

Charlottesville Police Civilian Oversight Board

Special Meeting December 20, 2022 at 6:30 PM

Agenda

<https://www.charlottesville.gov/zoom>

I. Call to Order

II. Announcements

III. Approval of Minutes

IV. Approval of Agenda

V. Selection of Police Chief

VI. Public Comments (First)

VII. Progress on Executive Director Search

VIII. Status of Complaints and Review Requests

IX. Review of Policies and Procedures (Bias-Based Policing)

X. City Council Action on Operating Procedures

XI. Scheduling of 2023 Meetings

XII. Public Comments (Second)

XIII. Adjournment

CHARLOTTESVILLE POLICE OVERSIGHT BOARD MEETING

MINUTES

Date: November 10, 2022

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

Board Members Attending: Bellamy Brown, Dashad Cooper, Jeff Fracher, Chair William “Bill” Mendez

Staff: None

Board Members Not Attending: Deirdre Gilmore, James Watson

Guests: PCOB Counsel Pamela O’Barry

Call to Order: The meeting was called to order at 6:48 p.m.

Announcements:

The Chair announced that Member Nancy Carpenter was moving away from Charlottesville and had resigned from the Board. He also announced that the job description for the Board’s Executive Director had been posted on the city website and on the NACOLE job postings.

Approval of Minutes:

The Chair stated that minutes for the last two meetings were not yet available and that they would be provided at the next meeting.

Approval of Agenda:

The agenda was approved by unanimous vote of members present. (Chair Mendez polled the members as there was no Staff support for the meeting.)

Public Comments (I):

No members of the public requested to speak.

Status of Complaints and Review Requests:

The Chair reported that the Neutral Evaluation document in the complaint brought by Mr. Fogel, along with Mr. Fogel’s response had been posted on the Board’s website. He noted that one complaint had been received through the Board’s Portal and that it had been forwarded to the CPD Internal Affairs Department. The Complainant was emailed stating that the Board could not conduct investigations until a new Executive Director was hired, and the complainant was asked if they had any objection to Internal Affairs conducting the investigation. The Chair noted that two review requests were pending, and the complainants had been notified that they also could not be addressed at this time. Finally, a request had been made to the CPD asking for the number of complaints received, and the number of closure letters issues in October. No response had been received as of the date of the meeting.

Member Brown raised the issue of whether the Neutral Evaluation report represented the findings of the Board or was strictly a document authored by Mr. Aguilar. He noted that he disagreed with some of the

findings in the Evaluation. The Chair stated that it was regrettable that the Board had not been able to review the report and that such a procedure would not be used in the future.

Board Review of Policies and Procedures:

Member Brown presented a brief report on a review of the CPD General Order related to Bias-Based Policing, including the definition of Bias-Based Policing and the history of its enforcement. Mr. Brown offered to provide the Board with a draft of his critique at the next meeting, with the intent that the Board could discuss it and decide on its recommendation to the CPD related to this General Order.

Town Hall Planning:

Member Fracher volunteered to undertake the task of planning for a Board-Sponsored Town Hall meeting, tentatively scheduled for early 2023. He provided the Board with a proposal outlining the purposes and objectives of the meeting, a list of stakeholders to be contacted, and suggestions for the order of the meeting. He asked for comments from the Board members to be incorporated into the proposal.

Progress on Operating Procedures:

The Chair stated that the City Attorney and Ms. O'Barry had been working very hard to finalize the Board's Operating Procedures for submission to the City Council, and thanked them for their efforts. He noted that the current draft had been circulated to the Board and requested comments, noting that nothing was yet "set in stone." He indicated that the final draft would be posted on the Board's website for stakeholder comments as soon as it was ready and that the deadline for inclusion in the City Council agenda package was November 22. In response to a question from Member Fracher, the Chair and Ms. O'Barry indicated that very little had changed substantively from the version submitted to the Council in April, although the order and organization of sections had changed.

Public Comments (Second):

Ms. Susan Burke asked whether the CPD had rejected Mr. Aguilar's recommendations and whether the Board intended to pursue the recommendations raised in the Neutral Evaluation. After a brief discussion, the Board Chair promised to address Ms. Burke's concerns via email. Member Brown was also invited to submit his comments on the Neutral Evaluation in writing for inclusion in the record. His response is included as an Addendum to these minutes.

Adjournment:

A motion to adjourn was approved by unanimous vote at 7:26 PM.

The next meeting of the Board is scheduled for Thursday December 8 at 6:30 PM. The Board will meet electronically.

Addendum: Response to Neutral Evaluation Report (Bellamy Brown)

December 8, 2022

Member Brown's Response to the Neutral Evaluation Report
In Re Civilian Complaint Brought by Jeff Fogel

This neutral evaluation is fundamentally flawed from its inception. On page 23 of the evaluation, the evaluator used a rubric that he created to assess whether the investigation was proper, "To systematically assess the five elements of a proper investigation (i.e. thoroughness, completeness, accuracy, objectivity, and impartiality) the neutral evaluator utilized the rubric that he originally created for the PCOB (Police Civilian Oversight Board) member's consideration when reviewing CPD (Charlottesville Police Department) investigations."

While the rubric may have value in helping the PCOB evaluate CPD investigations, it was never discussed and adopted by the PCOB as a measure to conduct such business. As a result, the evaluation itself can be challenged based on its own potential subjectivity and/or bias. Additionally, in footnote 20 of the report, also on page 23, the evaluator references the U.S. Department of Justice's Office of Community Oriented Policing Services' (COPS) measure of a "complete investigation." In that reference, the COPS office states, "A complete investigation is not necessarily exhaustive. There are many inquiries where a good faith professional judgment determines that sufficient relevant evidence of all points of view has been acquired, and where collecting more information merely would be cumulative."

On page 34 of the evaluation in his conclusion, the evaluator states, "All in all, the Department made a bona fide effort to investigate..." Merriam-Webster defines bona fide, as it relates to the law, as "in good faith," the same language that the COPS office uses above regarding a "complete investigation." Additionally, the COPS' definition mentions, "all points of view have been acquired," while some of C.G.'s own words were shared in the evaluation, material aspects were left out (i.e. when C.G. gestured to the officer that, "it's time to whoop ass," and when he conveyed to the magistrate that the officer, "did a good job, though...he deserves a medal or something"). Furthermore, in conjunction with these statements, the fact that C.G. has never had any involvement in this process should be significantly noted, as pointed out on page 31 by the evaluator, "had C.G. been willing to provide a narrative of the event in question."

On page 12, the evaluator noted, "the process by which this complaint was resolved highlighted key areas for improving the PCOB's practices, policies, and procedures," to my recollection, the complaint never articulated any deficiencies with the PCOB, so to include the PCOB in a complaint against the CPD appears extraneous. Additionally, to argue on page 13 that, "there were instances where the objectivity and impartiality of the Department's investigation could reasonably be called into question," and then later state on page 34, "the Department made a [good faith] effort to investigate," appears confusing and contradictory.

On page 17, in the "procedural history," the evaluator states "that Mr. Brown...had previously expressed hostilities toward him [the Complainant] that would suggest [Mr. Brown] would not be impartial." At no point did the evaluator attempt to ensure that my point of view had been acquired,

as articulated in his usage of the COPS' standard. If the evaluator had done so, I would have conveyed to him that during my time as chairperson, it was suggested that I speak with the Complainant to inquire whether his requested hearing could be postponed until the General Assembly completed its work in passing legislation for creating and strengthening oversight boards within the Commonwealth of Virginia.

In that conversation, the Complainant conveyed to me that neither the 2019 ordinance nor the new ordinance would help his case, because he wanted to make public policy. This is supported by the evaluator's own narrative on page 26, "In preparation for conducting the neutral evaluation, Executive Director Aguilar had a virtual meeting with the Complainant. At the meeting, the Complainant expressed his concerns with the disparate impact of applying the public intoxication law to unhoused individuals in the downtown mall. He further shared that there was an attempt by the City to codify similar practices, but that through his advocacy as a civil rights attorney he was able to oppose a city ordinance..."

I inquired about the interests of his alleged client, C.G., and he conveyed to me that he hadn't spoken to C.G., "he's somewhere down the road."

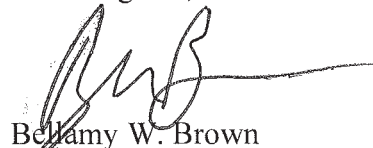
On page 26, the evaluator articulates, "it is unclear...how the officer determined C.G. was intoxicated to a degree that the officer believed C.G. could 'cause harm to himself/herself or others.'" Per Marina Medvin of Medvin Law, "...the [Commonwealth of Virginia] must prove beyond a reasonable doubt that the person charged with this crime (Va. Code. Sec. 18.2-388) is, in fact, drunk or cursed in a public area. The prosecution must prove two essential elements to convict: 1) the crime took place in public, and 2) the individual was intoxicated. Virginia courts define the meaning of "in public," as a place in open view, visible to the community...Virginia has a wide-reaching view of what is public.

A person is "intoxicated" under Virginia law only if he has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance, or behavior...police do not have to give a [breathalyzer] to determine if [an individual] was intoxicated...it is enough for [an individual] to exhibit intoxicated behavior. In order to justify an arrest for public intoxication, the Commonwealth must prove the odor of alcohol on a person's breath, coupled with other circumstances, such as suspicious behavior, speech, or appearance."

Here, in this case, C.G. acknowledged that he drank alcohol, and conveyed that he was seeking to obtain more alcohol; and he conveyed to the officer, by gesture and verbally, that "[it was] time to whoop ass," and proceeded to carry out that action.

For the reasons listed above, I take issue with the evaluation and do not fully support its findings.

Kind Regards,



Bellamy W. Brown
PCOB, Member