

BILL NO. 2020-16

NYE COUNTY ORDINANCE NO. 560

SUMMARY: An ordinance amending Nye County Code Title 2 Titled Administration and Personnel, Chapter 2.84, Titled Nye County Peace Officer Advisory Review Board, setting forth its powers and duties; providing for the severability, constitutionality and effective date thereof, and other matters properly relating thereto.

TITLE: AN ORDINANCE AMENDING NYE COUNTY CODE TITLE 2 TITLED ADMINISTRATION AND PERSONNEL, CHAPTER 2.84, TITLED NYE COUNTY PEACE OFFICER ADVISORY REVIEW BOARD, SETTING FORTH ITS POWERS AND DUTIES; PROVIDING FOR THE SEVERABILITY, CONSTITUTIONALITY AND EFFECTIVE DATE THEREOF, AND OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the Nye County Board of Commissioners (Board) is empowered, pursuant to the provisions of Chapter 244.119 of the Nevada Revised Statutes, to amend the Nye County Code;

WHEREAS, the Board is empowered, pursuant to the provisions of Chapter 289.380 of the Nevada Revised Statutes, to create an advisory review board to advise the Board on issues concerning peace officers within Nye County; and

NOW THEREFORE, the Board of Commissioners of the County of Nye, State of Nevada, does hereby adopt, promulgate and order compliance therewith the following regulations:

Chapter 2.84

NYE COUNTY PEACE OFFICER ADVISORY REVIEW BOARD

2.84.010: CREATION:

2.84.020: DEFINITIONS:

2.84.030: MEMBERS; APPOINTMENT; QUALIFICATIONS; TERM; REMOVAL:

2.84.040: POWERS AND DUTIES:

2.84.050: REVIEW BOARD PANEL INITIATION PROCESS:

2.84.060: REVIEW BOARD PANEL PROCEDURES:

2.84.070: DEPARTMENT HEAD PROCEDURES:

2.84.080: APPEALS:

2.84.090: CONFIDENTIALITY AND DISCLOSURE:

2.84.100: COMPENSATION:

2.84.110: PENALTY:

2.84.010: CREATION:

There is created an advisory review board to be known as the "Nye County Peace Officer Advisory Review Board". (Ord. 478, 2014)

2.84.020: DEFINITIONS:

For the purposes of this chapter, the following words shall have the meanings set out in this section:

BOARD: The Nye County Board of Commissioners.

CITIZEN COMPLAINT: A written document alleging misconduct of a peace officer submitted by a complainant.

COMPLAINANT: A person or entity who alleges misconduct of a peace officer and has submitted a citizen complaint containing those allegations to the County manager or Sheriff.

COUNTY: The County of Nye.

COUNTY MANAGER: The Nye County Manager or designee.

DEPARTMENT HEAD: An appointed official directly responsible to the County Manager, or the elected official responsible to the electorate for the overall administration of a department.

DISCIPLINARY ACTION: Dismissal, demotion, suspension, reduction in salary, written reprimand or transfer of a peace officer for punitive action purposes of discipline.

MEMBER: Members of the Nye County Peace Officer Advisory Review Board.

PEACE OFFICER: A current Nevada Police Officer Standards and Training Commission Category I, II or III, paid or volunteer certified peace officer working at the Justice Court, the Sheriff's Office or the District Attorney's Office.

REVIEW BOARD: The Nye County Peace Officer Advisory Review Board.

SHERIFF: The Nye County Sheriff or designee.

SHERIFF'S OFFICE: The Nye County Sheriff's Office.

STATE: The State of Nevada. (Ord. 478, 2014)

2.84.030: MEMBERS; APPOINTMENT; QUALIFICATIONS; TERM; REMOVAL:

A. The Board shall appoint six (6) members to serve on the review board for a period of four (4) years and six (6) members to serve for a period of two (2) years. Appointments thereafter shall be for periods of four (4) years. The Board shall appoint two (2) alternative members who will serve for a period of (4) years or until the unexpired term of the member they are replacing. All members are eligible for reappointment and shall have the following qualifications:

1. Each member of the review board must be a resident of the county;
2. No member shall be an active peace officer, school police officer, constable or deputy of a constable or shall have served in such capacity within (5) five years preceding their appointment to the board;
3. No member shall have been convicted of a felony.
4. Each member must complete training relating to law enforcement, including, without limitation, training in the policies and procedures of law enforcement agencies, the provisions of Nevada Revised Statutes 289.010 to 289.120, inclusive, and the employment contracts of the peace officers.

B. The members of the review board shall serve at the pleasure of the Board during their respective terms of appointment of an alternate member and may be removed without cause at any time. Any vacancy shall be filled by appointment by the Board in which case the person shall serve the remainder of the unexpired term. (Ord. 478, 2014)

2.84.040: POWERS AND DUTIES:

A. The review board:

1. Does not have jurisdiction over any matter which involves conduct of a peace officer which is the subject of an ongoing criminal investigation or prosecution, including appeals and other forms of judicial review.
2. Does not have jurisdiction over any conduct alleged to have occurred more than two (2) years prior to the submission of the citizen complaint.
3. Only has jurisdiction over a citizen complaint based upon conduct which directly involved a citizen who is not a fellow peace officer.
4. Shall not abridge the rights of a peace officer that are granted pursuant to a collective bargaining agreement, a contract or any federal or state statute or regulation;
5. May review citizen complaints against a peace officer pursuant to the procedures as set forth in this chapter;
6. May review an internal investigation of a peace officer that was initiated as a result of or involves the same conduct as alleged in a citizen complaint pursuant to the procedures set forth in this chapter and make recommendations regarding any disciplinary action against the peace officer that is recommended by the Sheriff or appropriate Department Head, including, without limitation:
 - a. Increasing or decreasing the recommended level of discipline; and
 - b. Exonerating the peace officer who has been the subject of the internal investigation.

7. Will advise the Board on issues concerning peace officers as directed by the Board. (Ord. 478, 2014)

2.84.050: REVIEW BOARD PANEL INITIATION PROCESS:

- A. Citizen complaints against peace officers shall be submitted to the County Manager.
- B. Any citizen complaint submitted to the Sheriff or a Department Head, rather than to the County Manager, shall be forwarded to the County Manager within three (3) Calendar days of receipt.
- C. Within five (5) calendar days of receipt of a citizen complaint, the County Manager shall determine if the review board has jurisdiction over the matter pursuant to this chapter.
- D. If the County Manager determines that review is proper the County Manager shall randomly select three (3) members of the review board to serve as a review board panel and schedule a date, time, and location for the review board panel to convene. The review board panel shall convene, and the County Manager shall provide the citizen complaint to the Sheriff or appropriate Department Head, when applicable, within three (3) calendar days of the County Manager's receipt of the subject citizen complaint.
- E. If the County Manager determines the review board panel has no jurisdiction over a citizen complaint, the County Manager shall notify the complainant and Sheriff or appropriate Department Head in writing.

2.84.060: REVIEW BOARD PANEL PROCEDURES:

- A. The review board panel shall attend any supplemental training deemed necessary by the Sheriff and/or affected Department Head, conducted by the Sheriff's Office training personnel.
- B. All meetings and investigative hearings held by the panel shall be closed to the public and are not subject to Nevada Revised Statutes 241.
- C. At its first meeting, the review board panel shall select a member to serve as its chair who will preside over all meetings and any investigative hearings conducted by the review board panel and take any action necessary for the review board panel's efficient conduct.
- D. A review board panel may conduct an investigative hearing regarding the conduct alleged in the citizen complaint. Prior to the initiation of any investigative hearing, the review board panel shall provide notice to the Sheriff or appropriate Department Head and the subject peace officer and advise the subject peace officer he/she shall have an opportunity to be heard at the hearing and may represent him/her self or be represented by an attorney or other person of the peace officer's choosing at the hearing. The review board, Nye County, Sheriff or Department Heads are not responsible for providing such representation.

- E. During any investigative hearings, the chair shall have the power to:
 - a. Administer oaths and affirmations;
 - b. Issue subpoenas within the scope of the panel's jurisdiction to compel the attendance of witnesses to testify before the panel;
 - c. Require the production of books, papers and documents;
 - d. Determine the admissibility of evidence;
 - e. Limit the scope of testimony; and
 - f. Dispose of procedural motions and requests.
- F. At an investigative hearing, the members of the review board panel and the subject peace officer may:
 - a. Call witnesses.
 - b. Introduce exhibits relevant to the issues of the case.
 - c. Offer rebuttal evidence.
- G. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted.
- H. At the conclusion of investigative hearings, review panel members shall privately deliberate and vote upon action to be taken and such action shall be agreed to by a majority of review board panel members.
- I. All witness testimonies shall be audio or video recorded for appellate purposes only.
- J. I The chair of a panel shall report in writing the findings and recommendations of the panel regarding recommended disciplinary action to the Sheriff or appropriate Department Head and the County Manager within one-hundred-twenty (120) calendar days from the date of receipt of each and every complaint assigned to a review board panel for review and recommendation.

2.84.070: DEPARTMENT HEAD PROCEDURES:

- A. The Sheriff or appropriate Department Head shall conduct an internal investigation into any conduct alleged in a citizen complaint and provide notice to the peace officer pursuant to the requirements of any applicable collective bargaining agreement or the provisions of Nevada Revised Statute 289.
- B. The Sheriff or appropriate Department Head shall complete its internal affairs investigation and issue an internal investigation report to the review board panel within sixty (60) calendar days from the date of receipt of the citizen complaint.
- C. The Sheriff or appropriate Department Head shall submit its recommendation regarding discipline to the review board panel upon completion.

D. Upon receipt of the review board panels' findings and recommendations, the sheriff or appropriate Department Head shall serve the peace officer with the review board panels' findings and recommendations and the recommendation for discipline prepared by the Sheriff or Department Head.

E. The Sheriff or Department Head will make a final decision regarding what, if any, disciplinary action shall be taken against the subject peace officer and serve the final decision upon the subject peace officer and provide a copy to the County Manager within the one-hundred-eighty days negotiated in the collective bargaining agreement unless a waiver is approved by the NCLEA

2.84.080: APPEALS:

A peace officer may appeal a recommendation made by a panel of the review board through the procedures established in the applicable collective bargaining agreement. (Ord. 478, 2014)

2.84.090: CONFIDENTIALITY AND DISCLOSURE:

- A. The findings and recommendations of a panel of the review board are public records unless portions thereof are otherwise declared confidential by state or federal law.
- B. The Sheriff and/or the appropriate Department Head shall make available to a review board panel upon written request, all material necessary for the review board panel to conduct its review, including any relevant Nye County Sheriff's policies and procedures or other department applicable policies and procedures, any incident information within the custody of the Sheriff or Department Head, including known victims and witnesses, and the subject peace officer's personnel file, excluding any insurance, beneficiary, confidential medical or other confidential material.
- C. Except as otherwise provided in this chapter, the review board panel is not entitled to any information or material deemed confidential under the applicable collective bargaining agreement, or state, local or federal law.
- D. Except for the written findings and recommendations described herein, members of a review board panel shall not publish, discuss, or otherwise disclose information relating to a peace officer or the proceedings before the panel. (Ord. 478, 2014)

2.84.100: COMPENSATION:

Review board members shall serve without compensation but shall be entitled to the same travel expenses and subsistence allowances as county officers. (Ord. 478, 2014)

2.84.110: PENALTY:

Any person violating any of the provisions of this chapter is guilty of a misdemeanor. (Ord. 478, 2014)

SEVERABILITY. If any provision of this chapter or amendments thereto, or the application thereof to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity of provisions or applications of this chapter or amendments thereto which can be given effect without the invalid provision or application, and to this end the provisions of this chapter and amendments thereto are declared to be severable.

CONSTITUTIONALITY. If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the 7th day of December, 2020.

Proposed on the 6th day of October, 2020.

Proposed by: Commissioner Blundo.

Adopted on the 16th day of November, 2020

Vote: Ayes: Commissioners: Koenig, Strickland, Wichman, Blundo, Cox

Nays: Commissioners: Ø

Absent: Commissioners: Ø

BY: 
John Koenig, Chairman
Nye County Board of
County Commissioners

ATTEST: 
Sandra L. Merlino
Clerk and Ex-Officio
Clerk of the Board