

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



Agenda Date:	December 20, 2021
Action Required:	Adoption of Ordinance (2 nd of 2 Readings)
Presenter:	J. Lloyd Snook, City Councilor
Staff Contact:	Lisa Robertson, City Attorney
Title:	Ordinance Re-enacting the PCRБ as a Police Civilian Oversight Board, with expanded functions

Background:

In November 2019 City Council enacted the current provisions of City Code Chapter 2, Article XVI (Police Civilian Review Board). Subsequently, in 2020, the Virginia General Assembly enacted Virginia Code §9.1-601, to provide express enabling legislation for the governing bodies of localities to establish law enforcement civilian oversight bodies. The state enabling legislation confers authority for City Council to assign seven categories of specific duties, and related duties as necessary to carry out effective oversight of the local law enforcement agency.

The enabling legislation also specifies that the governing body, rather than the oversight body itself, will establish the policies and procedures for the performance of any duties that are conferred upon the oversight body. As you will note in the proposed ordinance, the duties authorized within the ordinance cannot be undertaken by the board until City Council approves policies and procedures for each of the categories of duties. Once this ordinance is approved the work of preparing the policies and procedures will commence/ continue (City Council recently approved a set of hearing procedures that may be used by the board in the interim). Separately, rather than leaving it to the oversight board and chief of police to enter into “contractual” arrangements, the Ordinance requires the City Manager to prepare Standard Operating Procedures to ensure that information will be shared by the police department with the oversight board as required by the Ordinance, subject to reasonable recordkeeping protocols that will protect individuals’ “personal information”, as contemplated by the principles of information practice reflected in the Government Data Collection and Dissemination Practices Act (Va. Code §§ 2.2-3800 et seq.).

Currently the board authorized by Chapter 2, Article XVI of the City Code is referred to as a “Review Board” because—prior to the state enabling legislation—there was a limited range of functionality a board created within a municipality could undertake, primarily the review of

administrative/ internal investigations performed by the police department. The 2020 enabling legislation continues the existing authorization to review police administrative/internal investigations but goes further in providing for an expanded role referred to in the state legislation as “oversight”. Therefore, once the ordinance is updated by City Council, the board will be referred to going forward as the “Police Civilian Oversight Board”.

The existing board appointments do not need to be reconstituted. The board will continue to consist of seven (7) voting members and one (1) nonvoting member. Since the terms of the existing board seats were staggered originally so that not all of the seats could become vacant at once, there is no need to alter the terms of any existing members. The provisions of the proposed ordinance will work together with other City Code provisions (see, e.g., City Code 2-8) that govern appointments and terms of board and commission members.

In enacting the 2020 enabling legislation, the General Assembly addressed the new law’s relationship to existing statutes governing police disciplinary matters, as follows:

1. The 2020 legislation specifies that, within localities that have established a civilian oversight body, the Virginia Law Enforcement Procedural Guarantees Act shall not apply. Va. Code §9.1-507. (This does not mean that officers lose their due process rights under federal law, only that the General Assembly abolished the minimum procedural guarantees previously afforded under state law).
2. Va. Code §15.2-1507(A)(3)(8) was amended by the 2020 enabling legislation to specify that, with respect to any grievance that relates to a binding disciplinary determination made by a civilian oversight body, the officer subject to the disciplinary action are not eligible to use the normal grievance process, although they are authorized to use the City’s grievance panel to review discipline imposed by a civilian oversight body. Va. Code §9.1-601(F).

As with the original PCRFB, the updated oversight board will be required to comply with applicable provisions of FOIA’s public records and open public meeting requirements. Whether or not, in a given situation, the oversight body will be able to convene within a closed meeting will depend on which of the categories of functions the Board is performing and what FOIA laws say at the time the oversight body begins conducting their business. (It is anticipated that the General Assembly may within its 2022 Session consider several bills relating to police disciplinary files and other FOIA matters relating to an oversight body’s functional areas). It is recommended that any requirement to protect personnel information about identifiable individuals should be specified generally within the Ordinance--as it is within this proposed Ordinance—and then specific protocols for managing personnel information should be put into place that can be enforced regardless of whether or not closed meetings could be convened by the oversight body.

Discussion:

The proposed Ordinance has been reviewed by both the City Attorney and the outside legal counsel for the PCRFB (the law firm of Sands Anderson, by attorneys Cynthia Hudson and Cullen Seltzer). The Ordinance represents many hours of work and collaboration between the City

Council committee and the PCRB's working committee. This agenda memo can't adequately convey the amount of time and effort that the Council and PCRB committee members have devoted to bringing this forward.

City Council may wish to discuss the following provision, which remains a topic of some controversy, and make a motion to amend the language of the proposed ordinance, if necessary, as a result of those discussions:

- Sec. 2-466(c): Within six months of appointment, and at least once a year thereafter, members shall participate in a ride-along session with the Department.

Wordsmithing continued until shortly prior to the deadline for Council agenda materials. If there are any modifications or amendments agreed to by the parties which do not show up in the attached Ordinance, the omission is accidental.

Budgetary Impact:

A number of the functions authorized within the ordinance will have a budgetary impact upon the City (and will require additional funding to be allocated to the PCOB budget) if they are to be effectively carried out as contemplated by the ordinance. However, the adoption of this ordinance will not, in and of itself, have any budgetary impact.

Alternatives:

City Council could leave the existing ordinance provisions in place; Council could also repeal the existing ordinance without enacting a new ordinance. Council may, by motion, amend any provision(s) within the attached proposed Ordinance.

Recommendation:

It is recommended that Council should adopt the attached proposed ordinance.

Community Engagement:

The proposed ordinance has been discussed at several PCRB meetings, and was publicly discussed and reviewed at the December 6, 2021, City Council meeting.

Alignment with Council Vision Areas and Strategic Plan: yes.

Attachment(1):

- Proposed Ordinance

ORDINANCE
AMENDING AND REENACTING CHAPTER 2 (ADMINISTRATION), ARTICLE XVI
(POLICE CIVILIAN REVIEW BOARD) TO REESTABLISH THE CITY’S POLICE
CIVILIAN REVIEW BOARD AS AN OVERSIGHT BOARD PURSUANT TO VIRGINIA
CODE SECTION 9.1-601

WHEREAS the Charlottesville City Council previously enacted an ordinance establishing a Charlottesville Police Civilian Review Board and codified the ordinance within Chapter 2, Article XVI of the Code of the City of Charlottesville (1990), as amended; and

WHEREAS on October 28, 2020, the Virginia General Assembly enacted House Bill 5055, which expressly authorizes the governing body of a locality to establish a law enforcement civilian oversight body; and

WHEREAS City Council hereby finds that it is in the public’s best interests to amend Chapter 2, Article XVI of the City Code to dissolve the City’s Police Civilian Review Board and to establish a Police Civilian Oversight Board in conformity with Virginia Code § 9.1-601 and to empower the Police Civilian Oversight Board with certain additional oversight authority and duties enabled by the statute; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA, that”

1. Article XVI (Police Civilian Review Board), Sections 2-450 through 2-464 of Chapter 2 (Administration) of the Code of the City of Charlottesville (1990), as amended, is and are hereby repealed, in their entirety, and

2. Chapter 2, Article XVI of said Code is hereby amended and reenacted as follows:

CHAPTER 2 (ADMINISTRATION)

ARTICLE XVI. – POLICE CIVILIAN OVERSIGHT BOARD

Sec. 2-450 -Title

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

Sec. 2-451 - Police Civilian Oversight Board Established

Pursuant to Virginia Code §9.1-601, there is hereby established a Charlottesville Police Civilian Oversight Board, which shall be referred to as “the Board,” with powers granted as provided within this ordinance. The Board is a body established and appointed by the City Council of Charlottesville pursuant to Virginia Code §9.1-601(B) to perform functions authorized by the City Council in accordance with Virginia Code §9.1-601(C). It shall not be able to bring suit or

to be sued in its own name, except to the extent needed to request and defend subpoenas as authorized by this ordinance.

Sec. 2-452.-Powers and Duties of the Police Civilian Oversight Board.

(a) **Purpose.** The purpose of the Board is to establish and maintain trust between and among the Charlottesville Police Department, which shall be referred to as “the Department,” the City Council, the City Manager, and the public.

(b) **Objectivity.** It is of fundamental importance that members of the Board be fair and objective in the conduct of their duties, and that they be perceived as fair and objective in the conduct of their duties.

(c) **Powers and Duties.** The Board shall have the following powers and duties:

- (1) To receive, investigate, and issue findings on complaints from civilians regarding the conduct of law enforcement officers and civilian employees of the Department;
- (2) To investigate and issue findings on incidents, including the use of force by a law enforcement officer, death or serious injury to any individual held in custody, serious abuse of authority or misconduct as defined in this section, allegedly discriminatory stops, and other incidents regarding the conduct of law enforcement officers and civilian employees of the Department;
- (3) At the conclusion of any investigation conducted pursuant to paragraphs (1) and (2), above, if the Board has found that an employee has committed misconduct, to recommend disciplinary action to the Chief of Police;
- (4) To investigate policies, practices, and procedures of the Department and to make recommendations regarding changes to such policies, practices and procedures, as set forth within Sec. 2-462 of this article;
- (5) To review investigations conducted internally by the Department, as set forth in Sec. 2-458 of this article, and to issue findings regarding the accuracy, completeness, and impartiality of the investigations and the sufficiency of any discipline resulting from such investigations;
- (6) To request reports of the annual expenditures of the Department, and to make recommendations to the City Council concerning future appropriations;

- (7) To make public reports on the activities of the Board, including investigations, hearings, findings, recommendations, determinations and oversight activities;
- (8) To hold hearings and, if, after making a good faith effort to obtain the voluntary attendance of witnesses and the production of books, papers, and other evidence necessary to perform its duties, the Board is unable to obtain such attendance or production, to apply to the Circuit Court for the City of Charlottesville for a subpoena compelling the attendance of such witness or the production of such books, papers and other evidence; and
- (9) To undertake other duties, as reasonably necessary, for the Board to effectuate its lawful purpose as provided for in this article, to effectively oversee the Department.

(d) **Definition of “serious abuse of authority or misconduct.”** “Serious abuse of authority or misconduct” shall include the following:

- (1) Verbal or other conduct regarding an individual or group that maligns or shows hostility for the individual or group because of race, color, religion, gender, national origin, age, disability, sexual orientation, or gender identity and expression;
- (2) Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
- (3) Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
- (4) Reckless endangerment of a citizen, detainee, or person in custody;
- (5) Violation of laws or ordinances;
- (6) Criminal or other misconduct occurring on or off the job which is related to job performance or is of such a nature that to continue the employee in the assigned position or in any City employment capacity would constitute negligence in regard to the City’s duties to the public or to other City employees;
- (7) In any matter within the jurisdiction of any officer, department or agency of the City: (a) the knowing falsification, concealment or cover-up of a material fact,

and/or (b) the knowing making of any false, fictitious or fraudulent statement or representation, and/or the making or using of any writing or document knowing the same to contain a false, fictitious or fraudulent statement or entry;

- (8) Sexual activity, including consensual sexual activity, on the job; and
- (9) Other serious violations of Charlottesville or Department policies or procedures, including the Department Code of Conduct.

(e) **Access to Department Information.** The Board is authorized to receive, and shall be provided full access to, all Department reports, files and records pertinent to Board investigations of complaints and incidents or to its review of Department Internal Affairs investigations, as authorized in this ordinance. All records, documents and materials in the possession of the Department or the City that are determined by the Board to be necessary and requested by the Board to carry out its authorized powers and responsibilities shall be provided to the Board subject to Board procedures adopted, with Council approval, for the protection of confidential information as defined in such procedures. Within 45 days of the enactment of this Article, the City Manager, in consultation with the Chief of Police and the Board, shall establish a Standard Operating Procedure setting forth how this access shall be given by the Department to the Board, how personal information shall be managed and protected by the Board in accordance with the requirements of Virginia Code §2.2-3800 *et seq.*, and under what circumstances or conditions it may be made available to the parties.

(f) **Department information to which the Board may not have access.** The Executive Director and the Board shall not have access to

- (1) juvenile records;
- (2) records that may reveal the identity or personal information, as defined in Virginia Code §2.2-3801, of a confidential informant;
- (3) investigative files for an active civil or criminal investigation by the Commonwealth Attorney, the Virginia Attorney General, the Virginia State Police, or the United States Department of Justice;
- (4) files related to an active EEOC claim, Human Rights Commission investigation, or civil claim involving a Department employee;
- (5) files containing information exempt from public disclosure pursuant to Virginia Code §§2.2-3706(B)(2), (3), (4), (5), (6), (7), (8), (10), (11); 2.2-3706(C); 2.2-3706.1(C)(1) through (C)(6); 2.2-3706.1(D); and 2.2-3706.1(E); or

(6) any information that the Police Department is not legally authorized to share.

(g) **Disputes over access.** If the Executive Director and the Board seek access to information the disclosure of which the Department believes would compromise ongoing investigations, disclosure may be withheld until such time as the need for maintaining confidentiality is no longer present, or until the City Manager has determined that the matter will not be compromised by the release of the information. If the Board believes that the City Manager is unreasonably withholding such information, the Board may consider whether to seek a subpoena requiring the production of such information pursuant to §2-458(f).

(h) **Procedures must be adopted before the Board begins to operate.** The Board shall not exercise the powers and duties set forth within paragraphs (c)(1)-(9) until City Council approves Operating Procedures, after consultation with the Board, pursuant to § 2-460(a).

Sec. 2-453 - Board Membership Appointment, and Terms.

(a) **Appointment Process.** The City Council shall appoint the members of the 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 Board. Council will seek to appoint fair-minded and objective members with a demonstrated commitment to community service who have training and experience, including lived experience, with topics relevant to the business of the Board, including law, police practices, human resources practices and procedures, trauma-informed mental health issues, and the sociology of historically over-policed communities.

(b) **Board composition.** The Board shall reflect the demographic diversity of the City of Charlottesville. The 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 for cause as specified in the Board Code of Ethics, violating the duty of confidentiality, failing to participate in required training, or other good cause.

- (1) Council shall appoint at least three members who are residents of public housing or who come from historically disadvantaged communities that have traditionally experienced disparate policing.
- (2) Council may appoint one member who represents an organization that seeks racial or social justice on behalf of historically disadvantaged communities.

- (3) The non-voting member of the Board shall be an individual with policing expertise or experience. The non-voting member may be a retired law enforcement officer who prior to his or her retirement was employed in a locality similar to the City of Charlottesville. The non-voting member need not be a resident of the City of Charlottesville.
- (4) The seven voting members of the Board shall be residents of the City of Charlottesville, except that if Council has appointed someone who represents an organization that seeks racial or social justice on behalf of historically disadvantaged communities, that person shall either be a resident of the City of Charlottesville or the organization they represent shall perform advocacy on behalf of City of Charlottesville residents.
- (5) No Board member shall be a current candidate for public office, a former member of the Department, an immediate family member of a current Department employee, or a current employee of a law enforcement agency, the Fire Department, the Emergency Communications Center, or the Sheriff's Office. If Council considers appointing a Board member who is employed by the City of Charlottesville, Council will seek to avoid potential conflicts of interest.

(c) **Terms.** Each Board member shall be appointed for a term of three years. Appointments and terms shall be subject to the provisions of City Code §2-8. The membership of the Board, and the terms of each board member, shall be the same as for the police civilian review board that was serving as of December 20, 2021, and that membership shall continue as the police civilian oversight board established by this article, with no change in the date of appointment, or length of term, for any member.

(d) **Conflicts of Interest.** No Board member may participate in any matter before the Board under circumstances in which the objectivity of the Board member could reasonably be questioned, including, without limitation, the consideration of a Complaint of someone who is a family member. For purposes of the Virginia State and Local Government Conflict of Interests Act, the Board shall be deemed a "governmental agency" and each Board member shall be an "officer", as those terms are defined in Virginia Code §2.2-3101. All Board members shall comply with the requirements of the Virginia State and Local Government Conflict of Interests Act.

(e) **Confidentiality.** Each member shall maintain the confidentiality of all confidential or privileged information, including but not limited to:

- (1) Materials from Police internal investigative files;

- (2) Disciplinary actions, memos and reports;
- (3) Statements of any police officer or civilian employee who was required by the Department to give a statement;
- (4) Criminal investigative files; or
- (5) Any other information that the Board has deemed confidential.

(f) **Records to remain Department records.** The Chief of Police, as the custodian of the original records of which copies may be provided to the Board by the Department, shall be responsible for decisions as to whether copies of such records (or information contained in such records) may be publicly disclosed, subject to the direction and control of the City Manager. Nothing in this paragraph shall preclude the City Manager from including with the Standard Operating Procedure required by §2-452 (e) guidelines for public disclosure of certain types of information contained with Department records. In the Standard Operating Procedure required by §2-452(e), the City Manager shall issue guidelines for what information may be included in Board reports or otherwise publicly disclosed.

Sec. 2-454. Meetings.

(a) **Number of meetings.** The Board shall hold public meetings at least once per calendar quarter. Additional meetings may be called by the Chair or any two Board members.

(b) **FOIA.** The Board shall comply with all applicable requirements of the Virginia Freedom of Information Act (“FOIA”) pertaining to disclosure of public records and the conduct of its meetings, including the requirement that all meetings shall be open to the public except under circumstances when the topic is authorized by FOIA to be discussed in a closed meeting.

(c) **Quorum.** A quorum of the Board shall be four (4) members.

(d) **Minutes.** The Board shall keep minutes of its meetings, which shall include:

- (1) the date, time, and location of the meeting;
- (2) the members present and absent;
- (3) a summary of the discussion on matters proposed, deliberated, or decided;

and

(4) a record of any votes taken.

(e) **Rules and Procedures.** Meetings of the Board shall be conducted in accordance with Robert's Rules of Order or such other procedures as the Board may adopt. Hearings of the Board shall be conducted in accordance with the Operating Procedures approved by City Council for the Board.

Sec. 2-455 - Executive Director

(a) **Appointment.** The City Manager shall appoint an Executive Director with the approval of a majority vote of the City Council.

(b) **Interview Process.** As a part of the Executive Director appointment process, the City Manager shall convene an interview panel that includes two members of the Board. If those two members recommend a candidate for appointment as Executive Director, the City Manager shall provide a written justification to the Board if a different candidate is appointed.

(c) **Duties.** The Executive Director shall support the Board in the implementation and exercise of all of its functions authorized under this ordinance and to undertake or ensure the performance of specific oversight tasks assigned by the Board, including the oversight of investigations conducted by the Department. If authorized by the City Manager or their designee, the Executive Director may engage the services of such investigators as may be necessary to perform the Executive Director's duties to conduct or to oversee investigations.

(d) **Supervision.** The City Manager shall supervise the work of the Executive Director and may delegate that responsibility to a Deputy City Manager. The City Manager's annual evaluation of the Executive Director's performance shall consider a written performance review submitted by the Board to the City Manager. The Board may request that the City Manager meet with the Board's Chair to discuss the Executive Director's performance.

(e) **Vacancy.** If there is a vacancy in the position of Executive Director, the City Manager or their designee may designate some other City employee who is not an employee of the Department to act as Executive Director until a new Executive Director is hired.

Sec. 2-456 - Board Legal Counsel.

The Board may retain independent legal counsel to represent the Board in all cases, hearings, controversies, or matters involving the interests of the Board. Such independent legal counsel shall be chosen from a list of attorneys recommended by the

City Attorney. The Board's Chair is authorized to execute a contract in the name of the Board for legal services if the contract has first been approved by the Board and endorsed by the City's Finance Director to verify that funding is available and has been appropriated to support performance of the payment obligations of the Board under such contract. The Board's legal counsel shall be paid only from funds that have been appropriated to the Board's budget by City Council. The Board and the Executive Director are encouraged to consult the Office of the City Attorney for legal advice except in cases, hearings, investigations, controversies that are before the Board, or in any other matter in which the Board's and the Department's interests may conflict.

Sec. 2-457 – Matters that the Board May Investigate.

(a) **Investigate Complaints.** The Board and the City Manager shall jointly develop and administer a process for receiving and investigating complaints from members of the public regarding the misconduct of law enforcement employees of the Department and referring complaints to the Department for investigation. The process, to be set out in detail in a Standard Operating Procedure established by the City Manager in consultation with the Chief of Police and the Executive Director, shall permit Complainants to file Complaints online, in writing, or orally. The SOP shall permit the Complainant to choose whether the Complaint will be investigated by the Board only or by the Department with the oversight of the Executive Director. Regardless of how a Complaint is received, it shall be promptly provided to the Department and to the Executive Director. The Executive Director, in consultation with the Board, may decline to investigate a Complaint.

(b) **Investigate Incidents.** If the Board becomes aware of an Incident, including the use of force by a law enforcement officer, death or serious injury to any individual held in custody, serious abuse of authority or misconduct as defined in this Article, an allegedly discriminatory stop, or another incident regarding the conduct of an employee of the Department, even if no Complaint has been filed, the Board may initiate its own investigation of the Incident, by notice from the Board Chair to the City Manager and the Chief of Police, who shall ensure the Department's cooperation with the investigation.

Sec. 2-458 - Investigations of both Complaints and Incidents.

(a) **Compliance.** Any investigation shall comply with all federal, state, and local laws.

(b) **Compelled Statements.** The Board may not compel a statement from any Department employee.

(c) **Exclusions.** The Board shall not consider complaints, incidents, claims or issues involving the following:

- (1) Any incident that occurred more than one year before the filing of the Complaint (unless the Board with the concurrence of the City Manager determines that there is good cause to extend the filing deadline);
- (2) A matter that was the subject of an investigation where more than seventy-five (75) days has elapsed since the Department sent notice to the Complainant informing the Complainant that the Department's Internal Affairs investigation is complete (unless the Board determines that there is good cause to extend the filing deadline);
- (3) Matters that are the 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 a filed complaint), or any pending City of Charlottesville grievance proceeding;
- (4) Any financial management related issue;
- (5) Any complaint, incident, claim or issue where the Complainant requests that the Board not have access to their files;
- (6) Any complaint, incident, claim or issue that has previously been the subject of an investigation by the Board, unless substantial new information has come to the attention of the Board;
- (7) An allegation of misconduct only by employees of law enforcement agencies other than the Department. Such complaints should be referred to the appropriate law enforcement agency;
- (8) An allegation of conduct that does not violate the Charlottesville Police Policies and Guidelines, Disciplinary Orders, or Code of Conduct;
- (9) Any other claim outside the scope of the Board's authority expressly set forth within this Ordinance.

(d) **Exceptions to time limits.** The Board may review investigations beyond the time limits specified in subsections (c)(1) and (c)(2) if:

- (1) The board determines that there is good reason for doing so, or
- (2) As part of an audit taking place under Section 2-462(b).

(e) **Suspension of Investigations.** If a Complaint asserts criminal conduct by an employee of the Department, or if at any point in an investigation of a Complaint or Incident the Board becomes aware that an employee may have committed a criminal offense, the Board shall:

- (1) Suspend the investigation and notify the Chief of Police and Commonwealth's Attorney of the alleged conduct, ensuring that no statements obtained from the Police Department employee(s) whose actions are the subject of the matter are shared with criminal investigators or any prosecuting authority except in accordance with applicable law; and
- (2) Evaluate, in consultation with Board legal counsel, the City Attorney, and the Commonwealth's Attorney, whether competing public interests and civil rights involved permit the resumption of continued, parallel investigation by the Board.

(f) Subpoenas.

- (1) If the Board determines that there is evidence (including witnesses) not within the control of the Department that the Board is unable to obtain voluntarily, the Board by two-thirds vote may direct the Executive Director, on behalf of the Board, to apply to the Charlottesville Circuit Court for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence, and the Court, on finding that the witness or evidence is material to the discharge of the Board's duties, may issue the requested subpoena.
- (2) If the Executive Director is denied access to material witnesses, records, books, papers, or other evidence within the control of the Department that the Executive Director deems necessary to perform their duties and the duties of the Board, the Executive Director may request the City Manager to require the Department to produce the requested witnesses and documents. The City Manager, or their designee, shall not unreasonably deny such a request, but may place conditions on the production of the requested witnesses and documents as necessary to preserve confidentiality for the reasons set forth in this ordinance. The City Manager, or their designee, shall issue a decision on the Executive Director's request within 5 business days from the date of that request.
- (3) If the City Manager, or their designee, denies the Executive Director's request made pursuant to subparagraph (2) above, the Board by two-thirds vote may direct the Executive Director, on behalf of the Board, to apply to the Charlottesville Circuit Court for a subpoena compelling the attendance of such witnesses or the production of such books, papers, and other evidence. The Court, on finding that the witness or evidence is material to the discharge of the Board's duties, shall cause the subpoena to be issued with such conditions as the Court may deem necessary to protect the Department's concerns about the need for confidentiality. The Board shall give the City Manager and the Department reasonable notice of its intent to subpoena such witness or records and shall give the City Attorney a copy of the request for subpoena. The Board shall not unreasonably

withhold its agreement to limitations on the scope of the subpoena requested by the City Manager that may be necessary to protect confidential information. The parties may request that any hearing to be held in the Circuit Court on the request for a subpoena be conducted in a closed courtroom, to the extent permitted by state law. Upon request, the court file for any such subpoena request shall be kept under seal to the extent permitted by state law.

- (4) If a subpoena is granted, the Board shall digitally record any interviews or depositions conducted pursuant to the subpoena and shall make copies of any documents obtained by subpoena. The Board shall provide the Department with copies of any such interview/deposition recordings and documents. The Board shall delegate its authority to subpoena and question witnesses to the Executive Director, who shall conduct any interviews, depositions, or questioning of witnesses in a non-public forum that adequately protects the privacy of the individual being subpoenaed, the confidentiality or sensitivity of information shared or sought, and the integrity of any pending or concurrent investigation.
- (5) In deciding whether, and under what conditions, the Circuit Court will issue any subpoena, the Court shall refer to procedures and caselaw decided under Rule 3A:12 of the Rules of the Supreme Court of Virginia.

(g) Conduct of Investigations Pursuant to §2-457(a).

- (1) If the Complainant asks that the Complaint be investigated by the Department, the Complaint will be investigated by the Department with oversight from the Executive Director. When the Department's investigation is concluded, the Department will provide the Complainant with an Investigative Report of its findings and the resolution of the Complaint and will provide the Board a summary of the Department's resolution of the Complaint.
- (2) The Executive Director may actively monitor all investigations of Complaints of employee misconduct conducted by the Department and shall have access to records and witnesses to the same extent as the Department, subject to the limitations or requirements set out in this Ordinance. Such oversight may include reviewing the investigative plan of the Department, reviewing with the Department any records within the Department's digital evidence management system, reviewing with the Department any pertinent law enforcement records within the Department's Records Management System, observing any and all real-time interviews of witnesses with the Department, reviewing all recorded interviews which the Executive Director chooses not to attend in real time, providing feedback during the interview to be relayed to Department staff conducting the interview, providing feedback to Department staff in

determining next steps in the investigative process, and reviewing facts gained from investigation with Department staff. For active investigations, the Executive Director shall be limited in their participation to the same extent the Department is limited in its participation in such investigations. The Executive Director may oversee the Department's administrative investigation of employee misconduct after the close of the active investigation in the same manner as all other investigations of employee conduct handled by the Department as described in this section. When monitoring Department investigations, during the pendency of the investigations the Executive Director shall not disclose information to the Board, any Board member, or any person other than as authorized in writing by the Chief of Police or the City Manager.

- (3) If the Complainant asks that the Complaint be investigated only by the Board, the Executive Director shall initiate an investigation on behalf of the Board. The Executive Director will provide the Chief of Police with enough identifying information to allow the Department to give the Executive Director access to information, records and witnesses as required by §2-452(e) and (f) of this Ordinance as may be relevant to the Complaint. When the Board's investigation is concluded, the Executive Director will provide the Board, the Complainant and the Department with an Investigative Report that includes a summary of the circumstances of the incident(s) of alleged misconduct, the evidence related to whether there was any misconduct, and any suggested findings related to each allegation.
- (4) Any investigation will be completed, and any Investigative Report will be submitted, within seventy-five (75) days from the date the Complaint is filed. The Board may extend the 75-day period upon request of the Police Chief or the Executive Director to protect an ongoing investigation or prosecution, or for other good cause, with notice to the Complainant and the City Manager.

(h) Conduct of Investigations Pursuant to §2-457(b). If the Board is investigating an Incident under the authority of §2-457(b), the Board may request information from the Department, may seek subpoenas as authorized above, and may conduct such an investigation as is necessary to permit the Board to prepare a Preliminary Investigative Report, making findings about whether there was any employee misconduct in the Incident under investigation. The Preliminary Investigative Report shall be provided to the Department and to any employees identified as having committed employee misconduct.

Sec. 2- 459 – Matters on which the Board may Conduct Hearings

(a) Review Request. Within 75 business days of the issuance of any Investigative Report, the Complainant, or any member of the Board, may file a Review Request with

the Executive Director, asking that a hearing be held on the allegations in the Complaint. A Review Request shall be deemed filed when it is received by the Executive Director. In any Review Request reviewing a matter where the Complainant has not previously authorized Board involvement in the investigation, the Complainant must grant permission for the Board to have access to the Internal Affairs files and evidence if they wish to pursue a Review Request. The Board may conclude that no hearing, or a hearing only on a limited issue, is necessary on the Review Request. If so, the Board may issue a report without the need for a full hearing.

(b) **Hearing to be scheduled.** The Board may conclude that no hearing, or a hearing on only a limited issue, is necessary on the Review Request. If so, the Board may issue a report without the need of a full hearing. If the Board does choose to have a hearing on the Review Request, that hearing shall be held promptly. The hearing will be conducted pursuant to the Operating Procedures approved by City Council pursuant to §2-460(a).

(c) **Report on findings on Review Request.** Within 30 days of the hearing pursuant to a Review Request, the Board shall report publicly and to the City Manager, the Police Chief and the Complainant that it has made one of the following findings with respect to each allegation or issue under review:

- (1) That the Board finds that the investigation of the Complaint was satisfactory, and the Board concurs with the findings of the investigation;
- (2) That the Board finds that the investigation of the Complaint was satisfactory, but the Board does not concur with the findings of the investigation, in which case the Board may make recommendations to the City Manager concerning disposition of the Review Request; or
- (3) That the Board finds that the investigation is incomplete or otherwise unsatisfactory and provides a detailed written explanation of the basis for such finding.

(d) **Investigations in Support of Review Requests.** If the Board makes a finding under (c)(3), above, the Board may initiate an independent investigation of the matter. After the additional independent investigation, the Board shall report publicly that it has made one of the following findings with respect to each allegation or issue under review:

- (1) That the Board now finds that the investigation of the Complaint was satisfactory, and the Board concurs with the findings of the Investigative Report;
- (2) That the Board now finds that the investigation of the Complaint was satisfactory, but the Board does not concur with the findings of the Investigative Report, in which case the Board may make recommendations to the City Manager concerning disposition of the Complaint; or

- (3) That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether the findings of the Investigative Report are correct.

(e) **Preliminary Investigative Report.** After receiving a Preliminary Investigative Report as provided in §2-458(h), the Board may hold a hearing on the allegations in the Preliminary Investigative Report. The Board shall report its findings within thirty (30) days of the hearing. The Board shall report publicly and to the City Manager and the Police Chief that it has made one of the following findings with respect to the Incident under review:

- (1) That the Board finds that a Department employee committed misconduct;
- (2) That the Board finds that no Department employee committed misconduct; or
- (3) That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether any Department employee committed misconduct.

Sec. 2- 460. –Operating Procedures

(a) **Operating Procedures.** The City Council shall approve Operating Procedures for the performance of duties by the Board. Those procedures may be amended from time to time by City Council, in consultation with the Board. The Board shall conduct all hearings in accordance with hearing procedures set forth within the Operating Procedures approved by City Council. A Hearing Examiner, chosen as set out in the Operating Procedures, shall preside over the hearing; however, the Board shall serve as the factfinding body. Parties to the hearing shall have no right to a particular set of procedures. The Hearing Examiner may make reasonable modifications to the procedures as circumstances concerning a particular Complaint may require, provided that (i) any such modifications are within the authority of the Board under this ordinance or the approved Operating Procedures; and (ii) no such modification deprives any party to a hearing of substantial justice.

(b) **Informal Resolution.** At any time after receiving a Complaint and before issuance of the written findings required at the conclusion of a hearing, the Board and any party may propose an informal resolution within the scope of the express authority granted to the Board within this Ordinance, which informal resolution may be adopted if all parties and the Board agree to such a resolution. At any time, the parties may agree to refer the matter to mediation or other alternative dispute resolution methods, without prejudice to the right to have a hearing on the Review Request.

Sec. 2-461. - Disciplinary Recommendations

(a) Prerequisite to the Board making disciplinary recommendations. The Board shall be authorized to make disciplinary recommendations in a manner that protects personnel information regarding identifiable employees against public disclosure, in accordance with the Operating Procedures established by City Council pursuant to Sec. 2-460(a) and the Standard Operating Procedures established pursuant to Sec. 2-452(e). Subject to the foregoing provisions, the following process may be used, as appropriate:

- (1) Upon making a finding that an employee has engaged in a serious breach of departmental and professional standards, the Board shall meet to discuss appropriate recommendations for disciplinary action. The Board shall consult with the employee's direct supervisor or commander, complainants and witnesses when discussing the appropriate disciplinary action to be recommended. Prior to commencement of any such disciplinary deliberations, the subject employee shall be given notice of the proceedings and of the range of disciplinary actions under consideration, and the employee shall be offered an opportunity to be heard. If permitted by FOIA, some or all of the disciplinary hearing may be held in closed session. No employee, and no other City employee, shall be compelled to provide statements to the Board during its deliberations. Disciplinary action to be considered for recommendation by the Board shall include those specified within any applicable disciplinary matrix utilized by the Department. After considering these sources of information, the Board may make a disciplinary recommendation to the Department.
- (2) If the Board makes a disciplinary recommendation to the Department, and the Department declines to implement the Board's disciplinary recommendations, the Chief of Police shall, within thirty (30) days of the Board's recommendation, provide a written explanation of their reason for declining to implement the Board's recommendation. This explanation shall be made available to the Board, the City Council, the City Manager, and the public.

(b) Grievance rights. Nothing in this ordinance shall affect in any way any right of an employee to file a grievance requesting a hearing before the City's Personnel Appeals Board, which right shall be governed by the provisions of Sections §9.01-507 and 9.1-601(F) of the Virginia Code, or the provisions of Va. Code §15.2-1507(A)(3) and the City's employee grievance procedures, as may be applicable. No finding by the Board, nor any recommendation of the Board, shall be admitted in any personnel appeal or grievance hearing.

Sec. 2- 462. - Board Review of Law Enforcement Policies, Practices and Procedures

(a) **Authority to make policy recommendations.** The Board may review and make recommendations regarding policies, practices, and procedures of the Department, including written policies, procedures and standing orders. The Board shall present in writing its findings and recommendations with supporting rationale to the City Manager and Chief of Police. If the Department declines to implement any changes recommended by the Board, the Chief of Police shall explain in writing, which shall be made available for public inspection, why the Department declines to implement the Board's recommendation, unless the Board instead withdraws the recommendation based on the rationale provided. The Board's withdrawal of any such recommendation shall be made available for public inspection.

(b) **Executive Director's authority to conduct audits.** The Board may direct the Executive Director on its behalf to conduct retrospective examinations and audits of patterns in Internal Affairs investigations, arrest and detention, and other public-police interactions. The Board may request information from the Department, may seek subpoenas as authorized above, and may conduct such an investigation as is necessary to permit the Board to perform the audit.

Sec. 2- 463. - Request Annual Reports of Police Expenditures

During the City Manager's preparation of a proposed City budget, the Budget Office shall provide the Board with annual expenditure estimates and future year projections for the Department, itemized to the same level of detail as provided to the City Manager. The estimates shall be presented to the Board at the same time they are presented to the City Manager. The Board may review the estimates and may make budgetary recommendations to the City Manager and/or to the City Council during the annual budget process.

Sec. 2-464. - Legislative Recommendations and Annual Report.

(a) **Legislative recommendations.** The Board may make recommendations to City Council of any proposed changes in state law, for the Council's consideration to include in its annual legislative program to present to the General Assembly. These recommendations shall be presented to the City Attorney's Office by August 15 of each year.

(b) **Annual Report.** On or before April 15 of each calendar year, the Board shall provide the City Council with an annual report of activities conducted during the preceding calendar year. The report shall detail the Board's activities in the prior calendar year, with sections related to the appointment of committees and their actions; the establishment of any community advisory panels; an overview of complaints received during the calendar year including the number of complaints, the complaints' findings, and the number of complaints deferred due to pending proceedings; the number and outcome of any independent investigations; an overview of proposed policy recommendations and amendments to Department policies and whether the recommendations and amendments were implemented by the Department; the number, type, and attendance at community listening sessions; recommendations of the Board about policing within the City; and any other information necessary to provide an overview of the Board's activities.

Section 2-465. - Community Engagement and Community Relations

(a) **Community Outreach.** The Board and the Executive Director shall engage in community outreach to seek the assistance and input of community members. At least twice a year, the Board shall host public community listening sessions to discuss policing matters of pressing public concern, including the impacts of local policing on historically disadvantaged communities that currently experience or traditionally have experienced disparate policing.

(b) **Community meetings.** The Board may also host or participate in public police-community relations meetings, in which Board members, supported by the Executive Director, Department officials, designated by the Chief of Police, and community members discuss policing matters of pressing public concern, including questions about transparency, availability, legitimacy, mutual respect and trust, equitable treatment, social and racial justice, equal rights, and community safety and order.

(c) **Include in reports.** The Board shall report on its community outreach and engagement activities, public input, and any recommendations for community-policing initiatives or for improved police-community relations at least annually as part of the annual report provided for in Section 2-464(b).

Section 2-466. - Training

(a) **NACOLE training.** At least once every two years, and within 90 days of any new Board appointments, the City, assisted by the Executive Director, shall provide Board members with at least eight hours of training, presented by the National Association for Civilian Oversight of Law Enforcement or a comparable professional organization. The training shall be consistent with the Board's mission, this ordinance, and the Operating Procedures.

(b) **City or CPD training.** At least once every two years, and within six months of any new Board appointments, the City, assisted by the Executive Director and the Chief of Police or their designees, shall provide Board members with training or information:

- (1) Describing the legal and ethical obligations of members of a public board, including the need to comply with FOIA and other statutes and ordinances governing their service;
- (2) Explaining Police Department procedures, policies, and regulations;
- (3) Describing the substance of Police Department personnel record-keeping;
- (4) Describing such other City policies, procedures and systems relevant to the duties of the Board; and
- (5) Explaining the Code of Ethics for the Board.

(c) **Ride-alongs.** Within six months of appointment, and at least once a year thereafter, members shall participate in a ride-along session with the Department.

(d) **Additional training.** As needed, the City shall provide Board members with additional relevant training by subject matter experts on subjects that may include mental health, trauma-informed policing, civil rights and constitutional law, race and racism, community outreach, mediation, investigation, and policing practices.

Section 2-467. – Commendations for Exceptional Community Service

(a) **Soliciting public comment.** The Board may solicit comments from the public concerning incidents of exceptional performance by employees of the Department.

(b) **Exemplary employees.** The Board may consult with the Chief of Police regarding individual employees who have made outstanding contributions exemplary of equitable, just, and professional policing.

(c) **Recognition of outstanding contributions.** The Board may issue public citations recognizing individuals deemed to have made such contributions.

Section 2-468. – Mediation

The Board may propose procedures for the use of mediation or other alternative dispute resolution techniques to resolve complaints against employees of the Department. Such procedures shall not affect the ability of Complainants to pursue remedies under other sections of this ordinance.