Ord. #5620

ORDINANCE NO. 5586

SUBSTITUTE ORDINANCE DELETING CHAPTER 28, ARTICLE VII., Civilian LAW ENFORCEMENT REVIEW BOARD

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 28, Article VII., Civilian Law Enforcement Review Board is hereby substituted to read as follows:

Sec. 28-151. Establishment.

A. *Designation.* There is established a board to be known as the Civilian Law Enforcement Review Board, a board for oversight of law enforcement as provided by the city police department. The board shall investigate complaints originating from Internal Affairs; provided the internal investigation has been completed within 45 days and the original complainant has filed a complaint with the Board.

B. *Members: Appointment.* The board shall consist of the following thirteen members appointed as follows: a law enforcement official or person with a background in criminal justice, a member of the clergy, a medical official, one attorney and citizens at-large appointed by the Memphis city mayor with the approval of the city council, respectively. The chairperson of the city council public safety committee may also serve on the board as an *ex officio,* non-voting member. Members shall be of lawful age and residents of the City of Memphis.

C. *Term of office.* The city mayor shall submit the initial appointments to the council within 30 days of the enactment of this chapter. Of the initial appointments, two shall be for terms of two years; three shall be for terms of three years; and the remainder shall be appointed for terms of four years. Thereafter, terms of office shall be for four years or until their successors are appointed and qualified. In the event of a vacancy whether by reason of resignation, death, or other cause, the Mayor, with the approval of council may elect a successor for the remaining term.

Members shall as a part of their training complete the Citizens Police Academy, participate in an official ride along, and become familiar with Police Policy and Procedures.

#72

D. *Staffing.* Passage of this chapter will cause to be implemented the hiring of staff; an administrator and a minimum of two support persons, one of whom shall be an investigator who will receive the initial complaint, investigate complaints, keep records, maintain the timely posting of all required information to the website, and process the information regarding complaints . Likewise, the establishment of an office for staff to work where files and records are kept and where personal visits by complainants can be made is expressly authorized, and the offices are funded by the city budget in an amount authorized by the Memphis City Council. The Personnel Director will be responsible for hiring personnel.

E. ***Website.*** The Board and the Administrator shall be jointly responsible for the creation and maintenance of a mobile friendly website. The website shall be independent from the main web portal of the City of Memphis. The Administrator shall have a budget for the establishment of the Website and an annual budget to maintain the Website. The Website shall be updated at least monthly and shall include the following:

1. An "About Us" page describing the Board's mission. This page shall also contain a link to this ordinance and any other applicable law.
2. A "Process" page describing, in detail, the options for filing a Complaint with the Board, the process by which Complaints are reviewed, all relevant timing requirements and deadlines, and a description of all possible outcomes.
3. A "Board Members and Staff" page listing office location, hours, and phone number as well as the names, photos, and contact information for all Board members and staff.
4. A "File a Complaint" page containing an online form which can be used to file a formal Complaint.
5. A "Complaints Reviewed" page that lists all Complaints received, and posts the following information for each Complaint:
    a. the current stage in proceedings of each Complaint and the time and place of any hearings or meetings concerning the investigation
    b. no more than 45 days after the complaint is filed, the completed investigation, finding, and recommendation of The Board
    c. no more than 30 days after the Board makes a recommendation, the finding and explanation of action taken by the Police Director.
6. A "Board Meetings" page that posts all approved minutes from meetings of The Board and lists the time and location of future Board meetings.

Any other pages or information that The Board finds necessary to carrying out its mission.

(Code 1985, § 28-151; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-152. Compensation.

All members of the Civilian review board shall serve without compensation.

(Code 1985, § 28-152; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-153. Oath of office.

Members of the board established by this chapter shall qualify and take an oath to uphold the Constitution of the United States and of the state, laws and ordinances of the city to faithfully discharge the duties of such office.

(Code 1985, § 28-153; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-154. Purpose, powers and duties.

The Civilian Law Enforcement Review Board shall receive, cause investigation of, and recommend resolution of complaints filed with it alleging misconduct by members of the Memphis Police Department when such misconduct is directed toward any person who is not a member of that police force. The board will act on complaints filed with it, including but not limited to the use of excessive or deadly force and incidents resulting in the death or injury of persons in police custody; other physical abuse; verbal abuse; harassment; improper procedure, arrest, search, entry; inadequate response or investigation; intimidation or threat; improper firearm or vehicle use; and property issues. The Board is required to appear before the City Council semi-annually and report findings on all complaints filed. The board shall perform such other duties not inconsistent with the provision of this chapter.

In order to carry out its functions, the board is authorized to request through its Council liaison, a subpoena to effectuate an investigation or compel attendance by an officer or witness for a hearing before the Memphis City Council, pursuant to procedures approved by the Memphis City Council. Upon investigation and fact finding, the Council liaison shall present a resolution to the full City Council to obtain the requested subpoena. Should the Council liaison fail to support the request of the board for the subpoena within the next two council meetings following the date of the request, the board Chairperson may make a recommendation to the City Council Chair. In the event the Council fails to issue the requested subpoena, the board reserves the right to file a complaint with the local and state ethics commissions, Tennessee Human Rights Commissions, or the Department of Justice to investigate the case before the CLERB board.

(Code 1985, § 28-154; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-155. Rules and regulations.

A. *Chairperson.* The board established by this chapter shall designate one of its members as chairperson, upon a vote of a majority of the members of the entire board, for a one-year period. The chairperson may succeed himself or herself in office for no more than one term.

B. *Meetings.* Meetings of the Civilian Law Enforcement Review Board shall be held at the call of the chairperson. The established board shall meet at least once per quarter at such time and place the board shall decide. Meeting frequency and duration will be determined by the caseload. Meetings and hearings will be open to the public with proper public notification. Special meetings, open to the public, may be called from time to time on concurrence by three members of the board and/or the chairperson. A majority of the members of the entire board shall constitute a quorum for the transaction of business. The board shall cause a proper record to be kept of its proceedings which shall contain the final disposition of each case, the vote of each member, the absence of any member, and the failure of any member to vote. Written notice of any meeting of the board shall be given to members and the public at least 24 hours prior to the date set for meeting. Members who fail to attend three consecutive meetings shall be dismissed from the board.

C. *Procedures.* The established board may adopt such rules and procedures consistent with existing laws as are necessary for the conduct of its affairs and performance of its functions and responsibilities. All rules and regulations must carry approval by the majority of the entire board. Members of the board shall disqualify themselves from reviewing any case in which they have a personal interest or bias.

(Code 1985, § 28-155; Ord. No. 4285, § 1, 10-25-1994)

State Law reference— *Open meetings act, T.C.A. § 8-44-101 et seq.*

Sec. 28-156. Investigation and disposition of complaints.

A. The board shall cause a full and complete investigation to be made of each complaint filed with the board, except complaints which relates to matters or occurrences that are the subject of pending criminal proceedings. The investigation shall be confined to matters set forth in the complaint. The Civilian Law Enforcement Review Board will review and dispose of the matter upon completion of the investigation.

B. The staff of the board shall forward a copy of the complaint to Internal Affairs, and request a copy of the closed investigative file within 7 days of the receipt of the complaint. If an investigation is ongoing, Internal Affairs shall provide the board with updates regarding its status and upon completion will submit the closed file. The Memphis Police Department shall when feasible conclude its internal investigation within 45 days.

C. Prior to recommending action on a complaint or to determining that a complaint warrants no action, the board may, in its sole discretion, hold a hearing, pursuant to its rules.

D. If the board decides that the complaint should be resolved by promulgation or amendment of rules and regulations it has established, the board shall submit its recommendation to the police director and shall notify the complainant of its disposition of his or her complaint.

E. If the board decides that disciplinary action should be taken against any of the officers or employees under the management and control of the police director then such action shall be in accordance with prevailing current policy of the Memphis Police Department and existing law.

F. If the board determines that the complaint warrants no action, the board shall so notify the complainant.

G. The scope of the investigation shall be limited to those matters identified in the complaint.

(Code 1985, § 28-156; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-157. Civilians' Law Enforcement Board hearing process.

A. Members of the Civilian Law Enforcement Review Board will be provided with an agenda which identifies matters before the board the week prior to the public hearing date.

B. Public hearings will follow a routine agenda which includes the following components:

1. Call to order, roll call;

2. Acceptance of agenda;

3. Approval of previous meeting minutes;

4. Approval of administrative matters;

5. Deliberation of individual cases.

C. Decisions reached during the public hearing will be reported in the meeting minutes distributed during the next public hearing and posted on the website.

D. Prior to the conclusion of the public hearing , the board will set the agenda for the following meeting.

(Code 1985, § 28-157; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-158. Duties of the chairperson.

A. After the election of the chairperson by the board an alternate chairperson shall be appointed from the remaining 12 board members. (Excluded from serving as chairperson would be city council representative.)

B. In the event that the chairperson is absent from a board meeting, the alternate chairperson shall have full powers of the chairperson.

C. The chairperson may administer oaths to all those giving testimony.

D. The chairperson can request, with a majority vote of the board, the attendance of witnesses and the production of evidence in order to further an investigation of a complaint before the board.

E. All persons wishing to be heard in any matter before the board must first be recognized by the chairperson member.

F. With the approval of the board the chairperson may place an investigation on pending/active or pending/inactive status and may hold matters in abeyance.

G. With a majority vote of the board, the chairperson may declare a recess of board proceedings at any time.

(Code 1985, § 28-158; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-159. Cases to be reviewed by the board.

A. The Civilian Law Enforcement Review Board may investigate complaints of alleged misconduct that are filed with Internal Affairs not more than 18 months from the date of the alleged misconduct.

B. The Civilian Law Enforcement Review Board may investigate complaints of alleged misconduct that were eligible to be heard by CLERB from June 1, 2011 to enactment of this chapter by the city.

C. Complaints alleging police misconduct will be placed into one of the following categories for administrative processing:

1.	Force:	The use or threatened use of improper, unnecessary or excessive force by a member of the Memphis Police Department.

2.	Arrest:	The restraint of a person's liberty was improper or unjustified.
3.	Entry:	Entry into building or onto property was improper, to include excessive force being used against property in order to gain entry.
4.	Search:	The search of a person or their property was improper, in violation of established police procedures or unjustified.
5.	Harassment:	The taking of police action which was predicated upon factors which are irrelevant, under the circumstance, to good law enforcement decision making.
6.	Demeanor:	Improper actions regarding an officer's bearing, gestures, language or other action which allegedly is offensive or of doubtful social propriety.
7.	Other Procedures:	Allegation of other actions which are in violation of departmental rules, procedures, or policies.
8.	Service:	The lack or inadequacy of police service.
9.	Property:	Property lost or damaged while in police custody or confiscated through police action.

D. The board, on its own complaint, will investigate cases involving use of deadly force and incidents resulting in the death or injury of persons in police custody.

E. Citizen complaints which allege criminal conduct on the part of the officer shall not be heard by the board. These cases shall be referred to the Memphis Police Department for appropriate disposition. In the event that potential criminal conduct is determined during the course of an investigation, the case will be referred to the Memphis Police Department or the attorney general for appropriate disposition. The final disposition of the cases will be forwarded to the board by the police director.

(Code 1985, § 28-159; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-160. Disposition of cases.

A. The Civilian Law Enforcement Review Board will examine complaints against police officers and determine whether such complaints have merit.

B. The board may recommend that no action be taken on a complaint, recommend rule changes, or recommend to the police director that specific disciplinary or other remedial action be taken.

C. In the event that the Civilian' Law Enforcement Board determines that the complaint is without merit and that it warrants no action, a letter of final disposition will be forwarded to the complainant by the board and the case will be considered closed. This letter will outline circumstances of incident and identify the reason for closure.

D. In the event that the board decides the complaint should be resolved by amendment of rules and/or policy, the board shall submit its recommendations to the police director and notify the complainant of the disposition of his or her case.

E. In the event that the Civilian Law Enforcement Review Board determines that disciplinary action should be taken, the board shall submit its recommendations to the police director. Within ten [days] after receipt of the board's recommendation, the police director will notify the board in writing of the actions he or she proposes in response to its recommendations.

F. All rulings, recommendations, decisions, modifications, or revisions must be approved by at least a majority of the quorum of members of the board.

(Code 1985, § 28-160; Ord. No. 4285, § 1, 10-25-1994)

Sec. 28-161. Public information, periodic reports and analysis.

A. All requests for information shall be referred to the Public Records Office for review and appropriate response. Complainants may request a copy of their Internal Affairs complaint through the board administrator at no cost.

B. To the extent permitted by law, all board information, files, computer files, and related data are to be considered confidential in nature and not released to any individual or agency without the expressed consent of the board. Any person aggrieved by a determination of the board concerning the release of information may request that the board review and reconsider the decision. All such requests shall be in writing and must identify with specificity the information sought.

C. To the extent permitted by law, all records related to hearings are strictly confidential and findings and recommendations of the Board shall not contain information declared confidential by state law.

Any violation of confidentiality may result in removal from the Review Board and/or other appropriate penalties as provided by law. However, the Review Board shall have the authority to notify the complainant in writing of the disposition of the complaint.

D. The board shall produce quarterly and annual reports and statistical analysis to be forwarded to the police director, the mayor and the city council. These reports shall include a statistical and narrative analysis of all cases heard by the board.

E. Upon request of the police director, the mayor and the council, special reports shall be produced regarding any facet of the Civilian Law Enforcement Review Board operations.

(Code 1985, § 28-161; Ord. No. 4285, § 1, 10-25-1994)

THE FOREGOING ORDINANCE
#5620 PASSED
1st Reading 6-7-2016
2nd Reading 6-21-2016
3rd Reading 8-09-2016

Approved
Chairman of Council

Date Signed: 23 Aug 2016

Approved:
Mayor, City of Memphis

Date Signed: 8-24-16

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Supes
Comptroller