




## MEMORANDUM

**To:** Mayor Scott and Members of the Board of Directors

**From:** Thomas M. Carpenter   
City Attorney

**Re:** COMMENTS| Proposed ordinance on Citizen Review Board

**Date:** 23 July 2019

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The purpose of this memorandum is to comment upon the attached final draft of the Citizens Review Board (“CRB”) ordinance. In addition, because there have been inquiries from members of the Board of Directors (“BOD”), this memorandum will also address these questions. The final draft of the ordinance is based upon Board inquiries, Director Capi Peck’s request for differentiation between a Civilian Review Board (“CRB”) and the Little Rock Civil Service Commission (“CSC Commission”), and modifications made today to the ordinance.

On 21 July 2019, and again on 23 July, I was sent a revised draft CRB draft ordinance for the 23 July 2019 agenda of the BOD. There were not many changes. At the 16 July 2019 BOD Agenda Meeting, Capi Peck requested a comparison of the proposed CRB with the duties of the CSC Commission. On , 21 July 2019 Director Peck she expanded her request for information. In addition, I have been contacted by other members of the BOD about the CRB ordinance Rather than prepare memoranda, the various inquiries are combined into this memorandum.

### DRAFTS OF CRB ORDINANCE

#### *Background*

During the 2018 mayoral election, candidate-Frank D. Scott, Jr., made several statements about the need for public safety and accountability. Upon his election, a transition team – divided into various subcommittees – studied the implementation of these campaign ideas. A summary of the work of these subcommittees was published as *The Scott Script: A Citizen-led transition for growth and progress in Little Rock* on 16 April 2019. The subcommittee on Public Safety and Accountability (“PS&A Subcommittee”) published five pages of recommendations.<sup>1</sup> The charge of the PS&A Subcommittee included:

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<sup>1</sup> Scott Script at 39. This subcommittee was co-chaired by Tamika Edwards and Cristina Monterrey. Its members included Osyrus Bolly, Carla Coleman, Carlos Corbin, Bud Cummins, Holly Dickson, Michelle Hastings, Kellye Neal, Jessica Scott-Wolfe, Greg Summers, Clarke Tucker, Derick Wilson, and Donyell Wolfe. *Id.* at 36.

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...producing an implementation plan for Mayor Scott's Public Safety and Accountability Agenda and reviewing the departmental transition memoranda from LRPD, LRFD, the Little Rock District Court, and the Civil Service Commission...[and to] assist [the Mayor] in identifying the needs for the next police chief of the LRPD.

*Scott Script* at 36. One recommendation was the creation of a "Little Rock Community Review Board."<sup>2</sup> Specifically, the PS&A Subcommittee recommended "...a Type 1 or Type 2 model board made up primarily of civilians without law enforcement training."<sup>3</sup>

Prior to the issuance of *The Scott Script*, a memorandum to Kendra Pruitt – Special Advisor to Mayor Scott – noted that different types of a CRB had been implemented throughout the United States.<sup>4</sup> The memorandum pointed out that there were essentially four types of review boards in operation in the United States. These types are:

**TYPE 1** Citizens investigate allegations of police misconduct and make recommendations to the Chief of Police

**TYPE 2** LRPD investigates allegations and makes findings, but the CRB reviews the findings and recommends to the Chief of Police whether they should be accepted or rejected.

**TYPE 3** The CRB serves as an appellate body for citizens to review departmental findings and make recommendations.

**TYPE 4** The CRB is an auditor that investigates the process by which LRPD accepts and investigates a complaint, and reports on

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<sup>2</sup> Under the caption "Creating the Little Rock Community Review Board," the PS&A Subcommittee stated:

Create a Community Review Board (more than modifying the existing Civilian Review Board) that is diverse and fully representative of the larger Little Rock community. The board should be autonomous with clearly defined responsibilities and relationships to the officer review process....

*Scott Script* at 39.

<sup>3</sup> *Id.*

<sup>4</sup> MEMORANDUM FROM CITY ATTORNEY THOMAS M. CARPENTER TO SPECIAL ADVISOR TO THE MAYOR KENDRA SCOTT (22 March 2019) (on file with author) at 1. ("MEMORANDUM CARPENTER TO PRUITT| 22 March 2019").

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the thoroughness and fairness of the process to both the LRPD and the public.<sup>5</sup>

In part because and a statement by LRPD Chief Keith Humphrey of his preference for a CRB that acts as an auditor and investigator<sup>6</sup>, and the City's creation of the CSC Commission,<sup>7</sup> the auditor format (TYPE 4) was recommended. It is not clear if my memorandum was provided to the PS&A Subcommittee.<sup>8</sup>

Because the City has authorized a CSC Commission<sup>9</sup> to exercise jurisdiction over members of the Little Rock Police Department ("LRPD") and Little Rock Fire Department ("LRF"), certain matters are exclusively within its jurisdiction. The CSC Commission rules and regulations "shall have the force and effect of law."<sup>10</sup> The authority of the CSC Commission includes:

- (1) Determination of the qualifications of applicants for appointment to a police or fire position under its jurisdiction (§ 14-49-304 (b) (1) (West Supp. 2019);
- (2) Testing by open competitive examinations of the relative fitness of applicants for a covered position ((§ 14-49-304 (b) (2) (West Supp. 2019);
- (3) Public advertisement for examinations (§ 14-49-304 (b) (3) (West Supp. 2019);
- (4) Creation of eligibility lists for department positions, including promotions (§ 14-49-304 (b) (4) (West Supp. 2019);

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<sup>5</sup> *Id.*

<sup>6</sup> Little Rock, Ark., Ordinance No. 5475 (July 12, 1937); Little Rock, Ark., Ordinance No. 5017 (February 13, 1933).

<sup>7</sup> MEMORANDUM CARPENTER TO PRUITT| 22 March 2019 at 2.

<sup>8</sup> The delineation of types of CRB was gleaned from materials published by the National Institute of Justice in the Office of Justice Programs of the U.S. Department of Justice – *CITIZEN REVIEW OF POLICE: Approaches & Implementation*, [www.ncjrs.gov/pdffiles1/nij/184430.pdf](http://www.ncjrs.gov/pdffiles1/nij/184430.pdf) (last accessed 22 July 2019) ("DOJ CITIZEN REVIEW") -- and, from the National Association for Civilian Oversight of Law Enforcement) – *CIVILIAN OVERSIGHT OF LAW ENFORCEMENT: Assessing the Evidence*, [https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/161/attachments/original/1481727974/NACOLE\\_AssessingtheEvidence\\_Final.pdf?1481727974](https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/161/attachments/original/1481727974/NACOLE_AssessingtheEvidence_Final.pdf?1481727974) (last accessed 22 July 2019) ("NACOLE CIVILIAN OVERSIGHT").

<sup>9</sup> See, Ark. Code Ann. §§ 14-49-101 to -313 (West 2004 & West Supp. 2019).

<sup>10</sup> Ark. Code Ann. § 14-49-304 (a)(2) (West Supp. 2019).

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- (5) Certification of the three highest candidates on the eligibility list for promotion (§ 14-49-304 (b) (4) (West Supp. 2019);
- (6) Appeal consideration of any disciplinary action of three (3) days suspension or more, including termination (§ 14-49-304 (b) (11) (West Supp. 2019)<sup>11</sup>.

In other words, since the Chief of Police – also subject to the jurisdiction of the CSC Commission – is tasked with control of the LRPD and the enforcement of its General Orders and its Rule and Regulations, a CRB could not fully function as a Type 2 or Type 3 CRB. More to the point, since actions of a certified law enforcement officer may also violate state criminal law, the prosecuting attorney for the Sixth Judicial District also has jurisdiction to review the conduct of an officer.

The combination of Type 1 and Type 4 as auditors of departmental investigations does not conflict with the CSC Commission statutes or rules and regulations. It permits an independent body to consider a complaint, review the actions taken by LRPD, and determine if the investigation was complete. If not, the CRB can recommend to the Chief of Police that additional investigation be done, or that additional issues be considered. The initial ordinance draft attempted to have this review occur after the Chief of Police had made an initial determination about a matter, and possibly imposed disciplinary action, but before any appeal to the CSC Commission. This approach was taken so independent citizens could assure itself, and the public, that there had been a full, thorough, and fair investigation of a matter. However, the ultimate decision as to what action to take would rest with the Chief of Police. Of course, while the CSC Commission could review any disciplinary action against a Chief of Police, the suggestion to hire or fire that individual would rest with the Mayor.

Hence, as pointed out in the initial memorandum:

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 action, the CRB will not comment until after the [CSC]

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<sup>11</sup> See also, *Discipline and Appeal Procedures*, LITTLE ROCK CIVIL SERVICE COMMISSION RULES AND REGULATIONS at Ch.6, pp. 15-17. (“LR CSC RULE at \_\_\_”).

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Commission has reviewed the matter. This was done to avoid interference with the statutory procedure.

MEMORANDUM FROM CITY ATTORNEY THOMAS M. CARPENTER TO SPECIAL ADVISOR TO THE MAYOR KENDRA SCOTT (22 March 2019) (on file with author) at 2-3. To be sure, the initial draft ordinance was rough.<sup>12</sup> A request for a list of items to pursue further, or whether to provide further documentation, was offered. *Id.*, at 3. At this point, this office did not have involvement in the process until June 2019.

Of course, work was done. In addition to *The Scott Script* already noted, the City engaged personnel from the U.S. Department of Justice to help think through the issue. As a result of this work, this office was sent a working draft of bylaws on 20 June 2019.<sup>13</sup> A draft ordinance for the 16 July 2019 BOD Agenda Meeting was requested.

These draft bylaws became the foundation for the 11 July 2019 draft ordinance to create a CRB. Except for a few questions posed with the bylaws, this office did not really comment upon the draft ordinance. While the Type 4 auditor CRB was still a major interest, there were additional questions that needed more consideration.

***Steps to assure the CRB was a quasi-independent body.***

It seemed important that the CRB be viewed as an outside auditor and be semi-independent. The major desire of a CRB is that individuals and groups feel validated, are satisfied that concerns about an incident or an officer can be expressed, and that a CRB is a contribution to the local police department.<sup>14</sup> In the 11 July 2019 draft of the CRB Ordinance, then, Mayor would appoint the members after an application process and similar to how board and commission members are

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<sup>12</sup> Thomas M. Carpenter, UNPUBLISHED DRAFT ORDINANCE TO ESTABLISH A CITIZENS REVIEW BOARD FOR CERTAIN MATTERS IN THE LITTLE ROCK POLICE DEPARTMENT; [T]O DECLARE AN EMERGENCY; AND, FOR OTHER PURPOSES (Draft of 22 March 2019 at 11:47 a.m., at 4 (hereafter the Ordinance is “22 March 2019 Draft CRB Ordinance”).

<sup>13</sup> City of Little Rock, Arkansas Police Citizen Review Board Bylaws (20 June 2019), attached to E-MAIL FROM SPECIAL ADVISOR TO THE MAYOR KENDRA PRUITT TO CITY ATTORNEY THOMAS M. CARPENTER AND OTHERS. (“CRB PROPOSED BYLAWS” for the bylaws).

<sup>14</sup> DOJ CITIZEN REVIEW at x-xi; *see also*, NACOLE CIVILIAN OVERSIGHT at 13 (“When the public believes that officers are not being held accountable for violating the law or department policy, then a consensus may develop that misconduct allegations can be more effectively handled by a civil organization external to the police...Underlying this view is the belief that having non-police actors play a role within the process for handling complaints can lead to more thorough, complete and impartial investigations and findings.”)

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currently selected. The provision that a CRB member would serve at the pleasure of the Mayor was deleted, although the Mayor and Board of Directors will fill any voluntary or involuntary vacancy. An involuntary vacancy was limited to failure to attend meetings, or conviction of plea of *nolo contendere* to a felony, misdemeanor other than a traffic offense, or driving while intoxicated or impaired.<sup>15</sup>

***Concerns about Compliance with Arkansas FOIA.***

***a. Single-member Sessions of the CRB***

The proposed bylaws<sup>16</sup> suggested there could be a single-member meeting of the CRB to address certain personnel issues, and that this meeting would not be public.<sup>17</sup> Unfortunately, only a governing body with the authority to consider imposition of a disciplinary matter is permitted to meet in executive session.

...an executive session will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee...Boards and commissions of this state may meet in executive session for purposes of preparing examination materials and answers to examination materials that are administered to applicants for licensure from state agencies.

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<sup>15</sup> Thomas M. Carpenter, UNPUBLISHED DRAFT ORDINANCE TO ESTABLISH A CITIZENS REVIEW BOARD FOR CERTAIN MATTERS IN THE LITTLE ROCK POLICE DEPARTMENT; [T]O DECLARE AN EMERGENCY; AND, FOR OTHER PURPOSES (Draft of 11 July 2019 at 7, § 10 *Vacancy on the CRB*. (Hereafter the Ordinance is “11 July 2019 Draft CRB Ordinance”). (“TMC EMAIL TO KP ON 11 JULY 2019 DRAFT” for future reference to the accompanying email).

<sup>16</sup> CRB PROPOSED BYLAWS (20 June 2019).

<sup>17</sup> The proposed bylaw states:

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

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Ark. Code Ann. § 25-19-106 (West Supp. 2019). Since no law enforcement officer will ever be the employee of a CRB, then the CRB cannot consider whether to employ, appoint, promote, demote, discipline, nor to accept the resignation of a law enforcement officer.<sup>18</sup>

***a. Information considered by CRB may be deemed released pursuant to FOIA.***

A major question is whether disclosure of information -- particularly where there has been the use of deadly force, or an allegation of excessive force which also implicate state criminal statutes -- to the CRB would require release of such information pursuant to FOIA. There is an express exemption from disclosure pursuant to FOIA of “[u]ndisclosed investigations by law enforcement agencies of suspected criminal activity.” Ark. Code Ann. § 25-19-105 (a) (2) (A) (7) (West Supp. 2019). The Arkansas Supreme Court has clearly stated that an undisclosed criminal investigation encompasses an ongoing criminal investigation.<sup>19</sup> While public records in such investigations are exempt from disclosure pursuant to FOIA, the question is whether once the information is disclosed to one individual or entity not authorized by state law to receive it, can a government refuse to disclose it to any other eligible request for such information. There is no clear legal answer to this question. As a result, it is something that would have to be resolved on a case by case basis.

***State law does not grant a CRB the right to take sworn testimony.***

There is no statute that expressly authorizes a CRB. There is also no statute that permits a CRB to swear a witness, or to take sworn testimony. While the ordinance anticipates the CRB essentially

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<sup>18</sup> State statute expressly provides that the CSC Commission is the body that hears an appeal of disciplinary actions against a law enforcement officer. *See* Ark. Code Ann. § 14-49-311 (West Supp. 2019). The Commission is granted express statutory authority to adopt rules necessary to enforce its duties. *Id.*, § 14-49-304 (c). The Little Rock Civil Service Commission has done so. LR CSC RULES at 16 (“At the conclusion of appeal hearings, the Commission shall retire in executive session to consider the appeal and determine whether the City established by a preponderance of the evidence that the employee violated the rules and regulations that are the basis for the disciplinary action and, if so, whether the discipline administered is just and proper.”); and, at Chapter 8, 24, *Review of Citizen Complaints*.

<sup>19</sup> *Martin v. Musteen*, 303 Ark. 656, 660, 799 S.W.2d 540, 542 (1990):

While we recognize that the definition of “ongoing” is not the same as the definition of “undisclosed,” we conclude, as we recognized in the *McCambridge [v. City of Little Rock]*, 298 Ark. 219, 766 S.W.2d 909 (1989) case and has Professor Watkins suggested after our decision in the *City of Fayetteville [v. Rose]*, 294 Ark. 468, 743 S.W.2d 817 (1988) case, that the general assembly meant to protecting *ongoing criminal investigations* being conducted by law enforcement agencies.

[emphasis added]; *see also, McCambridge v. City of Little Rock*, 298 Ark.

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deposing an expert witness, which through the process could result in the witness testifying under oath, there is no ability to compel the witness to do so. More to the point, there is no authority to subpoena civilian witnesses, or to mandate that a law enforcement officer provide testimony.

***A CRB does not have subpoena power or compulsory process.***

The CSC Commission has express statutory authority for compulsory process to witnesses for an officer who appeals a disciplinary decision.<sup>20</sup> Absent express statutory authority, the CRB would have to depend upon an individual person's willingness to appear and testify. The difference between this situation, and the deposition of an expert witness, is that the expert witness is typically hired to review material and provide an opinion, so part of the contract would be that the witness appear and testify as reasonably requested.<sup>21</sup>

***Prohibition of CRB Members as Witnesses in CSC Commission Appeal is Questionable.***

In the 22 March 2019 draft ordinance, I included a section that limited the use of findings by a CRB:

No findings or report of the CRB shall be provided to the Civil Service Commission prior to any action it is required to take in a particular matter.<sup>22</sup>

The rationale is that nothing the CRB does should interfere with the statutory appellate process for the CSC Commission. Further, a recommendation by the CRB for more, or different, examination should not be considered by the CSC Commission as it decides a particular case since the CRB is designed as an auditor to recommend to the Chief of Police things to do. This limitation was included in the bylaws later prepared and presented to this office to draft an ordinance.<sup>23</sup>

There is a serious policy question raised here. If the CRB finds information that supports an officer, or supports a disciplinary decision, in time for the CSC Commission to consider it, it seems

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<sup>20</sup> Ark. Code Ann. § 14-49-311 (b) (3) (West Supp. 2019).

<sup>21</sup> Even so, if the witness failed to appear the only sanction the CRB could pursue is for breach of contract.

<sup>22</sup> 22 March 2019 Draft CRB Ordinance at 4, § 10.

<sup>23</sup> CRB PROPOSED BYLAWS at *CRB Authority to Review Investigation Procedures* at 5, ¶ 10; *see also*, TMC EMAIL TO KP ON 11 JULY 2019 DRAFT AT 2, ¶ 8. (“Since Civil Service Commission actions can be penal in nature, I do not believe the U.S. Constitution, nor the Arkansas Constitution, would permit information before the CRB to be excluded from presentation to the Civil Service Commission, a deposition, a court of law, or a prosecutorial or agency investigation; I did not place such language in this ordinance, but it is a major concern.”).



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that should be done. No statute imposes such a requirement. However, if the disciplinary action is upheld and the officer appeals, the information can be considered during the appeal to Circuit Court.

*Concerns Raised by Director Peck on the Interaction of the CRB and the CSC Commission.*

During discussions at the 16 July 2019 BOD Agenda Meeting, Director Capi Peck asked for a legal opinion from this office about the 11 July draft ordinance. Further clarification asked how the CRB would operate with the CSC Commission. Instead of a formal legal opinion, this memorandum will set out these particular points.

<b>Incident Investigation</b>		
<b>LRPD</b> <i>Professional Standards (IAD)</i>	<b>LR Civil Service</b>	<b>CRB</b>
1. Complaint from chief/public	1. Does not investigate unless there is a disciplinary appeal, or Citizen Complaint.	1. Complaint from public
2. May do initial walkthrough at scene	2. Even so, the procedure and scope is limited.	2.-----
3. Receives CID file from LRPD	3.-----	3. Receives CID portions not protected by prosecutor or court order
4. Can interrogate all fact witness	4.-----	4. Reviews CID statements, and may review IAD statements from fact witnesses
5. Can seek additional forensic witnesses	5.-----	5. Can seek forensic witnesses
6. Obtains input from LRPD Chain of Command	6.-----	6. Reviews input from LRPD Chain of Command

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<b>Subpoena Power</b>		
<b>LRPD</b> <i>Professional Standards (IAD)</i>	<b>LR Civil Service</b>	<b>CRB</b>
1. CID or as needed for investigation as to documentary/forensic evidence	1. Can subpoena witnesses and evidence requested by the appellant	1. -----
2. Can mandate LRPD personnel testify	2. Can mandate LRPD personnel testify---	2.-----
3. Can request warrant for physical evidence	3.-----	3.-----
4. Can interrogate all fact witness	4.-----	4. Reviews CID statements, and may review IAD statements from fact witnesses
5. Can seek additional forensic witnesses	5.-----	5. Can seek forensic witnesses
6. Can seek sanction against LRPD personnel who fail to comply	6. Can hold in contempt those who fail to comply	6. Can note a failure to respond to a request

<b>Report to LRPD</b>		
<b>LRPD</b> <i>Professional Standards (IAD)</i>	<b>LR Civil Service</b>	<b>CRB</b>
1. Prepares summary of investigation as to violation of LRPD General Orders/Rules	1. -----	1. To Mayor, Board of Directors, and LRPD Chief of Police
2. Recommends finding: Sustained/Not Sustained/Dismissed/Upheld	2.-----	2. Reports; Reecommends  additional investigation but may not conduct it

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<b>Ability to take sworn testimony</b>		
<b>LRPD</b> <small>Professional Standards (IAD)</small>	<b>LR Civil Service</b>	<b>CRB</b>
1. Yes for sworn police officer-----	1. Yes. Required to be recorded, and can be transcribed.	1.-----

<b>Power to Impose Sanction</b>		
<b>LRPD</b> <small>Professional Standards (IAD)</small>	<b>LR Civil Service</b>	<b>CRB</b>
1.-----	1. Can affirm, reject, increase, or decrease penalty imposed by management	1.-----

<b>Other Authorities</b>		
<b>LRPD</b> <small>Professional Standards (IAD)</small>	<b>LR Civil Service</b>	<b>CRB</b>
1. As requested by LRPD Chief of Police--	1. (a) Approve changes in examination procedures (b) Establish rules to advertise examinations (c) Approve list of qualified applicants for LRPD and LRFD. (d) Approve ranking of candidates for promotion	1. Can make recommendations to the Mayor, Board of Directors, or Chief of Police

In short, there really is no overlap with the intent for a CRB. The CRB, like the CSC Commission, is made of citizens and not professional City staff or elected officials. The major difference seems to be that while the Commission *might* make comments on policies, procedures, or investigations, that is not its real focus. As an entity, its involvement with investigations is

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limited to when a Citizen Complaint under the current procedure, is made, or when an officer has been disciplined and appealed. The finding is either whether a preponderance of evidence supports the LRPD discipline, and the extent of discipline; or, whether the review of an LRPD situation noted in a Citizen Complaint requires additional investigation.

#### **OTHER ISSUES RAISED SINCE THE 16 JULY 2019 AGENDA MEETING**

In the past week, I have received additional requests from information from members of the Board of Directors. This section will briefly deal with these issues.

##### ***Receipt of Initial Complaint***

Previous drafts of the ordinance have listed different persons or offices to receive an Initial Complaint, or a Review Request. These drafts did not necessarily catch all of the ramifications that a change might create. The final draft anticipates that an Initial Complaint or Review Request can be delivered in person to LRPD, or if the City provides a means for an online complaint to be made, in that fashion. The final draft also anticipates that an Initial Complaint or Review Request will immediately be shared with the Mayor, City Manager, Chief of Police, and Director of Human Resources.

##### ***Review Request is not limited to someone who has actually been involved with LRPD***

This is correct. The ability to request investigation by LRPD is not limited to just those who have personally experienced an incident. A request must be made by a citizen of the City, however, unless there is a personal involvement with the matter. This personal involvement can include, of course, serving as legal counsel for someone who has had such involvement.

##### ***CRB blocked from access to information by court order or action of the prosecuting attorney***

The reference to a court of competent jurisdiction blocking access to certain information should not be a concern. This is already the case in many situations. While the ordinance does not include such a provision, the fact that state or federal law preclude access to certain information would also apply.

As to the prosecuting attorney, that office is concerned in part with whether to charge an individual of a criminal offense, and the determination that investigative materials establish probable cause an offense was committed, and a specific individual, or group of individuals, committed the offense. Nothing about the CRB should interfere with the independent role of the

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prosecuting attorney to make these determinations. If the prosecuting attorney makes such a determination in a matter brought to the CRB, the City should defer to that determination.

***Concern that “physical injury,” as opposed to “serious physical injury” might prompt CRB review.***

The ordinance permits investigations of physical injury or serious physical injury. The terms are modeled on the Arkansas criminal statutes. So, for example, an officer may improperly use a taser against an individual, or make use “pepper spray.” While these are probably not factually a cause of “serious physical injury,” it seems important to have such a complaint subject to review. The thrust of the CRB is to review investigations by LRPD as an auditor; it is not a different body with which merely to file a complaint. This ordinance requires that members of the CRB receive training, and that they sign a statement under oath that information gleaned during an investigation is not to be published. These safeguards should be sufficient, and do not preclude early decisions that further investigation is not warranted. However, if such investigation is warranted, then the CRB can serve as an auditor of the investigation done.

***Discrimination is listed as a part of corruption so why is it an additional means of investigation.***

An earlier draft did include a definition of discrimination as a part of corruption. The current draft sets discrimination out as a separate basis for CRB review, and uses a definition of discrimination that comports with City policy.

***Time of Review***

An Initial Complaint or Review Request may occur before the initial investigation by the LRPD has been completed. If so, the LRPD and Civil Service system are in place. While it would be good to permit an audit of the investigation to occur before any disciplinary action taken is appealed to the Commission, that may require some delay as to when the Commission hears the matter. Currently, the Commission is supposed to schedule a trial on such an issue within 15 days of the request.<sup>24</sup>

***Limitation on time to review a matter***

The CRB jurisdiction to review a matter applies to an Initial Complaint or Review Request filed after the effective date of the ordinance. There is one extremely rare circumstance when jurisdiction may be available: evidence that becomes available late that an officer may have mischaracterized or planted evidence, mislead authorities to obtain a prosecution, or otherwise participated in egregious investigative misconduct. One recent active area of civil rights litigation

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<sup>24</sup> LR CSC RULE at Chapter 6 at 15.

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has dealt with such intentional misconduct. These cases are typically brought after release of a person from incarceration. The LRPD does not condone such action, but once an allegation is raised – particularly if it is raised before litigation – the City should be able to use a CRB to audit an LRPD investigation into the matter.

### COMMENTS ON THE USE OF A CRB

**This memorandum has addressed issues about the use of a CRB, and specific questions that have been posed about the current draft ordinance. Because there are already investigative processes in place, is the CRB a redundancy? Does the CRB suggest lack of support for the LRPD?**

**Civilian oversight mechanisms are usually implemented based on the assumption that members of the community do not have faith in the ability of the of a police or sherrif's department to police itself.**

**NACOLE CIVILIAN OVERSIGHT at 13. However, when a CRB is created as an overall addition to a community and not in response to a specific incident, is carefully planned involving all concerned parties, and precisely sets the objections of a review system, then a CRB has been considered an asset to a community. See DOJ CITIZEN REVIEW when carefully created and focused, “police unions have supported what has been perceived to be more professionalized forms of oversight, such as a monitor or auditor model.” DOJ CITIZEN REVIEW at 107-121.<sup>25</sup>**

att: (1) 23 July 2019 CRB Ordinance

cc. **Bruce T. Moore, City Manager (via email)**  
**Emily Cox, Intergovernmental Relations Manager (via email)**  
**Susan Langley, City Clerk (via email)**  
**Allison Segers, Assistant City Clerk (via email)**  
**Keith Humphrey, Chief of Police (via email)**  
**Charles Blake, Mayor Chief of Staff (via email)**  
**Kendra Pruitt, Special Advisor to the Mayor (via email)**  
**Alexander J. Betton, Chief Deputy City Attorney (via email)**  
**Debbie Wisdom, Law Office Administrative Coordinator (via email)**

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<sup>25</sup> Chapter 6 of the DOJ CITIZEN REVIEW manual is entitled *Resolving Conflicts Between Oversight Bodies and Police*.