

Council Bill: B 259-21

MOTION TO AMEND: _____

MADE BY: _____

SECONDED BY: _____

MOTION: I move that Council Bill B 259-21 be amended as set forth on this amendment sheet.

=====

The ordinance attached to this amendment sheet is substituted for the original ordinance.

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 259-21 A

AN ORDINANCE

amending Chapter 21 of the City Code relating to the Citizens Police Review Board; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. Chapter 21, Article III of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended as follows:

Material to be deleted in ~~strikeout~~; material to be added underlined.

Sec. 21-44. Purpose.

The purpose of this article is to provide an external and independent process for review of actual or perceived misconduct by police officers ~~and community service aides~~ thereby increasing the police department's accountability to the community and community trust in the police department.

Sec. 21-45. Definitions and rule of construction.

The following definitions and rules of construction apply to this article:

Board, when not otherwise specified, means the citizens police review board.

~~*Community service aide* means a uniformed civilian employee who does not have the power of arrest and served in the Columbia police department with a position title of "community service aide."~~

Complainant means a person who files a complaint with the police department or with the city clerk against a police officer ~~or a community service aide~~.

Complaint means a written statement alleging misconduct of a police officer ~~or community service aide~~ involving interaction with the public.

Misconduct means any violation of federal law, state law, city ordinance, city regulation or police department policy, guideline, directive, rule, regulation or order in effect at the time of the incident.

Notice shall be considered given when it is hand delivered or three (3) business days after it is mailed.

Police officer and officer" means a commissioned law enforcement officer, other than the chief of police, who has the power of arrest and who serves in the Columbia Police Department.

Written statement means a narrative, reduced to writing, outlining an allegation of misconduct that includes the personal identifying information of the individual filing the complaint. Such writings include, but are not limited to, letters, emails, complaint forms, digital submissions, internal memorandums or oral statement that has been reduced to writing by an individual who has received the information from the complainant or the complainant's representative.

Sec. 21-46. Establishment; membership; qualifications; terms; and removal.

(a) The citizens police review board is hereby established.

(b) The board shall consist of eight (8) members appointed by the city council and a member of the commission on human rights appointed by the commission. Members shall serve without compensation.

(c) Board members must be residents of Columbia and registered voters. Board members may not be employed by the city, be a party to any pending litigation against the city, be an elected public office holder, or be a candidate for elected public office. Board members should reflect the cultural and racial diversity of Columbia and have no serious criminal record. The police chief shall obtain a criminal history of all applicants for membership on the board and advise the city council of any convictions for violations of federal, state or local law.

(d) Three (3) of the members first appointed by the city council shall serve terms of two (2) years, three (3) shall serve terms of three (3) years and two (2) shall serve terms of four (4) years. Thereafter, members appointed by the city council shall serve terms of three (3) years. The member appointed by the commission on human rights shall serve a term of one (1) year. Vacancies shall be filled for unexpired terms in the same manner as the original appointments.

(e) The board may recommend to the city council that a board member be removed from the board if the member persistently fails to perform the duties of office.

Sec. 21-47. Officers; meetings; quorum; rules.

(a) The board shall elect a chair and vice-chair from among its members. The term of these officers shall be one (1) year. The chair shall preside at meetings. The vice-chair shall preside when the chair is absent or otherwise unable to preside.

(b) The board shall meet monthly. When requested by the board the police chief, or ~~the chief's designee,~~ shall attend board meetings to serve as an informational resource for the board. The board shall provide an opportunity for public comment at each monthly meeting. The board shall meet semi-annually with the chief of police to discuss issues of concern and to recommend ways that the police can improve their relationship with citizens. The board may also make recommendations regarding policies, rules, hiring, training and the complaint process.

(c) Five (5) members shall constitute a quorum for conducting business.

(d) The board may establish rules and procedures that do not conflict with local, state, or federal law ~~this code~~ or the City's rules and regulations governing ~~internal affairs investigations~~ personnel investigations.

(e) Board members shall follow the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

Sec. 21-48. Administration and training.

(a) The city manager shall designate staff for the administration of the board.

(b) New board members shall participate in orientation and training that includes review of the police professional standard unit's operating policies and procedures and a ride along with police officers. Training shall also include topics suggested by NACOLE in its recommended orientation and training for board members.

(c) Board members shall participate in a ride along with police officers at least one (1) time every two (2) years, with at least one (1) ride along occurring at night.

Sec. 21-49. Duties.

The citizens police review board shall have the following duties:

(1) Review appeals from the police chief's decisions on alleged misconduct as provided for in this article.

(2) Conduct a jurisdictional review from the decision by the police chief that a person's allegations do not fall within the requirements set forth in this article related to complaints.

- (3) Host public meetings and educational programs for Columbia residents and police department.
- (4) Review and make recommendations to the police chief and city manager on police policies, procedures and training.
- (5) Conduct audits or reviews of the records of the police department for compliance with the requirements of this article.
- (6) Without disclosing information considered closed under state law, Pprepare and submit to the city council annual reports that analyze citizen complaints including demographic data on complaints, complaint disposition, investigative findings and disciplinary actions and the board's activities. The reports should also describe the board's community outreach and educational programs. The reports should also set forth any recommendations made on police department policies, procedures and training. The reports shall be submitted no later than March 1 for the previous calendar year.

~~Sec. 21-50. Reserved.—Sec. 21-50. Internal affairs procedures; police officer and community service aide rights.~~

~~(a) — The city manager shall cause police department rules and regulations to be established that provide for internal affairs investigations. These rules and regulations must be consistent with the provisions of this article and chapter 19.~~

~~(b) — Police department officers and community service aides under investigation shall have the following rights in connection with internal affairs investigations:~~

~~(1) — The police officer and community service aide may provide a written or oral statement to an investigator before investigative findings are made.~~

~~(2) — The police officer and community service aide may have an attorney or Columbia Police Officer Association representative present during the officer's or community service aide's interview to observe the interview.~~

~~(3) — When practicable, a police officer or community service aide interview shall be conducted during the employee's normal working hours.~~

~~(4) — The police officer and community service aide may record the interview or obtain a copy of any recording of the interview made by the city.~~

~~Sec. 21-51. Complaints; police chief decision preliminary determination on complaint; appeals to board.~~

~~(a) Complaints may be filed with the police department or with the city clerk only by the following:~~

~~(1) Any person who is an alleged victim of misconduct of a police officer ~~or~~ community service aide; or~~

- (2) Any family member, friend or attorney of an alleged victim of misconduct of a police officer ~~or community service aide~~; or
- (3) Any person who witnessed alleged misconduct of a police officer ~~or community service aide~~ in person; or
- (4) Any resident of Boone County.

(b) ~~The city clerk and the police department shall promptly forward complaints within two (2) business days to the police chief and the staff liaison to the Board.~~ Complaints must be filed within one (1) year from the date of the alleged misconduct. The board shall take no action on a complaint alleging misconduct that the police department is treating as a criminal matter unless and until the police determines that the police officer's or community service aide's alleged conduct was not criminal or a prosecutor has declined to prosecute the alleged offense or a prosecution of the alleged offense has concluded.

(c) The police department shall conduct an investigation of such complaint using processes and procedures established by the department. Unless the complaint has been withdrawn or the police officer ~~or community service aide~~ is no longer employed by the city, the police chief shall make a preliminary determination based upon the initial police department investigation that the complaint is one of the following ~~the complaint investigation process shall conclude with a decision by the police chief that the complaint is:~~

- (1) unfounded (acts complained of did not occur or were misconstrued);
- (2) the complaint is not sustained (insufficient facts established to either prove or disprove the acts complained of);
- (3) the complaint is sustained (sufficient facts established to prove misconduct);
or
- (4) the police officer or community service aide is exonerated (acts complained of occurred but were justified, lawful and proper).

If the complaint is sustained, the police chief shall make a preliminary determination for ~~take~~ appropriate disciplinary action. The police chief's determination shall remain preliminary and the police department investigation shall remain open to allow board review if requested by the complainant or police officer pursuant to this article.

(d) Within two (2) business days, ~~the~~ police chief shall ~~promptly~~ give written notice of the preliminary determination to the complainant and written notice of the preliminary determination together with a preliminary recommendation for disciplinary action to the police officer decision and any disciplinary action to the police officer or community service aide and the complainant. The notice shall include information on the

right and manner of appealing the preliminary determination decision of the police chief to the ~~citizens police review~~ board.

(e) The police officer, ~~the community service aide~~ and the complainant have the right to appeal the police chief's decision to the board. An appeal to the board must be made in writing and delivered to the city clerk. The clerk must receive the appeal within ten (10) ~~thirty (30)~~ days after the notice of the police chief's written notice of the preliminary determination decision was given. The appeal must be either hand delivered to the office of the city clerk or sent to the city clerk by United States Mail, ~~facsimile machine~~ or electronic mail.

(f) When an appeal has been filed, the city clerk shall promptly notify all board members and the police chief. Within two (2) business days, the ~~The~~ police chief shall promptly forward to each board member a copy of all police department records pertaining to the complaint and the investigation of the complaint.

Sec. 21-51.1. Request for jurisdictional review.

(a) Upon a written request, the board shall conduct a jurisdictional review from ~~the a~~ decision by the police chief that a person's allegations do not fall within the requirements set forth in this article related to complaints, including but not limited to:

- (1) An appeal of a decision determination that the complaint or concern was untimely filed, as defined in section 21-51(b).
- (2) An appeal of a decision determination that the person failed to allege misconduct, as defined in section 21-45.
- (3) An appeal of a decision determination that the person does not meet the requirements set forth in section 21-51(a).

(b) Requests for jurisdictional ~~limited~~ review pursuant to this section shall be filed with the city clerk within ten (10) ~~thirty (30)~~ days after the person is given notice of the decision determination by the police chief that the person's allegations do not fall within the requirements set forth in this article related to complaints.

(c) When a request for jurisdictional review has been filed, the city clerk shall promptly notify all board members and the police chief. Within two (2) business days, the ~~The~~ police chief shall promptly forward to each board member a copy of the person's allegations, any relevant police or city policies, records relating to any police investigation, and a copy of the police chief's written notice.

(d) The board shall review the records provided to determine if the person timely filed a complaint within the meaning of this article. In reaching its determination, the board shall limit the scope of its review to determine if the police chief's decision that the person's allegations do not fall within the requirements set forth in this article related to complaints

~~determination~~ was correct. The scope of the board's review shall be limited to a jurisdictional review of the records. The board shall not hear public comment and shall not call witnesses.

(e) If the board agrees with the police chief's decision ~~determination~~, the board shall notify the police chief, the police officer ~~or community service aide~~, and the complainant of its determination.

(f) If the board disagrees with the police chief's decision and finds that the complainant has timely filed a complaint, the board shall notify the police chief, the police officer ~~or community service aide~~ and the complainant. The police chief shall proceed with an investigation of the complaint ~~or shall refer the complaint to mediation~~.

Sec. 21-52. Board review of police chief's preliminary determination ~~decision~~ on complaints and recommendation.

(a) The board shall review the record of the initial police department investigation and may request the police chief to order further investigation, as may be allowed by Section 590.502 RSMo. Subject to the availability of appropriated funds, the city may ~~shall~~ contract with independent investigators to assist the board in its investigations of alleged misconduct.

(b) The board, as part of the review of an appeal, may interview and hear comments from witnesses to the incident under investigation. The board shall not allow comments by the general public as part of the review.

(c) The police chief and all employees ~~police officers and community service aides~~ shall cooperate with the board in its review of appeals from the police chief's preliminary determination ~~decision~~. Cooperation shall include, but not be limited to, appearing before the board upon request and answering all questions honestly and thoroughly. Failure to cooperate shall be grounds for disciplinary action up to and including dismissal. Notwithstanding the foregoing, any police officer(s) under investigation shall have the rights provided in Article VII of Chapter 19 and Section 590.502 RSMo.

(d) The board shall provide timely updates on the progress of the review and any follow-up investigation to the complainant and the police officer ~~and community service aide~~, unless the specific facts of the review and investigation would prohibit such updates.

(e) The board may decline further action on an appeal if it determines that the alleged acts of misconduct are false and that the complainant knew they were false when the appeal was filed.

(f) After completing its review and investigation, the board shall provide written notice of report its findings and recommendations on the preliminary determination and any preliminary recommendation for disciplinary action to the city manager, the police chief, and the police officer, ~~the community service aide and~~ The board shall provide written

notice of its findings and recommendations on the preliminary determination to the complainant.

(g) If the board has issued findings and recommendation that agrees with the police chief's preliminary determination on disposition of the complaint, the board ~~it shall also give notice to the police officer, the community service aide and the complainant that they have of the right to further appeal of the police chief's preliminary determination decision as provided in section 21-53.~~

(h) If the board recommends a disposition of the complaint other than the preliminary determination disposition made by the police chief, the police chief shall have five (5) ten (10) business days to reconsider the preliminary determination original decision and either reaffirm or modify it. The police chief shall give written notice of the police chief's reconsidered preliminary determination and reconsidered recommendation for disciplinary action decision to the board, the city manager, and the police officer, ~~the community service aide and~~ The police chief shall give written notice of the police chief's reconsidered preliminary determination to the complainant. The police chief shall also give notice to the ~~police officer or community service aide and the complainant that they have of the right to appeal the reconsidered preliminary determination chief's decision as provided for in section 21-53.~~ If the police chief takes no action within five (5) ten (10) business days after the date of the board's findings and recommendation, the preliminary determination and preliminary recommendation for disciplinary action are original decision is automatically reaffirmed and the board shall give notice to the ~~police officer, the community service aide and the complainant that they have of the right to appeal the chief's decision as provided for in section 21-53.~~

Sec. 21-53. Appeal by the complainant to the city manager. ~~Appeals to city manager or personnel advisory board.~~

(a) After the board's findings and recommendation or, if applicable, the police chief's preliminary determination upon reconsideration, the complainant may appeal the police chief's preliminary determination to the city manager. The appeal shall be made by filing a written statement with the city manager explaining the reasons for the appeal. The request must be filed within five (5) days after the complainant was given notice of the reconsidered preliminary determination or the preliminary determination was automatically confirmed pursuant to Section 21-52(h)(b). The city manager shall give notice of the appeal to the police officer and police chief. The police officer shall have five (5) days after notice has been given to file a written response to the complainant's appeal with the city manager. The police officer and the complainant shall not otherwise communicate with the city manager concerning the complaint.

(c) The city manager may act on the appeal as the manager deems appropriate. The city manager shall provide notice of the city manager's recommendation on the appeal to the complainant, the police officer and the chief of police. The administrative investigation on the complaint shall be deemed to be concluded when the city manager

provides notice of the city manager's recommendation on the citizen complaint to the police chief.

(d) Within five (5) days of receiving the city manager's recommendation, the police chief shall make a final determination on the complaint and shall send out the notices required in this subsection and Section 590.502 RSMo. The police chief shall send notice of the police chief's final determination on the complaint to the complainant. The police chief shall send notice of the police chief's final determination on the complaint and final determination on any disciplinary action to the police officer, the city manager, and the board.

~~(a) The police officer and community service aide may appeal the police chief's decision to the personnel advisory board if the officer or community service aide was suspended, demoted or discharged. The appeal shall be made by filing a written request with the city clerk for a hearing before the personnel advisory board. The request shall set forth the employee's grievance and reasons for appeal. The request must be filed within thirty (30) days after the officer or community service aide was given notice of the right to appeal. The hearing shall be held in accordance with the provisions of chapter 19. The director of human resources shall give the complainant ten (10) days written notice of the hearing. At the hearing, the complainant shall be allowed to testify to the facts of the incident and shall be allowed to express an opinion on the appropriate personnel advisory board action.~~

~~(b) The police officer and community service aide may appeal the police chief's decision to the city manager if the officer's or community service aide's discipline was other than suspension, demotion or discharge. The appeal shall be made by filing a written statement with the city manager setting forth the employee's reasons for appeal. The request must be filed within thirty (30) days after the officer or community service aide was given notice of the right to appeal. The appeal shall be handled in accordance with the provisions of chapter 19. The city manager shall give notice of the appeal to the complainant and afford the complainant the opportunity to discuss the matter with the city manager.~~

~~(c) The complainant may appeal the police chief's decision to the city manager. The appeal shall be made by filing a written statement with the city manager explaining the reasons for the appeal. The request must be filed within thirty (30) days after the complainant was given notice of the right to appeal. The city manager shall give notice of the appeal to the police officer and community service aide. The officer or community service aide shall have fourteen (14) days after notice has been given to file a written response to the complainant's appeal with the city manager. The officer, the community service aide and the complainant shall not otherwise communicate with the city manager concerning the complaint. If the employee has also appealed, the procedures of subsection (a) or (b) shall be followed. If the employee has not appealed, and the city manager determines that the alleged facts may merit more severe discipline involving the suspension, demotion or discharge of the police officer or community service aide, the city manager may refer the matter to the personnel advisory board for a hearing following the~~

~~procedures set forth in chapter 19. Otherwise, the city manager may act on the appeal as the manager deems appropriate.~~

Sec. 21-53.1 Appeal by the police officer.

After the final determination of the police chief is issued, the police officer, shall have the right to appeal such final determination as provided in Chapter 19 of the City Code.

Sec. 21-54. Open records and meetings for complaints filed prior to August 28, 2021.

(a) Notwithstanding the provisions of section 2-25.3, all records pertaining to complaints filed against police officers and community service aides alleging misconduct of the police officer and community service aides prior to August 28, 2021 shall be open records, except those closed by state or federal law or by section 21-55(b) and except that records or portions of records that would disclose the identity of an officer working undercover shall be closed.

(b) For any complaint filed against a police officer or community service aide prior to August 28, 2021, the The board shall meet in open session except as provided in (c) and (d).

(c) The board shall meet in closed session to hear statements and discuss matters:

- (1) That cannot be heard or discussed in an open meeting under state or federal law; or
- (2) That would involve disclosure of the identity of an officer working undercover.

(d) Upon a two-thirds ($\frac{2}{3}$) vote of board members present at a meeting, the board may meet in closed session:

- (1) To hear statements of a witness sixteen (16) years of age or younger; or
- (2) To hear statements and discuss complaints involving sexual assault or sexual intimidation.

Sec. 21-54.1 - Records and meetings for complaints filed on or after August 28, 2021.

All records compiled as a result of a complaint filed against a police officer on or after August 28, 2021 shall be subject to the confidentiality requirements of Section 590.502 RSMo. Such records shall be held confidential and shall not be subject to disclosure under chapter 610 RSMo. except by lawful subpoena or court order, by release approved by the officer, or as otherwise provided in Section 590.070 RSMo.

(b) For any complaint filed against a police officer on or after prior to August 28, 2021, the board shall meet in closed session to hear statements and discuss matters related to any complaint, as complaint is defined in this article.

Sec. 21-55. Mediation.

(a) Unless a complaint involves an allegation of criminal activity by a police officer ~~or community service aide~~, the board or the police chief may refer a complaint to mediation.

(b) If the complainant and the police officer ~~or community service aide~~ are able to reach an agreement through mediation, records relating to alleged misconduct shall be closed records to the extent allowed by law.

(c) If the complainant and the police officer ~~or community service aide~~ are unable to resolve the complaint through mediation, or a party declines to participate in mediation, the complainant and the police officer ~~or community service aide~~ may pursue the complaint or an appeal as set forth in this article.

(d) Statements by the police officer, ~~the community service aide~~, or the complainant during a mediation session shall not be used by either party for any other purpose.

Sec. 21-56. Advocates.

(a) Every complainant has a right to be assisted by an advocate.

(b) The board shall recruit and train community members to serve as advocates for complainants and shall maintain a roster of trained advocates. A complainant, however, may choose any person to serve as advocate.

(c) Every person who inquires about filing a complaint will be offered an advocate. Every person who requests mediation will be encouraged to be assisted by an advocate.

(d) Advocates shall not be employees of the city and the city shall not compensate them for their services.

Sec. 21-57. Obstructing board operations.

It shall be unlawful for any person, in any manner, to willfully intimidate, influence, impede, deter, threaten, harass, obstruct or prevent another person from freely, fully and truthfully cooperating with the board.

Sec. 21-58. Annual evaluation by council.

Each year, after reviewing the board's annual report, the city council shall review the effectiveness of the board and shall determine whether this article should be modified or repealed.

Sec. 21-59. Availability of police policies.

The chief of police shall make available to the police department employees and the public, and place on the city's website, all police department policies, guidelines, directives, orders, rules and regulations except those that would reveal tactics that would endanger the life of any police officer.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2021.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor