

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 4.08 of the Lincoln Municipal Code relating
2 to the Citizen Police Advisory Board by amending Section 4.08.010 to update language to reflect
3 the continuing existence of such board and reorganization of Chapter 4.08; amending Section
4 4.08.020 to create new category of General Complaints and to reflect reorganization of Chapter 4.08;
5 amending Section 4.08.030 to clarify and update procedures for filing complaints with the Citizen
6 Police Advisory Board; adding a new section numbered 4.08.040 to clarify the jurisdiction of the
7 Citizen Police Advisory Board to provide that it shall not have jurisdiction over any complaint while
8 any civil or criminal action arising from the subject matter of the complaint is pending; providing
9 that the filing of a civil action by complainant shall permanently deprive the Citizen Police Advisory
10 Board of jurisdiction over an Event-Based Complaint concerning that event, but allowing the Board,
11 in its discretion, to consider a General Complaint relating to such facts; allowing the refiling of
12 Event-Based Complaints after criminal or civil actions are no longer pending and setting forth the
13 time limit for such refiling; and providing procedures for jurisdictional dismissals and review of
14 such dismissals; adding a new section numbered 4.08.050 to clarify Board procedures for
15 investigating and hearing complaints; renumbering existing Section 4.08.040 as Section 4.08.060;
16 renumbering existing Section 4.08.050 as Section 4.08.070; and repealing Sections 4.08.010,
17 4.08.020, 4.08.030, 4.08.040, and 4.08.050 of the Lincoln Municipal Code as hitherto existing.

18 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

19 Section 1. That Section 4.08.010 of the Lincoln Municipal Code be amended to read
20 as follows:

1 **4.08.010 Purpose; Board Created; Powers and Duties.**

2 A properly administered mechanism for review of complaints concerning police procedures
3 and policies ~~would~~ serve both the professional interests of the Lincoln Police Department and the
4 general interests of the community by fostering better police-community relations and by
5 maintaining police services commensurate with the expectations of the community. ~~Therefore, there~~
6 ~~is hereby~~ The City of Lincoln has therefore created for the administration of this chapter a Citizen
7 Police Advisory Board ("CPAB"), ~~which shall be~~ composed of seven members who ~~shall~~ serve
8 without remuneration, to administer this chapter. Said board shall be appointed by the Mayor and
9 approved by the City Council and shall consist of ~~seven~~ individuals who ~~shall be~~ representative of
10 represent a cross-section of the citizens of the community. ~~Three of the members first appointed~~
11 ~~shall serve for a period of one year, three for a period of two years, and one for a period of three~~
12 ~~years. Thereafter, each~~ Each appointee shall serve for a period of three years. Any vacancy occurring
13 shall be filled in the same manner as provided for in the original appointment.

14 The board herein established shall ~~operate as a mechanism to review complaints of alleged~~
15 ~~police misconduct by the use of excessive force, abuse of authority, or extreme discourtesy, and~~
16 ~~shall also hear complaints of a general nature concerning the policies and procedures of the Lincoln~~
17 ~~Police Department. The board shall review and investigate such~~ and review event-based complaints
18 and general complaints as described in this chapter and shall submit written reports of its findings
19 and recommendations as hereinafter set forth.

20 The board shall ~~have no jurisdiction to hear complaints or conduct an investigation while a~~
21 ~~criminal action relating to the complaint is pending against either the complainant or the officer or~~
22 ~~officers involved. The board shall meet at least once a year and shall at that time~~ annual meeting at
23 which it shall elect a chairperson from among its members and adopt rules and regulations for the

1 conduct of meetings of the board. ~~Legal service~~ The board may meet a such other times as it shall
2 deem necessary. ~~shall be provided by an~~ An attorney from the office of the City Attorney shall serve
3 as legal counsel to the board. ~~In addition to the designated members,~~ One officer from the Police
4 Department ~~in addition to the designated members~~ shall serve as a nonvoting liaison member of the
5 board.

6 Section 2. That Section 4.08.020 of the Lincoln Municipal Code be amended to read
7 as follows:

8 **4.08.020 Complaints; ~~in Writing; Time Limit~~ Types.**

9 ~~Complaints must be filed in person within forty-five days of the alleged occurrence of~~

10 The board may exercise jurisdiction over event-based complaints and general complaints.

11 (a) Event-based Complaints: Event-based complaints are complaints regarding conduct
12 of a specific officer or officers which concern an event or series of events investigated by or
13 responded to by the officer(s), such as alleged misconduct by the use of excessive force, abuse of
14 authority, or extreme discourtesy.

15 (b) General Complaints: General complaints are complaints regarding practices, policies
16 and procedures of the Lincoln Police Department in general, and where no specific officer or event
17 is the subject of the complaint.

18 ~~on the part of a police officer or officers. However, if a criminal action relating to the complaint is~~
19 ~~pending against either the complainant or the officer or officers involved, then such forty-five day~~
20 ~~period shall start from the rendering of a verdict on the criminal action. Should the complainant file~~
21 ~~a civil action regarding any of the facts of this matter, the Citizen Police Advisory Board will lose~~
22 ~~jurisdiction over any complaint relating to those same facts. All complaints shall be on a form~~
23 ~~approved by the board and shall be signed by the complainant. Complaints may be filed by~~

1 ~~aggrieved parties or by interested persons or interested organizations. All complaints shall be filed~~
2 ~~in the office of the Mayor of the City of Lincoln and shall be handled in a confidential manner so~~
3 ~~as to avoid publication of the names of the complainant, witnesses, or officers involved therein.~~
4 ~~Before acceptance of a complaint for filing, inquiry shall be made of the complainant or~~
5 ~~complainants as to whether or not the Police Department has been contacted concerning the~~
6 ~~complaint, and if not, whether or not the complainant or complainants desire to seek review of the~~
7 ~~complaint by the Police Department before filing the complaint with the Citizen Police Advisory~~
8 ~~Board. However, the complainant or complainants shall not be required to seek review of the~~
9 ~~complaint by the Police Department as a precondition to filing the complaint for review by the~~
10 ~~Citizen Police Advisory Board.~~

11 Section 3. That Section 4.08.030 of the Lincoln Municipal Code be amended to read
12 as follows:

13 **4.08.030 Copy of Complaint to Police Department; Rules of Procedure. Complaints;**
14 **Form; Time Limit; Content.**

15 ~~Upon receipt of a complaint as set out above, the office the Mayor shall forward a copy of~~
16 ~~such complaint to the Police Chief and members of the Citizen Police Advisory Board. The~~
17 ~~chairperson shall determine whether the complaint is redundant to other unsustained complaints~~
18 ~~previously filed by the same party, filed out of time, filed against parties other than members of the~~
19 ~~Lincoln Police Department, or is wholly frivolous on its face. In such event, the chairperson may~~
20 ~~dismiss the complaint; however, any complaint so dismissed shall be reviewed at the next regular~~
21 ~~meeting of the Citizen Police Advisory Board and the Board as a whole shall either ratify the~~
22 ~~decision of the chairperson or overturn the same. Should the Citizen Police Advisory Board overturn~~
23 ~~the decision of the chairperson, then the complaint shall be investigated and the time periods as~~
24 ~~hereinafter set forth shall start with that decision. Thereupon, the chairperson shall designate two~~
25 ~~members of the board, which designation shall be upon a rotating basis when possible, to meet~~
26 ~~informally with the complainant or complainants, police officer of officers involved in the~~
27 ~~complaint, and two members of the Police Department to be designated by the Police Chief. The~~
28 ~~informal meeting shall be held as soon as possible, not exceeding thirty working days after the~~
29 ~~receipt of the complaint. At the informal meeting, an attempt shall be made to resolve the problem~~
30 ~~or problems, if any, raised in the complaint filed against the Police Department by conference and~~
31 ~~conciliation. The board members participating in the informal meeting shall report to the board at~~
32 ~~a full public meeting of the board held within fifteen working days after the conclusion of such~~

1 initial informal meeting, and shall advise the board as to the proceedings and result of such meeting.
2 The report of the members shall indicate whether (a) there was or was not a basis for the allegations
3 of the complaint; (b) whether the complaint was resolved by the meeting; (c) whether another
4 meeting or meetings will be held to further attempt to resolve the complaint; or (d) whether the
5 complaint is not likely to be resolved through the informal meeting procedure. If the complaint has
6 been resolved at the informal meeting, no further action shall be taken by the board. However, if the
7 complainant is not satisfied with the results of the informal meetings, and resolution of the complaint
8 through further informal meetings appears unlikely, then the full board shall consider the report of
9 the Internal Affairs Unit and the report of the board members participating in the informal meetings
10 and, based upon those reports, shall submit a report and recommendation as hereinafter set out.
11 Throughout all informal meetings and public hearings by the full board, and in all reports of the
12 board, the names of the complainants and officers involved shall remain confidential.

13 (a) Except as provided in § 4.08.040(d), an Event-based Complaint shall be filed within
14 forty-five days of the alleged occurrence of the police misconduct. The complaint shall be filed at
15 the office of the Mayor in person by the complainant, provided, however, that in cases where it is
16 shown that disability or economic hardship of the complainant makes personal filing difficult or
17 impossible, the board chairperson shall have discretion to allow filing by first-class mail, by an agent
18 or representative of complainant, or by other reasonable means. The complaint must be in writing
19 on a form approved by the board, and shall include, at a minimum, the following information:

20 (1) Complainant's name, address, and day-time telephone contact number.

21 (2) Date and location of the event from which the complaint stems.

22 (3) Name or badge number of any officer that is the subject of the complaint, if
23 known.

24 (4) Names, addresses, and telephone contact numbers of any known witnesses to the
25 conduct that is the subject of the complaint.

26 (5) Detailed narrative describing the misconduct.

27 (6) Remedy complainant seeks.

1 (7) Whether any citations were issued or arrests made, and the names of persons cited
2 or arrested including case or citation numbers, if known.

3 (8) Description of any pending criminal prosecution or civil lawsuit that arose from
4 the event.

5 (9) Signed waiver and agreement by complainant providing that: (i) to the extent
6 permitted by law, all matters relating to the investigation and review of the matter by the board or
7 its subsidiaries will remain confidential and that no statements, exhibits, or reports made or used by
8 any witness, party, or CPAB board member during any formal or informal meeting or at any stage
9 in the CPAB investigation may be used in any court or administrative forum, whether civil or
10 criminal; provided, however, that complainant has been informed and acknowledges that the board
11 has a duty to, and shall, report criminal conduct to proper authority; and (ii) Complainant will
12 immediately notify the office of the Mayor if civil or criminal proceedings relating to the event that
13 is the subject of the complaint are instituted after the complaint is filed but before the board issues
14 its report.

15 (10) Any other information required by the board on its complaint form.

16 (b) A General Complaint may be filed any time. The complaint shall be filed at the office
17 of the Mayor, in person, by the complainant, provided, however, that in cases where it is shown that
18 disability or economic hardship of the complainant makes personal filing difficult or impossible,
19 filing may be allowed by first-class mail, by an agent or representative of complainant, or by other
20 reasonable means. The complaint must be in writing on a form approved by the board, and shall
21 include, at a minimum, the following information:

22 (1) Complainant's name, address, and day-time telephone contact number.

23 (2) The policy, practice or procedure that is the subject of the complaint.

1 (3) Detailed narrative stating why the complaint is being filed.

2 (4) Complainant's suggested remedy.

3 (5) Description of any pending criminal prosecution or civil lawsuit relating to the
4 practice, policy or procedure that is the subject of the complaint.

5 (6) Signed waiver and agreement by complainant providing that: (i) to the extent
6 permitted by law, all matters relating to the investigation and review of the matter by the board or
7 its subsidiaries will remain confidential and that no statements, exhibits, or reports made or used by
8 any witness, party, or CPAB board member during any formal or informal meeting or at any stage
9 in the CPAB investigation may be used in any court or administrative forum, whether civil or
10 criminal; provided however, that complainant has been informed and acknowledges that the board
11 has a duty to, and shall, report criminal conduct to proper authority; and (ii) Complainant will
12 immediately notify the office of the Mayor if civil or criminal proceedings relating to the policy or
13 procedure that is the subject of the complaint are instituted after the complaint is filed but before the
14 board issues its report.

15 (7) Any other information required by the board on its complaint form.

16 Section 4. That Chapter 4.08 of the Lincoln Municipal Code be amended by adding
17 a new section numbered 4.08.040 to read as follows:

18 **4.08.040 Complaints; Jurisdiction.**

19 (a) The board shall have no jurisdiction to hear complaints or conduct an investigation
20 while any civil suit or criminal action relating to the complaint is pending. Upon commencement
21 of any civil or criminal action relating to an event that is the subject of a complaint, or to a practice,
22 policy or procedure that is the subject of a complaint after such complaint has been filed, regardless
23 of who files the action, the Citizen Police Advisory Board shall lose jurisdiction over that complaint.

1 **(b) Should complainant at any time file a civil action regarding any of the facts relating**
2 **to an event or alleged police conduct, the board shall permanently lose jurisdiction over any**
3 **event-based complaint arising from that event or conduct. A majority of the board may decide,**
4 **however, in the exercise of its discretion, to consider a general complaint relating to those facts at**
5 **such time as the civil proceedings have been finally dismissed, concluded or otherwise resolved and**
6 **no other civil or criminal proceedings based on the event or conduct are pending.**

7 **(c) Upon receipt of a complaint as set out above, the office of the Mayor shall forward a**
8 **copy of such complaint to the Police Chief and members of the Citizen Police Advisory Board. The**
9 **board chairperson shall determine whether the board has jurisdiction over the complaint by**
10 **considering whether any of the following factors are present:**

11 **(1) A civil or criminal action relating to the complaint is pending, regardless of**
12 **whether complainant is a party to the action;**

13 **(2) The complainant has filed a civil action based upon the event or alleged police**
14 **conduct upon which the complaint is based;**

15 **(3) The complaint is redundant to other complaints previously filed by the same**
16 **party;**

17 **(4) The complaint is filed out of time;**

18 **(5) The complaint is filed against parties other than members of the Lincoln Police**
19 **Department;**

20 **(6) The complaint relates to events that were the basis of prior complaints handled**
21 **by or pending before the Board; or**

22 **(7) The complaint is wholly frivolous on its face.**

1 In the event the chairperson determines that any one or more of the factors listed in (1) - (7) above
2 is present, the chairperson shall dismiss the complaint for want of jurisdiction; however, any
3 complaint dismissed for any reason shall be reviewed at the next regular meeting of the Citizen
4 Police Advisory Board and the board as a whole shall either ratify the decision of the chairperson
5 or overturn the same. The only grounds for overturning dismissal of a complaint under subparagraph
6 (c)(2), however, shall be to exercise the board's discretion to consider a general complaint relating
7 to the facts which give rise to the complaint after no civil or criminal proceedings based on the event
8 or conduct remain pending.

9 Should the Citizen Police Advisory Board overturn the decision of the chairperson, the
10 complaint shall be investigated and the time periods relating to investigating and reporting shall
11 commence as of the date of the board's decision rather than the date the complaint was filed.

12 (d) In the event that a proper and timely complaint previously filed by a complainant has
13 been dismissed for want of jurisdiction under subparagraph (c)(1) of this section on the grounds that
14 a criminal action was pending or instituted, or on the grounds that a civil action, filed by any person
15 other than complainant, was pending or instituted, complainant may refile such complaint with the
16 Citizen Police Advisory Board within forty-five days of the time all such civil or criminal actions,
17 including any appeals, are finally dismissed, concluded or otherwise resolved and no such actions
18 remain pending.

19 Notwithstanding the foregoing, however, an event-based complaint over which the
20 board did not have jurisdiction because of the provisions of subparagraphs (b) and (c)(2) of this
21 section may not be refiled under this subparagraph (d).

22 (e) Notwithstanding any other provision of this section, no time limit shall apply to filing
23 a general complaint, including a general complaint described in subparagraphs (b) and (c)(2) of this

1 section; provided, however, that the board shall have power in the exercise of its discretion to hear
2 or to refuse to hear any general complaint to which the circumstances in subparagraphs (b) and (c)
3 (2) of this section apply.

4 (f) If the chairperson determines that any complainant's characterization of a complaint
5 as event-based or general is in error, the chairperson shall properly characterize the complaint for
6 review and investigation in accordance with the procedures herein.

7 Section 5. That Chapter 4.08 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 4.08.050 to read as follows:

9 **4.08.050 Procedure**

10 Throughout all informal subcommittee meetings and all public hearings by the full board,
11 and in all reports of the board, names of complainants and officers involved shall remain
12 confidential.

13 The Board shall complete its investigation of an event-based or general complaint within
14 sixty days after the filing of the complaint. After the chairperson has conducted initial review of the
15 complaint as provided in § 4.08.040(b), the chairperson shall designate two members of the board
16 as a subcommittee to investigate the complaint, including conduct of an initial interview of the
17 complainant. The Police Chief shall also designate one or more members of the Police Department
18 to investigate on behalf of the department. An informal meeting or meetings with the complainant,
19 police investigators and any officers involved shall be held as soon as practicable, but not exceeding
20 thirty working days after filing of the complaint, at which the subcommittee shall attempt to resolve
21 the complaint by conference and conciliation. Witnesses may be permitted to appear voluntarily on
22 behalf of the complainant or the officers in the discretion of the board subcommittee members, but
23 neither the board nor the subcommittee are empowered to issue subpoenas or other legal process or

1 to otherwise compel attendance of witnesses. The subcommittee members participating in informal
2 meetings shall report at the next public meeting of the board to occur after such informal meetings,
3 and shall advise the board as to the proceedings and result of such meetings. The report of
4 subcommittee members shall indicate whether (a) there was or was not a basis for the allegations
5 of the complaint; (b) whether the complaint was resolved by meetings; (c) whether another meeting
6 or meetings will be held to further attempt to resolve the complaint; or (d) whether the complaint
7 is not likely to be resolved through the informal meeting procedure. If the complaint has been
8 resolved by informal meetings, no further action shall be taken by the board.

9 If informal meetings do not resolve the complaint and resolution of the complaint through
10 further informal meetings appears unlikely, the full board shall prepare a report and recommendation
11 as hereinafter set out, based upon the reports of the informal subcommittee meetings.

12 Section 6. That existing Section 4.08.040 of the Lincoln Municipal Code be
13 renumbered as Section 4.08.060 and amended to read as follows:

14 **4.08.040 4.08.060 Findings; Report.**

15 After a review of all the reports, the board shall make a findings as follows:

16 (a) That the complaint warrants corrective action to be taken on the part of the Mayor
17 and/or the Police Chief; or

18 (b) That the complaint does not warrant any corrective action.

19 The board shall put its findings in writing and shall send a copy of such findings to the City
20 Council, the Mayor, and the Chief of Police, and may include in such written findings, a
21 recommendation of the action which the board feels is necessary to correct the policies or activities
22 of the Police Department upon which the complaint is based. The complainant shall also be notified
23 of the result of the hearing.

1 Section 7. That existing Section 4.08.050 of the Lincoln Municipal Code be
2 renumbered as Section 4.08.070 and amended to read as follows:

3 **~~4.08.050~~ 4.08.070 Annual Review.**

4 ~~The board shall meet at least once a year and~~ At its annual meeting, the board shall review
5 all complaints received. If the board determines that the complaints indicate a pattern of misconduct
6 or show that particular police policies are being met with significant disapproval by a substantial
7 number of citizens, then the board shall make a report in writing to the City Council, the Mayor and
8 the Police Chief outlining such patterns of misconduct or police policies and shall make
9 recommendations and proposals for their correction.

10 Section 8. That Sections 4.08.010, 4.08.020, 4.08.030, 4.08.040, and 4.08.050 of the
11 Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

12 Section 9. That this ordinance shall take effect and be in force from and after its
13 passage and publication in one issue of a daily or weekly newspaper of general circulation in the
14 City, according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2011: _____ Mayor
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