

CHAPTER 4.08

CITIZEN POLICE ADVISORY BOARD

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4.08.010 Purpose; Board Created; Powers and Duties.

A properly administered mechanism for review of complaints concerning police procedures and policies serves both the professional interests of the Lincoln Police Department and the general interests of the community by fostering better police-community relations and by maintaining police services commensurate with the expectations of the community. The City of Lincoln has therefore created the Citizen Police Advisory Board (“CPAB”), composed of seven members who serve without remuneration, to administer this chapter. Said board shall be appointed by the Mayor and approved by the City Council and shall consist of individuals who represent a cross-section of the citizens of the community. Each appointee shall serve for a period of three years. Any vacancy occurring shall be filled in the same manner as provided for in the original appointment.

The board herein established shall investigate and review event-based complaints and general complaints as described in this chapter and submit written reports of its findings and recommendations as hereinafter set forth.

The board shall conduct an annual meeting at which it shall elect a chairperson from among its members and adopt rules and regulations for the conduct of meetings of the board. The board may meet at such other times as it shall deem necessary. An attorney from the office of the City Attorney shall serve as legal counsel to the board. In addition to the designated members, one officer from the Police Department shall serve as a nonvoting liaison member of the board. (Ord. 19499 §1; February 7, 2011: prior Ord. 19044 §1; February 11, 2008: Ord. 15430 §1; February 12, 1990: P.C. §2.31.010; Ord. 11475 §1; September 29, 1975).

4.08.020 Complaints; Types.

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

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

(b) General Complaints: General complaints are complaints regarding practices, policies and procedures of the Lincoln Police Department in general, and where no specific officer or event is the subject of the complaint. (Ord. 19499 §2; February 7, 2011: prior Ord. 19044 §2; February 11, 2008: Ord. 15430 §2; February 12, 1990: P.C. §2.31.020; Ord. 11851 §1; December 6, 1976: Ord. 11475 §1; September 29, 1975).

4.08.030 Complaints; Form; Time Limit; Content.

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

- (1) Complainant's name, address, and day-time telephone contact number.
- (2) Date and location of the event from which the complaint stems.
- (3) Name or badge number of any officer that is the subject of the complaint, if known.
- (4) Names, addresses, and telephone contact numbers of any known witnesses to the conduct that is the subject of the complaint.
- (5) Detailed narrative describing the misconduct.
- (6) Remedy complainant seeks.
- (7) Whether any citations were issued or arrests made, and the names of persons cited or arrested including case or citation numbers, if known.
- (8) Description of any pending criminal prosecution or civil lawsuit that arose from the event.
- (9) Signed waiver and agreement by complainant providing that: (i) to the extent permitted by law, all matters relating to the investigation and review of the matter by the board or its subsidiaries will remain confidential and that no statements, exhibits, or reports made or used by any witness, party, or CPAB board member during any formal or informal meeting or at any stage in the CPAB investigation may be used in any court or administrative forum, whether civil or criminal; provided, however, that complainant has been informed and acknowledges that the board has a duty to, and shall, report criminal conduct to proper authority; and (ii) Complainant will immediately notify the office of the Mayor if civil or criminal proceedings relating to the event that is the subject of the complaint are instituted after the complaint is filed but before the board issues its report.
- (10) Any other information required by the board on its complaint form.

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

- (1) Complainant's name, address, and day-time telephone contact number.
- (2) The policy, practice or procedure that is the subject of the complaint.
- (3) Detailed narrative stating why the complaint is being filed.
- (4) Complainant's suggested remedy.
- (5) Description of any pending criminal prosecution or civil lawsuit relating to the practice, policy or procedure that is the subject of the complaint.
- (6) Signed waiver and agreement by complainant providing that: (i) to the extent permitted by law, all matters relating to the investigation and review of the matter by the board or its subsidiaries will remain confidential and that no statements, exhibits, or reports made or used by any witness, party, or CPAB board member during any formal or informal meeting or at any stage

in the CPAB investigation may be used in any court or administrative forum, whether civil or criminal; provided however, that complainant has been informed and acknowledges that the board has a duty to, and shall, report criminal conduct to proper authority; and (ii) Complainant will immediately notify the office of the Mayor if civil or criminal proceedings relating to the policy or procedure that is the subject of the complaint are instituted after the complaint is filed but before the board issues its report.

(7) Any other information required by the board on its complaint form. (Ord. 19044 §3; February 11, 2008: prior Ord. 17202 §1; June 30, 1997: Ord. 15430 §3; February 12, 1990: P.C. §2.31.030: Ord. 11851 §2; December 6, 1976: Ord. 11475 §1; September 29, 1975).

4.08.040 Complaints; Jurisdiction.

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

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

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

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

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

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

(4) The complaint is filed out of time;

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

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

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

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

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

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

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

(e) Notwithstanding any other provision of this section, no time limit shall apply to filing a general complaint, including a general complaint described in subparagraphs (b) and (c)(2) of this section; provided, however, that the board shall have power in the exercise of its discretion to hear or to refuse to hear any general complaint to which the circumstances in subparagraphs (b) and (c)(2) of this section apply.

(f) If the chairperson determines that any complainant's characterization of a complaint as event-based or general is in error, the chairperson shall properly characterize the complaint for review and investigation in accordance with the procedures herein. (Ord. 19499 §4; February 7, 2011).

4.08.050 Procedure.

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

The Board shall complete its investigation of an event-based or general complaint within sixty days after the filing of the complaint. After the chairperson has conducted initial review of the complaint as provided in § 4.08.040(b), the chairperson shall designate two members of the board as a subcommittee to investigate the complaint, including conduct of an initial interview of the complainant. The Police Chief shall also designate one or more members of the Police Department to investigate on behalf of the department. An informal meeting or meetings with the complainant, police investigators and any officers involved shall be held as soon as practicable, but not exceeding thirty working days after filing of the complaint, at which the subcommittee shall attempt to resolve the complaint by conference and conciliation. Witnesses may be permitted to appear voluntarily on behalf of the complainant or the officers in the discretion of the board subcommittee members, but neither the board nor the subcommittee are empowered to issue subpoenas or other legal process or to otherwise compel attendance of witnesses. The subcommittee members participating in informal meetings shall report at the next public meeting of the board to occur after such informal meetings, and shall advise the board as to the proceedings and result of such meetings. The report of subcommittee members shall indicate whether (a) there was or was not a basis for the allegations of the complaint; (b) whether the complaint was resolved by meetings; (c) whether another meeting or meetings will be held to further attempt to resolve the complaint; or (d) whether the complaint is not likely to be resolved through the informal meeting procedure. If the complaint has been resolved by informal meetings, no further action shall be taken by the board.

If informal meetings do not resolve the complaint and resolution of the complaint through further informal meetings appears unlikely, the full board shall prepare a report and recommendation as hereinafter set out, based upon the reports of the informal subcommittee meetings. (Ord. 19499 §5; February 7, 2011).

4.08.060 Findings; Report.

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

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

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

The board shall put its findings in writing and shall send a copy of such findings to the City Council, the Mayor, and the Chief of Police, and may include in such written findings, a recommendation of the action which the board feels is necessary to correct the policies or activities of the Police Department upon which the complaint is based. The complainant shall also be notified of the result of the hearing. (Ord. 19499 §6; February 12, 2011; P.C. 4.08.040: Ord. 15430 §4; February 12, 1990: P.C. §2.31.040: Ord. 11851 §3; December 6, 1976: prior Ord. 11475 §1; September 29, 1975).

4.08.070 Annual Review.

At its annual meeting, the board shall review all complaints received. If the board determines that the complaints indicate a pattern of misconduct or show that particular police policies are being met with significant disapproval by a substantial number of citizens, then the board shall make a report in writing to the City Council, the Mayor and the Police Chief outlining such patterns of misconduct or police policies and shall make recommendations and proposals for their correction. (Ord. 19499 §7; February 7, 2011; P.C. § 4.08.050: Ord. 15430 §5; February 12, 1990: P.C. §2.31.050: Ord. 11475 §1; September 29, 1975).