

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 258-21

AN ORDINANCE

amending Chapter 19 of the City Code to add a new Division 8 relating to police officer rights and appeals to the Personnel Advisory 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 19 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended to add Division 8 as follows:

Secs. 19-241-19-249 Reserved.

DIVISION 8. POLICE OFFICER DISCIPLINARY INVESTIGATIONS

Sec. 19-250. Applicability.

Notwithstanding anything contained in chapter 19 of this code to the contrary, this division shall apply to police officer disciplinary investigations and shall supersede any conflicting provisions contained in chapter 19 related to the subject matter of this division.

Sec. 19-251. Definitions.

The following definitions apply to this division:

Department director. The director of the investigating department. In the police department, the chief of police shall be deemed to be the director.

Investigating department. The department(s) conducting the investigation on behalf of the city.

Police officer and officer. A commissioned law enforcement officer, other than the chief of police, who has the power of arrest and who is employed as an employee in the police department.

Sec. 19-252. Police officer rights in investigations.

(a) This section shall only apply to a police officer who is under administrative investigation or subjected to administrative questioning that may lead to disciplinary action, demotion, dismissal, transfer or placement on a status that could lead to economic loss as those terms are defined in Section 590.502 RSMo.

(b) A police officer under investigation shall have the following rights in connection with investigations:

- (1) *Written notice and assignment of investigator(s).* The investigating department shall provide written notice and a copy of the complaint to the police officer. The notice shall include the personal identifying information of the complainant and the names, rank and command of the individual(s) who will be conducting the investigation. The investigating department may assign up to two (2) investigators, except that, separate investigators shall be assigned to investigate alleged policy violations and alleged criminal violations.
- (2) *Garrity warnings.* The investigating department shall provide the notice and a copy of the complaint at least twenty-four (24) hours prior to any interrogation or interview of the police officer. Prior to interviewing the officer for alleged policy violations, the investigating department shall provide the officer with written notice that the police officer is being ordered to answer questions under threat of disciplinary action and that the officer's answers to the questions will not be used against the officer in criminal proceedings. The investigating department shall not threaten, harass or promise rewards to the officer to induce the officer into answering any question; except that the police officer may be compelled by the investigating department to give protected *Garrity* statements to the investigator(s) assigned to investigate alleged policy violations, but such compelled statements shall not be used or derivatively used against the police officer in any aspect of a criminal case brought against the police officer.
- (3) *Written or oral statements.* The police officer may provide a written or oral statement to an investigator before investigative findings are made.
- (4) *Interviews.* When a police officer is questioned or interviewed regarding matters pertaining to the officer's law enforcement duties or actions taken within the scope of the officer's employment, such questioning shall be conducted for a reasonable period of time and only while the officer is on duty unless reasonable circumstances exist that necessitate questioning the officer while the officer is off duty. The investigator(s) shall provide times for the officer to allow for personal necessities and rest periods as the department director determines are reasonably necessary. The police officer may have an attorney or any other duly authorized representative present during the officer's questioning to observe the interview. The police officer

and the officer's attorney or representative shall have the opportunity to review the complaint prior to the interview. The attorney or representative shall be permitted to confer with the officer but shall not unduly disrupt or interfere with the interview. The investigator(s) shall suspend questioning for a period of up to 24 (twenty-four) hours if the officer requests representation. Any interviews or questioning shall be conducted at a secure location at the police department or at the agency that is conducting the investigation, unless the officer consents to another location. The police officer may record the interview or obtain a copy of any recording of the interview made by the investigator.

- (5) *Investigation time limits; extensions.* The investigating department shall have ninety (90) days from receipt of a complaint to complete the investigation. The department director may, for good cause, petition the city manager for an extension of time to complete the investigation. Unless the officer consents, the city manager shall set the matter requesting an extension for hearing and shall provide notice of the hearing to the officer under investigation. The officer shall have the right to attend the hearing and to present evidence and arguments against the extension. If the city manager finds the department director has shown good cause for the granting of an extension of time to complete the investigation, the city manager shall grant an extension of up to sixty (60) days. The city manager shall grant no more than two, sixty (60) day extensions per investigation, except that, if there is an ongoing criminal investigation there shall be no limitation on the amount of sixty (60) day extensions. For good cause shown, the internal investigation may be tolled until the conclusion of a concurrent criminal investigation arising out of the same alleged conduct.
- (6) *Notification to officer.* Within five (5) calendar days of the conclusion of the administrative investigation, the investigating department shall inform the officer in writing of the investigative findings and any recommendation for further action, including discipline.
- (7) *Records.* The investigating department shall keep a complete record of the administrative investigation. Upon the written request of the officer or the officer's representative, the investigating department shall provide a complete copy of the entire record to the officer or the officer's representative within five (5) business days of the officer's written request.

Sec. 19-253. Police officer appeals to the personnel advisory board.

(a) A police officer who is suspended without pay, demoted, terminated, transferred, or placed on a status resulting in economic loss, as that term is defined in section 590.502 RSMo., shall be entitled to a full due process hearing before the personnel advisory board. A hearing shall be scheduled as soon as possible and shall be conducted by procedures and rules established by the personnel advisory board. The city shall provide the police officer or the officer's attorney and the complainant seven (7) days'

written notice of the hearing date and time. At least seven (7) days in advance of the hearing, the city shall also provide to the police officer or the officer's attorney an opportunity to access and review documents that are in the city's possession and that were used as a basis for the disciplinary action. The hearing shall be closed.

(b) The police officer shall have the right to be heard and to present evidence. Testimony shall be given under oath and a record made of the hearing. The police officer has the right to refuse to testify at the hearing if the police officer is concurrently facing criminal charges in connection with the same incident. A police officer's decision not to testify shall not result in additional internal charges or discipline.

(c) Each party, as well as the board, may engage counsel and call witnesses. The board shall, upon request of any party, issue subpoenas and shall in a proper case issue subpoenas duces tecum for the hearing, but not for depositions. Subpoenas shall be issued, served and enforced in the same manner as subpoenas issued under chapter 536 RSMo., by agencies created by the constitution or state statute. Technical rules of evidence shall not apply. After hearing and consideration of the evidence and within ten (10) working days after the hearing, the board shall render its recommendations in writing to the city manager. As soon as possible after the hearing, a certified written transcript of the hearing along with all exhibits produced at the hearing shall be delivered to the city manager. The city manager shall review the transcript and exhibits and, within the time set forth in section 590.502 RSMo., render a decision supported by findings of fact and conclusions of law which shall be final, binding and not subject to further administrative appeal except to the extent allowed by state law. A copy of the decision or order accompanying findings and conclusions along with the written action and right of appeal, if any, shall be delivered or mailed promptly to the police officer or the officer's attorney.

(d) The city shall maintain a complete record of the hearing for purposes of appeal. The record shall be provided to the officer or the officer's attorney upon written request. The record of the hearing shall remain confidential and shall not be subject to disclosure under chapter 610 RSMo., except by lawful subpoena or court order.

(e) A police officer shall have the opportunity to provide a written response to any adverse materials placed in the officer's personnel file, and such written response shall be permanently attached to the adverse material.

Sec. 19-254. Police officer appeals to the city manager.

If the officer was not suspended without pay, demoted, terminated, transferred, or placed on a status resulting in economic loss, as that term is defined in section 590.502 RSMo., the police officer 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 setting forth the officer's reasons for appeal. The request must be filed within ten (10) days after the officer was given notice of the right to appeal. 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. The city manager may act on the appeal as the manager deems appropriate.

Sec. 19-255. Unlawful Retaliation.

It shall be unlawful for any person to retaliate or discriminate in any manner against any other person because such person has filed a complaint, assisted or participated in any manner in any proceeding conducted pursuant to this division.

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