

ORDINANCE
AMENDING AND REENACTING CHAPTER 2 (ADMINISTRATION),
ARTICLE XVI (POLICE CIVILIAN REVIEW BOARD)

WHEREAS on December 21, 2021 the Charlottesville City Council previously enacted an ordinance establishing a Charlottesville Police Civilian Oversight Board in conformity with Virginia code §9.1-601; and

WHEREAS while preparing a set of policies and procedures for the performance of duties by said oversight board, as required by Virginia Code Sec. 9.1-601(D), it has become apparent that several amendments to the previously-enacted ordinance would clarify the board’s authority and allow implementation of best practices; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA, that Article XVI (Police Civilian Oversight Board) of Chapter 2 (Administration) of the Code of the City of Charlottesville (1990), as amended (“City Code”) is hereby amended, reordained and reenacted to include the following:

1. Section 2-458 of the City Code shall be amended to read as follows:

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

(a) Compliance. Any investigation shall comply with all federal, state, and local laws, as well as with requirements for the initiation and conduct of investigations described in the procedures promulgated by the City Council under § 2-460 of this ordinance.

(b) Compelled Statements. The Board may not compel a statement from any Department employee, other than by means of its subpoena powers.

(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, or one year before the Board received notice of the incident, except as otherwise authorized by subsection (d) of this section;

(2) Except as otherwise authorized by subsection (d) of this section, 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. With the concurrence of the City Manager, 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 cause 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 their Complaint be investigated by the Department, the Complaint will be investigated by the Department with monitoring by 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 monitoring 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 monitor 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.

(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 an investigation of the incident. When the Board's investigation is concluded, the Executive Director will provide the Board, the Department, and (if a complaint has been filed) the Complainant, with an Investigative Report that includes, at a minimum, a summary of the circumstances of the incident, the evidence related to whether the incident involved any police or employee misconduct, and any suggested findings related to the incident. The Executive Director may make recommendations as to whether an allegation, if substantiated, could constitute serious misconduct as defined in Sec. 2-452(d). The Investigative Report shall also be provided to any employees identified within the Investigative Report as having committed employee misconduct.

(i) **Duration of Investigations.** Investigations of complaints and incidents will be completed, and any Investigative Report will be submitted, within seventy-five (75) days from the date the Complaint is received, or the Board received notice of the an incident. 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.

2. Section 2-459 of the City Code shall be amended to read as follows:

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

(a) Hearings.

(1) At the conclusion of an investigation of an incident or a complaint the Board may conduct a Review Hearing whose scope and procedures are described in the Board's operating procedures, approved by City Council. Review hearings shall be defined as any hearing conducted by the Board to review the facts, issues and findings of an Investigative Report of the Department related to an Internal Affairs investigation, or of an Investigative Report of the Executive Director related to a Complaint or Incident Investigation. .

(2) The Board may conclude that no hearing, or a hearing only on a limited issue, is necessary to support the Board's decision related to a particular complaint or incident. If so, the Board may issue a report without a hearing.

(b) Within 30 days of a Review Hearing of an Internal Affairs investigation, the Board shall report their findings publicly and to the City Manager, the Police Chief, and the Complainant with respect to each allegation or issue under review as follows:

(i) That the Board finds that the investigation of the Complaint was satisfactory, and the Board concurs with the findings of the investigation;

(ii) 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

(iii) That the Board finds that the investigation is incomplete or otherwise unsatisfactory and provides a detailed written explanation of the basis for such finding.

(c) If the Board makes a finding under (b)(iii) above, the Board may conduct an independent investigation of the matter that is the subject of the complaint. The Board shall report publicly and to the City Manager, the Chief of Police and the Complainant that the Board has made one of the following findings:

(i). That the Board now finds that, despite the defects in the original Internal Affairs investigation, the Boards own Investigation has produced no material evidence to dispute the original findings of the Internal Affairs Department.

- (ii). The Board's independent investigation has produced substantive new information that causes them to disagree with the findings of the Internal Affairs investigation. In this case, the Board shall make recommendations to the City Manager concerning disposition of the Complaint; or,
- (iii). That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether the findings of the Internal Affairs Investigative Report are correct.

(d) Within 30 days of a Review Hearing of a Complaint or Incident investigation, the Board shall report their findings publicly and to the City Manager, the Police Chief, and the Complainant with respect to each allegation or issue under review as follows:

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