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Little Rock Board of Directors
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RE: Proposed Citizens' Review Board

Ladies and Gentlemen of the Board:

I have been engaged to speak to the Board of Directors of the City of Little Rock (the "Board") on behalf of the Little Rock Fraternal Order of Police (the "FOP") regarding the proposed Citizens' Review Board (the "CRB") Ordinance (the "Ordinance"). It is the FOP's position that there is no need for a Citizen's Review Board in any form. The proposed CRB purposes are already accomplished by existing bodies. However, if it is Board's conclusion that a CRB is in the best interests of the City, the current ordinance is not ready for approval. We urge the Board to vote down this proposed ordinance.

First, an explanation of why the FOP believes the CRB is not needed. The police have always accepted that the public should review police actions. However, we believe that the demand among some in the public for a CRB reflects a lack of understanding of how much review already occurs. Right now, at least five agencies and bodies review and investigate police actions. Those include (1) Internal Affairs; (2) the Civil Service Commission; (3) Pulaski County Prosecuting Attorney's Office; (4) the U.S. Department of Justice; and (5) the Shooting Review Board. Each of these is authorized by federal and state law. For example, the Civil Service Commission (the "CSC") is authorized under Ark. Code Ann. 14-51-101 etc. seq. The CRB would add a sixth body that mirrors the reviews of the foregoing five, and the city has not proposed the law that authorizes its creation.

Rather than add another public review body, the FOP believes the City would be better served by improving the public's access to information about what is already being done. For example, by making the Civil Service Commission documents more comprehensible to the general public and by more clearly reporting the results of investigations by internal affairs and the prosecutor's office, the public would realize how much power the public already has. However, if the Board determines that a citizen's review board is needed, this proposed board is not what the city needs.

Fundamentally, the structure of the proposed CRB does not respect the separation of powers inherent in our state and federal constitutions because it does not give appropriate power to the Board of Directors. That separation of powers is reflected in other boards and commissions. As it stands, the Mayor would choose the members, who then report results of its reviews primarily to him. The Mayor also selects the chair of the CRB. This leaves the Board with no oversight powers. Unlike other boards, the Board is not even given power to remove members for cause. Our City has a Board of Directors for a reason, and this structure does not respect the function of that Board.

Furthermore, the Board is being asked to approve the creation of the CRB without knowing the details they are approving. There are no by-laws, although the CRB will require them. There is no real limitation on what the CRB would be authorized to review. There are no legal guidelines by which the CRB would determine which Initial Complaint or Review Request merit a review and which do not. There is no legal standard of review by which the CRB would determine whether an investigation the CRB is reviewing was supported by the facts. There is nothing guaranteeing the due process rights for an officer being reviewed. There is no protection of confidential information within a personnel file. There is nothing that determines when the meetings will be held and how much, if any, of those meetings would be open to the public. None of these details, nor dozens of additional matters, are addressed in this ordinance, and the Board is being asked to approve the CRB with an emergency clause. That is asking for too much from this Board.

The lack of details in the CRB ordinance bring up another, significant problem: There are few jurisdictional or timing limitations on the CRB's review powers. This will result in CRB interference with the actions of the other, established reviewing bodies. The CSC, Internal Affairs, and other investigative bodies have worked out jurisdictional issues and procedural matters to ensure that each meets its legal obligations while protecting the legal and constitutional rights of the persons being reviewed. The CRB's broad scope and public nature could result in a CRB review that makes public findings that are still subject to a pending CSC determination or a DOJ investigation. In fact, the CRB would be required to conduct a review prior to the CSC being able to hear an officer's appeal, directly interfering with an officer's appeal rights. The result will be that actual, legal consequences resulting from the CSC or a federal court could be affected by the CRB. This will result in less effective public review of officers.

The design of the CRB also goes against some of the guidelines suggested by the U.S. Department of Justice (the "DOJ"). Certain DOJ guidelines specifically state that no activist or political candidate should be a member of a CRB. However, the proposed CRB specifically includes an activist and a member appointed by the business community. This reflects the current ordinance's fundamental misunderstanding of what a review body should be: A neutral body that conducts a review to determine the truth. The very purpose of this proposed CRB is to respond to the public. Not only does that negate the very purpose of what any reviewing body should pursue, it will put the public in danger.

The greatest danger of this form of CRB is that its review of police action is focused on politics and responding to the public. This will hinder police action and make our city less safe. This proposed CRB is going to review police action without any legal framework. Instead, a board entirely appointed by the Mayor will conduct a review without a standard of review or legal guidelines, and then report its findings directly to the Mayor. The stated purpose is to make the police accountable to the public, not the law. We fear that a reviewing body that reports solely to a single elected official will frame its reporting on the political needs of that elected official, intentionally or not.

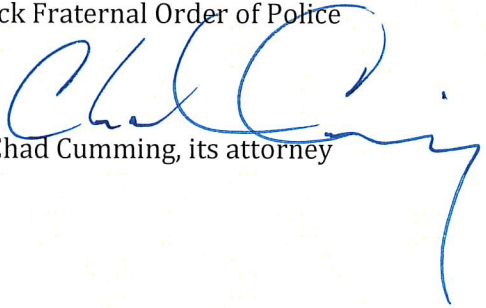
Police are trained to act within and enforce the law. They make split second decisions that mean life or death. Many in the public judge their actions without any understanding of criminal law or law enforcement procedures. However, an officer should be reassured that, so long as she abides by the law and follows policies, she will keep her job and be protected from unjust consequences. However, this ordinance proposes that the CRB review an officer's actions based on public perception.

Officers who are forced to consider public perception and politics rather than the law will make this city less safe. If an officer is forced to consider the political ramifications as well as the law & public safety when confronting a potentially dangerous criminal, she may well hesitate. That puts the officer and this City in harm's way. Crime is one of the biggest factors keeping the City from attracting more businesses and talented individuals. This proposed ordinance will weaken the police force, resulting in more crime. The crime victims will feel the most immediate consequences, but we will all suffer from lost opportunity.

The proposed form of CRB is not what this city needs. The City should do more to educate the public about the existing forms of review the public has of the police. However, if the Board determines that a CRB is needed, this is not the form it should take. CRB's goals should be apolitical, should give this Board oversight power, and should include sufficient details for the Board to make an informed vote. We strongly urge the Board to vote down this ordinance.

Kind Regards,

Little Rock Fraternal Order of Police

By:  Chad Cumming, its attorney