

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	November 4, 2019
Action Required:	Ordinance Enactment & Resolution Adoption
Presenter:	John C. Blair, II, City Attorney
Staff Contacts:	John C. Blair, II, City Attorney
Title:	Police Civilian Review Board Ordinance, Bylaws, and Resolutions

Background:

On October 21, 2019, the Council conducted a first reading of proposed Police Civilian Review Board (CRB) bylaws and a proposed ordinance. The Council also considered a resolution for the CRB's Executive Director to study and provide a report to the Council concerning an Auditor position.

Discussion:

After the October 21, 2019 Council meeting, the City Attorney's Office made amendments to the bylaws, ordinance, and resolution. The following highlights some of the amendments that have been made:

Auditor Resolution: The proposed Auditor resolution now requires the CRB Executive Director to present a report and recommendation to the City Council by June 2020 or within sixty days of the Executive Director's appointment, whichever is later. The proposed resolution also includes requirements for the report to include recommendations on data collection as well as a Memorandum of Understanding with the Charlottesville Chief of Police.

Ordinance/Bylaws: The proposed ordinance now includes most provisions of the bylaws. The CRB may amend its bylaws without Council approval.

Policy Resolution: Pursuant to the Council's desires, I have crafted a resolution for the CRB's ability to review Charlottesville Police Department (CPD) policies thirty days in advance of the policy enactment by CPD. The Council may amend the resolution after receiving CRB recommendations for additional policies to be added to the list.

CRB Composition: The CRB's composition has been amended so that one member of the CRB may not be representative of both the "historically disadvantaged communities that have traditionally experienced disparate policing or who are residents of public housing" membership category as well as the "represents an organization that seeks racial or social justice on behalf of historically-disadvantaged communities" membership category.

Technical Amendments: The CRB ordinance and bylaws clarify that if a CPD internal affairs investigation contains multiple findings based on multiple issues cited, only the portion of the investigation that contains a finding of unfounded, exonerated, or not resolved may be reviewed by the CRB. The CRB ordinance and bylaws also clarify that the term “grievance proceeding” includes an appeal pursuant to the Virginia Law Enforcement Officers Procedural Guarantee Act. Additionally, the ordinance and bylaws now require the consent of a Complainant before the CRB may initiate a Review Request. The Complainant needs to consent to participate in the Review Request hearing process as well as providing the CRB access to records about the Complainant.

Budgetary Impact:

The budgetary impact is undetermined at this time. The costs of an Executive Director, NACOLE training for CRB members, office expenditures, and legal services will need to be determined.

Alternatives:

The Council could amend or decline to adopt the Ordinance, Bylaws, and Resolutions.

Attachments:

Proposed CRB Bylaws
Proposed CRB Ordinance
Proposed CRB Resolution concerning Auditor Report
Proposed CRB Resolution concerning Policy Review
Proposed CRB Resolution concerning Bylaws Adoption

CHARLOTTESVILLE POLICE CIVILIAN REVIEW BOARD BYLAWS

Adopted by the Charlottesville City Council on _____, 2019.

ARTICLE 1. NAME

The name of this organization is the Charlottesville Police Civilian Review Board (hereinafter “Board”).

ARTICLE 2. PURPOSE

The Board aims to provide objective and independent civilian-led oversight of the Charlottesville Police Department (hereinafter “CPD”) in an effort to enhance transparency and trust, to promote fair and effective policing, and to protect the civil and constitutional rights of the people of the City of Charlottesville.

The Board’s functions, as outlined below, shall pursue the following principles and objectives:

- A. Ensuring that police officers act with integrity and treat every person with equal dignity;
- B. Empowering and inspiring self-governance and a culture of mutual respect;
- C. Seeking social and racial justice;
- D. Engaging in community outreach and amplifying the voices of the socially, politically, and economically disenfranchised;
- E. Listening to and building cooperation between all stakeholders to find and develop common ground and public purpose;
- F. Championing just, equitable, and legitimate policing policies and practices; and
- G. Processing complaints, reviewing police practices and internal investigations, issuing findings, writing public reports, and making recommendations.

ARTICLE 3. BOARD MEMBERSHIP AND TERMS OF OFFICE

A. Composition and Qualifications.

1. The Charlottesville City Council shall appoint each member of the Board.
2. The Board shall be composed of seven voting members all of whom reside in the City of Charlottesville. Three of the Board members shall either be residents of public housing at the time of their appointment or come from historically-disadvantaged communities that have traditionally experienced disparate policing. One of the other Board members shall represent an organization, office, or agency that seeks racial or social justice or that otherwise advocates on behalf of historically-disadvantaged communities, particularly communities that have experienced disparate policing.

3. The Board shall also have one non-voting member with law enforcement experience.

B. Terms of Service.

Board Members shall be appointed for three-year terms, except for the inaugural Board (which shall have terms as described below) and may be appointed to no more than two consecutive terms pursuant to Charlottesville City Code Section 2-8.

With respect to the inaugural Board, four Board Members shall be appointed for three year terms and three Board Members shall be appointed to eighteen month terms.

The non-voting member shall serve for a term of three years.

C. Resignations, Removals and Vacancies.

1. Board Members serve at the pleasure of the Charlottesville City Council.
2. The Board may request that the Charlottesville City Council remove a Board member for misfeasance, malfeasance, or excessive absences from Board meetings.
3. Any Board member may resign from the Board at any time by delivering written notice of their resignation to the City Council's Clerk of Council with a copy to the Board Chair. The resignation will be effective upon receipt by the Clerk of Council, unless an effective date of the resignation is specified in the written notice.
4. The Charlottesville City Council may appoint a new Board Member for the unexpired Board Member term resulting from a vacancy that occurs for any reason. In filling a vacancy for the remainder of a term, the Charlottesville City Council will attempt to maintain the composition of the Board consistent with the Article 3, Section (A)(2) of these Bylaws, but it is not required to do so. The Council will endeavor to preserve the composition of the Board consistent with Article 3, Section (A)(2) of these Bylaws by giving a preference to a prospective appointee who represents a group mentioned in these Bylaws to fulfill the aforementioned Board composition provision.

D. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with ordinances or resolutions of the Charlottesville City Council. To the extent there is a conflict between any ordinance or any other resolution or matter passed by the City Council, and these Bylaws, the ordinance or resolution shall govern.

E. Board Immunity.

Board members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, et seq., and the provisions of Virginia Code § 15.2-1405.

ARTICLE 4. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. Election of Chairperson and Vice-Chairperson.

At its first meeting, the Board shall elect, by a majority vote, a Chairperson and Vice-Chairperson. The Board shall elect a Chairperson and Vice-Chairperson at its first meeting of every calendar year. No Board Member shall serve more than two consecutive terms as Chairperson.

B. Duties of the Chairperson and Vice-Chairperson.

The Chairperson shall preside over all Board meetings at which they are present. Additionally, the Chairperson shall prepare all Board meeting agendas in consultation with Board professional staff members. The Chairperson shall also draft all Board communications and serve as the Board's media point of contact. Finally, the Chairperson may assign an *ad hoc* task to one or more Board members.

The Vice-Chairperson shall preside over all Board meetings in the absence of the Chairperson and shall perform any other duties delegated to them by the Chairperson. The Vice-Chairperson shall take minutes at all Board public meetings unless the Board votes to allow its Executive Director to take minutes.

C. Committees.

The Chairperson may appoint any necessary committees or subcommittees of Board members to accomplish the Board's objectives.

D. Community Advisory Panels.

The Board may establish community advisory panels as it deems necessary. The Board shall determine the composition of the panels. The purpose of the panels shall be to provide community input on the Board's activities. No more than two Board members shall serve on a community advisory panel, and panels will not be delegated any of the Board's functions nor shall they serve as advisors to the Board.

ARTICLE 5. QUORUM, VOTING, MEETINGS, MINUTES, AND ETHICS

A. Quorum.

At any Board meeting, the presence of four Board members shall constitute a quorum.

B. Voting.

The vote of a majority of Board members present at a meeting with a quorum is necessary for the Board to take an action. All votes of Board members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Board members who are present at a meeting, including the Chair, may vote at any meeting.

C. Regular Meetings.

At its first meeting, the Board shall establish a regular meeting schedule for the year. Regular meetings shall be scheduled on a monthly basis, however, the Chairperson may cancel any meeting if there is no business to conduct or in the event of inclement weather. Any meeting cancelled due to inclement weather will be rescheduled by the Chairperson upon consultation with other Board members.

The Board will provide a time for public comment at each of its regular meetings. The Board Chairperson will establish a reasonable time period to receive public comments. The Board Chairperson may establish a specific, uniform time period for each public commenter to address the Board.

D. Special Meetings.

The Chairperson or two Board members may call a special meeting by providing a written request to the Executive Director.

E. Participation by Electronic Communication Means

A Board member may participate in the meeting through electronic communication means if the following conditions are met:

1. A quorum of Board members is physically present at the meeting site;
2. If the Board member is unable to be physically present due, the Board member shall notify the Chairperson of their inability to attend the physical meeting;
3. If the Board member's absence is due to a personal matter, the Board member shall identify the specific nature of the personal matter (a Board member may only participate electronically in two Board meetings per calendar year due to a personal matter);
4. The electronically participating member's physical location is recorded in the Board's minutes as well as the specific nature of the personal matter that prohibits the Board member's attendance;

5. The Board's minutes shall reflect if the electronically participating Board member's absence is due to a temporary or permanent disability or medical condition (a Board member may electronically participate in an unlimited number of meetings due to a temporary or permanent disability or medical condition);

6. The electronically participating member's voice can be heard by all Board members at the physical location of the meeting; and

7. By a majority vote of the Board members present at the physical meeting location, the Board approves the Board member's electronic participation in the meeting.

F. Freedom of Information Act Compliance

The Board shall work with members of City staff to ensure compliance with all meeting notice requirements contained in the Freedom of Information Act. All regular Board meetings shall be publicly noticed in two physical locations within Charlottesville City Hall as well as on the City of Charlottesville's calendar available on the internet.

G. Minutes

The Board shall ensure that it records meeting minutes for each Board meeting. The minutes shall contain the date, time, and place of the meeting; the Board members who are absent and present for the meeting; a brief description of the Board's business conducted at the meeting; and a record of all votes taken at the meeting including each Board member's vote on each issue by name, unless the vote is unanimous.

H. Ethics.

The Board shall demonstrate a commitment to integrity and impartiality. A Board member shall not allow a personal interest to compromise these values. The Board shall comply with the Virginia Conflict of Interests Act (COIA). Additionally, even if the COIA does not prohibit a Board member from participating in a Board action, if a Board member does not wish to vote on a matter before the Board, they may abstain from voting.

I. Training.

All Board members shall, within six months of appointment, participate in city-sponsored training offered by the National Association for Criminal Oversight of Law Enforcement (NACOLE) or a comparable organization selected by the Board's Executive Director. The training shall consist of at least eight hours.

Additionally, the Board's Executive Director shall provide a separate training to Board members within six months of a Board member's appointment. The curriculum of this training shall be developed by the Executive Director in consultation with the City Manager, City Attorney, Chief of Police, and any other City staff member that the Executive Director wishes to consult.

ARTICLE 6. STAFF

A. Executive Director

The City Manager will appoint an Executive Director for the Board upon a majority vote of the Charlottesville City Council. Before recommending a candidate for Executive Director role to the City Council, the City Manager will conduct an interview panel for finalists for the position. Two members of the Board shall serve on the interview panel and provide their advice and recommendations to the City Manager. The City Manager shall supervise and evaluate the Executive Director. The Executive Director may be terminated by the City Manager. The Board may, by a majority vote, request a conference between the Board Chair and the City Manager to discuss the performance of the Executive Director.

B. Legal Counsel.

The Board's Executive Director, the City Attorney, and the Board Chair shall work collaboratively to select legal counsel for the Board on an annual basis utilizing best practices for procuring legal services. The Board's legal counsel shall advise the Board on all legal questions the Board may have concerning complaints, reviews of internal affairs investigations, policy recommendations, and community forums. The Board and Executive Director may consult the Office of the City Attorney for legal advice concerning legal questions not related to the four aforementioned topics.

ARTICLE 7. BOARD AUTHORITY TO REVIEW INVESTIGATIONS

A. Scope of Board Review Authority.

The Board may review CPD internal affairs investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the CPD has completed an internal affairs investigation of a CPD officer and the investigation resulted in a finding of unfounded, exonerated, or not resolved; and (2) a Review Request is filed with the Board's Executive Director. A request shall be deemed filed when it is received by the Board's Executive Director. The Board shall not review:

1. Any Complaint related to an incident that occurred before the date of the Charlottesville City Council's adoption of these by-laws;
2. A Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Complaint;
3. A Review Request filed more than seventy-five (75) days after the date of the CPD notice sent to the complainant that informs the complainant of the completion of the CPD's internal affairs investigation (unless the Board determines that there is good cause to extend the filing deadline); or
4. A Review Request concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a

Notice of Claim or filed complaint), or any City of Charlottesville grievance proceeding including an appeal pursuant to the Virginia Law Enforcement Officers Procedural Guarantee Act.

5. Any portion of an internal affairs investigation which is sustained.

The Board may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Board shall not act on any Review Request that is the subject of a grievance proceeding until any and all appeals are resolved.

B. Deferral of Pending Proceedings.

If at any point in the review process the Board learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any grievance proceeding, the Board shall:

1. Suspend its review;
2. Defer the review pending resolution of the criminal, civil or grievance proceeding by the trial court or Personnel Appeals Board panel;
3. Notify the complainant, in writing, of any deferrals; and
4. Track any deferred matter and notify the complainant and the once the proceedings are closed and the request for review may proceed.

The Board may request assistance of the City Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.

The Board may act on a Review Request after the City Attorney determines that the trial court or Personnel Appeals Board has resolved the pending criminal, civil, or grievance matter.

ARTICLE 8. BOARD REVIEW PROCEDURES

A. Scheduling a Review Request.

Upon receipt of a Review Request, the Board shall meet to discuss the request and schedule a Review Request for a hearing before the Board. The Board shall determine whether the Review Request is filed within the timelines established within Article 7 of these Bylaws.

B. Access to Internal Affairs File and Other Materials.

Upon scheduling a Review Request for a hearing before the Board, the Board shall notify the Charlottesville Chief of Police. The CPD shall prepare each Board member a complete copy of the internal affairs file that is the subject of the Review Request. The City Attorney shall review the file and redact any information related to a juvenile pursuant to Virginia Code Section 16.1-301, as amended or as otherwise required to redact by law.

In addition to a complete copy of the internal affairs file, the CPD shall produce the officer's complete complaint history including any final disciplinary action taken against the officer that is the subject of the Review Request.

Additionally, the Board shall have access to any material or evidence utilized by the CPD during its internal affairs investigation related to the Review Request unless the Chief of Police, upon concurrence of the Charlottesville Commonwealth's Attorney, determines that the material or evidence is the subject of an active criminal investigation.

Board members may review the internal affairs file and the aforementioned disciplinary actions upon signing a notice of confidentiality in which the Board member agrees that they will not disclose the contents of an internal affairs file or disciplinary action taken against the officer. Failure to adhere to the notice of confidentiality shall result in the Council removing the Board member from the Board.

Finally, the Board shall have access to raw and aggregated data on the timing, findings, and dispositions of CPD internal affairs investigations.

C. Review Request Hearing

The Board shall conduct a hearing on all Review Requests that it finds to be in conformance with the criteria established in Article 7 of these Bylaws.

The Board may not subpoena witnesses or evidence nor may it take testimony under oath.

The individual filing the Review Request shall state the specific reason(s) for the Review Request. The individual may also present any evidence, including witnesses, supporting their reasons for filing the Review Request. The Board may question the individual filing the Review Request and any witnesses that the individual presents.

Upon the completion of the individual filing the Review Request's presentation, a CPD representative familiar with the internal affairs investigation that is being reviewed by the Board shall present a statement which summarizes all findings of fact and a review of all evidence collected and received during the investigation. The Board may ask the CPD representative questions about the investigation.

D. Findings.

At the conclusion of the Review Request, the Board shall, within thirty days, determine, by a preponderance of the evidence, and by a majority vote of Board members one of the following findings:

1. The Board concurs with the findings of the CPD investigation; or
2. The Board advises the City Manager that the CPD investigation's findings are not supported by the information reasonably available to CPD and make further recommendations to the City Manager concerning disposition of the Review Request; or
3. The Board advises the City Manager that the CPD's investigation is incomplete or unsatisfactory and provide the specific reasons for this finding; or
4. After an investigation pursuant to Article 10, if the Board still believes that an investigation is unsatisfactory or incomplete, it may make a finding to that effect and provide the specific reasons for that finding.

The Board shall be advisory and shall not have disciplinary authority.

If the Board determines that the CPD investigation is incomplete or unsatisfactory and provides specific reasons for its findings, it shall suspend its Review Request inquiry and follow the procedure found in Article 10 of these Bylaws.

ARTICLE 9. COMPLAINTS

A. Complaint Intake.

A Complaint shall be in writing and shall be deemed filed when delivered or emailed to the Board's Executive Director. A Complaint shall contain:

- (i) identifying information for the person filing the Complaint;
- (ii) a statement describing the reasons for the Complaint;
- (iii) the specific police behavior of concern;
- (iv) a description of the incident in which the behavior occurred; and
- (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.

B. Complaint Processing.

The Board shall immediately forward an Initial Complaint to the CPD for investigation. The CPD shall complete its investigation and provide an Investigation Report to the Board within seventy-five (75) days. The Board's Executive Director will assist and answer questions a Complainant may have about the Complaint process. The Board's Executive Director will provide an update to the Board about open Complaints at each Board meeting.

C. Complaint Results.

The CPD shall provide the Board and the Complainant a letter with its finding concerning the Complaint. If the CPD makes a finding of unfounded, exonerated, or not resolved the Complainant may file a Review Request by the Board within seventy-five (75) days of receiving the CPD finding. Additionally, the Board may initiate a Review Request, by a majority vote, if the CPD makes a finding of unfounded, exonerated, or not resolved and the Board receives the written consent of the Complainant to proceed with a Review Request.

ARTICLE 10. INVESTIGATIONS

A. Criteria.

If a Complaint investigation is not completed by CPD within seventy-five days of Complaint receipt or if, at the conclusion of a Board Review Request, the Board advises the City Manager that the CPD's investigation is incomplete or unsatisfactory and provides the specific reasons for this finding, then the Board's Executive Director shall request a conference with the CPD Chief of Police.

B. Conference.

The Board's Executive Director and the Chief of Police shall conduct a conference within thirty (30) days of either criteria being met in Article 10, Section A of these Bylaws. The purpose of the conference will be to discuss the delay of a Complaint's investigation or the Board's specific concerns about a Review Request investigation. The Executive Director and Chief of Police shall attempt to address the Board's concerns.

C. Report to Board.

The Executive Director shall report back to the Board after their conference with the Chief of Police. If the Board remains unsatisfied with the Executive Director's report, the Board may vote to request an investigation concerning the Complaint's incomplete investigation or which shall address the specific reasons the Board cited in its referral of a Review Request to the Executive Director.

D. Investigation.

If the Board votes to request an investigation pursuant to Article 10 Section (C) of these Bylaws, the Executive Director shall forward the request to the City Manager. The City Manager, in consultation with the Executive Director, shall procure an investigator independent of CPD to examine the Board's specific concerns about the Review Request or the incomplete investigation of a Complaint. The results of the investigation shall be provided to the City Manager and the Executive Director.

Any investigation initiated by the City Manager shall comply with existing federal, state, and local law and protections including the Virginia Law Enforcement Procedural Guarantee Act as well as the United Supreme Court's decision in *Garrity v. New Jersey*. Notwithstanding this

provision, only the Chief of Police may issue a “*Garrity* warning” to compel a statement from a CPD employee.

E. Investigation Results.

Upon completion of the investigation, the Executive Director shall provide the Board with the results of the investigation. If the investigation is the result of an incomplete Complaint investigation, the investigation shall be provided to the Complainant and the CPD. If the investigation is the result of a Review Request, the Board shall reconvene, complete its deliberations, and issue its finding.

ARTICLE 11. POLICY REVIEW AND ANNUAL REPORT

A. General Policy Review.

The CPD will provide the Board a list of all amendments that it makes to its administrative and operational policies. At the request of a Board member, the Chairperson shall schedule a review of the policy amendment at the Board’s next regularly scheduled meeting. The Board may adopt, by motion or resolution, a formal position statement on the policy amendment. The Board shall provide any official position statement to the Charlottesville Chief of Police for their consideration.

The Board may also make recommendations to the Chief of Police about proposed amendments to any existing CPD administrative and operational policies. Additionally, the Board may recommend proposed policies to the Chief of Police for their consideration.

B. November 4, 2019 Resolution Policy Review.

The Chief of Police shall provide the Board with any proposed amendments to any CPD policy contained in the Council’s November 4, 2019 Resolution at least thirty (30) days before the amendment will be enacted. The Board may adopt, by motion or resolution, a formal position statement on the policy amendment. The Board shall provide any official position statement to the Charlottesville Chief of Police for their consideration before the amendment is enacted.

C. Annual Report.

The Board shall file an annual written report to the Charlottesville City Council by December 1 of every calendar year. The report shall contain a summary of the Board’s activities for the calendar year as well as any recommendations the Board wishes to make about policing within the City of Charlottesville.

D. Legislative Proposals.

The Board may make requests to the Charlottesville City Council about specific state legislation that it wishes for the Charlottesville City Council to include in the Council’s annual

legislative package presented to the state legislators representing Charlottesville in the Virginia General Assembly. The Board shall provide all requests to the City Manager by August 15 of each calendar year.

ARTICLE 12. PUBLIC ENGAGEMENT

A. Community Outreach.

The Board may engage in community outreach to gather the input of community members about their interactions with CPD.

B. Community Listening Sessions.

The Board may engage in community listening sessions in which the Board solicits feedback about the relationship between CPD and members of the general public.

ARTICLE 13. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Charlottesville City Council. These Bylaws are procedural in nature and govern the internal operations of the Board.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Board. Any proposed amendment must be presented by a Board member in writing at a regular Board meeting. The Board may adopt the amendment at its next regular meeting upon an affirmative vote of four Board members.

**AN ORDINANCE
ADDING ARTICLE XVI-POLICE CIVILIAN REVIEW BOARD
TO CHAPTER 2 (ADMINISTRATION) OF THE CODE
OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED**

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia, that a new Article XVI (Police Civilian Review Board) is hereby added to Chapter 2 of the Code of the City of Charlottesville (1990), as amended, to read as follows:

ARTICLE XVI. POLICE CIVILIAN REVIEW BOARD

Sec. 2-450. Title.

This article shall be known as the Charlottesville Police Civilian Review Board Ordinance.

Sec. 2-451. Police Civilian Review Board established; immunities.

There is hereby created a Charlottesville Police Civilian Review Board which shall be referred to as the Police Civilian Review Board for purposes of this article. The Police Civilian Review Board shall enjoy the protection of sovereign immunity to the extent allowed and provided pursuant to Virginia statutory and common law.

Sec. 2-452. Powers and duties of the Police Civilian Review Board.

The Police Civilian Review Board shall have the following powers and duties:

- (a) Develop and administer a process for receiving civilian complaints about the Charlottesville Police Department;
- (b) Review Charlottesville Police Department internal affairs investigations at the request of the civilian complainant;
- (c) Conduct hearings and make findings concerning Charlottesville Police Department internal affairs investigations initiated by civilians;
- (d) Organize and conduct community outreach sessions;
- (e) Provide policy recommendations to the City Council and Charlottesville Police Department.

Sec.-2-453. Police Civilian Review Board membership.

The Police Civilian Review Board shall be composed of seven voting members and one non-voting member appointed by the City Council. The members shall be removable by the City Council.

The seven voting members of the Police Civilian Review Board shall be residents of the City of Charlottesville.

The seven voting members shall include: at least three members who come from historically disadvantaged communities that have traditionally experienced disparate policing or who are residents of public housing and at least one other member who represents an organization that seeks racial or social justice on behalf of historically-disadvantaged communities.

The non-voting member of the Police Civilian Review Board shall consist of an individual with policing expertise or experience.

No Police Civilian Review Board voting member shall be a current City of Charlottesville employee, a current candidate for public office, a former member of the Charlottesville Police Department, an immediate family member of a current Charlottesville Police Department employee, or a current employee of a law enforcement agency.

Sec. 2-454. Police Civilian Review Board membership appointment, and terms.

(a) *Appointment Process.* The City Council shall appoint the members of the Police Civilian Review Board. The Council shall announce a public application process with applications available online and by hardcopy in English and Spanish for individuals interested in serving on the Police Civilian Review Board.

The City Council shall interview candidates for the Police Civilian Review Board in a closed session pursuant to the Virginia Freedom of Information Act.

The Council shall convene in an open session held pursuant to the Virginia Freedom of Information Act and appoint members of the Police Civilian Review Board.

(b) *Terms.* The first Police Civilian Review Board shall consist of three voting members appointed for individual terms of eighteen months and four voting members appointed for individual terms of three years.

All subsequent members of the Police Civilian Review Board shall serve terms of three years.

The non-voting member with policing expertise or experience shall serve a term of three years.

Sec. 2-455. Police Civilian Review Board vacancies.

If a Police Civilian Review Board member's service on the Board ends before the conclusion of the Board member's term, the City Council shall appoint an individual to complete the remainder of the term.

Sec. 2-456. Police Civilian Review Board executive director.

The City Manager shall appoint a Police Civilian Review Board Executive Director with the approval of a majority vote of the City Council.

Sec. 2-457. Police Civilian Review Board legal counsel.

The Police Civilian Review Board shall be empowered to employ its own legal counsel. The Police Civilian Review Board's Executive Director, the City Attorney, and the Police Civilian Review Board Chair shall work collaboratively to select legal counsel for the Board on an annual basis utilizing best practices for procuring legal services. The Board's legal counsel shall advise the Board on all legal questions the Board may have concerning complaints, reviews of internal affairs investigations, policy recommendations, and community forums. The Board and Executive Director may consult the Office of the City Attorney for legal advice concerning legal questions not related to the four aforementioned topics.

Sec. 2-458. Police Civilian Review Board policy recommendations.

The Police Civilian Review Board may recommend policies or procedures to the City Council or the Charlottesville Police Department concerning police practices.

The Charlottesville Police Department shall provide any proposed amendment to policies or general orders found listed on the November 4, 2019 City Council Resolution, as may be amended from time to time, to the Police Civilian Review Board at least thirty days before its enactment. The Police Civilian Review Board may provide comment upon the proposed policy or general order's impacts, including but not limited to, on historically disadvantaged communities that have traditionally experienced disparate policing.

Upon the determination of the Chief of Police, in consultation with the City Manager and Police Civilian Review Board Executive Director, that it is impractical to present an amendment to a policy listed on the November 4, 2019 City Council Resolution to the Police Civilian Review Board at least thirty days before its enactment, the City Manager may waive the thirty day advanced review requirement. The amendment shall still be presented to the Police Civilian Review Board for review and comment.

Sec. 2-459. Police Civilian Review Board community engagement and outreach.

The Police Civilian Review Board is authorized to engage in community outreach efforts to discuss and gather information about community relations between the Charlottesville Police Department and the general public.

The Police Civilian Review Board may request the City Council to conduct a joint meeting to discuss issues of concern between the Charlottesville Police Department and the general public.

Sec. 2-460. Police Civilian Review Board complaint intake.

The Police Civilian Review Board is authorized to develop and administer a process for receiving civilian complaints about the Charlottesville Police Department.

(a) Complaint Intake.

A Complaint shall be in writing and shall be deemed filed when delivered or emailed to the Police Civilian Review Board's Executive Director. A Complaint shall contain:

- (i) identifying information for the person filing the Complaint;
- (ii) a statement describing the reasons for the Complaint;

- (iii) the specific police behavior of concern;
- (iv) a description of the incident in which the behavior occurred; and
- (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.

(b) *Complaint Processing.*

The Police Civilian Review Board shall immediately forward the Complaint to the Charlottesville Police Department for investigation. The Charlottesville Police Department shall complete its investigation and provide an Investigation Report to the Police Civilian Review Board within seventy-five (75) days. The Executive Director will assist and answer questions a Complainant may have about the Complaint process. The Executive Director will provide an update to the Police Civilian Review Board about open Complaints at each Police Civilian Review Board meeting.

(c) *Complaint Results.*

The Charlottesville Police Department shall provide the Police Civilian Review Board and the Complainant a letter with its finding concerning the Complaint. If the Charlottesville Police Department makes a finding of unfounded, exonerated, or not resolved the Complainant may file a Review Request pursuant to Sections 2-461 and 2-462 by the Police Civilian Review Board within seventy-five (75) days of receiving the Charlottesville Police Department finding. Additionally, the Police Civilian Review Board may initiate a Review Request, by a majority vote, if the CPD makes a finding of unfounded, exonerated, or not resolved and the Board receives the written consent of the Complainant to proceed with a Review Request.

Sec. 2-461. Police Civilian Review Board internal investigation review.

(a) *Scope of Board Review Authority.*

The Police Civilian Review Board may review Charlottesville Police Department internal affairs investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the Charlottesville Police Department has completed an internal affairs investigation of a CPD officer and the investigation resulted in a finding of unfounded, exonerated, or not resolved; and (2) a Review Request is filed by a civilian with the Police Civilian Review Board's Executive Director. A request shall be deemed filed when it is received by the Executive Director. The Board shall not review:

1. Any Complaint related to an incident that occurred before the date of the Charlottesville City Council's adoption of this Article;
2. A Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Complaint;
3. A Review Request filed more than seventy-five (75) days after the date of the Charlottesville Police Department notice sent to the complainant that informs the complainant of the completion of the Charlottesville Police Department's internal affairs investigation (unless the Police Civilian Review Board determines that there is good cause to extend the filing deadline); or
4. A Review Request concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as

evidenced by a Notice of Claim or filed complaint), or any City of Charlottesville grievance proceeding (inclusive of a grievance initiated pursuant to the Virginia Law Enforcement Officers Procedural Guarantee Act); or

5. Any portion of an internal affairs investigation which is sustained.

The Police Civilian Review Board may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Police Civilian Review Board shall not act on any Review Request that is the subject of a grievance proceeding until any and all appeals are resolved.

(b) Deferral of Pending Proceedings.

If at any point in the review process the Police Civilian Review Board learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any grievance proceeding, the Police Civilian Review Board shall:

1. Suspend its review;
2. Defer the review pending resolution of the criminal, civil or grievance proceeding by the trial court or Personnel Appeals Board panel;
3. Notify the complainant, in writing, of any deferrals; and
4. Track any deferred matter and notify the complainant once the proceedings are closed and the Review Request may proceed.

The Police Civilian Review Board may request assistance of the City Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.

The Police Civilian Review Board may act on a Review Request after the City Attorney determines that the trial court or Personnel Appeals Board has resolved the pending criminal, civil, or grievance matter.

(c) Access to Materials.

Upon scheduling a Review Request for a hearing before the Police Civilian Review Board, the Board shall notify the Charlottesville Chief of Police. The Charlottesville Police Department shall prepare each Board member a complete copy of the internal affairs file that is the subject of the Review Request. The City Attorney shall review the file and redact any information related to a juvenile pursuant to Virginia Code Section 16.1-301, as amended or as otherwise required to redact by law.

In addition to a complete copy of the internal affairs file, the Charlottesville Police Department shall produce the officer's complete complaint history including any final disciplinary action taken against the officer that is the subject of the Review Request.

Additionally, the Police Civilian Review Board shall have access to any material or evidence utilized by the Charlottesville Police Department during its internal affairs investigation

related to the Review Request unless the Chief of Police, upon concurrence of the Charlottesville Commonwealth's Attorney, determines that the material or evidence is the subject of an active criminal investigation.

Police Civilian Review Board members may review the internal affairs file and the aforementioned disciplinary actions upon signing a notice of confidentiality in which the Police Civilian Review Board member agrees that they will not disclose the contents of an internal affairs file or disciplinary action taken against the officer. Failure to adhere to the notice of confidentiality shall result in the Council removing the Board member from the Police Civilian Review Board.

Finally, the Police Civilian Review Board shall have access to raw and aggregated data on the timing, findings, and dispositions of CPD internal affairs investigations.

(d) Review Request Hearing.

The Police Civilian Review Board shall conduct a hearing on all Review Requests that it finds to be in conformance with the criteria established in Section 2-461.

The Police Civilian Review Board may not subpoena witnesses or evidence nor may it take testimony under oath.

The individual filing the Review Request shall state the specific reason(s) for the Review Request. The individual may also present any evidence, including witnesses, supporting their reasons for filing the Review Request. The Police Civilian Review Board may question the individual filing the Review Request and any witnesses that the individual presents.

Upon the completion of the individual filing the Review Request's presentation, a CPD representative familiar with the internal affairs investigation that is being reviewed by the Police Civilian Review Board shall present a statement which summarizes all findings of fact and a review of all evidence collected and received during the investigation. The Police Civilian Review Board may ask the CPD representative questions about the investigation.

(e) Findings.

At the conclusion of the Review Request, the Police Civilian Review Board shall, within thirty days, determine, by a preponderance of the evidence, and by a majority vote of Police Civilian Review Board members one of the following findings:

1. The Police Civilian Review Board concurs with the findings of the Charlottesville Police Department investigation; or

2. The Police Civilian Review Board advises the City Manager that the Charlottesville Police Department investigation's findings are not supported by the information reasonably available to the Charlottesville Police Department and make further recommendations to the City Manager concerning disposition of the Review Request; or

3. The Police Civilian Review Board advises the City Manager that the Charlottesville Police Department's investigation is incomplete or unsatisfactory and provide the specific reasons for this finding; or

4. After an investigation pursuant to Section 2-462, if the Police Civilian Review Board still finds that an investigation is unsatisfactory or incomplete, it may make a finding to that effect and provide the specific reasons for its finding.

Sec. 2-462. Investigations.

(a) Criteria.

If a Complaint investigation initiated pursuant to Section 2-460 is not completed by the Charlottesville Police Department within seventy-five days of Complaint receipt or if, at the conclusion of a Review Request, the Police Civilian Review Board advises the City Manager that the Charlottesville Police Department's investigation is incomplete or unsatisfactory and provides the specific reasons for this finding, then the Police Civilian Review Board's Executive Director shall request a conference with the Charlottesville Police Department Chief of Police.

(b) Conference.

The Executive Director and the Chief of Police shall conduct a conference within thirty (30) days of either criteria being met in subsection (a) of this Section. The purpose of the conference will be to discuss the delay of a Complaint's investigation or the Police Civilian Board's specific concerns about a Review Request investigation. The Executive Director and Chief of Police shall attempt to address the Board's concerns.

(c) Report to Board.

The Executive Director shall report back to the Police Civilian Review Board after their conference with the Chief of Police. If the Police Civilian Review Board remains unsatisfied with the Executive Director's report, the Board may vote to request an investigation concerning the Complaint's incomplete investigation or to address the specific reasons the Police Civilian Review Board cited in its referral of a Review Request to the Executive Director.

(d) Investigation.

If the Police Civilian Review Board votes to request an investigation pursuant to subsection (c) of this Section, the Executive Director shall forward the request to the City Manager. The City Manager, in consultation with the Executive Director, shall procure an investigator independent of the Charlottesville Police Department to examine the Police Civilian Review Board's specific concerns about the Review Request or the incomplete investigation of a Complaint. The results of the investigation shall be provided to the City Manager and the Executive Director.

Any investigation initiated by the City Manager shall comply with existing federal, state, and local law and protections including the Virginia Law Enforcement Procedural Guarantee Act as well as the United Supreme Court's decision in *Garrity v. New Jersey*. Notwithstanding this provision, only the Chief of Police may issue a "*Garrity* warning" to compel a statement from a Charlottesville Police Department employee.

(e) Investigation Results.

Upon completion of the investigation, the Executive Director shall provide the Police Civilian Review Board with the results of the investigation. If the investigation is the result of an incomplete Complaint investigation, the investigation shall be provided to the Complainant and the Charlottesville Police Department. If the investigation is the result of a

Review Request, the Police Civilian Review Board shall reconvene, complete its deliberations, and issue its finding.

Sec. 2-463. Police Civilian Review Board recommendations and annual report.

The Police Civilian Review shall provide the City Council a list of recommendations, if the Board determines any recommendations are necessary, for the Council's consideration to include in its annual legislative program present to the General Assembly. These recommendations shall be due to the Council by August 15 of each year.

The Police Civilian Review Board shall provide the City Council with an annual report by December 1 of each year. The report shall detail the Police Civilian Review Board's calendar year activities.

Sec. 2-464. Police Civilian Review Board by-laws.

The City Council shall approve Police Civilian Review Board's initial bylaws that shall govern the procedures, practices, and internal operations of the Police Civilian Review Board. The Police Civilian Review Board may amend its bylaws. Any proposed amendment must be presented by a Police Civilian Review Board member in writing at a regular Board meeting. The Police Civilian Review Board may adopt the amendment at its next regular meeting upon an affirmative vote of four Board members.

**RESOLUTION AUTHORIZING POLICE CIVILIAN REVIEW
BOARD EXECUTIVE DIRECTOR TO PREPARE A JUNE 2020
REPORT TO CITY COUNCIL**

BE IT RESOLVED, by the Council of the City of Charlottesville, Virginia that the Police Civilian Review Board's Executive Director shall issue a report to the Charlottesville City Council in June 2020 or within sixty days of the Executive Director's appointment by City Council if the appointment occurs after April 30, 2020; and

BE IT FURTHER RESOLVED, by the Council of the City of Charlottesville, Virginia that the City Manager, in consultation with the Executive Director, shall recommend a sufficient appropriation to the Council to employ a consultant to assist the Executive Director in composing their report; and

BE IT FURTHER RESOLVED, by the Council of the City of Charlottesville, Virginia that the June 2020 Executive Director's report shall recommend whether the Council should appropriate funds for an Auditor position to serve the Police Civilian Review Board; and

BE IT FURTHER RESOLVED, by the Council of the City of Charlottesville, Virginia that the Executive Director's report shall recommend whether the Auditor should be a full-time or part-time position or if the Executive Director recommends contracting with a firm for audit services; and

BE IT FURTHER RESOLVED, by the Council of the City of Charlottesville, Virginia that the Executive Director's report shall detail which, if any, aspects of the Charlottesville Police Department's operations should be audited; and

BE IT FURTHER RESOLVED, by the Council of the City of Charlottesville, Virginia that the Executive Director's report shall detail which forms and types of Charlottesville Police Department data should be made available for an Auditor position to analyze; and

BE IT FURTHER RESOLVED, by the Council of the City of Charlottesville, Virginia that the Executive Director's report shall recommend whether the Executive Director and the Charlottesville Chief of Police should enter into a formal Memorandum of Understanding; and

BE IT FURTHER RESOLVED, by the Council of the City of Charlottesville, Virginia that the Executive Director's report shall recommend what topics, functions, and information should be included with a Memorandum of Understanding between the Charlottesville Chief of Police and the Executive Director; and

BE IT FURTHER RESOLVED, by the Council of the City of Charlottesville, Virginia that the Council will consider the Executive Director's report and may amend any ordinances, appropriate funds, or enact resolutions to achieve the Executive Director's report's recommendations.

**RESOLUTION LISTING CHARLOTTESVILLE POLICE DEPARTMENT
POLICIES PURSUANT TO CHARLOTTESVILLE CITY CODE SECTION 2-458**

WHEREAS, the Charlottesville City Council adopted an ordinance on November 4, 2019 detailing the authority of the Police Civilian Review Board (CRB); and

WHEREAS, the CRB ordinance states that the Council will provide, by resolution, a list of Charlottesville Police Department (CPD) policies which the CRB may review thirty days in advance of CPD enacting the policies.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the CRB shall be entitled to review the Charlottesville Police Department's Internal Investigations and Citizen Complaints (Manual Number 517.01) policy thirty days before CPD may enact any amendment to the policy.

BE IT FURTHER RESOLVED by the Council of the City of Charlottesville, Virginia that the Council may, upon recommendation of the CRB, amend this resolution to include additional CPD policies which may not be amended until the CRB is provided a thirty day period to amend the policy.