

CHARLOTTESVILLE CITY COUNCIL
Police Civilian Review Board Joint Work Session
April 27, 2021
Virtual/electronic meeting via Zoom

The Charlottesville City Council met in a joint work session on Tuesday, April 27, 2021, with the Police Civilian Review Board (PCRB) for the purpose of discussing the proposed changes to PCRB governing policies and to vote on the Coronavirus Aid, Relief, and Economic Security Act (CARES) funding allocation for the Pathways emergency assistance program.

Mayor Walker called the City Council meeting to order at 5:04 p.m., and Council conducted an item of business prior to opening the joint work session. The following members were present: Mayor Nikuyah Walker, Vice Mayor Sena Magill, Councilors Heather Hill, Michael Payne, and Lloyd Snook.

Resolution: CARES Funding Allocation for Emergency Assistance Program (Pathways Fund) - \$150,000 (1 reading)

Mayor Walker turned the meeting over to City Manager Chip Boyles, who requested Council approval to transfer \$150,000 of previously appropriated CARES monies from the Public Safety Police Department salaries to the Emergency Assistance Program. The request was made because monies in the Emergency Assistance Program fund is currently depleted and approval to reallocate CARES monies would prevent an interruption of housing assistance until the American Rescue Plan (ARP) funding is received.

On motion by Ms. Hill, seconded by Mr. Snook, Council by the following vote APPROVED the CARES Funding Allocation for Emergency Assistance Program (Pathways Fund) in the amount of \$150,000: 5-0 (Ayes: Hill, Magill, Payne, Snook, Walker; Noes: None).

Chair Bellamy Brown called the Police Civilian Review Board to order at 5:14 p.m. The following members were present: Chair Bellamy Brown, Vice Chair William Mendez, and members Nancy Carpenter, Jeffrey Fracher, Deirdre Gilmore, Phillip Seay and James Watson.

PCRB Overview

Chair Brown turned the meeting over to Vice Chair Mendez to present the Board's overview of proposed changes to its governing policies.

Major Elements of the Proposed Oversight Mode:

1. Receive and process complaints
2. Initiate independent investigations of complaints of serious misconduct or incidents involving use of force, etc.
3. Review IA investigations that are not categorized as “serious”
4. Hold hearings in support of complaint review, investigations, or disciplinary matters, in support of which the board may exercise subpoena power
5. Conduct periodic audits of Charlottesville Police Department’s (CPD) policies, practices, and outcomes, evaluate impacts on disproportionately policed groups
6. Provide reports of audits and investigations of CPD policies, practices, and outcomes
7. Conduct public engagement activities to hear community concerns, facilitate communications with the CPD

Public Comment

Mayor Walker opened the floor for public comment. The following members of the public spoke:

- Sean McGowen, Division Director of the Virginia Police Benevolent Association
- Kate Fraleigh, People’s Coalition
- Sarah Burke
- Jeff Fogel
- Walt Heinecke

Questions from Council

Councilor Snook addressed the board regarding its proposal for binding disciplinary authority and expressed his concern for eliminating the Police Chief from the disciplinary process for serious cases. Vice Chair Mendez referenced a CRB in Chicago where which the Board may make a recommendation of disciplinary action and if the Chief of Police rejects the recommendation the oversight board can file an appeal with the Police Board. He described other Boards where if a recommendation is rejected then the Chief of Police must publically explain the reason for the rejection. Chair Brown suggested that a disciplinary model in Denver could offer some guidance in this area. Board members noted that the board will consult with the Police Chief before making a disciplinary decision.

Councilor Snook asked how investigations that require CPD resources, such as forensic examinations, will be conducted without CPD assistance. Board members responded that as an administrative body the Board would not need to conduct a forensic examination, and that the

board cannot conduct investigations on criminal cases. Councilor Snook also raised questions about The Garrity Rule and the Boards binding disciplinary authority as it relates to its inability to terminate an officer.

Mayor Walker commented on CPD involvement throughout all points of an investigation and determining if it is possible for the CRB to conduct an investigation without CPD involvement.

Councilor Hill requested that the process to draft an ordinance be a collaborative effort to include as many stakeholders as possible.

Chief Brackney explained her opposition to the Board creating a three-step disciplinary process, which eliminates the grievance process offered to an officer as a City employee, her ability to participate in that process and the Boards ability to conduct a grievance hearing. Chief Brackney also raised the concern of officers whose grievance does not go through the CRB, subsequently creating two separate grievance processes.

Vice Chair Mendez confirmed that the Boards legal counsel is reviewing the enabling legislations amendment to Section 9.1-507 - Law Enforcement Officer Procedural Guarantees Act applicability to the board.

Councilor Hill acknowledged that the operating procedures for the proposed powers will be a key component to developing the ordinance. Chair Brown replied that the ordinance and the operational procedures are a two-step process. The first step being the approval of an ordinance to include the powers provided in the enabling legislation and the second step is to draft the operational procedures for Council approval.

Councilor Payne asked how the board will address Freedom of Information Act (FOIA) non-exemptions and recommended that both the ordinance and the operational procedures be presented simultaneously. Chair Brown replied that FOIA protections should be included in the operational procedures and reliant upon the Board's Executive Director.

Member James Watson requested that Council compile a list of its concerns with the ordinance and continue to work closely with the Board to develop the governing document.

Chair Brown asked that Council approve the ordinance as-is with the exception of the independent investigatory authority and disciplinary authority.

Member Nancy Carpenter asked about opportunities for conjoined hearings and resource

allocation.

Councilor Magill asked for more information about: the auditor position, ensuring anonymity for the complainants, the current investigation process, investigatory training, and independent investigators, in addition to other questions. She also expressed a preference for the ordinance and operational procedures to be simultaneous. Mr. Mendez answered that the auditor may be a full or part-time position that will be responsible for tracking various procedures within the complaint process. He explained that the board is requesting to receive all applications because complainants are more likely to file with a CRB, the opt-in box on the application to file a complaint may be overlooked and to avoid determent to file. Investigative training is currently being provided by the National Association for Oversight of Law Enforcement (NACOLE). Mr. Mendez clarified that as a review board the board does not currently have an investigatory process. Independent investigators will be secured through procurement and the board has already secured legal counsel. Chair Brown noted that specific details of the complaints filed with the CRB to-date have not been released to the public and that the complainant would have to request a hearing with the board before information would be subject for release. He confirmed that certain aspects of the hearing process will be public while others are conducted in a closed session.

Acting City Attorney Lisa Robertson voiced her concerns about FOIA exemptions for members of the public who file a complaint. Ms. Robertson has spoken with the Legal Aid Justice Center and Delegate Sally Hudson and her staff regarding the exemptions. The current exemptions only apply to the police department and protect police officers' personnel records and records of internal and administrative investigations being conducted by the police department. The FOIA Advisory Council may be consulted for additional guidance. Complaints forwarded from the police department to the CRB are protected under FOIA through a confidentiality agreement that is signed by members of the Board. Chief Brackney clarified that CPD does not provide the Board with any documentation from an investigative file. The Board is sent the formal complaint, the acknowledgement letter, and the closure letter. Per Ms. Robertson, individuals requesting a hearing may authorize the board to speak publically about their case. A determination must also be made about how the Board and CPD will determine what information will be exempt under FOIA. The Board's Executive Director does not provide a FOIA exemption for documents. Efforts to extend FOIA laws to CRBs are resolved through legislation or the FOIA Advisory Council's interpretation of existing laws.

Mayor Walker asked for further discussion of the complaint process and of any specific challenges surrounding the current complaint process. She asked that the criteria of 'serious' and 'not serious' violations be more concise and that drafting the list of criteria be a collaborative effort. Mayor Walker referenced a public speaker's comments about whether or not the Board

should decide if it will review ‘serious’ and/or ‘not serious’ complaints. She recognized CPD involvement at varying points in a case and asked how the Board can be structured as to not remove CPD and the Commonwealth Attorney’s Office from the investigation process and still provide the desired oversight. Vice Chair Mendez expressed his opposition to the opt-out option on the complaint intake form. Chief Brackney provided details of the online internal affairs complaint intake process that is automatically distributed to the Police Chief, Major, Internal Affairs, and the CRB Executive Director. All complaints are posted on the CPD website and will be distributed to the Board’s Executive Director upon placement. Approximately three complaints filed in 2020 and five complaints filed in 2021 opted out of forwarding their complaint to the CRB. The Mayor discussed the Board’s access to resources that will be required to support an investigatory model.

Vice Chair Mendez petitioned Council to hire the Board’s Executive Director and the Auditor position.

Public Comment

Mayor Walker opened the floor for public comment. The following members of the public spoke:

- Harold Folley
- Kate Fraleigh
- Rosia Parker
- Don Gathers
- Gloria Beard
- Sarah Burke
- Walt Heinecke
- Teresa Hepler, Legal Aid Justice Center

Next Steps

- CRB to draft operational procedures and share with Council
- Council to amend the current CRB ordinance to include a provision enabling general counsel by the Board’s legal representative
- Ongoing joint work sessions. The two initial sessions will cover disciplinary powers, investigatory powers, and operational procedures drafted at that time. The first session to tentatively occur in June. CRB legal counsel to attend.

Mayor Walker adjourned the meeting at 8:57 p.m., followed by the adjournment of the Police Civilian Review Board meeting.

BY Order of City Council

BY Maxicelia Robinson, Deputy Clerk of Council