Mayor as the Chair of the Internal Affairs Oversight Panel. The Commissioners shall each have knowledge and expertise relevant to aspects of police reform or accountability, as well as demonstrated knowledge of how demographic groups are impacted by use of force and field investigation. The Commissioner who is the Executive Director shall serve during their appointment to that role, and the remaining Commissioners shall each serve a term of three (3) years, provided, however, that of the members first appointed to the Commission, one shall be appointed for a term of three years, and one shall be appointed to a term of two years. Thereafter the Mayor shall appoint each successor to a term of three (3) years. Any vacancy occurring otherwise than by expiration of term shall be filled by the Mayor for the unexpired term. The Mayor shall appoint annually a Commissioner as the Chairperson of the Commission.

The Commissioners shall be residents of Boston. The Commissioners shall be classified as special municipal employees for the purposes of Chapter 268A of the General Laws. The Commissioners shall serve without compensation for their role on the Commission, but each Commissioner shall be entitled to his or her reasonable expenses actually and necessarily incurred in the performance of her or his duties as Commissioner. These expenditures shall be paid from the budget of the Commission. Nothing in this paragraph shall preclude any Commissioner from being compensated for their role as Executive Director of the OPAT, or as a member of the CRB or IAOP.

12-16.4 OPAT Executive Administration

There shall be within the OPAT Commission an administrative arm, to be known as the "Executive Administration" or "OPAT Staff," under the direction of an Executive Director. The Executive Director shall be appointed by the Mayor, which appointment shall function as an appointment to the Commission for the duration of their employment as the Executive Director. The Executive Director should be a member of the Massachusetts bar, but shall not practice law while serving their term. The Executive Director should have managerial experience and must reside in the City of Boston for their entire term.

The Executive Administration shall house staff necessary to carry out and support the work and purposes of the OPAT, including the Executive Director, a deputy director, and those technology professionals, investigators, analysts, law enforcement professionals, communications staff, community liaisons, and/or mediation professionals deemed necessary by the Executive Director and Commission. No OPAT Staff shall be current members or employees of any law enforcement agency. To execute OPAT's substantive responsibilities, OPAT Staff will be employed as municipal employees.

12-16.5 Powers and Duties of the Commission

The OPAT Commission shall have the power to:

- a. Create rules, regulations or procedures necessary to guide the conduct of investigations and making of findings and recommendations by the OPAT Staff, in keeping with all due process rights, applicable laws and statutes;
- b. By unanimous vote of all Commissioners, subpoena witnesses and compel their testimony under oath, including but not limited to filing contempt proceedings with the Superior Court, compel the discovery and production of documents, books, papers or evidence related to any matter under investigation by OPAT, and require the attendance during the examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material;
- c. Resolve differences that might arise between CRB and IAOP;
- d. In addition to business meetings necessary to fulfill other responsibilities of the OPAT Commission, it shall convene at minimum four (4) community meetings per year across the Boston neighborhoods for the purpose of informing and updating the community about the work of the OPAT Commission, and being informed by the community on matters of police transparency, BPD policies and procedures, and other matters of policing in Boston;
- e. Adopt rules and regulations consistent with the laws of the Commonwealth to carry out the powers and duties of the OPAT Commission and Executive Administration; and
- f. Act in any other manner consistent with this Ordinance.

12-16.6 Powers and Duties of the Executive Administration and Executive Director

The Executive Director shall have the powers of a department head, except for those powers explicitly conveyed to the OPAT Commission by this Section, and shall be responsible for carrying out the policies and decisions of the Commission.

The OPAT Staff, under the direction of the Executive Director, shall have the power and duty to:

- a. Support and carry out the overall operations of the OPAT;
- b. Provide all necessary staff support to the CRB and IAOP to support and facilitate the work of each;
- c. Receive, review, investigate, and make recommendations regarding civilian complaints concerning BPD officer conduct;

- d. Receive, review, investigate, and make recommendations regarding completed Internal Affairs Division investigations concerning BPD officer conduct;
- e. In coordination with the CRB, review and make recommendations to revise or modify existing and proposed BPD policies and procedures that may perpetuate racism or discrimination;
- f. Review, investigate, and make recommendations with regard to, allegations of disparate treatment by BPD in recruiting, hiring, promotion, discipline and termination of members of BPD;
- g. Review and analyze FIO data, and publish any findings on a semi-annual basis;
- h. Conduct independent investigations into any matter or issue related to OPAT's mission;
- i. Issue publications and results of investigations, including facilitating reporting of information and recommendations from the CRB and IAOP;
- j. Forward any resulting recommendations to the Police Commissioner for review;
- k. Create racial equity assessment tools to periodically evaluate current and proposed BPD policies and procedures;
- l. Evaluate alternatives to the civil service examination process;
- m. In coordination with the CRB, independently review instances where a BIPOC officer is disciplined or terminated;
- n. Coordinate with BPD staff to review and provide recommendations related to the selection and implementation of grants; and,
- o. Create and maintain a publicly available website to publish findings and reports of the Executive Administration, IAOP, and CRB, and to communicate information related to police transparency and accountability to the public.

All of the foregoing powers and duties of the OPAT Staff may be exercised in cooperation and conjunction with, and in support of, the CRB and IAOP, consistent with any regulations or procedures promulgated by the OPAT Commission.

12-16.7 Receipt, Investigation and Review of Complaints

OPAT Staff will receive and review complaints and, at the behest of IAOP or CRB, where such complaints present matters appropriate for investigation or for review of Internal Affairs decisions, OPAT Staff will perform the investigatory work necessary for the IAOP and the CRB to resolve internal affairs and civilian complaint issues, respectively. As part of this responsibility, OPAT Staff will draft reports summarizing the findings of its investigations and present its findings to the requesting unit. OPAT Staff

will conduct such intake, review, investigation, and recommendation as required by this subsection and by procedures and regulations promulgated by the OPAT Commission.

- a. *Receiving Complaints.* OPAT shall maintain a system for receiving complaints concerning the conduct of BPD officers and employees, the results of BPD Internal Affairs investigations, or other issues related to the BPD. OPAT shall accept complaints in-person at its office, designate other locations where complaints may be filed, and shall also create a process for electronic submission of complaints via a secure online portal. OPAT Staff shall ensure that the complaint process is consistent with the City's Language and Communications Access Ordinance and any City language access plan.
- b. *Complaint Screening and Assignment.* OPAT Staff shall review each complaint and recommend one of the following outcomes:
 - i. Dismissal;
 - ii. Referral for Mediation;
 - iii. Out of Scope Designation;
 - iv. Referral to IAOP; or,
 - v. Referral to CRB.

Where a complainant or the BPD Police-Community Mediation Program declines mediation, or such mediation fails to provide a mediated solution, OPAT Staff will recommend one of the remaining outcomes.

- c. *Investigation.* Where a complaint is referred to the IAOP or CRB for review, OPAT Staff shall assemble all materials and perform the investigatory work necessary for such review. OPAT Staff shall draft reports summarizing investigatory findings and present its findings to the requesting unit.
 - i. OPAT Staff shall have the power to investigate, present findings, and recommend action regarding complaints by members of the public against uniformed and sworn personnel of the BPD that allege misconduct. OPAT Staff will perform the necessary investigative functions to resolve concerns and complaints about matters related to Boston Police internal affairs for the IAOP and civilian concerns and complaints for the CRB.
 - ii. OPAT Staff may request that the OPAT Commission issue a subpoena for any testimony or records, documents, papers, books or other evidence related to any matter under investigation.
 - iii. OPAT Staff shall have access to all materials contained in the completed internal affairs files subject to review and any documents appended to civilian complaints, except those documents protected from release by statute.
 - iv. All investigative materials and reports assembled by OPAT Staff shall be treated by the OPAT Staff as confidential and available only to OPAT Staff subject only

to provisions for information sharing established by regulation of the OPAT Commission and the Massachusetts Public Records Law.

- d. Upon concluding its investigation, OPAT will draft a report summarizing the findings of its investigation. OPAT will present its proposed findings to the IAOP following the conclusion of its investigation of internal affairs complaints and the CRB following the conclusion of its investigation of civilian complaints.
- e. Upon the conclusion of any investigation or review of an Internal Affairs investigation, the OPAT shall communicate all findings or recommendations of the OPAT, CRB, or IAOP to the Police Commissioner.
- f. *Limitations on Investigatory Power.* No OPAT investigation shall interfere with any criminal investigation or civil proceeding by any authority with jurisdiction. Where an investigation by OPAT Staff may interfere with a criminal investigation or a civil proceeding, OPAT will seek to avoid such interference by, among other things, staying its investigation until such time as it will not interfere with other authorities or courts with jurisdiction over the matter. Any person appearing before the Commission or OPAT Staff who avails themselves of constitutional guarantees, or any other right provided by law or by a collective bargaining agreement, shall not be punished in any way for availing themselves of such rights.
- g. *Timeline for Concluding Investigations.* OPAT Staff shall establish a target timeline for OPAT's review of complaints, including those reviewed in cooperation with the CRB or IAOP, and shall make the timeline status of each case available online. If OPAT is unable to adhere to its timeline for review, the Executive Director must notify the individuals involved in the complaint.

12-16.8 Communication

The OPAT will publish a semi-annual report and make the report available to the public on its website. The semi-annual report will include: OPAT's findings of its review of FIO data; its findings related to disparate treatment, discipline or termination of BIPOC officers, in conjunction with the CRB; citizen complaint determinations, in conjunction with the CRB; and the results of reviews of completed Internal Affairs investigations, in conjunction with the IAOP. The Executive Director shall also make an annual report to the Mayor and Police Commissioner containing the same information, documenting the work of the OPAT, CRB, and IAOP for the year.

OPAT will create and maintain a publicly accessible website to publish its semi and annual reports, OPAT's rules and procedures, progress on various BPD reform goals, and any other information at the discretion of the Executive Director. Information published on OPAT's website shall be made available in compliance with the City's Language and Communications Access Ordinance and in an electronic format not only accessible via a computer.

12-16.9 Complaint Mediation Program

The Boston Police Department has implemented the Police-Community Mediation Program. This program serves as a voluntary alternative to the formal complaint process, and will be available to those officers and complainants involved in less serious incidents. The Police Commissioner, or his designee, determines which complaints are appropriate for the Complaint Mediation Program. The Executive Director shall designate an employee to serve as a liaison to the Police-Community Mediation Program. Whenever OPAT Staff determines that referral for mediation is an appropriate course of action for any complaint filed with it, the designated liaison shall contact both Complainant and the Police-Community Mediation Program in order to inform them of the opportunity to mediate and facilitate the initiation of mediation at the election of the Complainant. Where a Complainant elects not to participate in mediation, OPAT Staff shall recommend dismissal, out of scope designation, referral to IAOP, or referral to CRB.

Nothing in the preceding paragraph shall prevent the OPAT from establishing a voluntary mediation program to mediate resolutions of complaints.

12-16.10 Severability

If any provision of this Section shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this Section, which shall remain in full force and effect.

SECTION 2. The provisions of this ordinance shall take effect on the first day of the fiscal year beginning after the passage of this ordinance, or thirty days after the approval of any supplementary appropriation for the funding of the OPAT in an earlier fiscal year.

I HEREBY CERTIFY THAT
THE FOREGOING, IF PASSED IN
THE ABOVE FORM, WILL BE IN
ACCORDANCE WITH LAW.
BY Eugene L. O'Flaherty
EUGENE L. O'FLAHERTY
CORPORATION COUNSEL

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