

# NOTICE OF MEETING

## Citizens Police Review Board

Date: Wednesday, July 13, 2011

Time: 7:00 p.m.

Place: City Hall - New Addition  
Council Chamber  
701 East Broadway  
Columbia, Missouri

### Tentative Agenda

- I. Chair – Call to order.
- II. Approval of minutes from June 8, 2011 meeting.
- III.
  - a) Ordinance: Board Discussions
    - Clarification: Ms. LoCurto-Martinez
    - CPD's recommendations to City Manager/City Council.  
(Chief Burton will be present.)
    - CPOA's recommendations to CPRB (attached).  
(Eric Dearmont will be present.)
  - b) Positive Connections (attached) – Mr. Highbarger
- IV. Reports
  - Mediation Task Force
  - Outreach Subcommittee
- V. Unfinished Business
  - Guidelines for closed sessions – Board members' reports.
  - Supplement to Annual Report – Ms. LoCurto-Martinez
- VI. New Business
  - Chair/Vice Chair Positions – Ms. LoCurto-Martinez
- VII. Public comment.
- VIII. Board member and staff comment.
- IX. Next Meeting: August 10, 2011
- X. Adjournment.

# COLUMBIA POLICE OFFICERS' ASSOCIATION



Post Office Box 267, Columbia, Missouri 65205

July 4, 2011

Citizens Police Review Board  
701 East Broadway  
Columbia, Missouri 65205

## I. INTRODUCTION

The Columbia Police Officers' Association ("CPOA") would like to thank you for the opportunity to clarify the concerns expressed by our association at your May 11, 2011 meeting. We hope that this response can serve as a catalyst for future discussions between CPOA, the Columbia Police Department ("CPD" of "the Department"), the Citizens Police Review Board ("the CPRB" or "the Board") and other interested stakeholders.

As you are generally aware, CPOA believes that the current CPRB enabling ordinance should be amended. We feel that these amendments will help limit the City's exposure to litigation, but will not detract from the purpose or the effectiveness of civilian review in our community.

CPOA understands that the CPRB perceived our previous references to these ordinance amendments to be unnecessarily vague. For this reason, we hope this communication will help to clarify our specific concerns. It is our understanding that we have been asked to present conceptual changes, as opposed to precise language. Should you find any or all of these conceptual changes appealing, we would be delighted to collaborate with you at a future work session or to provide input on specific verbiage as requested.

As a final matter, we understand that CPD has also submitted a number of proposed ordinance amendments. While we agree with the majority of these changes conceptually, we neither endorse nor condemn the precise language included in the Department's proposal. In order to clarify our position in respect to the Department's proposal, we will attempt in this letter to comment on each of the Department's recommendations, even if only to express that we have no position. Please remember that the opinions expressed in this communication are those of CPOA and do not reflect the position of CPD.

## II. PROPOSED ORDINANCE AMENDMENTS

### A. SECTION 21-45 (DEFINITIONS)

The ordinance needs a definition of "misconduct." CPOA agrees with the Department's proposal and recommends that the Board endorse an amendment defining "misconduct" as provided

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in the Missouri Revised Statutes. We are aware that the Board has examined and rejected this proposal previously, but we ask that you reconsider. We perceive that the Board is of the opinion that the Department, by and through a similar recommendation, is attempting to limit the Board's jurisdiction. We do not believe that such is the Department's intent. To the contrary, as stated by Chief Burton previously, the Department's proposal is an attempt to ensure that the Board and the Department's Internal Affairs Division are "on the same sheet of music." In our opinion, the Department wants to ensure that they are investigating the complaints that need to be investigated, while at the same time ensuring that they are not misappropriating resources to those that do not warrant formal review. We concur with this goal. We believe this issue is one of confusion and resource management – not necessarily jurisdiction.

To the extent the Board is concerned about the effect of this proposal on its jurisdiction, it should not be. As a general legal principle, a municipality is free to exact laws that are narrower than those established on a topic by their respective state legislature, but may not enact laws that are more expansive. Our Missouri State Legislature has defined the maximum amount of jurisdiction that be may conferred upon a municipal civilian review board, in providing that such boards "...shall have the power to receive, investigate, make findings and recommend disciplinary action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability..." Section 590.653.2, RSMo (Cum. Supp. 2010). You cannot expand this jurisdiction. By adopting, verbatim, the definition of misconduct provided in the Missouri Revised Statutes, you do not constrict the Board's jurisdiction, but ensure that the Board retains the maximum amount of authority permissible at law.

## **B. SECTION 21-48 (TRAINING)**

CPOA wholeheartedly supports continuing education and training requirements for each and every member of the Board. As police practices evolve, and as the law governing those practices changes, we expect Board members to become familiar with these substantive and technical changes. All professionals, including police officers, are subject to continuing education requirements and we ask that the Board be held to a similar standard. Our proposal would include, but not be limited to, quarterly ride-along requirements and perhaps semi-annual legal updates.

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## C. SECTION 21-51 (STANDING AND STATUTE OF LIMITATIONS)

### 1. STANDING

We recommend that Section 21-51 be amended to narrow the scope of citizens who have standing to file complaints. We feel that the standing requirement under the current ordinance is too expensive and, as such, has allowed individuals and groups to commandeer the agenda and proper functioning of the CPRB. We believe there may be middle ground between the ordinance as written and the changes proposed by CPD.

### 2. STATUTE OF LIMITATIONS

CPOA does not have a strong opinion on this issue. We believe that CPD raised a very valid practical matter in pointing out that consistent with state law, the current retention time for untagged audio and video files is 60 days.

## D. SECTION 21-52 (INTERACTION WITH IA FINDINGS)

### 1. LIVE "TESTIMONY" FROM WITNESSES

We concur with CPD that live "testimony" from officers, complainants and witnesses should be elicited sparingly. We place the word testimony in quotations because while generally referred to as such, the comments given by individuals speaking before the Board have no evidentiary protections. They are not provided under oath and are not subject to the rules of evidence (i.e. regarding relevancy or hearsay). The Missouri State Legislature perhaps acknowledged this problem in providing that "[n]o finding or recommendation shall be based solely upon an unsworn complaint or statement..." *Id.* We would also like to remind you that requiring officers to testify may affect subsequent criminal prosecution of those officers (you may in essence be granting them immunity).

### 2. FINDINGS CATEGORIES

We agree with CPD that the Board should use the same categories of findings as used by CPD in the underlying Internal Affairs investigation (Sustained, Not Sustained, Exonerated, or Unfounded). We do not believe that the Board comments must necessarily be limited to these findings (in other words it may be appropriate to issue an attached opinion/explanation), but use of those disposition categories would appear to be more consistent with the findings that the ordinance requires the Chief to use in his underlying review.

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We provide an additional recommendation regarding opinions/explanation in Section III below.

## **E. SECTION 21-54 OPEN RECORDS AND MEETINGS**

At the outset of this discussion, we feel it appropriate to mention that addressing the personnel record implications of the current ordinance is our number one priority. If left unaddressed, we believe that the current interpretation of the ordinance's current wording may subject our members and our City to an increasing amount of civil litigation.

Please forgive the long-winded discussion, but perhaps a bit of history will help clarify our perspective on this issue. Prior to the enactment of the CPRB ordinance, the employment/personnel files of officers and all other City employees were closed (i.e. not publicly available) by virtue of Section 2 of the Code of City Ordinances. Admittedly, an exception to this rule would have been in an instance where a criminal complaint was filed against an employee. In that case, under most circumstances, the records related to that criminal complaint would have been open once such criminal complaint had been disposed

Relevant to this discussion, the CPRB ordinance reads as follows: "Notwithstanding Section 2-25.3, all records pertaining to complaints filed against police officers alleging misconduct of the police officer shall be open records..." As is currently interpreted, this section operates to open to the public all records related to any complaint, filed at any time. In other words, the records do not have to pertain to a complaint that is currently pending before the Board. The request does not have to be made by the individual filing the complaint. Anyone willing to pay the copying fees and expenses could request, in bulk, all records pertaining to any complaint ever filed against any officer of the Columbia Police Department. We feel that this is overreaching, unnecessary, and beyond the intent of City Council in passing the CPRB enabling legislation.

We understand that the Board has a job to do and in order to conduct a thorough and necessary review, the Board must have access to the documents relevant to the complaint pending before it. We are not attempting to limit the Board's private access to these records, but we cannot and do not see the necessity in removing these protections as they relate to the public at large. These protections are afforded to private sector employees and to all other employees of the City of Columbia. We ask that this section of the ordinance be amended to address these concerns. As with many of these issues, we believe that there may be middle ground between "all open" and "all closed."

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## F. OTHER COMMENTS (MEDIATION)

At this time, CPOA has no opinion on the necessity or structure of a complaint mediation process. We would be happy to provide input in the future if requested.

## III. PROPOSED BYLAW AMENDMENTS

### A. OPINIONS AND DECISIONS

We strongly believe that the Board should examine the way in which it issues opinions. While we feel that an amendment in this respect is extremely important, we believe that such may be addressed more appropriately in the context of the Board's bylaws, as opposed to its enabling ordinance.

We recommend that at the conclusion of an appeal, the Board discuss the matter (if it so chooses) and then take an informal vote upon the disposition of the complaint. We believe that the purpose of any discussion should be to discuss the merits of the case, but also to give guidance to the individual who will be drafting any subsequent opinion (if one is to be issued). We propose that the draft opinion then be presented to the Board at its next general meeting, to be formally voted upon and issued as the final decision. A similar process is used in some instances in Missouri state government and we believe that such procedure promotes transparency and compliance with the Sunshine law, increases accountability of Board members and the Board as a whole, and provides an opportunity for dissenting individuals to issue timely concurrences or dissents as they deem appropriate.

## IV. CONCLUSION

The men and women of the Columbia Police Officers' Association thank you for the opportunity to provide these comments. Please do not hesitate to contact us should you have any questions. In addition, we would be glad to collaborate with you in a future work session to develop these concepts further. Thank you for your service and we look forward to working with you in the future.

Sincerely,

**THE CPOA BOARD OF DIRECTORS**

## **-POSITIVE CONNECTIONS-**

The following recommendations are being offered as a potential method for establishing positive connections between the CPRB and Columbia Police Officers.

1. **-Ride-a-long:** -CPRB member encouraged to ride with on duty police officers quarterly.  
-Rotate Ride-a-long with different police shifts.
2. **-Positive Recognition:** -Officers receiving special recognition from police department or other organizations publicly recognized by CPRB during monthly CPRB meeting.
3. **-New Business Invitation:** -Monthly agenda item under New Business provided for police officers/members of the Columbia Police Officers Association, to address the CPRB. Post monthly notice at the police department of standing invitation.