

1 officer of the Little Rock Police Department, to be known as the Little Rock Citizens Review
2 Board of Law Enforcement Actions (“CRB”).

3 **Section 2.** The CRB shall have five (5) members, who can be members of the Little Rock
4 Civil Service Commission if at anytime that is directed by resolution of the governing body.

5 **Section 3.** If the Civil Service Commission is not designated as the CRB, the five members
6 of the CRB shall be selected as follows:

- 7 (a) The Mayor shall name three individuals, who are electors of the City, from the applications
8 and recommendations that are received for these appointments;
- 9 (b) One (1) individual, who is an elector of the City, shall be designated as the representative
10 of the community at-large and shall be actively involved in neighborhood activities;
- 11 (c) One (1) individual, who is an elector of the City, shall be designated as the representative
12 of the business community and shall be selected from nominations made by groups such
13 as the Little Rock Regional Chamber of Commerce, or any business association where
14 active involvement in a particular type of business is a requirement for membership;
- 15 (d) At all times, the CRB shall follow as closely as possible the demographic characteristics
16 of any statistically significant demographic group of electors within the corporate limits of
17 the City.

18 **Section 4. *Term of Office.***

- 19 (a) Except for the original five members of the CRB, each member shall serve a term of three
20 (3) years from the date of appointment, provided that additional terms of service may be
21 served in accordance with state law and City ordinance or resolution;
- 22 (b) The initial five members shall draw lots at the first meeting after their appointment as
23 follows:
- 24 (i) One lot will be for a term of one year;
- 25 (ii) Two lots will be for an initial term of two years; and,
- 26 (iii) Two lots will be for an initial term of three years;
- 27 (c) The individual who draws a lot for a term of one year shall not have that one year of
28 service count as a term for purposes of determining eligibility for reappointment;
- 29 (d) The Mayor shall designate one member as the Chair of the CRB;

1 (e) If a member is involved in the review of an action that is not completed before the expi-
2 ration of the member's term, an appointment shall be made for the new term, provided, if
3 the serving member is not reappointed for a new term, the serving member shall be per-
4 mitted to complete the investigation by the CRB of the action or actions under review at
5 the time the term expires

6 **Section 5.** The CRB shall have the authority to review the following types of complaints
7 against any City certified law enforcement officer:

- 8 (a) Excessive force when there has been a significant, though not permanent, injury suffered
9 by the complainant;
- 10 (b) Deadly force;
- 11 (c) Corruption which includes, but is not limited to, theft, embezzlement, falsification of public
12 records, falsification or testimony, manufacture or falsification of evidence; witness intimid-
13 idation; and witness bribery.

14 **Section 6.** In addition to the matters set forth in Section 5, the CRB shall be permitted to
15 review the manner of investigation of any such matter if requested to do so by the Mayor, the
16 governing body, the City Manager, or the Chief of Police.

17 **Section 7.** Staffing for the CRB shall be provided by the City and may include one or more
18 witnesses with special skill or expertise retained by the CRB.

19 **Section 8. *Time of Review***

20 (a) For the authorized matters of review set forth in Section 5, the CRB shall conduct its
21 review after any conclusion, including exoneration, is made by the Chief of Police, or a
22 Division chain of command, of the Little Rock Police Department, but before any potential
23 appeal is heard by the Civil Service Commission:

- 24 (i) The fact the CRB review is to take place does not change the time in which an
25 officer must file an appeal with the Commission of action taken by the Chief of
26 Police;
- 27 (ii) The CRB is to complete its review expeditiously and shall not exceed a 60-day
28 review period without written approval from the Mayor;

1 (iii) During this period of time, the CRB shall be provided all information provided to
2 the Little Rock Police Department that was considered as part of the ultimate de-
3 cision as to the officer;

4 (iv) The CRB can consider other information it deems appropriate in the particular
5 matter, including review by independent witnesses with special experience or ex-
6 pertise;

7 (b) For the authorized matters set forth in Section 6, the CRB shall complete its investigation
8 within 90 days.

9 **Section 9.** For matters reviewed pursuant to Section 5, the CRB shall provide its findings and
10 recommendations in writing to the Mayor, the City Manager, and the Chief of Police, for an initial
11 determination, to be made within seven (7) calendar days, as to whether additional review by the
12 Little Rock Police Department is required, or whether a different decision on the outcome of the
13 matter should be considered, provided that at the end of that seven (7) calendar day period the
14 report of the CRB shall be subject to public review if the recommendation for additional review
15 or a different decision on the outcome is not addressed by the Chief of Police.

16 **Section 10.** No findings or report of the CRB shall be provided to the Civil Service Commis-
17 sion prior to any action it is required to take in a particular matter.

18 **Section 11.** For investigations conducted pursuant to Section 6, the CRB shall be permitted to
19 make recommendations for a change in procedures which will be presented to the Chief of Police
20 and to the Mayor and governing body, provided, if such recommendations are rejected, or are not
21 implemented within 90 days, the CRB and the Chief of Police may be required to appear before
22 the governing body to discuss the issue.

23 **Section 12.** The CRB shall have the authority to conduct public hearings on matters brought
24 to its attention, to take testimony, to hire a court reporter and take sworn testimony, and to review
25 any physical evidence.

26 **Section 13.** To assure the prompt review and assessment of its information, the CRB may
27 conduct hearings to take testimony or receive evidence in the presence of only one member if the
28 Chair, or the Mayor when the Chair is unavailable, grants authority to do so, provided that all such
29 sessions shall be held in public unless a clear and present danger of harm to a witness is established.

1 If such harm is shown, the session shall be videotaped with appropriate steps taken to alter the
2 identity of the witness.

3 **Section 14. Severability.** In the event any title, section, paragraph, item, sentence, clause,
4 phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such
5 declaration or adjudication shall not affect the remaining portions of the ordinance which shall
6 remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional
7 was not originally a part of the ordinance.

8 **Section 15. Repealer.** All laws, ordinances, resolutions, or parts of the same, that are incon-
9 sistent with the provisions of this resolution, are hereby repealed to the extent of such incon-
10 sistency.

11 **PASSED:**

12 **ATTEST:**

APPROVED:

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Susan Langley, City Clerk

_____ **Frank Scott, Jr., Mayor**

16 **APPROVED AS TO LEGAL FORM:**

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Thomas M. Carpenter, City Attorney

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MEMORANDUM

To: Kendra Pruitt
Special Advisor to Mayor Scott

By: Thomas M. Carpenter
City Attorney

**Re: Initial Draft Ordinance/
Citizens Review Board**

Date: 22 March 2019

Attached to this memorandum is an initial draft ordinance about the implementation of a Citizens Review Board of the Little Rock Police Department ("CRB"). It is extremely rough because it is drafted without a number of issues having been addressed. Major background material was obtained from the National Institute of Justice in the Office of Justice Programs of the U.S. Department of Justice, as well as from the National Association for Civilian Oversight of Law Enforcement.

According to the materials I have reviewed, there are four (sometimes delineated as three) types of review boards. In TYPE 1, the citizens investigate allegations of police misconduct and make recommendations to the Chief of Police. In TYPE 2 the department investigates these allegations and make findings, but the CRB reviews the findings and recommends to the Chief of Police whether they should be accepted or rejected. In TYPE 3, the CRB is an appellate body for citizens to review departmental findings and make recommendations. In TYPE 4, the CRB is really an auditor that investigates the process by which a department accepts and investigates a complaint, and reports on the thoroughness and fairness of the process to both the department and the public.

In a conversation yesterday afternoon, Chief-select Keith Humphrey discussed with me steps he has taken in Norman, Oklahoma. He prefers a hybrid of auditor and investigator. To that end, I recommend that this incredibly rough draft be sent to him for review.

Certain answers to initial questions are assumed in the draft but certainly need to be addressed by the policymakers. These include the size of the CRB, the term of office, the nature of the review permitted, and whether any specialized training is required. After reading various materials, the ordinance drafted does not require any background training for the CRB members. It is presented

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like this contrary to my expressed and continued concerns that, particularly, in the area of deadly force awareness of the incredibly short period of time (7 milliseconds by one study) to decide to use such force is always a factor. However, the materials I have reviewed have argued forcefully for both positions, and this initial draft does not address them.

Another issue is the makeup and selection of the CRB. This draft seeks a five-member CRB that would mirror the statistically significant demographic groups within the City. Three of these members are designated as appointments by the Mayor, one from recommendations by the active neighborhood groups, and one from recommendations by the business community. There are definitely a plethora of combinations and interests to address.

The ordinance contains one provision that if the CRB is in the middle of an reviewing a matter at the time a member's term expires, that member can continue until the completion of that particular investigation. The City has a general rule that a person only serves two consecutive terms on any board or commission absent a compelling reason for a third term. As to the latter point, the City has granted a third term when a major construction project is under – e.g., the initial expansion of Robinson Auditorium – and the Chair of the Advertising & Promotion Commission had been quite involved with the project, but whose term was about to expire.

The ordinance is also drafted to recognize the current statutory authority of the Little Rock Civil Service Commission. Currently, if there is a suspension of more than three days, an appeal can be taken to the Commission. The Commission is not bound by the action of the Chief of Police. Arkansas law permits a Commission to terminate an employee that the Chief of Police merely suspends for a period of time. The Commission also has other duties with regard to LRPD – e.g., approval of promotion lists – the City may wish to maintain. Because of the current makeup of LRPD review, this draft attempts to avoid the problems that would exist without additional legislation.

To that end, legislation may be required. The first point, though, should be to determine exactly what the City wishes the CRB to do and how. Once these issues are decided, then it would be less difficult to draft an ordinance, a proposed statute, or both.

Of course, recent public and editorial comments have suggested that a CRB “have teeth.” In this initial draft, I have suggested that for action taken by the department against an officer, the CRB get involved before any appeal to the Civil Service Commission. At this juncture, the CRB can determine if it believes the appropriate action was correct, if additional investigation needs to be done, or if the Chief of Police should consider a different decision. To maintain a review and not a mandate, the draft ordinance provides a time frame to make a report, and a time frame for the Chief of Police to respond. If the Chief of Police does not accept the recommended course of

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action, the CRB will not comment until after the Commission has reviewed the matter. This was done to avoid interference with the statutory procedure.

As to the audit situation, I am familiar with a process used by the Arkansas Emergency Medical Physicians Group ("AEPF") for MEMS. There are essentially three kinds of audits: (1) systemic; (2) paramedic specific; and, (3) critical incident or reported complaint. In the first audit, AEPF chooses a medical condition, obtains the data from MEMS on all such cases within a period of time, and determines if the protocols are sufficient or if additional training needs to be done. In the second, a specific paramedic is selected and a cross section of ambulance run data is reviewed to determine if there is a consistent level of performance. The third audit is usually sparked by a specific incident, and involves a review of the actions taken, whether additional training is required, whether MEMS acted appropriately, and if any actions by the paramedic adversely impacted the patient. While the analogy between EMT and police duties is not exact, this does provide an idea of the types of audits the City may wish a CRB to have.

Finally, for purposes of this discussion, there can be significant expense involved with a CRB. This draft permits the hiring of independent specialists to help with an analysis. Particularly where forensic evidence is concerned, this can be quite expensive. Whether cost is any kind of factor on how to proceed, the provision is in the ordinance to spark that discussion.

What would be particularly helpful is to be given a list of items to pursue further, or to provide further documentation on. The field is definitely much broader than I thought when I started the research in January. This ordinance does not touch a number of areas. Finally, assumptions I made to produce a draft may be totally inappropriate.

I have a copy of this report and draft. Until I hear further from you, though, I will not share either with anyone.

TMC:ct