

**CHARLOTTESVILLE POLICE CIVILIAN REVIEW BOARD SPECIAL MEETING
MINUTES**

Date: July 14, 2021

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

Board Members Attending: Bellamy Brown, Nancy Carpenter, Jeff Fracher, Dierdre Gilmore, William Mendez, James Watson

Staff: Brian Wheeler, Maxicelia Robinson

Guests: Cynthia Hudson (CRB counsel), Councilor Michael Payne

Chair Bellamy Brown called the meeting to order at 6:34 p.m.

Agenda Adoption – Chairman Brown suggested that since Item 3 (resolution to close the meeting) might not require discussion and vote, that the agenda amended to add a public comment period after agenda approval, after the discussion of the hearing procedures and after discussion of the proposed ordinance. Motion: Mendez; Second: Carpenter. The amended agenda was passed unanimously.

Chair Brown asked if there was any sentiment on the Board to enter closed session. There was not. Ms. Hudson noted that the Board would be discussing the same issues for which the special session was called.

Public Comment Session I

Sarah Burke – Ms. Burke stated that she did not see copy of ordinance in agenda package, will be difficult for public to comment. She asked that the Board not vote on the ordinance without additional public comment.

Mr. Mendez noted that the Board will not be voting tonight; the ordinance will be posted for additional public comment. Chair Brown stated that the Board will not be voting on the hearing procedures either. Ms. Hudson suggested that the Board should discuss whether to release the draft documents, but indicated the vote to amend agenda could constitute Board approval for their release. Dr. Fracher suggested that the documents be posted immediately, and Ms. Robinson said that would be possible and that the documents could be discussed during the meeting using a shared screen. Chair Brown indicated that a final discussion and vote on the procedures and ordinance would occur at the next regular meeting.

Discussion of Hearing Procedures

Chair Brown presented a draft of the hearing procedures by shared screen. He pointed out that stakeholders had opportunities to comment on previous drafts except for a few recent edits. Mr. Mendez indicated that the procedures did not state who would preside at the meetings. Ms. Hudson noted that a hearing would be a regular meeting of the Board and that the Chair would

preside. Chair Brown then briefly discussed the individual sections of the procedures.¹ (Ms. Robinson indicated that the full text was posted on the Board’s website.)

Dr. Fracher asked how quickly the CPD could be expected to respond to a request for information in support of a hearing. Ms. Hudson noted that 10 days was not atypical, and the deadline could be changed at the desire of the Board. Mr. Watson asked when a hearing would be closed to discuss confidential information. Ms. Hudson stated that rules relating to a closed regular meeting apply here as well. Mr. Watson also asked what enforcement mechanism forces the CPD to provide information. Mr. Mendez suggested that future information sharing requirements in the proposed ordinance would be much stronger than under the current ordinance, and that the current ordinance requires the Board to sign confidentiality agreements before receiving CPD files.

Dr. Fracher inquired as to the level of privacy protection available for complainants. Would the Board’s maintaining confidentiality leave us open to legal challenge? Ms. Hudson stated that Board could assert applicable FOIA exemptions within its discretion, subject to legal challenge, which would be answered by the City of Charlottesville. Mr. Watson inquired as to the procedures and costs of engaging expert witnesses. Dr. Fracher recommended that we put a line item in the Board’s budget request to cover potential costs; Mr. Mendez noted that the need for experts is likely to occur very infrequently.

Mr. Mendez and Ms. Carpenter expressed reservations about the chilling effect on complainants of allowing cross-examination by attorneys for the accused officers. Ms. Hudson offered to send edited language clarifying this point.

Ms. Carpenter asked about ADA compliance in hearings and access to reports. Chair Brown indicated that we would follow the City ADA’s procedures, and Mr. Wheeler expressed the opinion that the existing procedures would adequately address the eventuality.

Ms. Hudson stated that 30-day posting requirement was not applicable to Board proceedings, but only to the City Council. Mr. Mendez noted that the next regular meeting is scheduled for August 12 (29 days away), and that the Board could solicit comment between now and then, which would provide adequate opportunity for input.

Public Comment Period #2 –

Sarah Burke – Ms. Burke stated that she has not yet reviewed the hearing procedures. She offered a few comments based on the discussion tonight: Reference to a “written record of evidence” should be changed to include all forms of evidence (not just documents, but video, etc.) The 10-day response period may be too short for the police to appropriately redact evidence; the provision should be more specific about acceptable reasons for the police not meeting the deadline. The provision requiring the complainant to file written questions, (without specifying a schedule) is vague and unreasonable. Finally, the whole hearing process seems very legalistic, complex, and unfriendly to plaintiffs.

¹ A video recording of the full discussion can be found at <https://boxcast.tv/channel/arevwckqrofmm9t57myy?b=ssc6mvrvbdqrmhrfgd2f>.

Teresa Hepler – Ms. Hepler suggested that the presumption of lawful conduct language should be more focused on complainants than subject officers. She suggested that the language in 4(b) allowing the Board to take adverse inference from failure to appear would be prejudicial against complainants and their witnesses and that the complex Section 4 procedures would deter complainants from coming forward. She also suggested that the Board should grant continuances only on very limited grounds and echoed Ms. Burke’s concern regarding the overall complainant-unfriendliness of the hearing procedure.

Jeff Fogel: - Mr. Fogel stated that the proposed procedures unnecessarily limited who would be allowed to ask questions during a hearing. He suggested that very few administrative bodies did not allow cross questioning to some extent, and strongly recommended that the Board allow cross-examination by complainants’ representatives.

Ms. Hudson noted that the latest draft hearing procedures address in more detail the issue of cross examination. Ms. Carpenter noted that she would likely not vote for this version of the procedures with the current cross examination provisions. Mr. Mendez expressed confidence that we can incorporate the comments received tonight.

Discussion of Proposed Ordinance

Mr. Mendez presented a brief discussion of the major provisions of the proposed ordinance. He stated that the outline and full ordinance would be immediately posted on the Board’s website.

Chair Brown asked about the power of the Board to respond to poor performance of the Executive Director. Mr. Mendez stated that under the proposed ordinance the Board can request a meeting at any time with the City Manager to discuss ED performance and could recommend termination based on 2/3 vote. Mr. Brown expressed concern about having ability to correct what the Board sees as inadequate performance. Mr. Mendez agreed that maintaining the Board’s independence is important, and the current language gives the Board considerable influence. Ms. Hudson noted that we are not an “independent” board; and there would need to be an entirely different structure for us to have final authority over the Executive Director’s performance.

Chair Brown also asked to whom on the Board the CPD would forward complaints, the Executive Director? Mr. Mendez stated that the operating procedures would probably mandate the Executive Director to receive complaints, but (s)he could communicate redacted versions of complaints to the full Board. Mr. Mendez also noted that some language in the current draft ordinance and in VA 9.1-600 might be used as a loophole for the CPD to not share all complaints.

Public Comment Period 3

Sarah Burke – Ms. Burke asked when the draft ordinance would be posted and where. She wished to know if it was still realistic for the Board to vote on August 12. Mr. Mendez stated that he could forward the outline and ordinance to the Ms. Robinson the next morning, and it could be posted immediately. Chair Brown asked where the documents would be posted. Mr. Wheeler stated that the new PCRB url is <https://charlotteville.gov/PCRB>, and the ordinance would be posted in the Working Documents section.

The Board voted to adjourn at approximately 8:26 p.m.

Next Meeting: August 12, 2021 at 6:30