

## **SIGNIFICANT CHANGES BETWEEN DRAFT PCOB ORDINANCE OF AUGUST 12, 2021 AND DRAFT OF DECEMBER 3, 2021**

The PCRB met and approved a draft ordinance in August. Following that, an informal working group continued to review and refine the language. The group consisted of Councilors Lloyd Snook and Michael Payne, PCRB members Bill Mendez and Jeff Fracher, Deputy City Manager Ashley Reynolds Marshall, and PCRB Executive Director Hansel Aguilar, and copies of these intermediate drafts were circulated to a larger circle that included, at various points, PCRB Chair Bellamy Brown, PCRB Counsel Cynthia Hudson, and the other Councilors. We continued to tweak the language, and the PCRB looked at the draft again in November. Since that time we have continued to get feedback and have continued to make edits, up through December 3. In re-working this ordinance, we referred to many different ordinances as models. This draft owes a great deal to the Arlington, Virginia ordinance, passed in July, 2021.

This memo is intended to highlight changes since the draft was approved in August. We continue to work on a separate memo on procedures; those procedures would be passed by City Council in a resolution but would not be printed in the Charlottesville Code. We anticipate presenting that memo on procedures to Council, perhaps in January. This draft has not yet been vetted by City Attorney Lisa Robertson.

### **OVERVIEW OF STRUCTURAL ISSUES**

The National Association for Civilian Oversight of Law Enforcement (NACOLE) categorizes civilian oversight boards into three major categories:

1. An **investigative** model, where the Board investigates all complaints;
2. A **review-focused** model; or
3. An **auditor/monitor-focused** model.

#### **INVESTIGATIVE MODEL**

##### ***Key Characteristics:***

1. Routinely conducts independent investigations of complaints against police officers
2. May replace or duplicate the police internal affairs process
3. Staffed by non-police, “civilian” investigators

##### ***Potential Key Strengths:***

1. May reduce bias in investigations into citizen complaints
2. Full-time civilian investigators may have highly specialized training
3. Civilian-led investigations may increase community trust in the investigations process

***Potential Key Weaknesses:***

1. Most expensive and organizationally complex form of civilian oversight (one study found that the average cost was around \$1 million a year)
2. Civilian investigators may face strong resistance from police personnel
3. Disillusionment among the public may develop over time when community expectations for change are not met

**REVIEW-FOCUSED MODEL**

***Key Characteristics:***

1. Often focuses on reviewing the quality of completed police internal affairs investigations
2. May make recommendations to police executives regarding findings or request that further investigation be conducted
3. Commonly headed by a review board composed of citizen volunteers
4. May hold public meetings to collect community input and facilitate police-community communication

***Potential Key Strengths:***

1. Ensures that the community has the ability to provide input into the complaint investigation process
2. Community review of complaint investigations may increase public trust in the process
3. Generally the least expensive form of oversight since it typically relies on the work of volunteers (the same study found an average annual cost of about \$200,000)

***Potential Key Weaknesses:***

1. May have limited authority and few organizational resources
2. Review board volunteers may have significantly less expertise in police issues and limited time to perform their work
3. May be less independent than other forms of oversight

## **AUDITOR/MONITOR-FOCUSED MODEL**

### ***Key Characteristics:***

1. Often focuses on examining broad patterns in complaint investigations, including patterns in the quality of investigations, including patterns in the quality of investigations, findings and discipline
2. Some auditors/monitors may actively participate in or monitor open internal investigations
3. Often seek to promote broad organizational change by conducting systematic reviews of police policies, practices or training and make recommendations for improvement

### ***Potential Key Strengths:***

1. Often have more robust police reporting practices than other types of oversight
2. Generally less expensive than full investigative agencies, but more expensive than review-focused agencies
3. May be more effective at promoting long-term, systemic change in police departments

### ***Potential Key Weaknesses:***

1. Auditor/monitor focus on examining broad patterns rather than individual cases may be treated with skepticism by some local rights activists
2. Significant expertise is required to conduct systematic policy evaluations. The hiring of staff without relevant experience may cause tensions between the oversight agency and police officers
3. Most auditor/monitors can only make recommendations and cannot compel law enforcement agencies to make systemic changes

The December 3 draft proposes a hybrid model – the Board will have the power to review investigations and to consider civilian complaints and to do its own investigations if necessary, including a robust subpoena power; the Board will have the power to make recommendations to City management; and the Board will have the power to focus on broad patterns of police conduct.

This draft is different from the version of the ordinance approved by the PCRB in August in the following ways:

December  
section

- §2-450 No change
- §2-451 Tweaked.
- §2-452 Subsections (a) and (b) were added, and the term “serious abuse of authority or misconduct” is now defined in subsection (d). Subsection (f) is new.
- §2-453 This was reorganized. There are three substantive differences. First, the non-voting member (former law enforcement officer) need not be a resident of Charlottesville. Second. Council would now be able to appoint a City employee who was not involved in law enforcement. Third, the provision in §2-453(d) permitting someone to continue to serve after the end of their term until Council appoints a replacement has been eliminated. Provisions about conflicts of interest (e) and the need for confidentiality (f) have been added.
- §2-454 The Board is required to meet quarterly rather than monthly. Language about complying with FOIA, a quorum requirement, minutes, and Rules was added.
- §2-455 Subsection (d) was rewritten, and (e) was added.
- §2-456 Tweaked.
- §2-457 Significantly rewritten. Overall, the new version tries to be more clear about the  
§2-458 two different kinds of investigations – citizen Complaints (§2-457(a)) and  
§2-459 Board-initiated investigations of Incidents (§2-457(b)). The procedures are intended to be essentially parallel structures. A Complaint, brought by a Complainant, gets investigated by either the Department with the oversight of the Executive Director or by the Board, led by the Executive Director. The default would be an investigation by the Department with the oversight of the Executive Director. The result of that investigation would be an Investigative Report that would identify any “serious abuse of authority or misconduct.” The Executive Director would also report to the Board on whether they felt that the investigation was satisfactory. The Complainant or the Board could then request a hearing on the Complaint as presented in the Investigative Report.

If the Board on its own initiative seeks to investigate a matter that had not been the subject of a Complaint, that is referred to as an “Incident.” The investigation of that Incident by the Board would lead to making a Preliminary Investigative Report, which then would serve as the basis for the decision whether to have a formal hearing on the Incident.

- §2-458(f) In the newer version, there is a detailed procedure for subpoenas.
- §2-460 In the newer version, provides for the promulgation of procedures (formerly in §2-459). §2-460(b) allows for informal resolution if all parties agree.
- §2-461 In the newer version, the Disciplinary Recommendations section (formerly §2-460) is contingent on the City Attorney certifying that state law permits confidential personnel files to remain confidential, and that state law permits closed sessions for consideration of both evidence and deliberation of disciplinary matters. Once we get clarity on this issue – either from a clear court precedent or from a legislative change – the City Attorney can certify it and the Board can then get into disciplinary hearings and recommendations, without the necessity of further action by Council.
- §2-462 Tweaked the former §2-461.
- §2-463 Tweaked the former §2-462.
- §2-464 Tweaked the former §2-465.
- §2-465 Tweaked the former §2-467.
- §2-466 Tweaked the former §2-468. The one significant change is that a police “ride-along” shall be required once a year.
- §2-467 Tweaked the former §2-469.
- §2-468 Tweaked the former §2-470.