

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



Agenda Date:	December 5, 2022
Action Required:	Approval of Ordinance Amendment and Approval of Proposed Operating Procedures
Presenter:	William Mendez - PCOB Chair
Staff Contacts:	Lisa Robertson, City Attorney
Title:	Police Civilian Oversight Board Matters

Background

At their December 20, 2021 meeting, the City Council amended and reapproved the enabling ordinance for the Charlottesville Police Civilian Oversight Board (PCOB), amending Article XVI Chapter 2 (Administration) of the Charlottesville Code. The ordinance granted powers and authorities to the Board consistent with Virginia Code Section 9.1-601. Section 2-452(i) of the City ordinance, and Section 9.1-601(D) specify that the City Council is required to establish the policies and procedures for the Board's performance of its duties. The Council is asked to consider the attached Operating Procedures and technical corrections to the enabling ordinance that will allow the Board to fulfill its mission.

Discussion

Substantively, the contents of the Operating Procedures are similar to the version sent to the Council in April, although the structure has been modified and a number of matters expected to have practical implications have been set out in greater detail. The purpose of the Operating Procedures is to implement the powers and authorities granted to the Board in Section 2-452(c) of the enabling ordinance. In the course of legal review by the City Attorney and the Board's independent counsel, 35 articles within the previous drafts (April 2022) have been compressed into 18 sections, by combining related materials, removal of duplicative language, and simplification of some procedures. The current procedures now deal, in order, with:

- The structure and authority of the Board
- Membership requirements and terms, meeting schedules and procedures, a code of ethical conduct and conditions under which Board members may be removed.
- Appointment and duties of the Board's Executive Director
- Receipt, screening, and processing of citizen complaints and review requests
- Requirement for initiating, and procedures for conducting, independent investigations
- Hearing procedures and the role of hearing examiners
- Procedures for making disciplinary recommendations
- Procedures for referring cases to mediation and mediation processes

- The issuance of subpoenas (under limited circumstances) and the execution of audits
- Board members' rights and duties in the monitoring of peaceable assemblies, and
- Community outreach and engagement

A few substantive modifications have been made. Recognizing that investigations of citizen complaints and investigations of incidents have the same structure and objectives, these two functions are now combined into one procedure. Most importantly, this approach abolishes the distinction between a "Preliminary Investigative Report" and an "Investigative Report" and does away with the former. Under the new structure, all Board-initiated investigations of complaints or incidents culminate in an Investigative Report authored by the Executive Director, which then supports further Board decision making (e.g., whether the Board will hold a hearing, whether the Board will find that misconduct has occurred, etc.)

Also, all procedures related to Board hearings have been combined into one module which covers both hearings after Board-initiated investigations and in support of citizen Review Requests. General procedures that apply to all hearings (rules and standards of evidence, the role of the Hearing Examiner, rules for orderly conduct during hearings, presumptions of legal conduct, etc.) are all now in one place in the Procedures. Differences across types of hearing (identity of parties, allowable findings, order of proceedings) are preserved, of course. Language has also been added to clarify the qualifications of, and procedures for, engaging Hearing Examiners.

In addition, the Board's duties in conducting audits are much more clearly defined, and a requirement for a detailed planning process before the Board engages in mediation has been added. Proposed Amendment to The Ordinance: The requested amendments of Sections 2-457 through 2-459 of the ordinance are necessary to implement the new procedures relating to investigations discussed above. The proposed language affirms the Board's authority to hold hearings after investigating an incident, an authority that is not currently specifically included. This change would allow the procedure after a Board-initiated investigation of an incident to follow the same path as for investigation of a civilian complaint. This change obviates the requirement for a "Preliminary Investigative Report," as noted above.

Alignment with City Council's Vision and Strategic Plan

The proposal contributes to Strategic Plan Goal 2, Promoting Health and Safety in the city. The proposal also contributes to Goal 5, (Responsive Organization) in that it provides citizens with expanded avenues to address concerns related to policing.

Community Engagement

The development of the Operating Procedures has been a nearly 2-year process during which the Board has asked for public input on several occasions. A draft of the operating procedures was provided to the City Council in April of this year and has been available for public comment since then. Input from concerned citizens received over this period has been incorporated.

Budgetary Impact

The PCOB is currently funded at a level that was intended to support estimated needs for fulfilling the functions specified in the enabling ordinance (responding to complaints, holding hearings, conducting investigations, public outreach, outside legal counsel, salary/benefits for an executive director,

etc.) There may be budgetary impacts if the future demand for services is less than or greater than anticipated. The magnitude of such impacts cannot be estimated at this time.

Recommendation

ORDINANCE (two readings): City Attorney's Office recommends adoption. (The City Manager should also be asked to confirm recommendation of adoption.)

RESOLUTION: City Attorney's Office recommends approval. It is also advisable for the City Manager to confirm approval.

Suggested Motion: "I move the RESOLUTION to approve Operating Procedures for the City's Police Civilian Oversight Board."

Alternatives

City Council may, at its discretion, decline to approve some or all of the proposed actions.

Attachments

None