Staff Summary Report REVISED

Tempe

Council Meeting Date: 11/06/08 **Agenda Item Number:** 34

SUBJECT: This is the introduction and first public hearing to amend Chapter 2, Article V, Boards, Commissions, Etc., of the Tempe City Code, by amending Section 2-181 relating to Powers and Duties; amending Div. 12, relating to Tempe Citizens' Panel for Review of Police Complaints and Use of Force by amending Sections 2-285 and 2-88; and repealing Section 2-287. The second public hearing is set for November 20, 2008.

DOCUMENT NAME: 20081106pdsam03 **TCC CH 2 – CITY CODE ADMINISTRATION (0503-02)** Ordinance No. 2008.68

SUPPORTING DOCS: No

COMMENTS: N/A

PREPARED BY: Shelly A. Macdonald, Management Assistant II, 480.350.8820

REVIEWED BY: Brenda Buren, Support Services Director, 480.350.8991

LEGAL REVIEW BY: Bill Amato, Police Legal Advisor, 480.350.8610

FISCAL NOTE: N/A

RECOMMENDATION: Staff recommends adoption of Ordinance No. 2008.68.

ADDITIONAL INFO: As follow up to the September 18, 2008 Issue Review Session, the Police Department is moving forward with the changes presented to the City Council and the City Attorney's Office. Since the IRS session on September 18, 2008, there as been a change to the ordinance and that is a clarification as to what a serious injury is. A serious injury includes physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, serious impairment of health, or loss or protracted impairment of the function of any bodily organ or limb (from A.R.S. 13-105). The recommended changes have been reviewed by current and former citizen panel members, as well as representatives from the TOA, TSA and SEIU employee groups.

The change to Section 2-181 is for clarification purposes to establish that a quorum ***is a majority*** of the members participating in a meeting and ***not a majority of*** the full membership of the Board or Commission.

ORDINANCE NO. 2008.68

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 2, ARTICLE V, BOARDS, COMMISSIONS, ETC., OF THE TEMPE CITY CODE BY AMENDING SECTION 2-181 RELATING TO POWERS AND DUTIES; AMENDING DIV. 12, RELATING TO TEMPE CITIZENS' PANEL FOR REVIEW OF POLICE COMPLAINTS AND USE OF FORCE BY AMENDING SECTIONS 2-285 AND 2-288; AND REPEALING SECTION 2-287.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 2-181 of the Tempe City Code is hereby amended to read as follows:

Sec. 2-181. Powers and duties.

All boards and commissions established by the city shall have the following powers and duties unless otherwise specified:

(1) To act in an advisory capacity to the city council for the purpose of making recommendations consistent with its duties;

(2) To establish such rules and regulations as it deems necessary for its government and for the faithful performance of its duties; to set a time for regular meetings which shall be held at least once a month if there is business to transact; to establish the manner in which special meetings may be held and the notice to be given thereof; and to provide that a majority of the total number of members shall constitute a quorum. The affirmative vote of a majority of the ~~total number of~~ members PARTICIPATING IN THE MEETING shall be required for passage of any matter before the board;

(3) To organize by electing one of its members as chairman of the board and one as vice-chairman. The city staff representative assigned to the board or commission shall act as secretary but shall not be entitled to take part in any voting;

(4) To require attendance of the members at regular meetings and provide that absence from three (3) consecutive regular meetings or six (6) meetings within any twelve (12) month time period without consent from the chairman or vice-chairman if the chairman is unavailable, shall be deemed to constitute a resignation and such position shall thereupon be deemed vacant;

(5) To consult, through the chairman of the board, or the vice-chairman if the chairman is unavailable, with the assigned city department on the items to be included on the agenda of the meetings prior to preparation and distribution of the agenda by the assigned city department; and

(6) To review and approve the official minutes of the board or commission as prepared by the assigned city department no later than thirty (30) days after the meeting or commission and if such minutes cannot be approved, for any reason, within such period of time, such minutes shall be transferred to the city council without approval.

Section 2. That Section 2-285 of the Tempe City Code is hereby amended to read as follows:

Sec. 2-285. Established; composition.

(a) There is hereby established a Tempe citizens' panel for review of police complaints and use of force ("panel") to be composed of fifteen (15) citizen members and ~~three (3)~~ FOUR (4) police department members CONSISTING OF TWO (2) SERGEANTS AND TWO (2) LINE LEVEL OFFICERS, WHO SHALL SERVE FOR A TWO (2) YEAR TERM. THE POLICE DEPARTMENT MEMBERS SHALL BE SELECTED BY THE CHIEF.

(b) When functioning as a review sub-panel as described in § 2-288, each sub-panel shall consist of ~~five (5)~~ SIX (6) citizen members and ~~three (3)~~ TWO (2) police department members CONSISTING OF ONE SERGEANT AND ONE LINE LEVEL OFFICER. The citizen members of each sub-panel shall be selected by the city manager. THE POLICE DEPARTMENT MEMBERS OF EACH SUB-PANEL SHALL BE SELECTED BY THE CHIEF.

(C) THE CHIEF SHALL APPOINT AN ASSISTANT CHIEF TO SERVE AS THE NON-VOTING CHAIRPERSON/FACILITATOR OF THE PANEL AND EACH SUB-PANEL.

(~~c~~ D) This panel shall act in an advisory capacity to the chief of police and the city manager.

(~~d~~ E) The fifteen (15) citizen members of the panel shall be selected from residents of the city. The mayor will make three (3) selections and each council member will make two (2) selections.

(~~e~~ F) The term of office of citizen members shall be for three (3) years and shall commence on the first day of January of each year and end on the 31st day of December, three (3) years thereafter, except for the initial citizen members of the panel. Such terms shall be staggered so that the term of no more than five (5) citizen members shall conclude in any given year.

(~~f~~ G) Citizen members of the panel may not serve more than two (2) complete consecutive terms. Any CITIZEN MEMBER vacancies shall be filled for the remainder of the unexpired

term ~~of the citizen member whose office is vacant~~ in the same manner as such citizen member received original appointment.

(~~g~~ H) The city manager may for cause remove any citizen member of the panel.

(I) PROSPECTIVE CITIZEN PANEL MEMBERS MAY NOT SERVE IF ANY OF THE FOLLOWING APPLY:

(1) HAVE BEEN ARRESTED BY THE TEMPE POLICE DEPARTMENT WITHIN THE LAST FIVE (5) YEARS;

(2) HAVE ANY FELONY CONVICTIONS;

(3) ARE RELATED DIRECTLY TO A TEMPE POLICE DEPARTMENT EMPLOYEE;

(4) ARE A CURRENT OR FORMER TEMPE POLICE DEPARTMENT EMPLOYEE;

(5) ARE A FORMER EMPLOYEE OF ANY OTHER POLICE AGENCY WITHIN FIVE (5) YEARS OF THEIR POLICE EMPLOYMENT; OR

(6) ARE AN ADVERSARY PARTY, A REPRESENTATIVE OF AN ADVERSARY PARTY, OR HAVE ANY FINANCIAL LITIGATION OR CLAIM AGAINST THE CITY RELATING TO THE POLICE DEPARTMENT OR ANY INDIVIDUAL IN THE POLICE DEPARTMENT.

Section 3. That Section 2-287 of the Tempe City Code is hereby repealed.

~~**Sec. 2-287. Police department members designated.**~~

~~(a) The chief of police shall select three (3) police department employees to serve as members of the panel.~~

~~(b) The three (3) police members shall consist of one division commander, who shall serve for an indefinite term, one first line supervisor and one line officer, both of whom shall serve for a two (2) year term.~~

~~(c) The appointed division commander shall serve as chairperson of the panel and each sub-panel.~~

Section 4. That Section 2-288 of the Tempe City Code is hereby amended to read as follows:

Sec. 2-288. Powers and duties.

(A) The Tempe citizens' panel for review of police complaints and use of force shall have the following powers and duties:

(1) To ~~establish~~ REVIEW such rules and regulations as it deems necessary for its government and for the faithful performance of its duties; AND ~~to set a time for meetings which shall be held as needed if there is business to transact; to establish the manner in which special meetings shall be held and the notice to be given thereof;~~ and

(2) To provide ~~that five (5)~~ SIX (6) members of ~~each~~ THE PANEL FOR EACH SUB-PANEL. A TOTAL OF SIX (6) MEMBERS OF THE sub-panel (OFFICERS AND CITIZENS) shall constitute a SUB-PANEL quorum. The affirmative vote of five (5) members of each sub-panel shall be required for passage of any matter before the panel.

~~(2) To require attendance of the members at regular meetings and to provide that absence from three (3) consecutive regular meetings without consent of the panel shall be deemed to constitute the resignation of such member and such position shall thereupon be deemed vacant;~~

~~(3) To meet in sub-panels selected by the city manager and conduct a review of the record of the following:~~

(B) THE SUB-PANEL SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

~~a.~~(1) TO REVIEW all police shootings and ANY police incidents ~~when~~ WHEREIN direct physical force by the police results in serious injury or death. Serious injury is defined as an injury that requires the subject be admitted into a hospital;

~~b.~~(2) TO REVIEW the findings of the police department's investigation of unsustained, unfounded or exonerated citizen complaints, when that citizen requests a review of the police department's findings. A request for review must be made within thirty (30) days from the date the citizen is notified of the findings of the police department's investigation; ~~or~~ AND

~~c.~~(3) TO REVIEW any police department incident, at the request of the chief of police;

~~(4)~~(C) After a review of the record, each review panel shall make one of the following findings in a WRITTEN report to the chief of police:

~~a.~~(1) Agree with the findings of the police department investigation;

~~b.~~(2) Disagree with the findings of the police department investigation;

~~c.~~(3) Advise the chief of police that further investigation is warranted; or

~~d.~~(4) Upon a review of a use of police force incident, the review panel shall make a further finding whether the use of police force was within police department policy~~; and~~.

~~(5)~~(D) The panel may make recommendations to the chief of police concerning training programs, revisions of policies or procedures, commendable actions, preventive or corrective measures (except for employee discipline) ~~and community concerns regarding police action and procedures~~ AS IT RELATES TO THE SUB-PANEL FINDINGS OF THE INCIDENT BEING REVIEWED.

Section 5. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

_____
MAYOR

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney