

SALT LAKE CITY COUNCIL STAFF REPORT

DATE: March 12, 2004

SUBJECT: **Amendment to Police Civilian Review Board Ordinance**

AFFECTED COUNCIL DISTRICTS: Citywide

STAFF REPORT BY: Gary Mumford

ADMINISTRATIVE DEPT. AND CONTACT PERSON: Management Services
Linda Hamilton, Civilian Review Board Administrator

CC: Rocky Fluhart, Linda Hamilton, Chief Dinse, JD Baxter

KEY ELEMENTS:

The Police Civilian Review Board is recommending an amendment to resolve some procedural problems and make some clarifications. The ordinance requires the Board to investigate all use of force complaints and any other complaints selected by the Board. The ordinance also requires the Board to review any decision with which the complainant was dissatisfied if the review is request within 30 days. The major change proposed in this amendment relates to appeals made by complainants.

MATTERS AT ISSUE:

The ordinance provides that a person dissatisfied with the decision of the Police Chief can make a request to the Board for a review within 30 days of the Chief's decision. This review is made by reviewing records of the Police Department regarding the incident but without questioning witnesses. A panel is appointed to review the investigator's findings and to prepare a report to the Police Chief. If the Board found gaps in the investigation, it could recommend that the original investigation be reopened. The Police Chief is to determine whether or not to reopen the case. The procedural problem with these appeals is that during the 30-day period the officer has already been disciplined or exonerated and believes that the matter is closed. The Memorandum of Understanding with the Police Union does not allow a case to be reopened after the Police Chief has made a decision. Although, the Memorandum of Understanding could probably be changed, the Union desires that investigations be concluded within a short period of time.

The Board is confident that the Police Department would initiate a new complaint if significant new information comes forward that may have altered the outcome of the original investigation. The Civilian Review Board Administrator would then participate in the new investigation. Filing of a new complaint eliminates the problem of recommending that a closed case be reopened, but still ensures that significant new information will not be ignored.

The other proposed changes are as follows:

Reduce training from Internal Affairs from eight hours to two hours – The ordinance provides for training of Board members as follows: (1) a specific training course as determined by the Police Chief and the Mayor, (2) eight hours of training by the Internal Affairs Division, and (3) two three-hour ride-alongs (one in each of the two police sectors). This training must be completed before a board member can actively participate on the board. The Police Department has developed a Police Citizen’s Academy tailored specifically for board members to meet the training required under item number 1 above. The Police Department is recommending that two hours of training from the Internal Affairs Division be sufficient for new board members rather than the eight hours currently required in item number 2. New board members also participate in the required ride-a-longs.

Give Board members six months rather than three months to complete their training – It may not be efficient for the Police Department to provide an academy for just one board member. Sometimes it may be necessary to wait until at least two new board members need training.

Allow complainants to be notified orally or in writing of their right to file a claim with the Civilian Review Board – Since complainants frequently file complaints with Internal Affairs over the phone, it is more manageable to notify them of the Board option at the same time.

Allow Board Members and the Administrator to discuss information in officer’s files with the Board Advisor – The current ordinance allow Board Members and the Administrator to discuss the file only with the Police Chief or designee, the Internal Affairs Unit, the Mayor or designee, or the Office of the City Attorney. This amendment will clarify that the Board and Administrator can discuss the file with the Board Advisor.

Allow the Administrator to interview witnesses that Internal Affairs did not intend to interview – The City Attorney’s Office has interpreted the current ordinance as prohibiting the Administrator from requiring that witnesses be interviewed. The Civilian Review Board is requesting a change to allow the Administrator to interview witnesses as long as Internal Affairs is invited to attend.

Delete the requirement of sending panel reports to the entire Board – The current ordinance requires reports of panels to be distributed to the Police Chief and to the Board. The Board is recommending that the entire Board receive a quarterly summary report (with names eradicated) rather than panel reports. Sending out 14 copies of a report would increase the likelihood of an accidental breach of confidentiality.

Allow the Administrator to attend pre-disciplinary hearings – A pre-disciplinary hearing gives the officer the opportunity to refute the allegations, provide additional information, and articulate any mitigating factors. The Union is requesting that the Administrator be allowed to attend pre-disciplinary hearings when the Administrator has conducted an independent investigation.

Correct two errors in the ordinance – The proposed amendment adds a period (2.72.080) and changes the word “complaint” to “incident” (2.72.200).

The paperwork from the Administration includes a letter from the Police Chief indicating that he has reviewed the proposed ordinance changes to the Civilian Review Board and concurs with these changes.

BACKGROUND:

The ordinance that was in place prior to June 2002 provided that the Civilian Review Board evaluate trends in complaints of police officer misconduct, but did not allow the Board to make recommendations regarding specific cases. The ordinance that the City Council adopted on June 18, 2002 allows the Civilian Review Board to make recommendations regarding individual cases and officers. The ordinance provides for a full-time Board Administrator position and a non-paid Board Advisor with prior police experience.

The Civilian Review Board investigates all cases in which it is claimed that a police officer used excessive force. The Board Administrator becomes a participant with Internal Affairs in interviewing witnesses and reviewing other information. A five-member panel is randomly selected to review the findings of the Board Administrator and prepare a report for the Police Chief. If there is disagreement among panel members a minority report can be submitted. A new panel is created for each case.

The Board Administrator performs the review concurrently with the Internal Affairs investigation, and the Board Administrator is able to participate in the Internal Affairs interviewing sessions. After completion of the review, the Board Administrator forwards recommendations to a Board panel. The Board panel forwards a report to the Police Chief. The Police Chief has the recommendations of the Board panel as well as Internal Affairs when making decisions concerning discipline. The Chief makes the final decision.

A person who files a complaint with the Police Department is informed that the person can also file the complaint with the Civilian Review Board within four business days. The Board has the option of accepting or not accepting the complaint. This decision is made promptly so that the Board Administrator can participate with the review made by Internal Affairs.

Every six months the Board prepares an advisory report highlighting the trends in police performance and gives recommendations regarding training needs or changes in police policy and procedures.

CHRONOLOGY:

February 1993 - Salt Lake City implemented a police review board that included citizen participation (2 citizens and 3 police officers).

1995 - A third citizen was added to the board.

Summer 1996 - A Council Member suggested inquiring into the review board process after talking to concerned constituents.

October 3, 1996 - A special committee was established to evaluate the effectiveness of the review process and propose further improvements.

August 5, 1997 - The City Council adopted an ordinance providing for a police civilian review board made up entirely of citizens with staff support independent of the Police Department.

March 2, 1999 - The City Council adopted an amendment to the Civilian Review Board Ordinance that (1) increased the number of board members from five to seven, (2) specified that the City Attorney is the attorney for the Civilian Review Board, (3) specified that closure of meetings be governed by the Open and Public Meetings Act, (4) clarified that police officers can be compelled to attend and testify in meetings of the Board, (5) required that requests for reviews be signed and dated by the person making the request, and (6) clarified that recommendations are limited to matters involving overall police performance or policy concerns.

June 18, 2002 - The City Council adopted an ordinance giving significantly more authority to the Police Civilian Review Board than the previous ordinance. It created an Investigator position, gave the Board authority to investigate individual complaints against Police officers and to review the final decision of the Police Chief on complaints already investigated by Internal Affairs.

July 8, 2003 - The City Council adopted an amendment to the ordinance to make some housekeeping corrections and provide some clarification to make the process more practical.
