

Minutes
Minneapolis Civilian Police Review Authority
Regular Monthly Board Meeting
Wednesday, April 6, 2011
333 City Hall
5:30 p.m.

Board members present: Bellfield, Benson, Elayaperumal, Kvidera, Pargo, Wetternach, Zuege

Board members absent: Santiago, Terrell

Also present: CRA Manager Lee Reid
Assistant City Attorney Joel Fussy
MPD Assistant Chief Scott Gerlicher

I. Call to Order

Chair Bellfield called the meeting to order.

II. Approval of Agenda

Wetternach **moved** the agenda be adopted. Benson seconded.

Motion passed unanimously.

III. Review of Disciplinary Decisions

Kvidera **moved** this portion of the meeting be closed to the public pursuant to the Minnesota Government Data Practices Act. Zuege seconded.

Motion passed unanimously.

Zuege **moved** the meeting be re-opened. Kvidera seconded.

Motion passed unanimously.

IV. Approval Of Minutes – March 2, 2011 Board meeting

Benson **moved** approval of the minutes of the March 2, 2011 board meeting. Kvidera seconded.

Motion passed unanimously.

V. Reports

Chair

- A PACC meeting was held today. Process issues were discussed.
- Board members Sharlee Benson and Dean Kallenbach have resigned due to moves outside the City. Bellfield thanked Benson and Kallenbach for their service.

Manager

Reid reviewed the [CRA Workload Report](#) for March 2011. Reid has asked board members with outstanding hearing panel determinations to complete them as soon as possible.

Committees

Policy Committee – Zuege

The committee met on March 16. The meeting was productive and a number of members of the public were in attendance. As a result of the meeting, there are a number of motions that Zuege can present during New Business.

Steering Committee – Wetternach

The committee held its final meeting. Some information on the committee's [proposed ordinance changes](#) is missing from the packets available at tonight's meeting. Reid will email the complete information to all present and it will be posted on the CRA website.

Wetternach referred to his [memorandum](#) and spoke of the issues that the committee discussed but where clarification is needed or there was no consensus among the members.

Major proposed changes to the ordinance:

- All 11 members to be appointed by the City Council, with Mayoral review and potential veto.
- Chair elected by board members
- Complaint investigations completed in six months instead of 60 days
- 172.130 Disciplinary Decisions – significant changes to this section which should be reviewed by all members for discussion
- 172.170 Staff – removal of community outreach advocate position, which was never funded. Language allowing the CRA manager to employ unpaid volunteers to act as an outreach advocate was retained.

Wetternach stated that the committee began to look at the Administrative Rules, but decided that since the rules flow from the ordinance, they would wait until ordinance changes have been adopted by the City Council before making any changes to the rules.

Wetternach thanked Benson, Kallenbach and Terrell for their committee work, as well as Chuck Turchick for attending every committee meeting and providing a lot of good input. Bellfield thanked the committee for their work.

Bellfield stated the proposed ordinance changes as well as a request for public comment will be posted to the CRA website. The May 4 board meeting agenda will include board discussion of the ordinance changes and will also include a public comment item related to the proposed ordinance changes.

Elayaperumal spoke about his research into the overlap of CRA complaints, Internal Affairs Unit and the City Attorney's Office. He was able to identify a handful of cases that overlapped between all three office. He is still waiting for requested data from IAU and asked DC Gerlicher when he should expect that. Gerlicher suggested Elayaperumal contact Lt. Glampe. Gerlicher added that he does know that Elayaperumal's request would include a lot of data and would take quite a while to complete.

VI. Public Invitation – Comments limited to three minutes for each speaker

Chuck Turchick

Turchick thanked the chairs of the Policy and Steering Committees for allowing public participation. He asked if there will be a separate public comment agenda item at the May board meeting for comments on proposed ordinance changes. Bellfield said there will probably five minutes allotted for public comment on this topic.

Turchick stated that 427 days ago, Chief Dolan offered to meet with the CRA chair to discuss the reckoning period and de novo review to find solutions. The minutes of the October 2010 board meeting reflect that Bellfield wrote a letter to Dolan. At the February 2010 meeting when Dolan made the offer, the board considered a motion directing the chair to inform the executive committee that the chief was not in compliance with the disciplinary section of the ordinance. In the discussion of that motion, “[Wetternach] noted that the chief tonight offered to meet with the board chair and board members to talk about the issue of de novo review. He thinks the board should try that first.... Terrell agreed with Wetternach.... Kvidera agreed with Terrell.” The minutes state that after the motion failed, “Wetternach asked that Terrell contact Bellfield when he returns to advise him of the chief’s offer at tonight’s meeting so he can set up a meeting as soon as possible.”

The board’s reports all mention this problem that the CRA is having with the chief’s compliance with the discipline section, the reasons he’s given: de novo review and the reckoning period, so for the board to have gone 14 months and not put pressure on the chief to have this meeting seems to put the board’s credibility into question. How can the public take the board’s criticism of the chief seriously if the chief makes this offer and nothing happens as a result of that?

Turchick last month asked about the doubling in four years of MPD supervisor force reviews. Lt. Glampe responded to Turchick’s e-mail explaining that. Turchick advised the board to contact Glampe if they are interested in his explanation.

Dave Bicking

Bicking praised the Steering Committee’s work on the proposed ordinance changes. He referred to the proposed change to 172.130, where suggested language takes out the de novo review language and replaces it with language that makes another attempt to clearly indicate the City Council’s intent that the board’s findings of fact be taken as conclusive in the chief’s disciplinary decision.

Bicking asked that the [information he presents at tonight’s meeting](#) be considered when they make their decision about ordinance changes concerning board member compensation and board appointment authority. He also has proposals for 172.30 which are in keeping with the Steering Committee’s intent. If the board retains complete control over its internal affairs, such as choosing a chair and vice-chair, then the acting chair provision can be discarded. It was only written originally out of concern that the board would not be able to function if it was waiting for an outside entity to appoint a chair.

Bicking suggests the Steering Committee write an explanation and rationale for all the changes they propose, for the benefit of the City Council.

VII. Old Business

There was no old business discussed.

VIII. New Business

Zuege **moved:**

It is hereby RESOLVED that the CRA recommends the MPD consider and adopt an Onlooker Policy setting forth rights of onlookers to reasonably observe police activities in public areas, in accordance with the attached policy recommendation "Minneapolis CRA - Recommendation for MPD Onlooker Policy." This recommendation is to be presented to the MPD in accordance with the policy recommendations outlined in the 2006 CRA Working Group Final Report.

Zuege stated that the policy was discussed at the last Policy Committee meeting and was modeled after a policy recommendation from a police oversight body in San Jose, California. Elayaperumal asked for a standard definition of "reasonable to do so" as stated in "Recommendation for MPD Onlooker Policy." Zuege replied that this wording would give some discretion to the MPD if they choose to implement this policy. In Zuege's view, it is similar to use of force being dependent on the totality of the circumstances. A reasonable distance in one circumstance may be five feet, in another it may be 30 feet.

Wetternach asked for the origin of the policy. Zuege said that issues in this area have come up in hearings the board has had. Zuege has discussed it in policy committee meetings going back quite a while.

Zuege **moved:**

It is hereby RESOLVED that the CRA recommends the MPD consider for training or policy purposes the use of chewing tobacco by officers while on duty, consistent with MPD Policy and Procedure Manual §3-300. This recommendation is to be presented to the MPD in accordance with the policy recommendations outlined in the [2006 CRA Working Group Final Report](#).

Zuege stated that this was a suggestion made by Kvidera some time ago and that was discussed in the last policy committee meeting. The issues surrounding the use of chewing tobacco are apparent enough that the committee felt it did not need to spell them out, but felt a general recommendation might be beneficial.

Reid added that there was a CRA complaint where this issue came up and there was not a MPD policy. A complaint alleged that an officer spit tobacco on the floor of the complainant's business. The officer said he was trying to spit into the trash can but he missed it and it landed on the person's property. There were two issues: should the officer be chewing tobacco when dealing with a citizen and the disposal of the spit in the person's house, or while talking with the person. The only MPD policy found during the investigation was one dealing with smoking. Gerlicher added that there is a city policy which would prohibit officers

from smoking in squad cars. Gerlicher added that the MPD is trying to shorten their policy manual, not increase it. He would rather deal with the officer on that, it is a code of conduct violation if an officer is intentionally causing damage to someone's property. He would not support a specific big long policy on chewing tobacco. It is over-legislating things. Reid replied that the recommendation is that the MPD extend the policy it already has regarding smoking to apply to all tobacco products. Gerlicher said he would need to look at the policy manual. He knows that smoking in squad cars is covered by City policy, not MPD policy. It may be mentioned, but he is not sure at this time. Gerlicher assured the board that all policy recommendations sent to the MPD by the board will be considered.

Zuege moved:

It is hereby RESOLVED that the CRA recommends the MPD reconsider the usage of the phrase "threatened assault" in MPD Policy and Procedure Manual §5-302 for clarity, namely the use of the term "threatened" in conjunction with a word ("assault") that in a criminal law context already implies a threat without actual use of force. This recommendation is to be presented to the MPD in accordance with the policy recommendations outlined in the 2006 CRA Working Group Final Report.

Zuege stated that he noted this while reading through the changes that were implemented in late 2010. He knows the word "assault" can be subject to many different interpretations. His concern is that the way that is phrased in the manual could be confusing in the sense that "assault" could be construed as referring to attempted battery.

Zuege moved:

It is hereby RESOLVED that the CRA recommends the MPD revisit MPD Policy & Procedure Manual §7-706, because it refers to repealed Minn. Stat. §169.1216. This recommendation is to be presented to the MPD in accordance with the policy recommendations outlined in the 2006 CRA Working Group Final Report.

Elayaperumal asked what the statute refers to. Zuege stated it has something to do with traffic laws, but it was repealed in 2000. It is still referenced in the MPD policy manual.

Kvidera suggested the board look into stating the correct statute, so the intent of the policy is not lost. Fussy stated that the motion recommends the MPD revisit the policy, so that would include amending the policy to refer to the correct statute if appropriate. Fussy said that the city ordinance has a provision that says if an ordinance refers to a state statute it also refers to any of its subsequent revisions. There may be some possibility to have more inclusive language.

Zuege moved Items 1 through 4 be adopted. Elayaperumal seconded.

Kvidera **moved** Item 4 **be amended** to add language that it refers to any inclusive or changed state statutes, or something to that effect, rather than just a given policy number. Elayaperumal seconded.

Zuege said this was really just meant as a "heads up" to the MPD that this particular statute was being referenced. He is comfortable with whatever the MPD wants to do with that; he

just wants to call it to their attention. He doesn't see the need to micromanage that. Pargo stated that this is nice to know, but it should be left up to the MPD to enforce. How will the board know that they are not enforcing it. She would like to revisit this. She would like more discussion after looking at it. There is not enough information to make a decision.

The amendment failed.

Zuege responded to Pargo that this could be taken up again next month, but her comment seemed to relate to how the CRA presents policy recommendations to the MPD. That is why each of these reference the 2006 Working Group where there was a very detailed procedure laid out. There is nothing that the CRA can do to force the MPD to adopt any of the board's recommendations, they simply have a mechanism where the board can present policy recommendations, which can be adopted or not adopted.

Wetternach agreed with Pargo that it is difficult to digest the motions and be ready to vote on them immediately. He asked that in the future, the board get the motions in advance. He will abstain on this motion.

Motion passed:

Yes - Bellfield, Benson, Elayaperumal, Kvidera, Zuege

Abstain – Pargo, Wetternach

IX. Announcements

There were no announcements.

X. Adjournment

Zuege **moved** the meeting be adjourned. Kvidera seconded.

Motion passed unanimously.

MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY
350 South 5th Street, Room 239
Minneapolis MN 55415
(612) 673-5500

TO: CRA Board

FROM: Samuel L. Reid II
Assistant Director

DATE: April 6, 2011

SUBJ: Monthly Report – **March 2011**

1. Intake – 27
2. Signed Complaints – 13
3. Complaints by:

<u>Ward</u>	<u>Police Precinct</u>	
Ward 5 – 2	Precinct 1 – 5	Repeat Officers ¹ – 13
Ward 6 – 1	Precinct 3 – 2	Repeat Officers ² - 4
Ward 7 – 5	Precinct 4 – 2	New Officers – 5
Ward 8 – 1	Precinct 5 – 4	
Ward 10 – 3		
Ward 11 – 1		
- Allegations

Excessive Force – 25

Inappropriate Language – 15

Failure to Provide Adequate or Timely Police Protection – 3

Inappropriate Conduct – 10
4. Completed Investigations – 10

Complaints in Investigation	2009– 41
	2010 – 60
	<u>2011 – 20</u>
	121
5. Mediations scheduled – 1
Mediations held – 1
 Successful mediations – None
6. Manager dismissals – 2
7. Complaints awaiting Hearing as of 3/31/11 – 14

¹ Officers with one or more prior complaint 1991 through 2007.

² Officers with one or more prior complaint 2008 - present.

- 8. Hearing Panels**
 - Complaints heard – 7
 - Determinations Completed – 4
 - Partially Sustained – 1
 - Not Sustained – 3

 - Determinations Pending – 13
 - Hearings held in 2010 – 3
 - Hearings held in 2011 – 10
- 9. Discipline Decisions Received From Chief of Police – 4**
 - No Discipline imposed – 6 officers
- 10. Complaints Awaiting Discipline Decision – 4**

April 3, 2011

MEMORANDUM

TO: CRA Board Members
FROM: Vernon Wetternach, Chair
CRA Steering Committee
RE: Proposed CRA Ordinance Changes
DATE: April 6, 2011

The CRA Steering Committee met to review the City of Minneapolis City Ordinance, Chapter 172.0, Civilian Police Review Authority.

Attached are the recommendations, as noted in red, the Steering Committee made. The members did have areas where changes were discussed and issues were raised that need clarification or there was no consensus among the members. They are as follows;

- Subpoena authority – The committee felt that it should not be the purview of the CRA Board to recommend this change. It was felt that it was better suited for the Minneapolis City Council to bring this issue forward through its legislative change making process to be implemented.
- Compensation – 172.30 (3) e; some members felt that with the current financial crisis in the city that the CRA Board member stipend level be reduced from the current level of \$50 to \$25. Others felt that with the work of the CRA Board that this reimbursement was appropriate. So the committee duly notes the discussion but makes no change.
- Request for Reconsideration – 172.120 (d) 2; the committee wishes to make this change however, it is not certain if this is legal and would thus need legal input.
- Period of Limitation – 172.160; again discussion occurred about reducing the current time frame from one year to a shorter period of time, either six months or nine months. There again was not consensus on the committee so it brings this issue forward to the full CRA Board for discussion.

CHAPTER 172. CIVILIAN POLICE REVIEW AUTHORITY

172.10. Civilian police review authority established. There is hereby created a Minneapolis Civilian Police Review Authority for the purpose of investigating allegations of misconduct on the part of officers of the Minneapolis Police Department and making findings of fact and conclusions based upon those findings of fact. (90-Or-043, § 1, 1-26-90; 90-Or-188, § 1, 7-27-90; 2003-Or-028, § 1, 3-21-03)

172.20. Scope of authority. The review authority shall receive complaints that allege misconduct by an individual police officer or officers, including, but not limited to, the following:

- (a) Use of excessive force.
- (b) Inappropriate language or attitude.
- (c) Harassment.
- (d) Discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, disability or age or sexual orientation.
- (e) Theft.
- (f) Failure to provide adequate or timely police protection.
- (g) Retaliation for filing a complaint with the review authority.
- (h) Any violation of the Minneapolis Police Department's policy and procedure manual. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 2, 3-21-03; 2006-Or-064, § 1, 6-16-06; 2006-Or-114, § 1, 10-20-06)

172.30. Review authority membership. (a) *Composition.* The review authority shall be comprised of eleven (11) members, appointed by the city council. The members shall serve for terms of four (4) years. From the members, a chairperson and vice-chairperson of the review authority shall be ~~elected from its members~~ for staggered terms of two (2) years, subject to the approval of a majority of the city council. The vice-chairperson shall have chairperson duties only in the absence of the chairperson. In the absence of a chairperson or vice-chairperson, the chairperson or vice-chairperson may designate an acting chairperson to serve until the next board meeting or until a chairperson is duly appointed. If the chairperson or vice-chairperson are unable for any reason to designate an acting chairperson, the board shall appoint an acting chairperson to serve until the next board meeting or until a chairperson is duly appointed. The acting chairperson shall have full authority to conduct actions of the chairperson. All members shall continue to serve until their successors have been appointed. A majority of the members shall constitute a quorum.

(b) *Qualifications.* All members shall be residents of the city. Residents currently or previously employed by the Minneapolis Police Department are ineligible to serve as members of the authority.

(c) *Minimum training requirements.*

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(1) All members must participate in an annual training session as arranged by the Minneapolis Department of Civil Rights.

(2) All new members must complete training in the following subject areas as arranged by the Minneapolis Department of Civil Rights: police use of force, Minnesota Government Data Practices Act, Open Meeting law and Minnesota Public Employee Labor Relations Act, conflict of interest.

(3) Within two (2) years of appointment, all new members must complete the portions of the Citizen's Academy as determined by the Minneapolis Department of Civil Rights. Members will be compensated fifty dollars (\$50.00) for each Citizen's Academy session attended.

(d) *Removal.* Any member of the review authority may be removed, by vote of a majority of the city council and approval of the mayor, for incompetence, neglect of duty, misconduct or malfeasance, failure to participate in and complete minimum training requirements. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the balance of the unexpired term by appointment by the mayor subject to approval of the city council. A member who has three (3) absences from meetings or complaint hearings in a calendar year shall automatically cease to be a member of the authority.

(e) *Compensation--Limitation.* Each member shall be paid fifty dollars (\$50.00) for each day when the member attends one (1) or more meetings or hearings, and shall be reimbursed for expenses incurred in the performance of duties in the same manner and amount as other city boards and commission members. The total amount of per diem, payment for file review, and reimbursable expenses payable under this section shall not exceed the total annual budget allocation for such costs. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 3, 3-21-03; 2003-Or-112, § 1, 9-12-03; 2004-Or-068, § 1, 6-18-04; 2009-Or-029, § 1, 3-27-09)

172.35. Reserved.

Editor's note: Ord. No. 2003-Or-028, § 4, adopted March 21, 2003, repealed § 172.35, which pertained to compensation--Limitation. See the Code Comparative Table.

172.40. Review authority--Administrative duties. (a) *Rulemaking notice and hearing.* The review authority shall adopt rules governing its operation. All rules, and any amendments thereto shall be enacted after a public hearing, at which interested persons may present written and oral evidence. The review authority shall, at least thirty (30) days prior to the date set for the hearing, give notice of its intention to adopt rules by publishing notice of the proposed rule, the date and location of the hearing. The notice shall also be provided to the mayor, city council and chief of police.

(b) *Rulemaking hearing procedure.* Rulemaking hearings shall be presided over by the chairperson of the review authority. The chairperson shall ensure that all persons involved in the hearing are treated fairly and impartially. After hearing and considering evidence, the review authority may choose to enact the proposed rule, enact an amended rule, or to not enact a rule. If the review authority chooses to enact a rule, the review authority shall enter into the record any written exhibits in support of the rule, along with a brief statement explaining why the review authority has adopted the rule and shall

submit such rule for approval by the city council. Rules adopted by the review authority shall not be effective until approved by the city council.

(c) The review authority shall cooperate with the chief of police in developing procedures pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967) and Gardner v. Broderick Police Commissioner NY, 392 U.S. 273 (1968). (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 5, 3-21-03)

172.50. Meetings. (a) The review authority shall meet once every month at a regularly scheduled time and place for the purpose of hearing requests for reconsideration, establishing the next month's hearing panel(s) and/or to conduct any other business necessary to the operation of the review authority. The review authority may meet at such additional times and places deemed necessary by its members, or on the call of the chairperson.

(b) Each month the chairperson of the review authority shall appoint panel(s) of three (3) members to conduct hearings related to complaints as necessary during the subsequent month. The chairperson of the review authority shall designate a chairperson of each panel. The panels of three review authority members shall meet at scheduled times and places for the purpose of conducting hearings related to complaints. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 6, 3-21-03)

172.60. Review authority--Substantive duties and powers. (a) Receive complaints alleging misconduct on the part of a Minneapolis police officer and conduct such investigations and inquiries as may reasonably appear necessary to find the facts with respect to the complaints.

(b) Conduct hearings related to complaints as provided in this chapter.

(c) Forward all investigatory file findings ~~of fact and panel determinations~~ to the chief of police.

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(d) Conduct a program of research and study for the purpose of ascertaining how the objectives of this title may be attained and sustained.

(e) Compile statistics relating to complaints of police officer misconduct and present results of such analysis on a quarterly basis to the council committee as designated by the Minneapolis City Council.

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(f) Review Minneapolis Police Department policies and training procedures, and proposed revisions, and make recommendations for change.

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(g) Facilitate, along with Minneapolis Police Department, appropriate cultural awareness training for sworn officers as determined by the review authority.

(h) Participate in the performance review of the chief of police.

(i) Create and implement a community outreach program. Coordinate outreach activities with the Minneapolis Commission on Civil Rights.

(j) Submit quarterly reports to the appropriate committee of the Minneapolis City Council as to the activities of the review authority. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 7, 8, 3-21-03)

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172.70. Complaint filing. Any person who has personal knowledge of alleged misconduct on the part of a Minneapolis police officer may file a complaint with the review authority by submitting said complaint at locations to be determined by the review authority within six (6) months of the alleged misconduct. The review authority shall select at least one location for the receipt of

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complaints that is not affiliated with the Minneapolis Police Department, nor staffed by Minneapolis Police Department employees. (90-Or-043, § 1, 1-26-90)

172.80. Preliminary review. Within seven (7) days of the date that a complaint was filed, review authority staff shall make a preliminary review of each complaint and determine whether an investigation of the alleged misconduct is warranted, whether mediation is appropriate or whether no further action is necessary. All complaints shall be kept on file regardless of whether an investigation is initiated. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 9, 3-21-03)

172.85. Dismissal after the Preliminary Review. (a) If after the preliminary review, the manager determines that further investigation is not warranted, the manager may request a dismissal from the chair of the board. The dismissal request must state the basis for the dismissal. The chair shall schedule a hearing for the dismissal.

(b) The manager may administratively dismiss complaints against misidentified officers, officers out-of-jurisdiction, and officers no longer with the Minneapolis Police Department. The manager shall notify the civilian review authority board of the administrative dismissal. (2006-Or-114, § 2, 10-20-06)

172.90. Investigations. If review authority staff determines that further investigation is warranted, the complaint shall be investigated by a review authority investigator. The investigator shall prepare recommended findings of fact and a recommendation of sustained or not sustained in a written summary. Such investigation shall be completed within ~~six (6)~~ **six (6)** months of the date that the complaint was filed. The review authority manager may once extend this deadline by an additional thirty (30) days, with a written explanation of the reason(s) for the extension. The application of this deadline may be held in abeyance during such time as the complainant and officer are participating in mediation or the review authority staff determine that an investigation might impede or harm a criminal investigation. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 10, 3-21-03)

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172.95. Investigation review. Within seven (7) days of the date the written summary is submitted, the review authority manager shall review the investigative file and written summary. The review authority manager may recommend further investigation that shall be completed within ~~three (3) months,~~ **three (3) months,** days. ~~In all cases in which no further investigation is recommended,~~ the review authority manager shall present the case at the next meeting of a hearing panel of the review authority allowing for proper notice to the complainant and the police officer. (2003-Or-028, § 11, 3-21-03; 2004-Or-068, § 2, 6-18-04)

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172.100. Hearings related to complaints. (a) Upon the completion of the investigation of a complaint, a three (3) member panel of the review authority shall weigh and consider all reliable and credible evidence presented. The review authority shall make reasonable efforts to conduct hearings related to complaints within thirty (30) days of the completion of the investigation.

(b) Prior to the hearing, a review authority investigator or the manager shall present the investigatory findings of fact and recommendations to the panel. No person other than a

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review authority investigator or the manager and the panel members shall be present during the presentation and discussion of the case.

(c) At the hearing, the complainant and the police officer, or their representatives, shall each be permitted ten (10) minutes to address the review authority, in the presence of each other, regarding the complaint. Other paid or volunteer review authority staff may attend with and assist the complainant, but will not otherwise participate in the hearing.

(d) Within thirty (30) days of the completion of a hearing, the hearing panel shall either remand the complaint to review authority staff for further investigation or issue a written report containing findings of fact and a determination of whether the complaint is sustained. This report shall be made public when permitted by the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes.

(e) Notice.

(1) At least ten (10) days prior to the scheduled hearing, the review authority shall provide written notification to the complainant and the police officer of the date, time and place of the hearing.

(2) The review authority shall provide written notification of the hearing panel's decision to the complainant and officer. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 12, 13, 3-21-03; 2004-Or-068, § 3, 6-18-04)

172.110. Standard of proof. The standard of proof necessary to sustain a complaint is preponderance of the evidence. Preponderance of the evidence means that the greater weight of the evidence supports the decision. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 14, 15, 3-21-03)

172.120. Request for reconsideration. (a) Within thirty (30) days of receipt of the hearing panel's decision, either party may submit a written request for reconsideration to the review authority.

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(b) The review authority shall reconsider the complaint at its next regularly scheduled meeting that is not less than ten (10) days after the filing of the request. If the review authority determines that the request for reconsideration alleges newly discovered evidence, the complaint should be remanded to authority staff to investigate and resubmit findings within thirty (30) days. The review authority may sustain or reject the prior hearing panel decision regarding the complaint.

(c) The complainant and the police officer, or their representatives, shall be permitted ten (10) minutes each in the presence of each other to address the review authority regarding the request for reconsideration.

(d) Notice.

(1) The review authority staff shall provide written notification to all parties of the request for reconsideration.

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(2) At least ten (10) days prior to the reconsideration hearing, the review authority shall provide written notification to all parties of the date, time and place of the reconsideration hearing.

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(3) The review authority shall provide written notification of its reconsideration decision to the complainant and officer. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 16, 17, 3-21-03; 2004-Or-068, § 4, 6-18-04)

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172.130. Disciplinary Decision. (a) Upon conclusion of the hearing and request for reconsideration process, the review authority shall forward the investigatory file, the findings of fact and the panel determination to the chief of police. For purposes of assessing whether misconduct occurred, the civilian review authority's findings of fact and panel determination shall be taken as conclusive in the chief's disciplinary decision.

Deleted: The chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board, and shall not include a de novo review of the facts by the Minneapolis Police Department's internal affairs unit or any other police officer, unit, or division.

In cases where the civilian review authority board has determined that specific facts constitute a violation of the Minneapolis Police Department policy and procedure manual, under no circumstances should the Minneapolis Police Department internal affairs unit or any other police officer, unit, or division be allowed to alter, augment, or revise the "designation."

The Chief of Police may not use the expiration of internal police department discipline timelines as a reason for not imposing discipline.

(b) In all cases where the review authority sustained the complaint, the chief of police shall do one of the following within thirty (30) days (except where noted) of receipt of the case from the review authority:

- (1) Impose discipline and notify the review authority in writing that discipline has been imposed; or
- (2) Determine that no discipline will be imposed and notify the review authority in writing of such determination and the reasons for such determination; or
- (3) Make a one time written request that the review authority reconsider the sustained finding; or
- (4) Submit in writing to the review authority a request for an extension of time, not to exceed an additional thirty (30) days, to take one of the actions in subparagraphs (1) through (3) with a statement of the reason for the extension and a proposed date by which one of such actions will be taken.

If the chief has determined that no discipline will be imposed pursuant to subparagraph (2), the review authority may require the chief (or his/her designee) to appear at a meeting of the full board, which shall be closed to the public pursuant to Minnesota Statutes Section 13D.05, subdivision 2, to discuss the basis for the determination.

If the chief has requested that the review authority reconsider a sustained finding, the chief or his/her designee shall appear before the entire review authority board to present the factual and legal basis on which the chief asserts that the complaint(s) should be not sustained. The parties shall be notified of this request for reconsideration to allow them the opportunity to be present and participate. After the review authority has reconsidered the matter, the decision of the review authority shall be provided to the chief in writing. If the review authority again determines that the complaint(s) should be sustained, the chief may then take one of the actions specified in subparagraphs (1), (2) or (4), above.

(c) The review authority shall provide notice to the complainant of the final disciplinary decision.

(d) The Mayor must review and sign-off on any Level D complaints as outlined in the Minneapolis Police Departments "Discipline Matrix", in which the Police Chief chooses not to impose discipline and the CRA has sustained the complaint. (e) The level of compliance with this section shall be included as an element of the chief's annual performance evaluation, pursuant to section 172.60(h) of this section. The civilian police review authority chairperson shall notify the executive committee of the chief's failure to comply with the requirements of this section, and such failure may subject the chief to disciplinary action. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 18, 19, 3-21-03; 2006-Or-114, § 3, 10-20-06)

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(d)

172.140. Confidentiality. The members, staff, and contractors of the review authority

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shall comply with all of the provisions of the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes. All members and contractors, paid and volunteer, of the review authority shall sign a contract agreeing to comply with the provisions of the Minnesota Government Data Practices Act, currently Chapter 13 of Minnesota Statutes. In return, the city will afford to such member or contractor the same legal protection that any other agent or employee of the city receives who performs duties within the scope of employment. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 20, 3-21-03; 2004-Or-068, § 5, 6-18-04)

172.150. Mediation. (a) The review authority manager shall refer complaints to mediation subject to the terms of this section. Referral to mediation may be made upon preliminary review of the complaint or at any other time in the course of investigation when the manager deems mediation to be appropriate. Referral to mediation shall be in the discretion of the review authority manager, and shall not be appealable.

(b) The complainant and the subject police officer(s) shall be required to participate in good faith in the mediation process. The mediation process shall continue for as long as the mediator believes it may result in the resolution of the complaint, except that it shall not extend beyond thirty (30) days from the date of the initial mediation session without approval of the review authority manager.

(c) The complainant and the subject police officer(s) shall attend the mediation session.

(d) If mediation is successful, the mediator and the parties shall sign a mediation agreement.

(e) If mediation is unsuccessful, the complaint shall be referred back to the review authority for further investigation, hearing and review pursuant to this chapter.

(f) If, after referral to mediation, the complainant fails or refuses to participate in mediation in good faith and without a valid excuse, the review authority manager shall dismiss the complaint.

(g) If, after referral to mediation, a subject police officer fails or refuses to participate in mediation in good faith, such failure or refusal shall constitute misconduct and grounds for disciplinary action. If warranted by the evidence, the chief of police shall cause appropriate disciplinary action to be initiated against the officer and shall notify the review authority manager of the outcome of such action. If a police officer fails or refuses to participate in mediation in good faith, the review authority manager shall refer the complaint for further investigation, hearing, and review under this chapter.

(h) The review authority manager shall inform the chief of police of a decision to proceed to mediation.

(i) Mediation tolls the timelines established for the review authority investigation and hearing processes.

(j) No record will be made of the mediation proceedings, and no information discussed will be used in subsequent proceedings.

(k) All complaints shall be referred to mediation with the following exceptions and limitations:

(1) Where there are multiple allegations against the same officer, all allegations must qualify for mediation.

(2) Where the complaint contains allegations against multiple officers, all officers must qualify for mediation.

(3) Mediation is not appropriate if the officer has a prior sustained complaint involving the same or similar allegations arising from an incident which occurred within one (1) year prior to the date of the incident from which the current complaint arises.

(4) Excessive force complaints are eligible only if physical injuries are de minimus and medical treatment is not required.

(5) Wrongful search or seizure complaints involving custodial arrest or other interference with liberty of significant duration are not eligible.

(6) Theft and intentional damage to property complaints are not eligible.

(7) The review authority manager may depart from the above guidelines for good cause.

(l) The mediators shall be neutral trained mediators unaffiliated with the review authority, the civil rights department or any other department of the City of Minneapolis.

(m) This section shall apply to complaints filed on and after the effective date of this section. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 21, 22, 3-21-03; 2005-Or-091, § 1, 9-23-05)

172.160. Period of limitation. No person may file a complaint with the review authority if one year has elapsed since the alleged misconduct. (90-Or-043, § 1, 1-26-90)

172.170. Staff. (a) The Minneapolis Department of Civil Rights shall provide staff to support the objectives of this chapter. Review authority staff shall consist of a manager and other positions as necessary. The manager may employ unpaid volunteers to perform the duties of the community outreach advocate. (b) *General duties of the manager.* The manager of the review authority shall be an attorney and shall report to the director of the department of civil rights. The manager shall administer the day-to-day operation of the review authority and aid the review authority in carrying out its purpose, including the implementation of a community outreach program.

(c) *Firewall.* Department of civil rights staff with access to review authority files shall not have access to civil rights investigation files. Department of civil rights staff with access to civil rights investigation files shall not have access to the review authority files. Information from civil rights investigations shall not be shared with staff assigned to the review authority. Information from review authority investigations shall be shared only with staff assigned to the review authority. The director of the department of civil rights shall have an administrative role with regards to the review authority. The director shall have access to review authority investigative files for administrative purposes consistent

Deleted: and a community outreach advocate

Deleted: on a temporary basis. ¶

Deleted: (c) *General duties of the review authority community outreach advocate.* The community outreach advocate shall report to the manager of the authority and shall perform administrative duties as assigned including: ¶

- (1) Timely and regular communications with complainant from complaint intake through final determination of case. ¶
 - (2) Consultation with the manager regarding case review process prior to the manager's recommendation of sustained or not sustained. ¶
 - (3) Implementation of community outreach program. ¶
 - (4) Attendance at hearings when requested by the manager of the authority. ¶
 - (5) Other duties as assigned by the manager of the authority. ¶
- (d)

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with establishing management goals and objectives, evaluating employee performance, providing case management support, and making budgetary decisions, but shall not participate in the decision-making process regarding individual complaint files. (2003-Or-028, § 23, 3-21-03; 2004-Or-068, § 6, 6-18-04; 2005-Or-053, § 1, 7-1-05)

172.180. Requirement of cooperation by the Minneapolis Police Department and all other city employees and officials with the review authority. The Minneapolis Police Department and all other City of Minneapolis employees and officials shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information, for participation in hearings and mediations, and for access to data and records for the purpose of enabling the review authority to carry out its responsibilities under this chapter. The failure by any official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct. The police officer identified in the complaint may, but shall not be required to, attend the public portion of the scheduled hearing. (2003-Or-028, § 25, 3-21-03; 2005-Or-053, § 2, 7-1-05; 2005-Or-091, § 2, 9-23-05)

172.185. Notification of officer's reinstatement. In the event that a dismissed officer has been reinstated to the Minneapolis Police Department, the chief of police shall provide notification to the civilian review authority of the officer's return to the department within thirty (30) days of the officer's reinstatement. (2006-Or-114, § 4, 10-20-06)

172.190. Complainant's choice. A complainant shall be offered the choice to proceed under this title or go to the Minneapolis Police Department internal affairs division. (2003-Or-028, § 25, 3-21-03)

Background Data Relevant to CRA Ordinance Changes to Membership and Compensation

This data is based on an analysis of the Boards and Commissions listed on the Minneapolis City website. It includes an analysis of all those listed, except elected boards (School Board, etc.), Special Service Districts, and multi-jurisdictional boards (watershed authorities and other boards with significant membership appointed by other cities, the county, etc.). There are 30 such boards and commissions.

Compensation

In all but one case, any compensation is per day on which a member attends a meeting or conducts board business. Note that the CRA compensation is the same as 3 boards of appeals, which similarly rule on citizen appeals, and presumably have to review case files and evidence. However, several boards with serious and time-consuming responsibilities are paid \$35, and the members of the majority of the boards receive no compensation.

Boards paid \$50 per day: (5)

- Civilian Police Review Authority
- Housing Board of Appeals
- Rental Dwelling License Board of Appeals
- Sports Facilities Commission, Metropolitan
- Truth in Sale of Housing Board of Appeals

Boards paid \$35 per day: (4)

- Civil Rights Commission, Minneapolis
- Heritage Preservation Commission
- Planning Commission
- Zoning Board of Adjustment

Boards with no compensation: (19)

- Above the Falls Citizen Advisory Committee
- Animal Care and Control Advisory Board
- Arts Commission, Minneapolis
- Bicycle Advisory Committee
- Capital Long Range Improvements Committee (CLIC)
- Charter Commission
- Citizen Environmental Advisory Committee (CEAC)
- Disabilities, Minneapolis Advisory Committee on People With
- Downtown Skyway Advisory Committee
- Economic Development Company, Minneapolis (MEDC)
- Ethical Practices Board
- Latino Community Advisory Committee to the Mayor and the City Council
- Minneapolis Workforce Council
- Neighborhood and Community Engagement Commission
- Pedestrian Advisory Committee
- Public Health Advisory Committee
- Senior Citizen Advisory Committee to the Mayor and City Council
- Telecommunications Network (MTN), Minneapolis
- Youth Violence Executive Committee

Other: (2)

- Public Housing Authority, Minneapolis: \$55
- Civil Service Commission: \$1500 per year

Selection of Members

In nearly all appointments by City Council or Mayor, appointments are made in conformance with the city's Open Appointment Process. In all cases of selection by City Council, the appointments are subject to mayoral veto, which is very rare.

All members appointed by City Council: (11)

- Arts Commission, Minneapolis – 17 members
- Bicycle Advisory Committee – 27 members
- Citizen Environmental Advisory Committee (CEAC) – 16 members
- Downtown Skyway Advisory Committee – 17 members
- Pedestrian Advisory Committee – 15 members
- Senior Citizen Advisory Committee to the Mayor and City Council – 23 members
- Heritage Preservation Commission – 11 members
- Planning Commission – 10 members
- Zoning Board of Adjustment – 9 members
- Rental Dwelling License Board of Appeals – 7 members
- Truth in Sale of Housing Board of Appeals – 10 members

All members appointed by Mayor: (3)

- Disabilities, Minneapolis Advisory Committee on People With – 15 members
- Minneapolis Workforce Council – 19 members
- Youth Violence Executive Committee – 17 members

Members appointed by Council and Mayor: (7)

- Civilian Police Review Authority - 11 members: Council 6, Mayor 5
- Civil Rights Commission, Minneapolis – 21 members: Council 7, Mayor 14
- Public Health Advisory Committee – 21 members: Council 21, Mayor 1
- Capital Long Range Improvements Committee (CLIC) - 33 members: Council 26, Mayor 7
- Public Housing Authority, Minneapolis – 9 members, Council 4, Mayor 5
- Latino Community Advisory Committee to the Mayor and the City Council – 13 members: joint process
- Telecommunications Network (MTN), Minneapolis – 9 members: joint process

Others: (9)

- Sports Facilities Commission, Metropolitan – 7 members: Council 6, Governor 1
- Animal Care and Control Advisory Board - ? members, appointed by Animal Control Department
- Housing Board of Appeals – 15 members: 8 public members appointed by CPED, approved by Council
- Civil Service Commission – 3 members: appointed by Executive Committee
- Charter Commission – 15 members: appointed by Chief Judge of District Court
- Above the Falls Citizen Advisory Committee – 30 members: complex, none by Council or Mayor
- Economic Development Company, Minneapolis (MEDC) – 27 members: complex, none by Council or Mayor
- Ethical Practices Board – 3 members: appointed by a judge and 2 law school deans
- Neighborhood and Community Engagement Commission – 16 members: Council 5, Mayor 2, MPRB 1, neighborhood organizations 8

Comparison with Civil Rights Commission regarding member selection, filling of vacancies, and selection of Chair and Vice-Chair

Note that the Civil Rights Commission fills vacancies by the same means as original appointment. Perhaps, if all members of the CRA are appointed by the Council, vacancies should also be filled by the Council.

Note also that the chairperson and vice-chairperson are chosen by the membership of the Civil Rights Commission, and are not subject to the approval of the City Council, Mayor, or any outside body. If that were the case for the CRA, perhaps the language of the CRA Ordinance could be simplified by removing all references to an acting chairperson. Even without the provision for an acting chairperson, there would be no danger that the CRA would be unable to conduct hearings due to lack of cooperation or timeliness in the selection of a chairperson.

Here is the relevant section of the Civil Rights Ordinance. (Emphasis added)

141.20. - Commission membership.

(a) Composition and qualifications. The commission shall consist of twenty-one (21) members all of whom shall be persons known to favor the principles of equal opportunity, nondiscrimination and the objectives of this title, who shall be appointed by the mayor and confirmed by the city council. A minimum of six (6) and a maximum of eight (8) shall be lawyers. All members shall be residents of the city.

(b) Appointment, terms. On and after August 31, 1976, the mayor shall appoint members as follows: For those terms which terminate on August 31, 1976, six (6) members shall be appointed for a term to terminate August 31, 1979, and three (3) members shall be appointed for a term to terminate August 31, 1978; for those terms which terminate on August 31, 1977, three (3) members shall be appointed for a term to terminate August 31, 1978, and five (5) members shall be appointed for a term to terminate August 31, 1980. On or after August 31, 1978, one member shall be appointed for a term to terminate August 31, 1979, two (2) members shall be appointed for a term to terminate August 31, 1980, and one member shall be appointed for a term to terminate August 31, 1981. Thereafter all members shall be appointed for three-year terms which shall terminate on August 31 of the third year following the year of their appointment. Commencing in 1982, the city council and the mayor shall divide the appointment of members as provided hereafter. The city council shall appoint four (4) of the members whose terms terminate on August 31, 1982; the mayor three (3). The city council shall appoint three (3) of the members whose terms terminate on August 31, 1983; the mayor four (4). The mayor shall appoint the members whose terms terminate on August 31, 1984. All these appointments and subsequent reappointments by the same appointing authorities shall be for three-year terms which shall terminate on August thirty-first of the third year following the year of their appointment. All mayoral appointments shall be subject to city council confirmation; all city council appointments are subject to mayoral consent or veto as provided in the Minneapolis City Charter, Chapter 3, Section 1. Members shall continue to serve until their successors have been appointed.

(c) Removal and vacancies; compensation; quorum. Any member may be removed by the appointing authority for incompetence, neglect of duty, misconduct or malfeasance. ***Any vacancy occasioned by resignation, death or removal shall be filled for the balance of the unexpired term in the same manner as provided for original appointment.*** Members of the commission shall be compensated at the rate of thirty-five dollars (\$35.00) per monthly meeting attended and further as provided in section 141.50(k)(2) and (3). Nine (9) members of the commission shall constitute a quorum.

Any member who has four (4) absences from regular meetings in a calendar year shall automatically cease to be a member of the commission. Any member appointed to a standing committee or task force who has four (4) absences from any scheduled committee or task force meeting in a calendar year shall automatically cease to be a member of the commission. Any member of a hearing committee who misses two (2) public hearings to which the member has been assigned by the chairperson of the commission without providing a substitute in any calendar year shall automatically cease to be a member of the commission.

Any time a member has been automatically removed from the commission by operation of this section, the chairperson shall immediately inform the appointing authority of the vacancy. (Ord. of 12-30-75, § 7; 78-Or-166, § 1, 8-24-78; 82-Or-115, § 1, 6-25-82; 84-Or-067, § 1, 4-27-84; 85-Or-061, § 1, 3-22-85; 96-Or-131, § 1, 12-13-96; 2006-Or-062, § 1, 6-16-06)

141.30. - Organizational and administrative powers and duties of commission.

The commission shall:

(1) Annually designate from among its own membership a chairperson, a vice-chairperson, and such other officers and committees as it may deem appropriate.

<snip>

--- Respectfully submitted by Dave Bicking, April 6, 2011