BILL NO.____________________________________

SUMMARY – An ordinance amending Chapter 2.62 of Title 2 of the Clark County Code for the purpose of revising various provisions relating to the Las Vegas Metropolitan Police Department Citizen Review Board; and providing for other matters properly relating thereto.

ORDINANCE NO.____________________________________
(of Clark County, Nevada)

AN ORDINANCE AMENDING CHAPTER 2.62 OF TITLE 2 OF THE CLARK COUNTY CODE FOR THE PURPOSE OF REVISING VARIOUS PROVISIONS RELATING TO THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT CITIZEN REVIEW BOARD; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 2.62 of title 2 of the Clark County Code is amended to read as follows:

2.62.010 Creation--Purpose. Pursuant to the authority of Chapter 289 of the Nevada Revised Statutes, there is created the Las Vegas metropolitan police department citizen review board. Such review board may advise the Las Vegas metropolitan police department committee on fiscal affairs and the Las Vegas metropolitan police department on issues concerning peace officers employed by the department, refer complaints against officers to the department, and review internal investigations by the department regarding discipline. The purpose of the review board is to act as an advisory body to the FAC and the department, and to inform the public of their recommendations to the extent permitted by law. The review board shall perform its functions without regard to race, color, religion, sex, age, [handicap,] disability, sexual orientation, national origin or political affiliation.

2.62.020 Definitions.

(a) “Board” means the board of county commissioners of Clark County, Nevada.
(b) “Citizen” means a member of the public.
(c) “City” means the city of Las Vegas, Nevada.
(d) “Council” means the city council of the city of Las Vegas, Nevada.
(e) “County” means Clark County, Nevada.
(f) “Department” means the Las Vegas metropolitan police department.
(g) “Director” means the director of the Las Vegas metropolitan police department citizen review board, or the director’s designee.
(h) “District attorney” means the district attorney of Clark County, Nevada.
(i) “Duties,” as used in Section 2.62.070(a) of the county code, are the functions of referral of complaints against officers to the department and the review of internal investigations by the department.
(j) “FAC” means the Las Vegas metropolitan police department committee on fiscal affairs.
(k) “Officer” means a peace officer employed by the Las Vegas metropolitan police department.
(l) “Panel” means a five-member panel of the Las Vegas metropolitan police department citizen review board.
(m) “Review board” means the Las Vegas metropolitan police department citizen review board.

2.62.030 Administrative support and funding.

(a) There shall be a director of the review board, who shall be appointed by the county manager in consultation with the city manager, with the advice and consent of the board and the council. The term of the director’s service shall be at the pleasure of the county manager and the city manager, with the advice and consent of the board and the council. 
(b) The county and the city may, upon mutual agreement, provide such funding, staffing, legal counsel and other resources as they determine, according to their sole discretion, to be necessary for the performance of the functions of the director and the review board. Neither the director, the review board, nor any panel of the review board shall incur any expense for which funding has not been approved by the city and the county.

2.62.040 Membership.
(a) The review board shall consist of twenty-five members, thirteen of whom shall be appointed by the members of the FAC who are representatives of the county, and twelve of whom shall be appointed by the members of the FAC who are representatives of the city.

(b) A person appointed to the review board must:

1. Be a resident of Clark County, excluding any incorporated cities other than the city of Las Vegas;
2. Not be currently employed as a peace officer. No more than five members of the review board may be former peace officers;
3. Not be a current employee in any capacity of the department; or a former peace officer of the department; or a spouse, child, sibling or parent of such a person;
4. Not be a current elected official;
5. Not be a person convicted of a felony; and
6. Not be or have been a party in litigation against the department, or against the county or the city with regard to any detention facility.

(c) The members shall be appointed from a list of names submitted by interested persons. Notice that applications for appointment to the review board are being accepted shall be published at a minimum once in a newspaper having general circulation in the county at least thirty days before the list is initially established. Applications for appointment shall be submitted to the director. Applicants must state whether they meet each of the eligibility criteria set forth in subsection (b) of this section. Applicants shall waive confidentiality and privacy as to records of criminal history, employment history, and such other information as is necessary to verify their eligibility and suitability for appointment, and shall authorize disclosure of such information for that purpose. Information about an applicant which is of a confidential nature shall not be disclosed, except in the course of administration of this chapter, to authorized representatives of the county or city, or upon lawful order by a court of competent jurisdiction.

(d) The director shall prescreen applications and disqualify any applicant who does not meet the minimum requirements set forth in subsection (b) of this section. Any applicant who is disqualified shall be so advised by the director. The director shall forward all applications, together with any grounds for disqualification, to the members of the FAC who are representatives of the city and the county.
(e) The county and city members of the FAC shall alternately appoint persons to the review board from the list of applicants submitted to them, with the county members making the first selection.

(f) The members of the FAC who are representatives of the county may by mutual agreement select and appoint persons to the review board from the list of applicants submitted to them. If the county members of the FAC are unable to agree, each will alternately make an appointment until the requisite number of persons has been selected. In such case, the first selection shall be made by the member with the greatest amount of time served on the board. If the county members of the FAC have equal amounts of service time, the person to make the first selection shall be determined by a toss of a coin.

(g) An updated list of applicants available for appointment shall be maintained by the director to fill vacancies on the review board. The director may update the list by adding the names of additional applicants and deleting the names of persons who become disqualified or who notify the director that they are no longer interested in serving on the review board. The director may accept applications at any time, but may solicit applications only through advertisement as described in subsection (c) of this section. Except as otherwise provided herein, applications shall remain active for a period of three years from the date of submittal. All subsequent applicants shall be subject to the same prescreening and background investigation requirements as the initial applicants. Vacancies shall be filled by action of the current representatives of the entity which originally appointed the position. When openings exist for both county and city members of the review board, the members of the FAC who represent the county and the city will appoint review board members and fill vacancies for unexpired terms from the most recent list of applicants according to the procedures set forth in subsection (e) of this section. The members of the FAC who represent the county will appoint review board members and fill vacancies for unexpired terms from the most recent list of applicants according to the procedures set forth in subsection (f) of this section.

(h) The director shall forward the application of each person tentatively selected for appointment to the district attorney’s office for background investigation. The district attorney’s office will return the results of its investigation, including any areas of concern and any grounds for disqualification it has discovered, to the director, who shall forward them to the applicable appointing authority. The appointing authority shall then make the appointment final, or select
another applicant according to the procedures set forth in this section. The appointing authority shall advise the director of any applicant who is disqualified, and the director shall notify the applicant.

(i) The director shall maintain a current list of review board members, and shall notify the FAC of all appointments to the review board.

(j) The initial county appointments to the review board shall consist of five members whose terms expire the first Monday in January, 2001; four members whose terms expire the first Monday in January 2002; and four members whose terms expire the first Monday in January, 2003. Thereafter, members shall serve for terms of three years. When a member resigns or otherwise has membership terminated, a new member will be selected to serve for the remainder of the former member’s term. No member shall be appointed more than three times, and no member shall be appointed to more than two three-year terms.

(k) County appointees to the review board serve at the pleasure of the members of the FAC who represent the [county, and may] county. A county appointee to the review board:

(1) May be removed from the review board without cause or notice upon mutual agreement of the county members of the FAC; 

(2) Shall be automatically removed from the review board if the member [Any member of the review board who] ceases to meet the qualifications set forth in Section 2.62.040; shall automatically be removed from the review board.

(3) Shall be automatically removed from the review board if the member has three unexcused absences from review board meetings, including training programs, or meetings of a panel during a calendar year. A member’s absence at a review board meeting will be considered “unexcused” if the member failed to notify the director, in writing or by phone, prior to the meeting that he will not be attending.

(4) Shall be automatically removed from the review board if the member declines three appointments to serve on a panel for reasons other than personal bias or conflict of interest unless a member of the FAC representing the entity through which the member was selected finds that the member had good cause for declining to serve on a panel;

(5) Shall be automatically removed from the review board if the member fails to attend three successive meetings of a panel to which they have been appointed unless a member of the FAC
representing the entity through which the member was selected finds that the member had good cause for failing to attend; or

(6) Shall be automatically removed from the review board for violating the confidentiality provisions of Section 2.62.100(l).

(1) Members of the review board shall serve without compensation, but may be entitled to reimbursement for expenses upon prior approval by both the board of county commissioners and the city council, or as otherwise provided by agreement between the county and the city.

2.62.050 Training.

Before serving on any panel, members of the review board must attend a training program related to law enforcement[,] as determined appropriate by the director, which shall include, at a minimum, the policies and procedures of the department, the department civil service rules related to conduct, the provisions of NRS 289.010 to 289.120 inclusive, the collective bargaining agreements covering the department and its officers, and the conduct of proceedings pursuant to this chapter. [Additional training shall, on occasion, be provided] The director shall be responsible for providing additional training, on occasion, to review board members to update or supplement the information previously provided to members.

2.62.060 Jurisdiction.

(a) The review board shall have jurisdiction to:

(1) Advise on issues concerning peace officers employed by the department, including:

(A) Conducting reviews and making recommendations to the department concerning department policies, procedures and programs, and

(B) Conducting reviews and making recommendations to the department concerning the provision of police protection and services;

(2) Refer citizen complaints against officers to the department; and

(3) Review completed internal investigations of officers by the department and make recommendations to the department regarding any discipline against officers.

(b) The review board shall not have jurisdiction to consider:

(1) Discipline or actions taken against an officer based upon conduct which did not involve a citizen, including but not limited to tardiness, attendance, insubordination, and productivity;

(2) Conduct of an officer which is the subject of an ongoing criminal investigation or prosecution, including appeals and other forms of judicial review;
(3) Conduct which is the subject of an ongoing internal investigation by the department, including grievances;
(4) Conduct previously submitted to the screening panel which the panel did not refer to the department or a hearing panel;
(5) Conduct previously reviewed by a hearing panel;
(6) Conduct occurring on or prior to the date of the creation of the review board, which shall be deemed to be the latter of the effective dates of the county and city ordinances establishing the review board;
(7) Complaints received more than one year after the date of the incident giving rise to the complaint. An ongoing criminal investigation or prosecution of an officer shall toll the period for submitting a complaint to the review board; and
(8) Any other conduct or matter for which jurisdiction is not provided under this chapter.

2.62.070 Selection of panels.

(a) The review board shall meet in panels of five to carry out its duties with regard to the referral of complaints to the department and review of internal investigations by the department.
(b) The review board may convene en banc for administrative purposes, including but not limited to training and establishing internal procedures. The review board may also convene en banc to consider issues of general concern regarding peace officers employed by the department.
(c) Panel members will be randomly selected by the director, who shall notify the members of their selection. No more than one former peace officer may be selected to serve on any panel.
(d) If a panel member is selected but is unavailable to serve, the director shall randomly select another member until the panel is filled. Eligible review board members who decline [three successive] appointments to serve on a panel [for reasons other than personal bias or conflict of interest,] or who fail to attend [three successive] meetings of a panel [to which they have been appointed, shall automatically be removed from the review board, unless a member of the FAC representing the entity through which the member was selected finds that the member had good cause for declining to serve on a panel or failing to attend.] are subject to removal from the review board pursuant to the provisions of Section 2.62.040(k).

2.62.080 Screening panel.

(a) Upon the appointment of the initial members of the review board, the director shall randomly select the members of the first panel, hereinafter referred to as the screening panel.
(b) The initial term of the members of the screening panel shall expire the first Monday in January, 2001. Thereafter, the director shall randomly select screening panel members, who shall serve terms of six months expiring the first Monday of the following July or January. When a screening panel member resigns or otherwise has membership terminated, the director shall randomly select a new member, who shall serve the remainder of the former member’s term. No screening panel member shall be eligible during their term on the screening panel to serve on any other panel. No member of the review board shall serve on two consecutive screening panels.

(c) Regular meetings of the screening panel shall be held at least once a month. Special meetings shall be held upon the call of the chair or two members of the panel.

(d) Citizen complaints against officers and requests to review internal investigations regarding officers shall be submitted to the director, who shall refer all complaints and requests for review to the screening panel. The director shall have no authority to dismiss or reject a complaint or request for review except in cases where the board has no jurisdiction pursuant to Section 2.62.060.

(e) The screening panel shall review complaints and requests for review to determine whether:

1. The review board has jurisdiction to consider the matter; and
2. The matter has sufficient merit to warrant further consideration by a hearing panel or the department.

(f) Upon review, the screening panel may:

1. Determine not to refer a matter to a hearing panel or the department;
2. Refer a complaint against an officer to the department; or
3. Refer a request for review of an internal investigation to a hearing panel; or
4. Refer a complaint for voluntary non-binding mediation but, if mediation is rejected, the screening panel shall follow paragraph (1), (2), or (3) of this subsection (f).

(g) The screening panel must complete its review and make its determination as to any complaint or request for review referred to it within fifteen days of the date the matter is first considered by the screening panel. The fifteen-day period shall be tolled during any ongoing investigation or proceeding which interferes with the panel's jurisdiction pursuant to Section 2.62.060 of the county code, or during any litigation over the screening panel's jurisdiction.

(h) Review by the screening panel shall be confined to the complaint or request for review, the records of the internal investigation for which review is requested, and such information as may
be voluntarily provided by the complainant, the department, or the officer whose conduct is the
subject of the complaint or request for review. The screening panel shall have no authority to
take testimony, issue subpoenas or require the production of books, papers and documents.

2.62.090  Reviews of internal investigations.
(a) Upon a determination by the screening panel to refer a request for review of an internal
investigation of an officer to a hearing panel, the director shall randomly select the members of
the panel.
(b) The hearing panel may review the internal investigation, and make recommendations to the
department regarding any disciplinary action against the officer, including, without limitation:
(1) Increasing or decreasing the recommended level of discipline; or
(2) Exonerating the officer who has been the subject of the internal investigation.
(c) At its first meeting, a panel shall choose one of its members as chair. The panel may select a
vice-chair to act in the chair's absence. The chair of the hearing panel shall report the findings
and recommendations of the panel to the department, the officer who is the subject of the
investigation under review, and the person who requested the review. The findings and
recommendations of the panel shall be in writing, which shall be approved by the panel. In the
event no findings and recommendations are approved by a majority of the panel, or a panel
member dissents from the majority’s decision, members of the panel may submit individual
findings and recommendation to the chair to be reported to the department, the officer, and the
person who requested the review. All findings and recommendations shall be reported to the
department within the time for making determinations set forth in Section 2.62.100(n) of the
county code.
(d) In the case of an internal investigation into a citizen complaint for which an officer is
potentially subject to discipline, the department may submit its proposed determination and any
supporting materials to the director for review by the screening panel. The screening panel shall
make its recommendation to the department within [fifteen] thirty days of the date that the
proposed determination is received by the director. The screening panel shall report its findings
and recommendations as set forth in subsection (c) of this section.

2.62.100 Panel procedures.
(a) The director shall comply with all legal notice requirements for panel meetings. In addition,
the director shall provide the department, and, if applicable, the complaining party and the
officer whose conduct is under review with notice of the proceedings, which shall include: the date, time and location of the meeting; the names of the members of the panel; and a summary of the alleged misconduct or item before the panel.

(b) [At its first meeting, a panel shall choose one of its members as chair. The panel may also choose a vice chair to act in the chair’s absence.] Except as otherwise provided in Section 2.62.080(h) of the county code, the chair shall preside over all meetings of the panel, and shall have the power to regulate all proceedings and take any action necessary for their efficient conduct, including the power to: administer oaths and affirmations; issue subpoenas (within the scope of the panel’s jurisdiction) to compel the attendance of witnesses to testify before the panel; require the production of books, papers and documents; determine the admissibility of evidence; limit the scope of testimony; and dispose of procedural motions and requests. When the chair is not present, the vice chair or designated temporary chair shall be empowered to perform all acts prescribed for the chair.

(c) A majority of the panel members shall constitute a quorum at any meeting, and a majority of those present and eligible to vote may take official action. No member shall be eligible to vote on the findings and recommendations of a panel unless they attended all meetings at which the panel received evidence on that item.

(d) Subpoenas issued by the chair of a hearing panel, or the director of the review board at the chair's request, shall give reasonable notice of the date, time and place for the taking of testimony. The chair may authorize the payment of reasonable expert witness fees when necessary, subject to the availability of funds. If a witness refuses to attend and testify or produce books, papers or other documents as required by subpoena, the panel may petition the district court to order the witness to appear and testify or produce the requested books, papers or document.

(e) The department shall make available to a hearing panel any personnel file or other material necessary for the panel to conduct a review. Upon completion of proceedings before screening panel or hearing panel, the panel shall return all materials and copies of materials received from the department back to the department, unless the matter is referred to a hearing panel by the screening panel.

(f) Panel members shall consider all matters in a fair and impartial manner. A panel member who has a personal bias or prejudice in the outcome of a proceeding shall not sit on a panel hearing
that matter. Personal interest in the outcome of a proceeding does not include holding or manifesting a political or social belief where such belief does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to: familial relationship or close friendship with persons material to the proceedings, witnessing events material to the proceedings, being a party or witness to the proceedings, having a financial interest in the outcome of the proceedings or holding a bias that is sufficient to impair the panel member’s impartiality. Prior to the commencement of any proceeding before the panel, the department and, if applicable, the complaining party or officer whose conduct is under review, may submit a motion to disqualify a panel member for personal bias, stating with particularity the grounds for such disqualification. After consideration, the panel shall either deny the motion and direct the proceedings to go forward or cause the disqualified member to be removed. A panel member shall abstain from voting on any motion to disqualify themselves. A panel member may withdraw from a proceeding where they deem themselves unqualified for any reason. When a member of a hearing panel is disqualified, the proceedings shall be continued to allow the director to randomly select another panel member. When the person disqualified is a member of the screening panel, they shall abstain from voting and the disqualification shall be effective only as to the matter in which the motion to disqualify was submitted.

(g) The chair of a hearing panel shall determine the order of taking testimony. Questions may be posed by the chair, other panel members, or counsel for the review board. The officer whose conduct is under review shall have the right to have counsel or another representative of their choosing present during questioning of the officer. The chair may, at their discretion, permit the department, an officer whose conduct is under review, or their counsel or representatives to be present during questioning of any witness. Following questioning by the chair, other panel members and counsel for the review board, the chair may, at their discretion, permit the department, an officer whose conduct is under review or their counsel or representatives to question the witness. The scope of questions, as well as any additional questioning, shall be determined by the chair.

(h) The chair of a hearing panel may, in their discretion, permit the department, an officer whose conduct is under review, or their counsel or representatives with the opportunity to present testimony and other evidence to the panel. When a hearing panel is reviewing an internal
investigation of an officer, the officer shall, at a minimum, have the opportunity to be heard by
the panel.
(i) In any proceeding before a hearing panel, the officer who was the subject of the investigation
under review may represent themselves or be represented by counsel or another person of their
own choosing. The officer is solely responsible for obtaining such representation, as to which the
review board, the panel, the FAC, the department, the county and the city have no obligation.
(j) Evidence may be admitted if it is of a type commonly relied upon by reasonable and prudent
persons in the conduct of their affairs. Patently unreliable, irrelevant, immaterial or unduly
repetitious evidence may be excluded. Notice may be taken of judicially cognizable facts and of
generally recognized technical or scientific facts.
(k) At the conclusion of evidentiary proceedings, if any, the panel members shall privately
deliberate and vote upon the action to be taken.
(l) The proceedings of a screening panel or a hearing panel shall be closed to the public. All
records submitted to the panel which contain information declared confidential by law, including
judicial precedent, and all records of proceedings before the panel, except public notices and the
panel’s findings and recommendations are deemed confidential. Custody of all records and
copies of records which are designated as confidential pursuant to this subsection shall be
maintained by the director, who shall make the records available to the panel members for
review at the office of the director and during proceedings of the panel. No panel member shall
remove, record or copy any confidential record or copy of any confidential record from the office
of the director or the location of proceedings before the panel. It shall be unlawful for any person
to disclose records or the contents of records designated as confidential by this subsection which
they have obtained through proceedings under this chapter, except: in the course of
administration of this chapter, to authorized representatives of the department, or upon lawful
order by a court of competent jurisdiction. Any person violating the confidentiality provisions of
this subsection shall be guilty of a misdemeanor and upon conviction shall be punished by
imprisonment in the county jail for a term not to exceed six months, or a fine not to exceed one
thousand dollars, or both such fine and imprisonment. Violation of the confidentiality provisions
of this subsection shall also be grounds for removal of a member from the review board[.]
pursuant to the provisions of Section 2.62.040(k). The findings and recommendations of a panel
or panel member shall not contain information declared confidential by law, including judicial
precedent, unless such information is designated as confidential and disclosed as provided under this section for confidential records.

(m) A panel shall not abridge the rights of an officer which are granted pursuant to any applicable collective bargaining agreement, contract, or law.

(n) A hearing panel must complete its review and make its determination as to any request for review referred to it by the screening panel within ninety days of the date the matter is first considered by the hearing panel. The ninety-day period shall be tolled during any ongoing investigation or proceeding which deprives the panel of jurisdiction pursuant to Section 2.62.060 of the county code, or during any litigation over the panel’s jurisdiction or a subpoena issued by the panel. Upon expiration of the ninety-day period, a panel shall have no authority to continue a review or make a recommendation.

(o) Consideration of a citizen complaint against an officer or a request for review of an internal investigation of an officer by a panel shall not stay the imposition of discipline or other action by the department. The screening panel or the hearing panel to which the matter has been referred, however, may recommend to the department that discipline be stayed pending review.

2.62.110 Appeals.

An officer who is the subject of an internal investigation which has been reviewed by a panel may appeal the panel’s recommendation through the procedures established in the applicable collective bargaining agreement. In the absence of such procedures, or in cases where the officer is not covered by a collective bargaining agreement, appeal shall be through the procedures established in the Las Vegas metropolitan police department civil service rules.

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.
PROPOSED on the _____ day of ____________, 2009.

PROPOSED BY: Commissioner ______________________

PASSED on the _____ day of ________________ 2009.

AYES: _______________________________________

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NAYS:_______________________________________

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ABSTAINING:_______________________________________

ABSENT: ________________________________________

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BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

BY:_____________________________________
Rory Reid, Chairman

ATTEST:

______________________________________________
SHIIRLEY B. PARRAGUIRRE, County Clerk

This ordinance shall be in force and effect from and after
the _____ day of ____________, 2009.