

CITY OF CHARLOTTESVILLE

**POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES**



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CITY OF CHARLOTTESVILLE



POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES

GENERAL OPERATING PROCEDURES

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-1
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

Virginia Code § 9.1-601(D) states "The governing body of the locality shall establish the policies and procedures for the performance of duties by the law-enforcement civilian oversight body." The purpose of these Police Civilian Oversight Board ("PCOB" or "Board") Operating Procedures is to set forth the policies and procedures that govern the Charlottesville PCOB in the performance of its duties.

The purpose of the Board is to establish and maintain trust between and among the Charlottesville Police Department, the City Council, the City Manager, and the public. In furtherance of that goal, the Board shall provide objective and independent civilian-led oversight of the Charlottesville Police Department ("CPD" or "Department") in an effort to enhance transparency and trust, to promote fair and effective policing, and to protect the civil and constitutional rights of the people of the City of Charlottesville.

II. ENABLING LEGISLATION

The powers and duties of the PCOB are set forth within Virginia Code § 9.1-60, and within Charlottesville City Code § 2-452, hereinafter known as the "enabling ordinance."

III. PROCEDURES – GENERAL ADMINISTRATIVE

A. Scope and Authority

1. The Board's jurisdiction extends to all civilian complaints alleging misconduct by sworn officers and civilian employees of the Charlottesville Police Department, irrespective of duty status. For purposes of this Article, "misconduct" is defined as any conduct actionable under CPD General Orders 517.00 (Disciplinary Procedures) Parts 1 and 2, 400.05 (Bias-Based Policing), and 400.00 (Code of Conduct), as amended, as

well as any other violation of procedures and policies applying to police conduct. The Board may also independently investigate incidents, including the use of force, by a law enforcement officer, death or serious injury to any individual held in custody, or serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law enforcement officers and civilian employees of the Department.

2. The PCOB is not authorized to take any action (adoption of bylaws, enactment of resolutions, implementation of programs, expenditure of City funds, etc.) that exceeds its authority expressly set forth within the enabling legislation identified in Section 2, above.

B. Board Membership and Terms of Office

1. Board members will be appointed by the City Council, after an open application process, for staggered three-year terms, as described in § 2-453(a) and (c) of the enabling ordinance.
2. Board composition shall reflect the demographic diversity of the City of Charlottesville and shall otherwise be composed as described in § 2-453(b) of the enabling ordinance.
3. The Board's Executive Director shall monitor the terms of office being served by City-council appointed members of the PCOB. At least 60 days prior to the expiration of the term of appointment of a member, the Executive Director will notify the Office of the Clerk of Council, so that an application process can be conducted in accordance with § 2-453 of the Charlottesville City Code.
4. Members appointed by City Council to the PCOB shall serve their terms in office and thereafter may continue until replaced.
5. In the event that a member's term has expired, the member may continue to serve in a hold-over capacity until they are either re-appointed by Council, or until Council has appointed a different person to fill the succeeding term.
6. If a member serves in a hold-over capacity, the individual appointed by City Council to fill the seat vacated by that member will serve the portion of the term remaining as of the date of appointment. If the date of appointment is made within the first three (3) months of the commencement of the established term for the vacated seat, then the new appointee shall be deemed to be serving a full term.
7. The term limits set forth in Charlottesville City Code § 2-8 shall apply to the PCOB membership.
8. Resignation – A member of the PCOB may resign, by submitting a written resignation to the Clerk of City Council, by electronic mail. The resignation will take effective immediately upon the date of submission.

C. Meetings of the Board

1. Regular Meetings. Regular Meetings shall be held once per month on a schedule that is convenient to Board members. The time and location of the meetings will be determined by consultation between the Board and the City Manager. The Board may by majority vote change the time and place of regular meetings.
2. Special Meetings. Special Meetings may be called by the Board Chair or by request of any two Board members to the Chair or Executive Director.
3. Notice. Public notice of regular meetings must be provided per City policy and the Virginia Code § 2.2-3707. Whenever possible, the Board shall provide written summaries of proposed agenda items as part of the agenda package. Public notice of special meetings must be provided at the same time as notice is provided to the Board Members.
4. Meeting Procedures. Roberts' Rules of Order 12th Edition, Sec. 49:21 Rules for Small Boards shall be used as guidance for the conduct of meetings. During meetings:
 - a) Board members must be recognized by the Chair before speaking or introducing motions.
 - b) The Chair will recognize members in order which they ask to be heard.
 - c) The Chair may participate in discussions and vote on motions but must relinquish the gavel if he/she wishes to introduce a motion.
 - d) The Chair will work to assure that the opinions of all members are heard.
 - e) Board members are expected conduct themselves civilly and respectfully.
5. Public Comment Period. At least one public comment period will be held at each regular and special meeting of the Board. More than one comment period may be held at the discretion of the chair. If two or more comment periods are scheduled, the Chair may limit the subjects of comments to items on the agenda in one comment session. During public comment periods, participants will be called on in the order that they request to be recognized. Each commenter will be limited to three minutes. Individuals may ask to be recognized more than once during a meeting or during a comment period; such individuals may be recognized by the chair, time permitting, after all others have had one chance to speak. The Board will develop and publish guidelines for public participation during its meetings.
6. Minutes. Minutes of regular and special meetings shall be taken by the Vice Chair or, if delegated by the Board, the Executive Director, as described in § 2-454(d) of the enabling ordinance.

D. Grounds for Removal from Office

Members of the PCOB serve at the pleasure of the City Council. The following conduct shall be specific grounds for removal of a member from office (but are not intended as an exclusive list of the potential grounds for removal):

1. Violation of any confidentiality obligations required by law, or set forth within Charlottesville City Code Chapter 2, Article XVI;
2. *Ex parte* communications with persons who have matters pending before the PCOB;
3. Neglect of duties including, but not limited to, absence from three (3) consecutive PCOB meetings, absence from four (4) PCOB meetings within any 12-month period or repeated failure to promptly attend to official PCOB business;
4. Failure to adhere to the Code of Ethics set forth within these or any other Operating Procedures; Failure to comply with any law(s) applicable to the transaction of the PCOB's business or to the member's service as a public official (including, but not limited to, violation of the Virginia State and Local Government Conflicts of Interest Act, or violation of the Virginia Freedom of Information Act); or
5. Any other action that constitutes either misfeasance or malfeasance of or in performance of a PCOB member's duties.

Each PCOB member and the Executive Director shall have responsibility to notify the City Manager and City Council upon becoming aware of any conduct of any member that is detailed in 1-6 above

E. Removal from Office

1. A PCOB member may be removed after being given a copy of written grounds for removal, prepared by the Executive Director at the request and direction of either City Council or the City Manager.
2. At its option, City Council may solicit comment from the PCOB regarding any matter(s) that form the basis of the written grounds.
3. The written grounds shall be accompanied by a notice of a hearing to be conducted by City Council, which hearing shall be conducted at least ten (10) business days after the date of the notice.
4. At the hearing, the PCOB member will have the opportunity to be heard on the grounds, either pro se or by counsel.
5. Following the hearing, City Council shall vote regarding removal. In the event of removal of a PCOB member, City Council shall cause a written report to be made

detailing its finding on the grounds. The written report shall be made available for public inspection.

F. Conduct and Ethics

1. Conduct

- a) Each member of the PCOB shall conduct themselves in accordance with applicable state statutes.
- b) Each member of the PCOB shall conduct themselves in accordance with the provisions of Charlottesville City Code Chapter 2, Article XVI.
- c) Each member of the PCOB shall execute and comply with the terms of a Confidentiality Agreement, to carry out the requirements of Charlottesville City Code § 2-453(e).

2. Ethics. Each Board member, as well as the Executive Director and any auditor, investigator, volunteer or staff of the PCOB, shall conduct themselves in a manner that reflects the ethical principles detailed in Board's Code of Ethics in these Procedures.

In the event that the PCOB determines that one of its members has failed to adhere to the PCOB's Code of Ethics or engaged in any act of misconduct inconsistent with their PCOB roles and responsibilities set forth within this Operating Procedure, then upon a majority vote of the remaining members the PCOB may take any of the following actions: (i) verbal or written censure of the member, or (ii) exclusion of the member from specific PCOB proceedings.

G. Resolution of Complaints About PCOB Members

1. In the event that a complaint is made regarding the conduct of a member of the PCOB to the Executive Director, the City Manager or the City Council, notice of the complaint shall be given as follows:
 - a) If the complaint is made to the Executive Director or to the City Manager, or if the Executive Director is notified by a PCOB member of a complaint, the Executive Director shall promptly notify the City Manager. The City Manager shall notify the City Council and the PCOB of receipt of the complaint.
 - b) If the complaint is made to the PCOB, or any member of the PCOB, the complaint shall promptly be brought to the attention of the Executive Director and the Chair of the PCOB. Upon receipt of the complaint, the Chair and the Executive Director shall coordinate to make prompt notification to the City Manager, who shall make notification to City Council.

2. In addition to carrying out the notifications required in section F.1(a) and (b) above, the Chair of the PCOB may also appoint a committee of PCOB members, to review and comment upon the complaint. No PCOB member who is the subject of a complaint may be part of any PCOB committee reviewing a complaint, nor may the PCOB member vote on any recommendation of the PCOB regarding any matter that is the subject of the complaint.
3. If City Council notifies the PCOB that it is considering removal of the PCOB member that is the subject of the complaint and of the charges against the PCOB member, then any committee of the PCOB designated to review a complaint shall be required to complete its review within the 10-day notice period prior to City Council's hearing.

H. Committees and Subcommittees

1. The PCOB, by majority vote, may establish a committee of its membership. A committee of the Board may, by majority vote, establish a subcommittee. No committee or subcommittee may include members who are not City-Council members appointed to the PCOB.
2. The purpose of a committee or subcommittee shall be to perform tasks delegated by the PCOB or committee, respectively, or to formulate recommendations or otherwise to advise the PCOB or committee, respectively.
3. The PCOB is to be a working board, and is not authorized to delegate responsibilities, duties, or decision-making roles to persons who are not members of the PCOB. The PCOB may not establish committees, subcommittees or advisory boards that include individuals other than City-Council-appointed PCOB members, or City-Manager-authorized staff. Notwithstanding the foregoing, the PCOB may assign duties to consult with, and request the presence of the Executive Director for any and all committee, subcommittee or advisory board so long as the ED is not a voting member of such assemblages, consistent with the Enabling Legislation and operating procedures which govern the roles and responsibilities of the Executive Director.
4. Nothing in this section shall preclude any committee or subcommittee from seeking or accepting information from persons who are not members of the PCOB or committee of the PCOB.
5. When any committee or subcommittee consisting of at least (2) members meet together in person, or by electronic communications means, and the purpose of the meeting is the discussion or transaction of the business of the PCOB, committee, or subcommittee, then that meeting shall be an open meeting conducted in compliance with FOIA's open meeting requirements.

I. Recordkeeping

1. The PCOB shall be responsible for establishing and maintaining public records, in a manner that complies with the Virginia Public Records Act and the Virginia Government Data Dissemination Practices Act and any additional requirements set forth within the Virginia Code.
2. The Executive Director is hereby designated as the records officer who will serve as a liaison to the Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including authorized destruction, of obsolete records. The Executive Director shall contact the Library of Virginia and provide their name and contact information. The City Manager shall ensure that
3. The Executive Director shall also be responsible for ensuring that the PCOB's record keeping system(s) comply with the requirements of Virginia's Government Data Dissemination Practices Act (Code of Virginia (1950), as amended, Title 2.2., Chapter 38).
 - a) All of the PCOB's record keeping systems shall be set up and maintained in a manner that adheres to the principles of information [management] practice set forth within Va. Code § 2.2-3800(C)(1)-(10).

The PCOB membership and the Executive Director are responsible for taking steps to prevent an individual's personal information collected for purposes authorized by City Council from being used or disseminated for another purpose. Neither the PCOB or any of its individual members, nor the Executive Director, shall use or disseminate personal information regarding any individual(s), for any purpose(s), or in any manner, other than expressly authorized by a City Council approved Operating Procedure

- b) The Executive Director shall be responsible for ensuring compliance with Va. Code § 2.2-3806 (rights of data subjects).
4. The Executive Director shall be responsible for ensuring that public records of the PCOB are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. If the Executive Director converts or migrates an electronic record, they shall ensure that the converted or migrated electronic record is an accurate copy of the original record.

J. FOIA Compliance

1. The City's FOIA Officer shall serve as the FOIA officer for the PCOB.
2. The PCOB members, and the members of every committee or subcommittee established by the PCOB to perform any delegated function(s) or to advise the PCOB, shall comply with the City's established FOIA Records Policy, a copy of which is available on the City's website.

3. The PCOB and its membership, and all of the PCOB's various committees and subcommittees, shall comply with the Citywide FOIA Meetings Policy, establishing uniform requirements for electronic and in-person meetings.
4. Neither the PCOB nor the Executive Director shall submit a "FOIA request" to any other City department, agency or official regarding PCOB matters. When the PCOB or the Executive Director desire to obtain information or records necessary to carry out the duties assigned to the PCOB pursuant to Chapter 2, Article XVI of the Charlottesville City Code, they will work cooperatively with department heads, employees and city officials. Neither the PCOB nor its Executive Director are authorized, either expressly or by implication, to bring any lawsuit against the City or any department, agency, official, or employee of the City related to or regarding PCOB matters.
5. A subpoena request submitted to a court as contemplated by state law and Charlottesville City Code Chapter 2.2, Article XVI shall not be deemed a "lawsuit"; however, neither the PCOB nor the Executive Director shall seek to subpoena any City official or employee, or any City records, unless all administrative avenues have been exhausted through the City Manager's office.

K. Review of Department Expenditures

1. Virginia Code § 9.1-601(C)(6) allows a locality to confer upon the PCOB the following responsibility: "To request reports of the annual expenditures of the law enforcement agencies serving under the authority of the locality, and to make budgetary recommendations to the [City Council] concerning future appropriations." This enabling legislation has been implemented by City Council within Charlottesville City Code § 2-463.
2. The term "expenditure report" shall mean and refer to a report generated from the data within the City's SAP software, which shows actual expenditures compared to the budgeted expenditure categories for a given fiscal year ("Budget-to-Actual Report"). The PCOB or Executive Director may, once per calendar year, within the month of October, request that a Budget-to-Actual Report be presented for the fiscal year that ended June 30 of that same year.
3. Upon request by the Executive Director on behalf of the Board, the Budget Office shall comply with the requirements of Charlottesville City Code § 2-463 by providing reports of the Department's annual expenditures, not more than once during each annual budget process. If the Board wishes to make budgetary recommendations to the City Manager during that same annual budget process, the Board shall submit its recommendations to the City Manager on or before March 1 each calendar year.
4. The PCOB's work in reviewing and making recommendations regarding the Police Department's annual budgeted expenditures shall be with the Budget Office, City

Manager and City Council. The Police Department is not required to consult with the PCOB prior to submitting its annual expenditure estimates (operational or capital) to the Budget Office. However, nothing in these Procedures shall preclude a representative of the PCOB, or the Executive Director, from meeting with the Chief of Police, a Deputy City Manager, or a member of the Budget Office during the annual budget process or at any other time to discuss the Department's budget expenditures.

CITY OF CHARLOTTESVILLE



POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES

EXECUTIVE DIRECTOR

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-2
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to establish the process by which an Executive Director to the Board is selected, and to detail the roles and responsibilities of the Executive Director to the Board.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-455.

III. PROCEDURES

A. Appointment.

The Executive Director is appointed by the City Manager, pursuant to the process set forth within Charlottesville City Code § 2-455. The Executive Director provides support, expertise and leadership to the Board, under the supervision of the City Manager.

B. Selection Process

The City Manager shall conduct a selection process as set forth in Charlottesville City Code § 2-455 to identify and evaluate candidates for Executive Director. The PCOB will participate in the selection process by having two PCOB members serve on the interview panel. PCOB members shall be selected to serve on the interview panel in accordance with the following process:

1. The Chair will ask for volunteers.

2. If more than two PCOB members seek to volunteer, the Chair will invite each member to express their reasons for wanting to serve.
3. After allowing all prospective volunteers to speak, the Chair will ask each PCOB member, to vote for one of the candidates who is seeking to serve on the interview panel.
4. The two members who receive the most votes will serve on the interview panel.

C. Role Of The Executive Director

1. The role of the Executive Director is to provide support to the PCOB in the implementation and exercise of all of the Board's functions authorized by the enabling ordinance. The Board may assign specific tasks to the Executive Director, including the monitoring of investigations conducted by the Department, or the investigation of complaints or incidents. If contractors are to be engaged to assist in performance of the Board's functions, the Executive Director will be responsible for compliance with procurement and other contracting requirements, and for overseeing the performance of contracted services. The Executive Director will comply with City Standard Operating Procedures pertaining to procurement, as well as those pertaining to approval and signature of contracts.
2. The PCOB may not delegate to the Executive Director decision-making authority for any of the functions listed in Va. Code § 9.1-601(C)(1)-(8).
3. The Executive Director shall have specific roles and responsibilities, in addition to those as otherwise assigned by the PCOB:
 - a. *Investigations*—the Executive Director's role in supporting investigations to be conducted by the PCOB pursuant to the authority of Va. Code § 9.1-601(C)(1) and (2) shall be set forth in more specific detail within the Operating Procedure specific to the various types of investigation.
 - b. *Other functions*—the Executive Director's role in supporting other functions of the PCOB (as authorized by state enabling legislation and the Charlottesville City Code) shall be set out within the Operating Procedures specific to the function(s).
 - c. *Liaison*—the Executive Director shall facilitate communications among and between the PCOB, the Police Department and the City Manager's Office.
 - d. *Monitor of Investigations and Complaints* --The Executive Director may actively monitor the Police Department's administrative investigations of

complaints received from civilians regarding the conduct of law-enforcement officers or civilian employees of the Police Department. The City Manager may establish a Standard Operating Procedure that will govern the Executive Director's access to information, records and witnesses while monitoring an administrative investigation.

- e. During the pendency of an administrative investigation which is not the subject of a citizen complaint, to which the Executive Director is allowed access, the Executive Director shall not disclose information to the PCOB, any PCOB member, or any person other than as authorized in writing by the Chief of Police or the City Manager. However, notwithstanding the other provisions of this paragraph, the Executive Director may acknowledge the existence of a matter otherwise under investigation to the PCOB or any PCOB member, or in the normal course of PCOB business.
- f. Budget—the Executive Director will administer budgeted funding in support of the PCOB, in accordance with the annual budget approved by City Council and in accordance with direction received from the City Manager.

Each year the Executive Director shall, in consultation with the Board Chair, prepare and submit to the City Manager's Office (Budget) a plan and estimate of all contemplated expenditures and the amount(s) of public funds needed for the ensuing fiscal year to support the operations of the PCOB. The plan and estimate shall include all of the staff desired to be employed for support of the PCOB functions, all independent contractor services, all technology and support services, etc. If the Executive Director does not submit an estimate in accordance with this paragraph, then the City's Budget Office will prepare and submit the estimate.

- g. *Contracts and procurement*--All contract services and expenditures associated with the operations of the PCOB shall be paid from the budget approved by City Council for a given fiscal year, inclusive of funding for contract legal counsel, other independent contractors, and personnel employed by the City to support the PCOB functions. The Executive Director shall review a budget-to-actual expenditures report on at least a monthly basis.

All contracts, whether for goods or services, are subject to the City's procurement procedures, and are subject to the City Manager's SOP governing Internal Contracts Management. Failure to comply with these requirements may subject the Executive Director to disciplinary action and may have other actions consistent with Charlottesville City Code Sec. 22-33.

D. Supervision Of The Executive Director

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.

1. A written performance review by the Board shall include the input and review of all Board members.
2. Prior to meeting with the City Manager, the Board Chair shall solicit comments from each Board member to ensure all positions are represented.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES

SCREENING OF COMPLAINTS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-3
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process by which the PCOB will conduct intake and screening of Complaints to carry out its function of initiating investigations in cases where the Complainant requests the Board, and not the Department, conduct an investigation of an allegation of misconduct.

II. ENABLING LEGISLATION.

Charlottesville City Code § 2-457
Charlottesville City Code § 2-458
Charlottesville City Code § 2-459

III. PROCEDURES

A. Standing to File a Complaint

The following shall have standing to have their complaints alleging misconduct by sworn officers or civilian employees considered by the Board:

1. Any individuals directly affected by incidents of police misconduct. “Directly affected” shall include any persons who were physically present and in physical or verbal contact with police during the alleged misconduct.
2. Designated representatives of individuals directly affected by police misconduct.

3. Parents, guardians, legal custodians of minors or persons under a disability who have alleged to have been victims of police misconduct.
4. Any witnesses to incidents of police misconduct who were physically present during the alleged misconduct.
5. Any individual with material information concerning police misconduct.

B. Filing of the Complaint

1. Complainants may file complaints online, in writing, or orally.
2. Complaints may be filed with the Charlottesville Police Department or through the PCOB online portal.
3. In the complaint filing the Complainant may choose whether they request the complaint be investigated by the Board only, or by the Department with monitoring of the investigation of the complaint to be conducted by the Executive Director.
4. Regardless how a Complaint is received, it shall be promptly provided to the Department and to the Executive Director.
5. The Board is authorized to decline to investigate a complaint.

C. Initial Screening of Complaints

1. Opening of Case File. Upon receipt of a complaint, the Executive Director shall create a case file for the complaint, designate a tracking number for the complaint, and enter the case in a database. In the event that the complaint was initially filed with the Department, the Executive Director shall use the complaint number assigned by the Internal Affairs Division of the Department.
2. Preservation of Evidence. Upon opening a case file, the Executive Director shall immediately initiate a process to ensure that any relevant body-worn camera footage, dash-cam footage, and all other electronic evidence and any documentation related to the case is preserved by the Department or other City of Charlottesville agencies or departments.
3. Initial Evidence Collection. The Executive Director may request additional information from the complainant, and collect any evidence necessary for the initial review.

4. Options after Screening is Complete. The Executive Director shall screen every complaint that is received and shall take any of following actions:
 1. Recommend to the Board that an investigation of the complaint be declined;
 2. Consult with and refer the complaint to the Commonwealth's Attorney to address an illegal activity alleged in the complaint;
 3. With the agreement of all parties, refer the complaint to mediation per the appropriate Operating Procedure
 4. Refer the complaint for an investigation to be conducted by the Board pursuant to the Complaint and Incident Investigation Operating Procedure
 5. Refer the complaint to the Department for investigation because the complaint falls outside of the authority of the Board to review.

D. Executive Director's Recommendation to Decline Investigation

1. After a complaint has been screened and the Executive Director recommends that an investigation be declined, the Executive Director shall so advise the Board in writing, stating the basis of his declination recommendation. In making the recommendation, the Executive Director shall consider the following factors:
 - a. The veracity of the allegations as presented in any available video evidence or other electronic evidence;
 - b. Credible oral or written testimony of an independent, third-party witness who refutes the allegations as presented by the complainant;
 - c. Other relevant information related to the allegations as presented in the complaint.
2. In cases where the Executive Director makes a recommendation to decline investigation of a complaint, the Board Chair may accept the recommendation and notify the Board of such decision. If two (2) or more Board members object to the recommendation, the Board Chair shall refer the matter to the full Board for consideration and a vote at its next regularly scheduled meeting.
3. If the Chair or the full Board accepts the recommendation not to investigate, the complainant shall be notified in writing of that decision within 2 days following the acceptance of the Executive Director's recommendation. The Board shall also advise the complainant with the reasons for the declination, and provide the opportunity to have the complaint sent to CPD for investigation.

4. If a majority of the Board votes to not accept the Executive Director's recommendation, the Chair shall direct the Executive Director to proceed with investigation of the complaint.

E. Withdrawal Of Complaints And Review Requests

A complaint may be withdrawn from further consideration at any time, verbally or in writing, by the complainant. A verbal withdrawal shall be memorialized as soon as practicable with the date and reason for the withdrawal (if provided). In whatever form delivered, such withdrawal should be provided to the Executive Director or any member of the Board. By majority vote the Board may decide to continue the investigation of a withdrawn complaint if they determine that doing so is in the public interest, keeping in mind the complainant's legitimate privacy concerns.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



SCREENING OF REVIEW REQUESTS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-4
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process by which the PCOB (a/k/a “Board”) will conduct intake and screening of Review Requests to carry out its function of reviewing dispositions of complaints, in cases where the original complaint was submitted to the Department for investigation and an investigation was conducted by the Department’s Office of Internal Affairs.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-457 through 2-459

III. PROCEDURES

A. Standing to File a Review Request

Any Complainant whose complaint has been investigated by the Charlottesville Police Department and who has received a Closure Letter may file a Review Request.

B. Filing of the Review Request

1.A Review Request is deemed filed with the Board when either a Complainant, or any member of the Board, submits a written request to the Executive Director for a hearing to be held on allegations of a complaint previously investigated by the Department’s Office of Internal Affairs.

2. The Executive Director shall ascertain whether the filing is timely as defined by Charlottesville City Code XVI § 2-459(a). If the filing is beyond the time limit defined in that section, the Executive Director shall ascertain the reason for the late filing.
3. Once a Review Request is filed the Executive Director shall contact the person who was the subject of the police-civilian interaction that is the subject of the Request, and must acquire the subject's written permission for the Board to access the Internal Affairs files and evidence, pursuant to Charlottesville City Code § 2-459(a).
4. If the subject of the police-civilian interaction has not previously authorized Board involvement in the investigation, and upon request of the Executive Director, does not grant written permission, the Board may not access the Internal Affairs files, and no Review Request may proceed.

C. Initial Screening of the Review Request

1. Upon receiving permission to access the Internal Affairs files pursuant to III.B.4 above, the Executive Director shall review the Internal Affairs complaint, summaries of evidence utilized by Internal Affairs, the final Internal Affairs disposition reports, and Closure Letter. The Executive Director may also consider any other information to which the Board has lawful access.
2. Preservation of Evidence. Upon opening Review Request for screening, the Executive Director shall immediately initiate a process to ensure that any relevant body-worn camera footage, dash-cam footage, and all other electronic evidence and any documentation related to the case is preserved by the Department or other City of Charlottesville agencies or departments.
3. Within 10 days of receiving a Review Request, the Executive Director shall provide a report to the Board:
 - a. Indicating whether in the Director's professional judgement any of the allegations in the review requests are unsupported by the available evidence;
 - b. If the report has not been filed in a timely manner, whether there are grounds to go forward with the Review Request under the exceptions granted by Charlottesville City Code XVI 2-458(d).

D. Decision Whether to Proceed with Review Hearing

1. The Board shall meet to consider:
 - a. Whether the Executive Director's recommendations as to whether any of the allegations in the Review Request are unsupported by the available evidence.

- b. Whether to accept the Executive Director's recommendation to proceed with a review that was not filed in a timely manner, if such was the case The Executive
2. By majority vote, the Board may:
 - a. Accept or refuse to proceed with a Review Request that was not filed in a timely manner;
 - b. Decline to investigate allegations that in their judgement are unsupported by the available evidence;
 - c. Proceed with the Review Request related to some or all of the allegations in the Review Request, at Board's discretion.
 - d. Decide whether to hold a Hearing related to the Review Request, or make findings solely based on the evidence in the record and other information to which the Board has lawful access.
3. The Board shall issue a report documenting their decisions in Sections 2. (a-d) above, and the basis for those decisions. The report shall be in writing and be prepared by the Executive Director, at the direction of the Board. The report shall be provided to the complainant, Chief of Police, and City Manager, within ten (10) days of the Board's finding.

E. Decision to Proceed with a Review Hearing

1. If the Board decides to proceed with a Review Hearing on a Review Request, the hearing will be held promptly, and in accordance with relevant Operating Procedures.
2. At any time prior to the commencement of presentation of evidence at the Review Hearing, the issues presented may be referred for mediation by either the Board or the Executive Director, in accordance with relevant Operating Procedures.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



GENERAL PRINCIPLES FOR BOARD INVESTIGATIONS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-5
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The standards and principles in this section, have been guided and adapted in part from the Quality Standards for Investigations (QSI) which provide a framework for conducting high-quality investigations for Offices of Inspector General (OIGs) affiliated with the Council of the Inspectors General on Integrity and Efficiency (CIGIE). Additionally, guidance has been incorporated from the National Association for Civilian Oversight of Law Enforcement (NACOLE) and affiliated practitioners and agencies.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452(1) and (2)

III. PROCEDURES

A. Independent Investigations Or Delegation Of Investigations

The Board is responsible for investigating complaints and incidents. The Board may conduct the investigation itself or by committee of itself (in either case, with the assistance of the Executive Director), the Board may request the Executive Director to conduct the investigation (subject to the Board's direction), or the Board may request the Executive Director to engage a contract investigator (subject to the availability and appropriation of funds within the Board's budget to support that expense) in accordance with Charlottesville City Code § 2-455(c) and § 2-458(g). In utilizing the discretion to directly investigate or delegate, or to have the Executive Director or a contractor perform the investigation, the Executive Director shall consider the following factors:

1. Complexity of the investigation (i.e. number of allegations, number of officers involved, seriousness of the allegations at hand, etc.).
2. Public interest in the case at hand.
3. Timeliness assessment (i.e. whether the investigation can be completed in a timeframe that does not cause undue burden for the execution of the other duties of the Executive Director).
4. Fiscal impact- availability of funds in the operating budget at the time the complaint is received.
5. The available resources and experience of the Executive Director.

B. General Standards

Prior to executing and investigations, the Executive Director shall compile an Investigation Manual that establishes guidelines for implementing this Operating Procedure (“Manual”), which shall be approved by the Board. The Manual shall implement this Operating Procedure and shall contain no processes or guidelines in conflict with the Ordinance or any other Council-Approved Operating Procedures. The Manual cannot create any rights, access, obligations or requirements not otherwise authorized by the ordinance or the operating procedures. The Board and the City Manager may jointly establish protocols to be incorporated within the Manual, and the City Manager’s endorsement of such protocols shall be reflected by his signature to the document. Until the manual is approved, the Board may, with the approval of the complainant, refer complaints to the Internal Affairs Department

The Executive Director shall present the Manual for review and approval by the Board. The Manual shall also be certified by both the Board’s independent legal counsel and the Office of the City Attorney as being consistent with the City Ordinance and these Operating Procedures. The Manual shall be reviewed by the Executive Director and recertified by the attorneys every three years to ensure it represents the latest standards in the field and changing circumstances within the City of Charlottesville. The review and revision of the manual should seek to incorporate any feedback provided from members of the public, members of the PCOB, the City Manager’s Office, City Attorney’s Office, the Chief of Police, the Commonwealth Attorney for the City of Charlottesville, and any other relevant stakeholder. The Manual will include, among other things: required qualifications for investigators, procedures for initiating independent investigations, required elements of investigations, and reporting and recordkeeping procedures.

The general standards for Board investigations are:

1. Qualifications:

Individuals assigned to conduct the investigative activities must collectively possess professional proficiency for the tasks required.

This standard places upon the Board the responsibility for ensuring that investigations are conducted by persons who collectively have the knowledge and skills required to perform the investigative activities.

2. Independence:

In all matters relating to investigative work, the Board must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude.

This standard places upon the Board, via the Executive Director, the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. There are three general classes of impairments to independence: personal, external, and organizational.

3. Due Professional Care:

Due professional care must be used in conducting investigations and in preparing related reports.

This standard requires the Board, via the Executive Director, a constant effort to achieve quality and professional performance. It does not imply infallibility or absolute assurances that an investigation will reveal the truth of a matter.

In addition to the general standards in the field, the Board will also adhere to the requirements as outlined in § 2-458(a)-(e).

C. Compliance

Any investigation shall comply with all federal and state laws, and the City Ordinance, any Standard Operating Procedures referenced in the Ordinance, and all applicable provisions of the Board's various Operating Procedures.

D. Procedures for Obtaining Statements from Department Officers or Employees

1. Prior to the interview of any police officer, the officer shall be given reasonable advance notice of the interview, the name of any individual(s) to be present during the interview, and a written notice of the charges (i.e., information regarding the date/time/location of the encounter being investigated and the allegations of the complaint and the basis therefor).

2. Interviews/ questioning of a police officer shall take place at a reasonable time and place as designated by the Executive Director, preferably when the officer(s) under investigation are on duty and within the office of the Executive Director or a suitable office within the Department. The Board's investigator shall plan, prepare for, and coordinate the investigative process, so that multiple, repetitive interviews/ question sessions will be avoided to the extent practicable (although on occasion, a follow-up interview may be necessary).
3. Prior to commencement of any interview/questioning, the chief of police or other authorized command staff member shall advise the officer of their Garrity rights, and obtain a written acknowledgment from the officer that they have been so advised. A copy of the form shall be maintained in the investigative file.
4. An officer who is being interviewed may have an attorney or other representative present during the interview, and shall be allowed reasonable breaks during which the officer may confer with the attorney/ representative. Otherwise, the attorney or other representative shall not be allowed to participate in the interview/ questioning. Upon request, the officer and the attorney/representative shall be provided with a copy of any audio/ video recording of the interview/ questioning.
5. Following the interview/ questioning an officer who is the subject of an allegation, the officer shall be notified that they have the right, within a reasonable time following the date of the interview, to respond in writing to the charges. The time limit shall be determined by the Executive Director, but in no event shall the time be less than five (5) calendar days unless agreed to by the officer.
6. All information and evidence ("records") collected by the Board and its investigator shall be assembled and maintained within an investigative file, to be kept in a secure location within the offices of the Executive Director. All such records shall be preserved in accordance with applicable records retention schedules of the Library of Virginia. All such records shall be exempt from public inspection pursuant to Virginia Code § 2.2-3705.1(1) and § 2.2-3706(B)(9)(ii).

If a subpoena is obtained, the Circuit Court for the City of Charlottesville can compel attendance of witnesses (which may include persons outside the Department, and individuals who are not public officials or employees of the City of Charlottesville) and the production of books, papers, and other evidence necessary to perform the investigative duties pursuant to § 2-452(c) & § 2-458(f).

E. Exceptions to time limits for investigation

The Board may initiate and/or complete any investigations of complaints or incidents beyond the time limits specified in § 2-458 subsections (c)(1) and (c)(2) if the Board determines that there is good reason for doing so.

1. For cases that are beyond the time limits, the Executive Director will assist the Board by interviewing the complainant to determine the reasons for the late filing.

2. The Executive Director shall deliver the reasoning as communicated by the complainant via a written Memorandum of Good Reason (MGR).
3. The Board shall consider whether the complainant had a “good reason” at the next regular business meeting of the Board. If the Board makes a determination by majority vote that “good reason” exists, it shall submit a request to waive the time limit to the City Manager. If the City Manager does not respond to the waiver request within 72 hours, the request shall be deemed to have been granted.

F. 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 Executive Director becomes aware that an employee may have committed a criminal offense, the Executive Director shall notify the Board Chair to that effect. With the concurrence of the Chair, the Executive Director shall:

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 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

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



COMPLAINT AND INCIDENT INVESTIGATIONS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-6
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

Pursuant to Charlottesville City Code § 2-457(a) the Board may conduct investigations of complaints from members of the public regarding the misconduct of law enforcement employees of the Department and may refer complaints to the Department for investigation.

Pursuant to Charlottesville City Code § 2-457(b) the Board may, *sua sponte* (on its own motion), initiate an investigation of conduct of a Department employee, if it becomes aware of allegations of certain incidents of misconduct of a law enforcement employee of the Department.

II. ENABLING LEGISLATION

Virginia Code § 9.1-601
Charlottesville City Code § 2-457(a)
Charlottesville City Code § 2-457(b)

III. POWERS AND DUTIES

A. Complaint Investigations .

The Board shall have the power to conduct Complaint Investigations when a member of the public makes a complaint of misconduct against a Department employee and requests to have the complaint investigated by the Board rather than the Department

The complainant's request for an investigation by the Board does not affect the authority that the Executive Director has under the Ordinance to monitor all IA investigations.

B. Incident Investigations

The Board shall have the power to initiate and conduct Incident Investigations of certain conduct of a police officer or department employee as authorized in City Code § 2-452(c)(2).

IV. PROCEDURES

A. Initiation of Complaint Investigations

1. Upon receipt of a complaint from a member of the public about alleged misconduct by a department employee the Board may initiate a Complaint Investigation, or the Board may refer the Complaint to the Department for investigation.
2. The Board may conduct the investigation itself, or by committee of itself (in either case, with the assistance of the Executive Director). The Board may request the Executive Director to conduct the investigation (subject to the Board's direction), or the Board may request the Executive Director to engage a contract investigator (subject to the availability and appropriation of funds within the Board's budget to support that expense).
3. If the Complainant asks that the Complaint be investigated only by the Board, the Executive Director shall first screen the complaint pursuant to the criteria provided in The Operating Procedure governing the Screening of Complaints.
4. After screening, if the Board elects to conduct an investigation, the Board shall notify the Chief of Police of its intent to conduct an investigation.
5. The Executive Director shall provide to the Chief of Police enough identifying information about the complainant, and enough information about the date, time, and location of the alleged encounter, to allow the Department to give the Executive Director information for the investigation.

B. Initiation of an Incident Investigation.

1. Upon request of the Chair, or upon the request of any two Board members, the Executive Director shall initiate an investigation of the following incidents:
 - A. Use of force by a law enforcement officer.
 - B. Death or serious injury to any individual held in custody
 - C. Serious abuse of authority or misconduct as defined in Charlottesville City Code § 2-452(d).

- D. Alleged discriminatory stops (vehicular or otherwise), of civilians by law enforcement officers.
 - E. Other incidents regarding the conduct of law enforcement officers and civilian employees of the Department.
2. Notice. Prior to initiation of an Incident Investigation, the Board Chair shall provide notice to the City Manager and the Chief of Police who shall ensure the Department's cooperation with the investigation.

V. GENERAL PRINCIPLES OF COMPLAINT AND INCIDENT INVESTIGATIONS

A. Access to Information.

1. The Department shall give the Board, or its designated investigator, access to information, records and witnesses as required by, and subject to, the provisions of § 2-452(e) and (f) of the Ordinance, as may be relevant to the matter under investigation.
2. Prior to the interview of any police officer, the officer shall be given reasonable advance notice of the interview, the name of any individual(s) to be present during the interview, and a written notice of the allegations (i.e., information regarding the date/time/location of the encounter being investigated and the allegations of the complaint and the basis therefor).
3. Interviews/ questioning of a police officer shall take place at a reasonable time and place as designated by the Executive Director, preferably when the officer(s) under investigation are on duty and within the office of the Executive Director or a suitable office within the Department. The Board's investigator shall plan, prepare for, and coordinate the investigative process, so that multiple, repetitive interviews/ question sessions will be avoided to the extent practicable (although on occasion, a follow-up interview may be necessary).
4. Prior to commencement of any interview/questioning, the Chief of Police or other authorized command staff member shall advise the officer of their Garrity rights, and obtain a written acknowledgment from the officer that they have been so advised. A copy of the form shall be maintained in the investigative file.
5. An officer who is being interviewed may have an attorney or other representative present during the interview, and shall be allowed reasonable breaks during which the officer may confer with the attorney/ representative. Otherwise, the attorney or other representative shall not be allowed to participate in the interview/ questioning. Upon request, the officer and the attorney/representative shall be provided with a copy of any audio/ video recording of the interview/ questioning.
6. Following the interview/ questioning an officer who is the subject of a complaint or allegation, the officer shall be notified that they have the right, within a reasonable time following the date of the interview, to respond in writing to the charges. The time limit

shall be determined by the Executive Director, but in no event shall the time be less than five (5) calendar days unless agreed to by the officer.

7. All information and evidence (“records”) collected by the Board and its investigator shall be assembled and maintained within an investigative file, to be kept in a secure location within the offices of the Executive Director. All such records shall be preserved in accordance with applicable records retention schedules of the Library of Virginia. All such records shall be exempt from public inspection pursuant to Virginia Code § 2.2-3705.1(1) and § 2.2-3706(B)(9)(ii).

B. Failure of the Complainant to Cooperate.

If the Complainant fails or refuses to cooperate in the Complaint Investigation after requesting the Board conduct the investigation, the Executive Director may recommend that the Board refer the investigation to the Department. The Board shall adopt or disapprove the Executive Director’s recommendation by a majority vote.

In the alternative, with the consent of the Board, the Complaint Investigation may be continued without the cooperation of the Complainant if, in the judgment of the Board and Executive Director, a fair and complete investigation is still possible.

C. Failure of the Subject Officer/Employee to Cooperate.

If the subject officer or employee refuses or fails to cooperate in the investigation, the Executive Director shall notify the Chief of Police of the lack of cooperation in writing. If the chief of police does not promptly resolve the issue, the Executive Director shall seek the intervention of the City Manager.

Officers or employees, including the chief of police, who refuse or fail to cooperate may be subject to disciplinary action.

D. Timeline for Completing the Investigation.

Any investigation conducted pursuant to this operating procedure shall be completed in accordance with the timelines prescribed in Section E. of the General Principles for Board Investigations Operating Procedure.

E. Preparation of the Investigative Report.

1. When the investigation is complete the Executive Director or other investigator shall prepare an Investigative Report for the Board’s review. The Report shall include the following:
 - a. A summary of the circumstances of the incident(s) of alleged misconduct.
 - b. The evidence related to whether there was any misconduct.
 - c. Any suggested findings related to each allegation.

- d. Indications of serious abuse of authority or misconduct as defined in § 2-452(d) of the enabling ordinance.
2. The Investigative Report shall also be given to the City Manager and to the Chief of Police, who shall be required to keep the contents of the report confidential (except as between themselves) unless otherwise agreed by the Board. The City Manager and Chief of Police shall have the right to submit comments, analysis, or proposed corrections to the Executive Director, who shall share them with the Board.
3. The Board may hold a hearing to review the information and allegations that are the subject of the Investigative Report in accordance with the Operating Procedure governing Review Hearings.

F. No Presumption of Misconduct.

The findings in an Investigative Report are not conclusive and create no presumption of misconduct unless and until the Board either:

1. By vote of majority affirms some or all of the findings in the report, without a Review Hearing; or
2. By vote of a majority, affirms some or all of the findings after conducting a Review Hearing.

G. Board Not Required to Affirm the Findings in a Preliminary Investigative Report.

After reviewing the Investigative Report, the Board by majority vote, shall have the power to accept or reject the report's findings in whole or in part, issue a closure letter, and take no further action. If the Board rejects the Report's findings, in whole or in part, the Board shall direct the Executive Director to make changes and to prepare a final report that reflects the findings of the Board.

H. Disposition of the Investigation

The Board, assisted by the Executive Director, shall prepare a final disposition of the investigation and the disposition shall be prepared for public release within thirty (30) days of the conclusion of a hearing conducted by the Board with respect to the allegations of the Complaint, or (ii) within 30 days of receipt of the final Investigative Report, whichever occurs later.

Matters of confidentiality, and any public disclosure of "personal information", as defined in Virginia Code § 2.2-3801, shall be resolved among the Board, the Executive Director and the City Manager, consistent with the requirements of Charlottesville City Code § 2-452(c), the Standard Operating Procedure referenced in that Code section, and with Charlottesville City Code § 2-452(g).



CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES

INVESTIGATION OF POLICIES, PRACTICES AND PROCEDURES

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-7
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

This procedure details the Board's power and authorities when investigating the policies, practices and procedures of the Department.

II. POWERS AND DUTIES

The Board shall have the power and duty to investigate the policies, practices and procedures of the Department, and to make recommendations regarding changes to such policies, practices and procedures. Such investigations may involve review of public documents, such as the Department's General Orders, and other such documents, as well as studies of the implementation or effect of Departmental policies.

III. ENABLING LEGISLATION

Virginia Code § 9.1-601(C) (5)
Charlottesville City Code § 2-462
Charlottesville City Code § 2-452(c)(4)
Charlottesville City Code § 2-457(f)

IV. PROCEDURES

A. Authorization of an Investigation of Policies, Practices and Procedures

By a majority vote, the Board may authorize an investigation of Department policies, practices and procedures. The Board may assign its own members to conduct reviews of public documents and policies or direct the Executive Director to conduct such investigations.

B. No Limitation on Powers

The Board's powers and duties to complete retrospective examinations and audits of Internal Affairs investigations, arrest and detention, and other public-police interactions shall not preclude the Board from exercising the powers and duties under this operating procedure.

C. Access to Information and Subpoena Power.

The Board shall make a good faith effort to obtain access to information as detailed in Sec. A. of the Subpoena Operating Procedure. If after such effort the Board is unable to secure voluntary cooperation or production, the Board may apply to the Circuit Court for the City of Charlottesville for a subpoena compelling the attendance of such witnesses, or the production of such books, papers and other evidence according to the procedures provided in the Operating Procedure governing Subpoenas.

D. Timeliness of Investigations.

When authorizing an investigation, the Board shall, in consultation with the Executive Director, establish a schedule for completion. Investigations under this section shall be completed in an expeditious and efficient manner consistent with the approved schedule.

E. Report of Investigations.

The delegated Board members or Executive Director shall provide a report of all investigations of policies, practices and procedures, and recommended changes to the Board for review and approval.

F. Policy Recommendations after Investigations.

After the Board receives and reviews the report of the investigation, the Board may make recommendations regarding policies, practices and procedures of the Department. Such recommendations shall be made utilizing the following procedure:

1. The Board shall present in writing its findings and recommendations with supporting rationale to the City Manager and Chief of Police.
2. If the Department declines to implement any changes recommended by the Board, the Chief of Police shall explain their decision in writing. Such written explanation by the Chief shall be made available for public inspection.

3. The Board may withdraw its recommendations to the Department based on the rationale provided by the Chief of Police. Such decision to withdraw its recommendation to the Department must be made in writing and shall be made available for public inspection.

V. RESOURCES TO DISCHARGE DUTIES

With the consent of the Board, the Executive Director may seek to contract with independent contractors and firms, consistent with the competitive and non-competitive guidelines and requirements of the City Charlottesville's procurement rules, to undertake investigations under this Operating Procedure. The Executive Director shall develop an investigative plan and budget for approval by the Board before an investigation can be undertaken.

CITY OF CHARLOTTESVILLE

**POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES**



**REFERRALS TO THE COMMONWEALTH ATTORNEY AND
EXTERNAL JURISDICTIONS OR AGENCIES**

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-8
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to detail under what circumstances the Board may refer matters for consideration by the Commonwealth Attorney for the City of Charlottesville, and/or to external jurisdictions and agencies.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-458(e)(1)

III. PROCEDURES

- A. If the Executive Director becomes aware that the misconduct, by a Department employee, alleged in the complaint or disclosed in the course of an investigation may be criminal in nature, with the concurrence of the Board chair they shall refer the case to the City of Charlottesville Commonwealth Attorney for possible criminal prosecution.
- B. In such a case the Board shall suspend their investigation and notify the Chief of Police and Commonwealth's Attorney of the alleged misconduct, by a Department employee, ensuring that no statement obtained from the Police Department employee(s) whose actions are the subject of the matter are shared with criminal investigators or any prosecuting attorney, except in accordance with applicable law.
- C. The Executive Director shall give written notification of such referral to the Board, the Chief of Police, the City Manager, the City Attorney, the complainant, and subject officer(s). If requested by the Commonwealth Attorney, the Executive Director shall

delay notification of the referral to one or more of these parties until the Commonwealth Attorney determines that notification is appropriate.

D. The Executive Director shall transmit copies of all relevant files to the Commonwealth Attorney, maintain a record of each referral, and record the disposition of each referred matter.

E. Consideration of Parallel Investigations:

The Board shall confer with the Commonwealth Attorney, the City Attorney, and the Board's own legal counsel as to whether competing public interests and civil rights involved permit the resumption of continued, parallel investigation by the Board, pursuant to Charlottesville City Code § 2-458(e)(2). If the Board is advised that a parallel investigation is advisable, they shall such certify in writing and initiate or resume an investigation as appropriate.

F. Referral to the External Jurisdictions/Agencies

If the Board receives complaints regarding the conduct of non-CPD officers and employees, the Executive Director, with the concurrence of the Board chair, shall notify the complainant of the Board's lack of jurisdiction to investigate, and shall forward the complaint to the appropriate agency or jurisdiction, with the permission of the complainant.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



HEARING EXAMINERS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-9
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process by which a Hearing Examiner will be selected for hearings of the PCOB, to clarify the required qualifications for a Hearing Examiner, and to provide guidelines for the Hearing Examiner's role in PCOB hearings.

These Operating Procedures set forth City Council's intention and guidance as to how the provisions within the Ordinance shall be interpreted and applied by the PCOB, the Executive Director and the Hearing Examiner. In the event of any apparent disparity between the provisions of this Operating Procedure and provisions of the Ordinance, the provisions of this Operating Procedure shall govern the interpretation of the Ordinance.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-460(a)

III. PROCEDURES

A. Selection of Hearing Examiner

1. The Executive Director, assisted by independent legal counsel and the Office of the City Attorney, shall prepare a list of hearing examiners whose qualifications under Paragraph A.2., below, have been verified ("List").
2. The Executive Director should endeavor to establish a List that contains at least 3 qualified examiners who would be available to preside at a hearing at a given time. Hearing Examiners performing legal services for the City's PCOB are exempt from procurement; however, the Executive Director may elect to conduct a competitive

selection process. Every Hearing Examiner shall be an attorney licensed to practice law in the Commonwealth of Virginia, and must meet the following standards:

- a) One of the following criteria: at least five (5) years' active practice of law; five years' service as a federal or state judge; an active hearing examiner on the Virginia Supreme Court's list of approved "hearing officers"; Professional experience in police oversight or mediation is preferred; however experience in other area(s) of relevant jurisprudence experience may be appropriate; and
 - b) Membership in good standing of the Virginia State Bar, in one of the following categories: active, judicial, or retired membership; and
 - c) Completion of a half-day training session conducted jointly by the PCOB independent legal counsel and Office of the City Attorney, at which the Deskbook contents will be reviewed. Such training may be completed after the Hearing Examiner is engaged, but completion will be required before they can assume any duties under this Procedure.
3. The PCOB's independent legal counsel and the Office of the City Attorney shall, cooperatively, prepare a "deskbook" setting forth a set of procedural guidelines intended to assist hearing examiners presiding within a PCOB hearing with the handling of those hearings and procedural issues that may arise within the hearings. The Deskbook for hearing examiners shall be based on the "*Hearing Officer Handbook*" published by the Office of the Executive Secretary of the Supreme Court of Virginia (Rev. November 2021), modified to fit the hearings conducted by the PCOB.
4. When a hearing is to be scheduled, the Executive Director will contact two or more individuals on the list and will determine their availability for the date(s) and time(s) of the hearing, and will ask the available hearing examiners(s) to verify that they could accept the assignment without having any conflict of interest, or without there being any appearance of a conflict of interest. Possible conflicts of interest include, without limitation:
- a) Financial interest in the outcome of the hearing,
 - b) Examiner's law firm representing one of the parties involved,
 - c) Member of the examiner's family being employed by one of the parties involved,
 - d) Bias toward or against one of the parties,
 - e) Prejudgment of one or more of the issues involved in the complaint,
 - f) Impermissible ex-parte communications (including, without limitation: pre-hearing communications with a police officer, a complainant/ complainant's representative, or a member of the PCOB other than the Chair)
5. The Executive Director shall not utilize the same Hearing Examiner for each and every case, but shall select a Hearing Examiner from the List on a rotating basis;

however, it may be necessary, due to individuals' availability on given date(s) and times, and the potential for conflicts relative to a particular case, to occasionally utilize the same Hearing Examiner for two hearings in a row. The goal of having the List is to build a reasonably sized pool of Hearing Examiners who develop familiarity with the work of the PCOB.

6. Prior to commencement of responsibilities as Hearing Examiner, every Hearing Examiner shall execute a written engagement letter in a format established and approved by the Office of the City Attorney.
 - a) The form engagement letter shall include, at a minimum: acknowledgment/verification of the Hearing Examiner's qualifications, the date/time/location of the hearing, the compensation to be received by the Hearing Examiner and any invoicing/payment procedures required for the Hearing Examiner to receive payment upon completion of services, and a certification that the Hearing Examiner, to their knowledge and belief, has no conflicts of interest; and
 - b) The Complaint number for the Complaint that will be the subject of the Review Hearing for which the Hearing Examiner is engaged.

B. Role of Hearing Examiner

1. The Hearing Examiner will be engaged to preside over the Pre-Hearing Conference and the Review Hearing (and any rescheduling(s) or continuation(s)) for a specific complaint.
2. The Hearing Examiner will preside over all PCOB hearings.
 - a) The hearing examiner will ensure that the hearing is conducted in such a manner that the parties to the hearing have a full and reasonable opportunity to present their evidence and arguments as may be relevant to the issues set forth in the complaint.
 - b) The hearing examiner's responsibility is to exercise such control as is necessary for an orderly, effective, thorough, and reasonably expeditious progress of the hearing. The hearing examiner shall prevent disruptive or prejudicial conduct during hearings. The Examiner may refuse to recognize individuals engaging in disruptive behavior and may adjourn or continue a hearing where, in the judgement of the Examiner, the disruptive behavior interferes with the legal and due process rights of any participant or impedes the work of the Board.
 - c) The hearing examiner shall preside over the hearing itself; however, the chair of the PCOB shall remain the presiding officer with respect to the deliberations among the board members and any actions [votes] taken at the hearing.

- d) The hearing examiner shall control the progress of the hearing and the conduct of the parties in a respectful, professional manner.
 - e) Shall preside over the presentation of evidence and shall make determinations as to the relevance of evidence that the parties wish to present and may advise the Board as to which items of evidence may be heard or considered by the Board relative to the authorized scope of the Board's investigation of complaints and incidents and review of the Internal Affairs Investigation.
3. The Hearing Examiner may make minor modifications of the applicable Hearing Procedures as necessary to facilitate the efficient and effective progress of a hearing, taking into account the nature and circumstances of the complaint, whether or not parties are represented by legal counsel, and other circumstances. No modifications are authorized which would deprive any party of substantial justice or due process, or that would substantially alter the nature of the hearing contemplated by the applicable Operating Procedures for the hearing.

Types of minor modifications or adjustments that are permissible by a Hearing Examiner include, without limitation:

- a) Change in the order of presentation of evidence or arguments
 - b) Establishment or changes in time limits for presentation of evidence or arguments
4. The Hearing Examiner is not a "party" to the hearing, but rather a neutral actor whose purpose is to ensure compliance with procedures for how a hearing is to be conducted.
- a) The Hearing Examiner may not suggest possible dispositions or informal resolutions of any complaint or issue.
 - b) The Hearing Examiner may not seek or accept any role(s) or responsibilities other than those provided in this Operating Procedure. (such as mediator, factfinder, final decisionmaker, etc.)
5. For purposes of a PCOB hearing, and because the hearing examiner is not a factfinder or decision-maker, the hearing examiner may have the following pre-hearing contacts and communications (no such contacts shall be deemed impermissible *ex parte* contacts):
- a) Conferences with PCOB independent counsel and a member of the City Attorney's Office, for purpose of reviewing provisions of the Deskbook, and asking general questions about procedures, the role of the Hearing Examiner, etc.,
 - b) Conferences with the Executive Director, to discuss dates/times for scheduling of hearings or prehearing conferences and to complete administrative paperwork (execution of an engagement letter, confidentiality agreements,

etc.), or conferences with the Executive Director and Board Chair to discuss administrative arrangements such as room setup, audio-visual setup, or any other administrative details anticipated relative to a particular hearing.

IV. RESOURCES

“*Hearing Officer Handbook*” published by the Office of the Executive Secretary of the Supreme Court of Virginia (Rev. November 2021).

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURE



REVIEW HEARINGS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-10
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process by which the PCOB (a/k/a “Board”) will conduct all hearings which the Board is empowered to conduct pursuant to its enabling legislation.

II. ENABLING LEGISLATION

Virginia Code § 9.1-601(C) (5)
Charlottesville City Code § 2-452
Charlottesville City Code § 2-459

III. DEFINITION OF REVIEW HEARING

For purposes of the exercise of the powers and duties of the Board, a Review Hearing 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.

IV. PROCEDURES

A. Review Hearings Following an Internal Affairs Investigation

The purpose of a Review Hearing following an Internal Affairs Investigation is for the Board, working with the Executive Director, to verify the adequacy and thoroughness of the Department’s Internal Affairs (IA) Investigation related to a specific complaint, and the appropriateness of the Department’s disposition of the complaint based on the information and evidence compiled during the course of the IA Investigation.

Upon review of the Investigative Report, the Board may conclude that no hearing, or a hearing only on a limited issue is necessary. The Board may also issue a report without the need for a full hearing.

1. Factors Considered by Board in Review of an Internal Affairs Investigation

In conducting a Review Hearing of an Internal Affairs Investigation, the Board shall consider and make findings as to whether the IA Investigation was incomplete or otherwise unsatisfactory related to the thoroughness, completeness, objectivity, impartiality or accuracy of the investigation.

2. Report of Findings Following Review of an IA Investigation.

At the conclusion of the Review Hearing, the Executive Director, at the direction of the Board, shall prepare a detailed written report of the basis for the Board's findings.

Such report shall be reported publicly and to the City Manager, the Chief of Police and the Complainant that the Board has made one of the following findings:

- a. The Board finds that the original IA Investigation was satisfactory, and the Board concurs with the original findings of the IA Investigation; or
- b. The original IA Investigation was satisfactory, but the Board does not concur with the findings. In the event the Board makes this finding, the Board shall set forth its own findings, and make recommendations to the City Manager concerning disposition of the complaint; or
- c. That the Board finds that the investigation is incomplete or otherwise unsatisfactory and provides a detailed written explanation of the basis for such finding.

3. Board's Authority to Initiate an Independent Investigation if an IA Investigation is Found to be Incomplete or Unsatisfactory.

If the Board finds that an IA Investigation was incomplete or otherwise unsatisfactory, pursuant to section IV(A)(2)(c) above, the Board may request the Executive Director, on behalf of the Board, conduct an independent investigation of the incident that is the subject of the Complaint. This investigation shall be conducted in accordance with the procedures set out within Operating Procedure governing General Principles of PCOB Investigations.

After completion of an independent investigation pursuant to this section, the Executive Director shall prepare a detailed written report of the investigation for the Board. After reviewing the Executive Director's report, 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:

- a. That the Board now finds that, despite the defects in the original IA investigation, the Board's own Investigation has produced no material evidence to dispute the original findings of the Internal Affairs Department.
- b. 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,
- c. That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether the findings of the IA Investigative Report are correct.

B. Review Hearings Following a Complaint Investigation

The purpose of a Review Hearing following a Complaint Investigation is for the Board, working with the Executive Director, to verify the adequacy and thoroughness of the Executive Director's Investigation related to a specific complaint that has not previously been the subject of an IA Investigation and Investigative Report, pursuant to Charlottesville City Code § 2-457(a). In such cases the Executive Director shall conduct a Complaint Investigation in accordance with the appropriate Operating Procedure and prepare a Complaint Investigative Report at the conclusion of the investigation.

Upon review of the Executive Director's Complaint Investigative Report, the Board may conclude that no hearing, or a hearing only on a limited issue is necessary. The Board may also issue a report without the need for a full hearing.

C. Review Hearings Following an Incident Investigation

The purpose of a Review Hearing following an Incident Investigation is for the Board, working with the Executive Director, to verify the adequacy and thoroughness of the Executive Director's Investigation which was undertaken upon the Board's own initiative pursuant to Charlottesville City Code § 2-457(b).

In such cases the Executive Director shall conduct an Incident Investigation in accordance with the appropriate Operating Procedure, and prepare an Incident Investigative Report at the conclusion of the investigation.

Upon review of the Executive Director's Incident Investigative Report, the Board may conclude that no hearing, or a hearing only on a limited issue is necessary. The Board may also issue a report without the need for a full hearing.

D. Report of Findings Following Review of the Executive Director's Incident Investigation or Complaint Investigation.

At the conclusion of the Review Hearing, the Executive Director, at the direction of the Board, shall prepare a detailed written report of the basis for the Board's findings. Such report shall be reported publicly and to the City Manager, the Chief of Police and the Complainant that the Board has made one of the following findings:

1. That the Board finds that the 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.

V. HOW THE HEARING PROCEEDS

A. Order of Presentations

The order of presentation of evidence and arguments to the Board during a Review Hearing shall be as follows:

1. Opening Statements:
 - a. In the case of a complaint or incident investigation, the Executive Director shall first present a summary of the Investigative Report prior to the parties' opening statements. Each Party will have the opportunity to make brief opening statements, not to exceed 5 minutes each. Upon prior request, the Hearing Examiner may grant each party additional time, for good cause shown, or change the order of statements. Under no circumstances shall either party be granted more time than the other. As noted in The
 - b. The Complainant, where relevant, shall have the opportunity to make the first opening statement, detailing their experience during the incident and its effect on them. Thereafter, the Department shall make its opening statement.
 - c. The Complainant may make their opening statement, or if represented by an attorney, may allow their attorney to present opening statements on their behalf. If a party has a designated representative or legal guardian, that person may make an opening statement on the party's behalf. The Department's opening statement shall be made by the Internal Affairs representative, the Chief of Police, or the Chief's designee.

d. Either party shall have the right to waive its opening statement.

2. Presentation of Evidence:

- a. Each party will have the opportunity to present its evidence. Evidence may be presented in the form of witness statements, personal statements, or by introduction of other forms of evidence deemed admissible according to the Rules of Evidence in Section (VI) below.
- b. The Complainant, where relevant, shall have the opportunity to present its evidence first, followed by the Department.
- c. In Review Hearings of IA Investigations, prior to presentation of any other evidence on its behalf, the Department shall be required to have its IA representative present a summary of the Complaint, the IA investigation of the complaint, and detail the basis for the IA finding.
- d. In hearings related to complaint investigations, the complainant may make a statement and present evidence, if they desire, at a time during the hearing approved by the Hearing Examiner.
- e. Either party shall have the right to call witnesses to testify in its case.
- f. No person providing evidence in a case can be compelled to answer questions.
- g. Cross-examination of witnesses: Only members of the Board shall be permitted to cross-examine any person who provides evidence in a case, subject to the evidentiary rulings of the Hearing Examiner.
- h. If the subject officer attends the hearing and voluntarily chooses to make a statement, only members of the Board shall have the right to ask questions of the subject officer, consistent with the limitations on cross-examination established in III.G.1.b.vi above.
- i. Generally, each presentation of evidence should be 30 minutes or less. The Hearing Examiner will request a presenting party to pause at the 30-minute mark. At that point, the Board may, by majority vote, extend the party's presentation time. Under no circumstances shall any party be granted more time than the other, but any party may waive any amount of its assigned presentation time.
- j. At the time provided for members of the Board to question parties or witnesses, the member shall ask the Hearing Examiner: "May I be

recognized for a question?” and shall wait for the Hearing Examiner to recognize the member, prior to asking the question.

- k. Notwithstanding the provisions of this paragraph, the Hearing Examiner may modify the order of presentations, as to the entire Review Hearing for good cause shown, and after articulating the reasons therefor on the record. Also, in cases involving multiple, complex issues, the Hearing Examiner may require each party to present their evidence on one issue at a time (with modified time limits), followed by the response from the other parties (going back and forth in that manner until all of the issues have been presented).

3. Conclusion of Evidence Presentation

After the time set aside for presentation of evidence has expired, the Hearing Examiner shall announce that “The evidentiary portion of this hearing is concluded, unless the Board has any additional questions for either party”. At the request of the Board chair, the Hearing Examiner may extend the hearing to allow questioning of the parties by Board members, but the hearing will not be reopened for presentation of additional evidence.

When there are no further questions from Board members to either party, the Hearing Examiner shall state that “The evidentiary portion of is complete”, and then the Hearing Examiner will ask “Does the Board wish to begin its deliberations”?

B. Deliberations of the Board

The Board’s deliberations must be conducted within an open public meeting unless a closed meeting is authorized by Va. Code §§ 2.2-3711 or 2.2-3712.

C. Findings Of The Board

1. The Board shall deliberate on the evidence and arguments presented by the parties at the Review Hearing, and on the basis of the information received and all of the information and materials within the Internal Affairs file(s), or Investigative Report, The Board shall make the findings appropriate to the Review Hearing being conducted and in accordance with this Operating Procedure section IV(A)(2) for IA Investigations, IV(D)for Complaint or Incident Investigations.
2. The Findings of the Board must be made by majority vote of the Board, such vote to be taken in an open meeting.

D. Policy Recommendations.

Once the Board has made its finding(s) the Executive Director shall ask the Board members whether the information presented at the Review Hearing suggests that the

Board should make policy recommendations to the Chief of Police and the City Manager. Should the Board have policy recommendations, the Board shall direct the Executive Director in preparation of the recommendations to be submitted to the City Manager within 30 days of completion of the Review Hearing.

E. Disciplinary Recommendations:

If the disposition of the IA Investigation was “sustained” for any allegation, the Executive Director shall initiate discussion by the Board of whether the officer’s conduct constituted a serious breach of departmental and/or professional standards, as defined in X. If so, the Board may initiate a process for making disciplinary recommendations, in accordance with the appropriate Operating Procedures.

VI. GENERAL HEARING PROCEDURES APPLICABLE TO ALL REVIEW HEARINGS

A. Presumption of Lawful Conduct

Hearings and related investigations are required to be neutral fact-gathering processes. Until findings are made to the contrary, all parties are presumed to have acted lawfully and in accordance with applicable policies and procedures.

B. Standard of Evidence and Findings

The Board’s findings related to review of all investigations shall be governed by a preponderance of the evidence standard.

C. Participation of Parties and Others in Review Hearings

1. Parties:

a. Parties to Review Hearing following an IA Investigation or a Complaint Investigation.

For the purpose of a Review Hearing following either an IA Investigation or a Complaint Investigation, the parties to the hearing are the Complainant and the Department (represented by the Chief of Police, an investigator from the Office of Internal Affairs, or both).

b. Parties to Review Hearing following an Incident Investigation.

For the purpose of a Review Hearing following an Incident Investigation, Parties to the hearing shall be the Department as the respondent. The Executive Director or his designee shall present evidence of its investigation, but shall not be a party in any matter.

2. Complainant(s). Any person whose complaint has been subject to an IA Investigation, Department or Complaint Investigation by the Executive Director shall be deemed the Complainant for the purpose of a Review Hearing. Because Incident Investigations are

conducted at the initiation of the Board, there shall be no “complainant” in Review Hearings of Incident Investigations.

3. Subject Officer(s). For the purpose of a Review Hearing, the officer(s) who are the subject of the complaint is/are neither parties to the Review Hearing, nor witness(es), except to the extent that the Subject Officer’s written or recorded statement(s) within the IA Investigation are part of the record of that investigation. In the event that the Board initiates an independent investigation of the matter pursuant to V(A)(3) above, the Board’s investigator will have the same access to the Subject Officer(s) as the original IA investigator(s).
4. The subject officer may voluntarily make a statement if he/she chooses.

D. Adverse Inferences from Non-Appearance

No party or witness is required to participate in a Review Hearing. However, the Board may infer from a party’s or a witness’s voluntary absence from a Hearing, despite notice and a request to appear, that their truthful participation would have been adverse to the interests of such voluntarily absent party or witness. The application and/or weight of any such inference shall be determined by a standard of objective reasonableness under the circumstances.

E. Rules of Evidence

1. Virginia's Rules of Evidence.

The Virginia Rules of Evidence, set forth within Part II of the Rules of the Supreme Court of Virginia. in the Code of Virginia. and in applicable Virginia Supreme Court opinions, shall be followed to the extent practicable within every Review Hearing. However, those rules are not binding, and the parties or their representatives may present arguments in support of the admission or exclusion of specific evidence.

- a. Admissibility of Evidence:

- i. Motions and Objections. Upon a proper motion or objection being made, the Hearing Examiner may make an evidentiary ruling as to the admissibility of evidence. Absent a sustained objection or motion as detailed herein, all evidence presented shall be deemed admissible.
- ii. A motion or objection is proper only when made be made only by the following:
 - A party,
 - The Board chair,
 - A Board member, seconded by another Board member

- iii. Rulings on Motions and Objections. The Hearing Examiner's decision on motions or objections, as detailed herein, shall be noted for purposes of the record of the Review Hearing.
- iv. Overruling Objections. The Board, by majority vote, may overrule a Hearing Examiner's ruling as to the admissibility of any evidence.

2. Prior or Subsequent Conduct of Complainant or Officer.

Prior or subsequent conduct of a complainant or police officer or employee may be considered by the Board in reviewing the findings and conclusions set forth within an Investigative Report. The determination of relevance of such conduct shall be based on an assessment of whether such conduct was substantially similar to the conduct that is the subject of the complaint, and whether such conduct indicates a pattern that should have been considered during the investigation. The following evidence related to prior conduct shall be excluded:

- a. Information or documents about the complainants' past encounters with the police, if they do not show *modus operandi*, or a pattern or practice of behavior that are relevant to the conduct that was the subject of the investigation.
- b. The criminal record of an individual, unless the criminal record includes offenses that would tend to impeach the credibility of that individual (e.g., prior conviction for forgery or perjury).
- c. Witness testimony that is not helpful to the Board in reaching a factual conclusion.
- d. An officer's or employee's past disciplinary record may not be excluded from consideration.

F. Timeline for Issuing Reports:

Within 30 days of the completion of the Review Hearing, or within 30 working days following receipt of a report from the Executive Director regarding the findings of an independent investigation conducted pursuant to Charlottesville City Code § 2-459(d) and Section IV(A)(3) of this operating procedure, the Board will report publicly its disposition of the case and also make notice of findings directly to the parties and the City Manager, and will post their findings on the Board's website.

G. Confidentiality of Information:

"Personal information", as defined in Virginia Code § 2.2-3801, shall be maintained confidential (i.e., not publicly disclosed) throughout the Board's proceedings under this Operating Procedure, until the proceedings have been concluded. At the end of the proceedings, questions regarding specific items of "personal information" to be included within the Board's public report shall be resolved with the City Manager, in

accordance with Charlottesville City Code § 2-453(f) and the Standard Operating Procedure referenced in that Charlottesville City Code section.

H. Right to advisor/representative of choice.

Throughout the hearing process, all parties may consult with and be represented by legal counsel, their legal guardians, authorized representative, or another individual advisor/representative of their choosing at any meeting or proceeding related to the Hearing process. A representative is not required, and the complainant and the Department are each responsible for ensuring their representatives' presence at the hearing.

I. Interpreters.

Any party requesting an interpreter shall provide at least 14 working days written notice of this request to the Executive Director.

J. Continuances.

The Board or the Executive Director may continue a Review Hearing due to the unanticipated unavailability of a witness or the individual who filed the Review Request (or their representative) for good cause shown, or due to the unavailability of an interpreter, or for other reasons deemed by the Board to constitute "good cause".

K. Non-Appearance of the Complainant or the Department.

In the event that any party, fails to appear more than 30 minutes after the scheduled time for a Review Hearing, the hearing will proceed, and the allegations may be sustained, or not, based on the evidence in the record and that presented by the other parties and witnesses.

Provided that a party or a witness has been given all of the notice(s) required by this O.P., the Board may infer from the party's or a witness's voluntary absence from a Hearing, despite notice and a request to appear, that their truthful participation would have been adverse to the interests of such voluntarily absent party or witness. The application and/or weight of any such inference shall be determined by a standard of objective reasonableness under the circumstances.

L. Limitation of Use of Subpoenas.

In cases where a Review Hearing is held, the Board may not subpoena any police officer(s) to testify at the Review Hearing. The individual police officer(s) who were involved in the civilian-police interaction that was the subject of the complaint are not parties to a Review Hearing. Statements of the police officer(s) collected during the IA Investigation shall be utilized by the Board, in lieu of subpoenaing police officers

as witnesses. Conditions under which the Board may request subpoenas during investigations are detailed in the Issuance of Subpoenas Procedure.

M. Officer Participation in the Event of the Board's Initiation of an Independent Investigation.

If, after a finding the Board chooses to assign the Executive Director to conduct an independent investigation, the City Manager shall require police officers within the Department to cooperate with the investigation, and to give interviews to the Executive Director, in the same manner as if the Department itself were conducting the investigation. This shall be the case regardless of whether the police officer(s) were previously interviewed during the IA Investigation. A representative of the Office of Internal Affairs shall be present at all such interviews, as an observer/ monitor.

N. Selection of a Hearing Examiner. The Executive Director shall select a Hearing Examiner, in accordance with the Hearing Examiner Procedure

O. Pre-Hearing Conference.

At the direction of the Board Chair, the Executive Director may schedule a pre-hearing conference to discuss preliminary issues related to the hearing. The Executive Director will provide at least ten days' notice of the pre-hearing conference to all parties. The Hearing Examiner shall preside over the Pre-Hearing Conference attended by the Parties, the Board Chair and the Executive Director. At the Pre-Hearing Conference the following issues to be discussed and resolved include, but shall not be limited to:

- i. Setting the date for the Review Hearing.
- ii. Any conflicts of interest or requests for recusal.
- iii. Standards of conduct and decorum for the hearing.
- iv. Objectives of the Complainant.
- v. Evidentiary issues.
- vi. Identification of witnesses needed for the Review Hearing
- vii. Order of statements and presentation of evidence
- viii. Preliminary requests or motions for the Board.
- ix. Any other such issues that may resolved in advance to facilitate the orderly progress of the Review Hearing.

P. Notice of Review Hearing.

Notice of the scheduled hearing shall be given to the parties, and to any witnesses whose testimony is to be accepted during the hearing no fewer than 14 days prior to the scheduled hearing. If the complainant or individual who filed a Review Request seeks to present testimony from witnesses, those individuals shall be identified not later than

at the pre-hearing conference. Witnesses not identified at the pre-hearing conference shall not be permitted to testify at the Review Hearing, without a showing of good cause, and with the approval of a majority of the Board. Failure of any person to receive proper notice pursuant to this section shall not create cause for the matter under consideration to be closed to the Board's review. Failure to provide proper notice may create good cause for the Board to grant a continuance of the matter, at the discretion of the Board.

Q. Engagement of Expert Witnesses by the Board.

The Board or the Executive Director, with the authorization of the Board, may engage disinterested medical, forensic, technological, or other experts, as defined by applicable law, when expertise on a topic is needed in order to achieve a fuller understanding police practices, policies or procedures, technical or scientific evidence, and/or of the methodology of the IA Investigations, or the conclusions reached by the Department within the IA Investigation. (Any such engagement shall be in accordance with applicable competitive procurement requirements).

R. Open Public Meeting – Virginia Freedom of Information Act (FOIA)

The PCOB is subject to the requirements of the Virginia Freedom of Information Act ("FOIA"), Virginia Code § 2.2-3700 et. seq., both as to access to public records of its deliberations and decisions, and as to FOIA's requirements for the business of the PCOB to be transacted within open, public meetings unless exempted by FOIA. The PCOB shall exercise any discretionary exemption available to it under applicable FOIA provisions, balancing the interests of transparency and privacy interests, as those interests may relate specifically to the circumstances at issue in a particular complaint.

S. Confidentiality:

1. Department records will be shared with the Board, pursuant to the provisions of Charlottesville City Code § 2-452(e), § 2-453(f) and the Standard Operating Procedures referenced in those Charlottesville City Code sections. No Board member shall use or share any Department records with other individual(s), or for any purposes other than preparation for the Review Hearing.
2. The Board may not, by majority vote or otherwise, compel the Department to share its records with the public, with any individual(s) who filed the Review Request, or who any individual representing the filing party at the Review Hearing. Neither may the Board, by majority vote or otherwise, share Department records except as authorized by Charlottesville City Code § 2-452(e), 2-453(f) and the Standard Operating Procedures referenced in those code provision. Upon request by a Complainant, the Board may itself review specific records within the IA file. The Board may verify the presence or absence of specific records as part of its public report.

3. Board members will not have access to records listed in Charlottesville City Code § 2-452(f).
4. Notwithstanding the foregoing, and subject to any exemptions authorized by FOIA or other state law(s), a person who is the subject of IA Records shall have the rights set forth within Virginia Code § 2.2-3806.
5. “Personal information”, as defined in Virginia Code § 2.2-3801, shall be maintained confidential (i.e., not publicly disclosed) throughout the Board’s proceedings under this Operating Procedure, until the proceedings have been concluded.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



DISCIPLINARY RECOMMENDATIONS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-11
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

Following any investigation or hearing authorized by Charlottesville City Code Article XVI § 2-461(a)(1), should the Board make a finding that any police action constituted a serious breach of departmental or professional standards, the Board shall meet to determine disciplinary recommendations to make to the Charlottesville Police Department (CPD). In making such recommendations, the Board shall review written policies, procedures, and the Department's general orders.

II. ENABLING LEGISLATION

Code of Virginia § 9.1-601.C.3
Charlottesville City Code § 2-461(a)(1)

III. PROCEDURES

A. Types of Disciplinary Recommendations.

Disciplinary recommendations for specific acts of misconduct shall be consistent with the range of sanctions allowable under the CPD Disciplinary Matrix for the type of violation at issue in the investigation.

Recommendations may also include changes to supervisory practices or procedures to disincentivize similar breaches of departmental or professional standards in the future and to ensure that such breaches, if they do occur, are timely identified by CPD command staff and that corrective discipline is timely imposed. If the Board is concerned about the advisability or lawfulness of a particular policy that was at issue in the situation under

review, then the Board may initiate an audit, or the Board may recommend that the chief of police review the policy and update it in accordance with current federal and state laws, or 21st Century community policing principles or other generally recognized best practices.

B. Timeline.

The meeting shall be held no later than 14 calendar days from the date of the Board's fact-finding referenced in paragraph B above.

C. Notice to Officer/Employee.

The Executive Director shall notify the chief of police and the subject officer or employee at least 10 working days before the meeting. The notification shall include a summary of the sustained allegations and the range of disciplinary actions that may be considered by the Board.

D. Structure.

The Board Chair shall preside at all Disciplinary Meetings. At the beginning of the meeting, the Board's Executive Director shall provide a written report to the board and make a presentation of the report, which shall include the following:

1. A summary of the allegations constituting serious misconduct
2. The opinion of the chief of police;
3. Input from the complainant;
4. Input from witnesses, if appropriate;
5. Written statement from of the officer, if they wish to provide one;
6. Prior sustained community member complaints against the officer, if they exist; and
7. The applicable provisions of the CPD disciplinary matrix or General Order.

The Board may then hear statements from the chief of police, and the subject officer or their representative, if the officer elects to participate.

E. Participation of the Subject Officer/Employee.

The subject officer/employee may be represented by an attorney when interacting with the Executive Director in advance of the Disciplinary Meeting, and during the Disciplinary Meeting, if the officer/employee elects to participate. At any stage of the proceeding, the officer/employee may submit a written statement to the Executive Director or Board to be considered during the Disciplinary meeting, in lieu of in-person participation. In this

meeting the officer/ employee's Attorney's role shall be limited to presentation of information and or statements on behalf of the officer or employee. If the subject officer/employee elects to appear in person at the Disciplinary Meeting, the officer will be allowed to provide an oral statement to the Board at the Meeting and will not be subject to cross-examination by anyone. No adverse inference may be made by the Board solely based upon the officer's or employee's decision not to participate in any aspect of the Disciplinary Meeting.

No portion of the Disciplinary Meeting at which the subject officer/ employee's personal information (as defined in Va. Code § 2.2-3801, shall be open to the public. The Board may either discuss and deliberate in a closed meeting, or the Board may elect to publicly discuss and deliberate using references only to "The Officer" or "The Employee", and other precautions.

F. Recommendations.

All recommendations of the Board shall be established by majority vote of a quorum of Board members. The recommendations shall be publicly announced and shall not reference any personal identifying information about the involved officer/ employee without the concurrence of the City Manager. The Board will submit disciplinary recommendations reflective of the Board's majority vote to the chief of police and the City Manager in writing within 10 calendar days from the date of the disciplinary meeting.

If the Department declines to implement the disciplinary recommendation of the Board, within 30 days of the Board's recommendation, the Chief of Police shall 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 to the public.

G. FOIA.

To the extent permitted pursuant to FOIA, some or all of the disciplinary meeting may be held in closed session. To enter into a closed meeting, the Board shall follow the procedure required by Code of Virginia § 2.2-3712.

CITY OF CHARLOTTESVILLE

**POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES**



MEDIATION

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-12
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the circumstances in which disposition of a matter over which the PCOB has authority may be determined by a person or persons other than the PCOB.

Notwithstanding various terminology utilized within Chapter 2, Article XVI (the “Ordinance”) (i.e., “mediation” and “mediation or other alternative dispute resolution methods”, or “informal resolution”): these Operating Procedures set forth City Council’s express guidance on how the provisions within the Ordinance shall be interpreted and applied. In the event of any apparent disparity between the provisions of this Operating Procedure and provisions of the Ordinance, the provisions of this Operating Procedure shall govern the interpretation of the Ordinance. Where the Ordinance references “informal resolution”, that term is used to mean and refer to the authority of the PCOB to deviate from the strict requirements of the Operating Procedures for a hearing, in cases where all parties are agreeable.

II. ENABLING LEGISLATION

Va. Code § 9.1-601(C)(3)
Charlottesville City Code § 2-460(b); 2-466(c); 2-468

III. PROCEDURES

A. Mediation

1. Mediation shall be the only form of alternative dispute resolution utilized by the PCOB or Executive Director to address complaints.

B. Planning for a Successful Mediation Program

1. Prior to referring any citizen complaints to mediation, the PCOB and the Board will engage in a planning process such as that highlighted in Chapter 5 (“Planning for a Successful Mediation Program) of the U.S. DOJ Publication “Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders”).
2. PCOB’s independent legal counsel shall certify to the City Manager and City Attorney that, in independent counsel’s opinion, a careful planning process has been undertaken and an appropriate mediation program is ready for implementation by the PCOB and Executive Director. Following this certification, the PCOB and Executive Director may refer complaints to mediation.

C. Case Eligibility

1. The following CANNOT be referred to mediation by the PCOB or Executive Director:
 - a. Any complaint involving use of force by a law-enforcement officer, death or serious injury to any person, serious abuse of authority, allegedly discriminatory stops, and other allegations of serious misconduct in violation of a person’s Civil Rights; or
 - b. Any complaint involving an officer who has been named in two or more civilian complaints within the 12 months preceding the date of the complaint (excluding complaints resolved by mediation); or
 - c. Any complaint, of any nature whatsoever, made by an individual *other than* the individual who was the subject of the citizen-police interaction that is the subject of the complaint, or their designated representative. An individual who has elected to have a representative aid them in the pursuit of a complaint may participate in mediation, but the representative may not be present during mediation sessions. The mediator may allow the participation of a legal guardian when the subject of the alleged misconduct is a minor or otherwise disabled.
2. Complaints selected for referral to mediation will be cases in which the goal of mediation will be building understanding, and not fact-finding or determination of “guilt” or “innocence”.
3. Citizen complaint mediation is an alternative to the PCOB’s review of an internal affairs investigation previously conducted by the Department and is an alternative to an investigation by the PCOB of a police-citizen interaction.

- a. If mediation achieves an outcome that is satisfactory to both the citizen and the police officer or Department representative who participated in the mediation, the PCOB shall have no further jurisdiction over the complaint. If this will be unacceptable to the PCOB in a given situation, the complaint shall not be referred for mediation.

D. Timing of Referral

1. The Executive Director shall notify the PCOB membership by email, of an assessment that a particular complaint is suitable for mediation (“Notification”). If the Executive Director receives no response from a member within 48 hours of giving the notification, the member shall be deemed to have no objection to mediation.
2. If two or more members of the PCOB give notice by email to the Executive Director within 48 hours of the Notification that they object to a complaint being mediated, then the question of mediation will be presented to the Board to be decided by majority vote.

Initial referral for mediation shall occur prior to any investigation by the PCOB or Executive Director beyond that necessary to determine if the complaint is eligible for mediation. Parties to the complaint may, however, request mediation at any time prior to the commencement of an investigative hearing.

E. Selection of Mediator; Mediator Qualifications

1. The PCOB will use a mediator on contract with the City, when available. If PCOB would like to establish contracts with one or more mediation organizations to call upon on an as-needed basis, the contracts may be awarded after compliance with procurement procedures. Regardless of how a mediator is selected in a given situation, a written engagement letter/ contract shall be executed by the mediator.
2. The Executive Director shall endeavor to locate/identify, or to develop, a cadre of certified mediators who are willing to study and develop proficiency specific to handling mediations of disputes arising from citizen-police interactions.
3. Every mediator shall be certified pursuant to guidelines promulgated by the Judicial Council of Virginia (reference: the Virginia Supreme Court’s Guidelines for the Training and Certification of Court-Referred Mediators), and the certification must be in the category “Circuit Court-Civil”. The City Manager may also accept mediators with equivalent qualifications.
4. To ensure mediator neutrality, prior to engaging a mediator in a particular situation, the prospective mediator shall be advised of the individuals who will be participants in the mediation, and the prospective mediator shall be given summaries of the factual allegation of the complaint. The prospective mediator shall be advised that they must

disclose all actual and potential conflicts of interest reasonably known to the mediator, and any written engagement agreement shall include a certification by the mediator that no conflicts exist. (Financial conflicts are not likely to arise in civilian complaint cases, but conflicts arising from political attitudes or personal associations may exist or may arise). The mediator shall decline to participate in a mediation, and shall decline to participate further in a mediation once engaged, should any conflict arise.

5. The mediator's written engagement shall contain an acknowledgment that the mediation is governed by the provisions and requirements of Virginia. Code § 8.01-581.21 et seq., including the standards and duties of mediators set forth within Virginia. Code § 8.01-581.24. Mediators should explain to the parties the confidentiality requirements in these provisions.
6. The written engagement of the mediator shall ensure that the mediator will conduct the mediation in accordance with this Operating Procedure, and a copy of this Operating Procedure shall be provided to the mediator at the time of engagement.
7. No individual may serve both as mediator and hearing examiner relative to a complaint.

F. Voluntary Participation and Settlement

1. The Board shall prepare informational brochures (one, suitable for citizens and a second, suitable for police officers) advising of the potential benefits of mediation, the confidentiality of the process, and the potential consequences for each participant of reaching a settlement of a particular dispute.
2. The Executive Director shall advise a citizen and police officer(s) involved in the incident that is the subject of a complaint that the complaint may be eligible for mediation as soon as practicable after making such a determination.

G. Proceedings

1. Mediations shall be governed by the provisions of Virginia. Code Title 2.2, Chapter 41.1, and by the provisions of Virginia. Code Title 8.01, Chapter 21.2.
2. Mediations of citizen complaints shall not include or involve attorneys. Neither the complainant nor the officer(s) participating in the mediation shall be entitled to a representative or an attorney within the mediation.
3. Confidentiality is an essential element of mediation. For mediation to succeed, both sides must feel free to speak candidly. The mediator shall be required to utilize a written form advising the parties to the mediation of their obligation and agreement as to confidentiality, and a plain-language explanation of the provisions of Virginia. Code §

8.01-581.22. Participants shall be required to sign the form, acknowledging their understanding of the process.

4. It is expected by the PCOB that each mediation process will be approached as a structured process, generally outlined as follows ¹:

- a. Introduction—mediator introduces the parties, explains the mediation process, and sets ground rules for the session
- b. Problem determination—mediator identifies the problem that has brought the parties together and asks each to explain their side of the story
- c. Summary—mediator summarizes the problem in a neutral and evenhanded manner
- d. Issue identification—mediator helps the parties identify specific issues that need to be mediated, without introducing mediator’s own interpretation of the dispute(s). Dialog between the two parties is to be the primary focus of the process.
- e. Development of alternatives—mediator assists the parties to discuss alternative ways to resolve the dispute(s). It is not within the purview of the mediator to impose a solution, but they may recommend options based on past experience. Further, the mediator will emphasize dialog between the parties and not a quick settlement (e.g., “It’s getting late; we need to wrap this up”).
- f. Selection of appropriate alternatives— once options have been discussed, the mediator will assist the parties in coming to agreement as to an appropriate solution.

Creative, non-traditional solutions/ outcomes are encouraged (such as agreements for the parties to take some type of action outside the mediation session that will build understanding between the parties as human beings).

No solution/ outcome may require any monetary payment from a police officer individually, or from the City of Charlottesville or any of its public officials, nor shall any solution/ outcome create any other binding legal obligation on the City of Charlottesville or its public officials. The mediator shall understand that a police officer participating in mediation does not have authority to speak for or bind the City organization or any of its other public officials or employees.

¹ The outlined process is credited to “*The Mediator Handbook*” published by the Center for Dispute Resolution at Capital University in Columbus, Ohio (Mitchell and Dewhirst 1990) and cited within “*Mediating Citizen Complaints against Police Officers: A Guide for Police and Community Leaders*” authors Samuel Walker, Carol Archbold, Leigh Herbst (Department of Criminal Justice University of Nebraska at Omaha, 2002) published by the U.S. Department of Justice, Office of Community Policing Services.

Conclusion of mediation—The mediation session concludes with a clear statement of, and agreement on the terms of the resolution. The statement will be documented as in (IV.) below.

IV. Mediation Outcome Reporting

- A. If both parties agree that the mediation has been successful, the Department will remove the complaint from the officer's personnel file(s). Within PCOB and Department files, the case will be logged and tracked as having been "Mediated".

A successful mediation must be documented with a simple statement to that effect, signed by both parties. The document must not contain details regarding the nature of the complaint or the final agreement, simply a certification that the parties agree that mediation was successful. (However, if the resolution requires the parties to take some action outside the mediation process, a written understanding of what action is supposed to take place may be prepared and placed in a sealed file in the possession of the mediator and the file will remain sealed and confidential so long as the activity occurs. In such cases, the parties to the mediation shall notify the mediator once the activity is completed, and the written acknowledgement of successful mediation will be forwarded to the PCOB at that time).

- B. A mediation will be deemed "unsuccessful" if (1) either party expresses dissatisfaction with the outcome or (2) the mediator indicates that one or both parties failed to participate in good faith or (3) either party fails to attend a mediation session without adequate justification. If mediation is unsuccessful the mediator will document this outcome and notify the Executive Director of that fact, without disclosing any other details. The complaint will be returned to the PCOB for handling, in the same posture as the case existed prior to referral to mediation.

V. RESOURCES

- A. "*Mediating Citizen Complaints against Police Officers: A Guide for Police and Community Leaders*" authors Samuel Walker, Carol Archbold, Leigh Herbst (Department of Criminal Justice University of Nebraska at Omaha, 2002) published by the U.S. Department of Justice, Office of Community Policing Services.

Virginia Supreme Court's Guidelines for the Training and Certification of Court-Referred Mediators)

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



ISSUANCE OF SUBPOENAS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-13
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

This Operating Procedure implements the power of the Board to request subpoenas for the production of evidence or the appearance of witnesses.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452(c)(8)
Charlottesville City Code § 2-458(f)

III. PROCEDURES

The Board shall make a good faith effort to obtain access to information as detailed in Sec. II.A. of this Operating Procedure. If after such effort the Board is unable to secure voluntary cooperation or production, the Board may apply to the Circuit Court for the City of Charlottesville for a subpoena compelling the attendance of such witnesses, or the production of such books, papers and other evidence according to the following procedure:

- A. The Board may exercise its subpoena power only by a two-thirds vote of the majority after first making a good faith effort to obtain the evidence voluntarily.
- B. Upon a proper two-thirds vote of the majority the Board 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 or other evidence.
- C. Prior to making the Board's authorized application to Court for a subpoena directed to a City official or City employee, the Board shall give the City Manager and the Department reasonable notice of its intent to subpoena such witnesses or records. If

the City Manager concurs that the Board's request is reasonable and necessary for the Board's work, then the City Manager will direct and authorize the Executive Director to obtain the information (records) from the department(s), or if the Board seeks testimony, the City Manager will direct the City official or employee to participate; provided, however, that in no circumstances shall any subpoena be directed to the City Attorney's Office, or to any employees therein. (See also Operating Procedures X and Y). In the event of a conflict between the provisions of this Operating Procedure and the provisions of another Operating Procedure, the more specific provisions shall apply.

- D. The Board shall give the City Attorney a copy of the request for subpoena on the same day that it is filed with the Court.
- E. The Board shall not unreasonably withhold its agreement to limitations on the Board's request for records or testimony which are requested by the City Manager that may be necessary to protect confidential information.
- F. The Board or the City Manager may request that any hearing to be held in Circuit Court on the subpoena request be conducted in a closed courtroom, if permitted by law, and either the Board or the City Manager may request a protective order.
- G. Upon request of either the Board or the City Manager, the court file for such subpoena may be kept under seal, to the extent permitted by law and where authorized by the judge.
- H. The Court, on finding such witness or evidence is necessary for and material to the discharge of the Board's duties, may issue the requested subpoena.
- I. The Court may cause the subpoena to be issued with such conditions as the Court may deem necessary to protect confidentiality.
- J. Rule 3A:12 of the Rules of the Supreme Court of Virginia shall govern the issuance of Board requested subpoenas, pursuant to this operating procedure.

CITY OF CHARLOTTESVILLE

**POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES**



EXECUTION OF AUDITS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-14
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process and procedures by which the Board may exercise its authority granted under Charlottesville City Code, Chapter 2, Article XVI, § 2-462 (the “Ordinance”), as enabled by Code of Virginia § 9.1-601(C)(4) (referred to as “Audits” or “the Audit Function”).

These Operating Procedures set forth City Council’s guidance on how the provisions within Charlottesville City Code, Chapter 2, Article XVI, § 2-462 shall be interpreted and applied

II. ENABLING LEGISLATION

Code of Virginia § 9.01-601(C)(4)
Charlottesville City Code § 2-462(a) and(b)

III. PROCEDURES

As authorized in Charlottesville City Code § 2-462(b), the Board may direct the Executive Director on its behalf to review and make recommendations regarding policies, practices, and procedures of the Department, and to conduct retrospective examinations and audits of patterns in Internal Affairs investigations, arrest and detention, and other public-police interactions. The Board may initiate an audit in support of the development of policy recommendations as authorized in Charlottesville City Code § 2-462(a).

The Board’s authority to have the Executive Director perform an Audit is distinct from the Director’s authority to monitor Internal Affairs investigations as provided in Charlottesville City Code § 2-455(c).

A. Manual of Audit Procedures

The Executive Director shall compile a manual that establishes guidelines for implementing this Operating Procedure (“Manual”), which shall be approved by the Board. The Manual shall implement these Operating Procedures and shall contain no processes or guidelines in conflict with the Ordinance or these Operating Procedures. Neither the Board nor the Executive Director shall have authority, within the Manual, to impose requirements on any police officers or other employees or management personnel within the City; however, the Board and the City Manager may jointly establish protocols to be incorporated within the Manual, and the City Manager’s endorsement of such protocols shall be reflected by his signature to the document.

The Manual shall be based on guidance that reflects best police oversight and auditing practices including, but not limited to those set forth within the following documents:

- NACOLE- Guidebook for the Implementation of New or Revitalized Police Oversight
- Los Angeles Police Department- Audit Division Policy and Procedures Manual
- The Yellow Book- Generally Accepted Government Auditing Standards (GAGAS)- 2018 Revision

The Manual will identify audit techniques and practices that are relevant to types of retrospective analyses that the PCOB will be conducting. The Manual will reflect best audit practices, cognizant of organizational and resource constraints facing the Board.

The Executive Director shall present the Manual for review and approval by the Board. The Manual shall also be certified by both the Board’s independent legal counsel and the Office of the City Attorney as being consistent with the City Ordinance and these Operating Procedures. The Manual shall be reviewed by the Executive Director and recertified by the attorneys every three years to ensure it represents the latest standards in the field and changing circumstances within the City of Charlottesville. The review and revision of the manual should seek to incorporate any feedback provided from members of the public, members of the PCOB, the City Manager’s Office, City Attorney’s Office, the Chief of Police, the Commonwealth Attorney for the City of Charlottesville, and any other relevant stakeholder.

The Audit Manual will address the following topics, at a minimum:

- Audit planning process and the development of an Audit Plan
- Definition of audit objectives and questions to be addressed
- Auditor qualifications, audit staffing and participation
- Assurance of audit independence
- Identification of data sources and databases to be accessed, data analyses to be conducted and individuals to be interviewed
- Other tasks required to complete the audit
- Projected schedule and costs of the audit
- Documentation of compliance with audit procedures and guidance
- Documentation of audit results and answers to audit questions

- Format and organization of the Audit Report
- Precautions for handling confidential and personal information

No audits shall be undertaken until the Audit Manual required by this Operating Procedure has been approved by the City Manager's Office (when required by this Procedure) and has been certified by the City Attorney and the Board's legal counsel as set forth above.

B. Execution of the Audit

The Board shall specify the subject and scope of the audits in consultation with the Executive Director and shall request audits be undertaken by majority vote. The Executive Director shall prepare a proposed Audit Plan before commencing the work on any audit; the plan will address all the audit elements identified in Section A., above. The proposed Audit Plan shall be provided to the City Manager and Chief of Police, and they shall be given an opportunity to be heard on any matters that may adversely impair or disrupt ongoing operations of the City administration or CPD. Failure of either the City Manager or the Chief of Police to provide a response to the proposed audit plan within 10 days of receipt shall constitute their tacit approval of the proposed audit plan. Final approval of an Audit Plan by the Board is required before work commences. If the City Manager and Chief of Police do object to the Audit Plan as submitted, the Plan shall be deemed approved without a further Board vote.

All audits shall be conducted in accordance with the approved Audit Plan and on the schedule and budget specified therein, and in accordance with the Ordinance, this Operating Procedure and with the Audit Manual. When the execution of an audit spans more than 30 days, the Executive Director shall report on the progress on the audit at each regular Board meeting until the audit is complete. If, during the process of an audit, the Executive Director determines that changes are needed to the audit procedures, the changes and justification for them will be documented in a proposed Amended Audit Plan which shall be reviewed by the City Manager and Chief of Police and then provided to the Board for approval, following the same process as for establishment of the original Plan.

C. Audit Documentation

Progress on the audit, compliance with audit procedures, and audit outcomes will be documented using available software selected by the Executive Director. Auditors should design the form and content of audit documentation to conform the requirements of the Audit Plan and meet the circumstances of the particular audit. The audit documentation constitutes the principal record of the work that the auditors have performed in accordance with standards, and the conclusions that the auditors have reached. The quantity, type, and content of audit documentation are a matter of the auditors' professional judgment, within the specifications of the Audit Plan.

Auditors will prepare a draft Audit Report for review by the Board and the Board's independent legal counsel. Audit Reports transmitted to the Board will avoid or minimize the use of "personal information", as defined in Virginia Code § 2.2-3801. Audit reports that cite or otherwise disseminate personal information about a city employee shall be publicly released only after compliance with the requirements of the Information Sharing SOP adopted by the City Manager pursuant to Charlottesville City Code § 2-453(f).

The Draft and Final Audit Reports shall include a copy of the original or amended Audit Plan as an Appendix. Following preliminary review by the Board of a draft Audit Report for compliance with this Operating Procedure, a Final Audit Report will be presented at a regular meeting of the Board and a copy of the final Audit Report will be posted on the PCOB website.

D. Delegation of Audit Performance

With approval of the Board, the Executive Director, or any qualified city employee under the Executive Director's supervision, may undertake roles required for the completion of an audit. The Executive Director's/ employee's role(s) shall be specifically identified within the Audit Plan.

Employees of the Charlottesville Police Department may not participate in the audit process beyond providing information in support of the audit.

The Executive Director may also seek to engage independent contractors and firms to perform some or all of an Audit. Contracted services shall be allowed if contracts for the services are awarded after compliance with the City's Small Purchase Procedures or other competitive procurement processes, when required. In all cases, however, the Executive Director will be responsible for assuring that audits comply with all provisions within this Operating Procedure and are conducted on schedule and within budget. If independent contractors are engaged, the Audit Plan will identify the independent contractor's role and responsibilities and shall include adequate quality assurance mechanisms to document compliance with the Plan.

E. Cooperation from City Departments

In developing Audit Plans, the Executive Director shall coordinate with the Charlottesville Police Department, the City Manager's Office, and any other city departments from whom data will be requested or from whom cooperation would be required.

The Charlottesville Police Department and other city departments shall cooperate with reasonable requests for access to information and personal interviews. Provision of information and scheduling of interviews may be negotiated on a mutually agreed basis, but in no case can access to information or personnel be unreasonably delayed. If the desired information or cooperation is not forthcoming within 30 days of a written request,

the Executive Director may request that the City Manager direct the appropriate department heads to cooperate with the PCOB audit. If the City Manager issues the instruction and the department head fails to comply, the department head shall be subject to disciplinary action and the City Manager shall send the Executive Director into the applicable department with all necessary support and assistance (including from the Department of Information Technology) to collect the information and records. If necessary to complete an audit, after all other administrative means have been exhausted, the Board may request subpoenas as authorized in Charlottesville City Code § 2-46(b), applying the procedures described in Charlottesville City Code XVI § 2-458(f).

Notwithstanding the foregoing: the City Attorney's Office shall be excluded from the list of departments from whom data may be requested during an Audit and shall not be required to participate in any interviews pertaining to an Audit. However, nothing shall preclude the City Attorney and the Board's independent counsel from mutually agreeing to an exchange of non-privileged records relating to non-pending claims or non-pending litigation matters directly relevant to a matter being audited, only if such records cannot be obtained from any other department(s). All such records shall be provided by the City Attorney's Office to the outside counsel.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



PEACEFUL ASSEMBLY MONITORING

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-15
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

Members of the Board may observe or monitor “demonstrations” as defined by Charlottesville City Code §18-36. This procedure outlines the authority and responsibility of Board members when monitoring demonstrations.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452(c)(9)

III. PROCEDURES

A. Training And Identification

Members of the Board monitoring such demonstrations or gatherings will be appropriately trained in applicable law and monitoring procedures. They will clearly identify themselves to police and participants as monitors and shall not participate in assemblies they are monitoring.

B. Reports

Members of the Board shall report their experiences and observations to the Board at the next regular Board meeting after serving as a monitor at any gathering or demonstration.

C. Information on Complaint Process

Board members or the Executive Director may inform attendees of demonstrations of procedures for reporting police misconduct to the Police Department or to the Board.

D. Report of Misconduct

Members observing misconduct by Police officers during a demonstration shall promptly provide a written statement to the Executive Director describing the misconduct. Any such member shall recuse themselves from discussing or participating in any deliberative or decision-making capacity on any Board decisions related to the misconduct they observed. Members may not file complaints with the Board.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



COMMUNITY ENGAGEMENT

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-16
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

This procedure specifies activities for community outreach and engagement that may be undertaken by the Board.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452
Charlottesville City Code § 2-465

III. PROCEDURES

A. Community Listening Sessions

At least twice a year, the Board shall host public community listening sessions or town hall meetings 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 Training

At least yearly, the Board shall host public community trainings on topics like legal observation of peaceful assemblies and “know your rights” in interactions with the police. The board will poll the community to determine what training the community needs.

C. Community Events

At least once a year, the Board shall participate in community-sponsored events where they can educate the community about the Board and its purpose.



CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURE

CODE OF ETHICS¹

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-17
Subject: POWERS AND DUTIES	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The Board shall be governed in all its powers and duties by a code of ethics.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452

Charlottesville City Code § 2-453

III. PROCEDURES

A. Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

¹ The Code of Ethics was developed by the National Association of Civilian Oversight of Law Enforcement (NACOLE.)

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

B. Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

C. Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

D. Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

E. Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including, but not limited to age, ethnicity, citizenship, color, culture, race, disability, gender, gender identity, gender expression, housing status, marriage, mental health, nationality, religion, sexual orientation, socioeconomic status, or political beliefs, and all other protected classes.

F. Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

G. Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge

your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

H. Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

I. Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



DEFINITIONS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-18
Subject: DEFINITIONS	
Approval: City County Resolution, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

Whenever used in these regulations, unless plainly evident from the context that a different meaning is intended, the following terms are defined as follows:

- **Allegation:** An allegation is a claim or assertion that someone has done something illegal or wrong, or in violation of CPD General Orders and other guidance. Allegations against police officers or employees of the CPD may be made by persons filing a complaint or internally by the IAD. There may be multiple allegations made in a single complaint; the PCOB addresses each complaint individually.
- **Audit:** A PCOB review of patterns in Internal Affairs investigations, arrest, detention, or other public-police interactions. Audits are executed by Executive Director at the direction of the PCOB.
- **Board:** The Charlottesville Police Civilian Oversight Board (PCOB)
- **Chief of Police:** The Chief of the City of Charlottesville Police Department.
- **Compelled Statement:** A statement made under compulsion, for example a statement required of a police officer after a “Garrity warning.” The Board may not compel a statement from any witness or party to a complaint except by applying for a subpoena.
- **Complainant:** The person filing an investigation complaint or a review request with the PCOB who is alleging misconduct by sworn officers or civilian employees considered by the PCOB:

- Any individuals directly affected by incidents of police misconduct (who were physically present and in physical or verbal contact with police during the alleged misconduct)
 - Representatives, designated in writing, of individuals affected by police misconduct
 - Parent or guardian of minor alleging police misconduct or custodians of an individual with diminished mental capacity
 - Any witness to incidents of police misconduct who was present during the alleged misconduct
 - Any individual with material information related to police misconduct
- Complaint: A report of misconduct made by a person against a sworn police officer or Charlottesville Police Department employee irrespective of duty status.
 - Confidential Information: Information which cannot be released under Virginia Law, the Charlottesville City Code, and the Standard Operating Procedures CPD/PCRB-01 defining protocols for information release to the PCOB.
 - Conflict of Interest: Conflicts of interest are defined in the Virginia State and Local Government Conflicts of Interest Act (Virginia Code § 2.2-3100 – 3131.) The Act prohibits PCOB members from taking actions on behalf of the Board or as part of their duties on the Board that further the own financial or personal interests.
 - Continuance: Postponement of a hearing or other proceeding. The Executive Director may Continue a hearing “due to the unanticipated unavailability of a witness or representative if good cause is shown, or due to the unavailability of an interpreter.”
 - Day: Calendar days, unless specified otherwise.
 - Disciplinary Matrix: A list of types of misconduct and recommended disciplinary options, contained in Charlottesville Police Department General Order 517.00, Parts 1 and 2, as amended.
 - Discriminatory Action: Conduct by a member of the CPD that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the Commonwealth of Virginia and the City of Charlottesville.
 - Ex parte communication: Communication that is made by a party outside the presence of the other party(ies) to a controversy. Board members may not engage in ex parte communications with individuals having matters before the Board.

- Exonerated: A subject officer will be exonerated when it is determined that the alleged conduct occurred but was within the law and did not violate CPD General Orders, policies, or procedures.
- FOIA: The Virginia Freedom of Information Act (VA code § 2.2-3700 et seq.)
- Hearing Examiner: A qualified person designated by the Executive Director to preside over a review hearing.
- Incident: Refers to an event or occurrence of apparent police misconduct where a member or employee of the CPD is involved, regardless of whether a member of the public was present, and regardless of whether a citizen complaint is filed.
- Independent Investigator: Qualified individuals engaged by the Executive Director to investigate a complaint or incident.
- Investigative Report: A report summarizing the results of a PCOB investigation of a civilian complaint, an incident of alleged police misconduct, or the Board's review of an Internal Affairs Investigation. The Investigative Report is used to support the Board's decision making on the matter.
- Malfeasance/Misfeasance: Malfeasance by a Board member is a wrongful or dishonest act that causes harm to one or more parties in a matter before the Board. Misfeasance is conduct that is lawful and consistent with the enabling ordinance but harms another person financially or physically due to carelessness or accident.
- Mediation: An alternative dispute resolution process, facilitated by a neutral third party, whereby the complainant and the subject officer meet in good faith to discuss the alleged misconduct with the goal of addressing their differences.
- Mediator: A suitably qualified neutral third party who has contracted with the Board to attempt to mediate disputes between complainants and subject officers.
- Misconduct: Abuse or misuse of police power by a sworn officer directed toward any person who is not a sworn officer or employee of the Department, even if the person(s) are not present.
- Pre-Hearing Conference: A proceeding overseen by a Hearing Examiner at which preliminary matters related to the Hearing are discussed and/or resolved. Preliminary matters may include (but are not limited to) procedural rules for, and order of, the hearing, and admission of testimony and other evidence into the record.

- Preponderance of Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.
- Personal Information: Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.
- Recusal: The withdrawal of a Board member from deliberating and voting in a case on the grounds that they are unqualified to perform legal duties under the Ordinance because of a possible conflict of interest or lack of impartiality. It is the duty of the Board members (upon consultation with the Executive Director and/or Board's independent counsel if necessary) to decide whether it is appropriate for them to recuse themselves in any particular case.
- Relevant Evidence: Evidence is relevant to the Board if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the Board's decision
- Removal: Board members may be removed by the City Council for violation of confidentiality obligations, engaging in ex parte communications with individuals having issues before the Board, neglect of duties, failure to adhere to the Code of Ethics, failure to comply with any applicable laws, misfeasance or malfeasance, or other good cause.
- Review Hearing: A hearing convened by the Board to evaluate evidence and make findings related to a review request or the investigation of a civilian complaint or incident of alleged police misconduct
- Review Request: A request by a complainant that the PCOB review the results of an Internal Affairs investigation.
- Sua Sponte: Latin phrase for "of one's own accord; voluntarily." The Board may undertake an investigation of an incident of police misconduct sua sponte (that is, without a citizen complaint.)
- Subject Officer: A sworn member of the CPD against whom an allegation of misconduct has been made in a complaint.
- Subpoena: An order issued by a judge requiring a witness to attend a proceeding or to produce specific documents to support an investigation.

- Sustained: An allegation is sustained when it is determined that the alleged conduct occurred and that the conduct was illegal or violated the CPD General Orders, policies, or procedures.
- Technical Rules of Evidence: Refers to such rules of evidence as those found in Virginia's Rules of Evidence, contained in Part II of the Rules of the Supreme Court of Virginia and in the Code of Virginia or any other official codebook, manual, or protocol. Such rules are intended to guide the acceptance of evidence by the Board, but are not strictly binding.
- Timely: Complaints are considered timely if filed within one year of the date upon which the alleged misconduct occurred. Review requests are timely if they are filed within 75 days of the issuance of a closure letter by the CPD. The PCOB may not investigate complaints or review requests that are not timely unless they determine that there is good reason to do so (for example, the receipt of new information.)
- Unfounded: An allegation is unfounded when it is concluded that the alleged action did not take place.
- Witness: a person who testifies with first-hand knowledge of a matter in question.