

CHARLOTTESVILLE POLICE CIVILIAN REVIEW BOARD
MINUTES

Date: August 13, 2020

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

Board Members Attending: Nancy Carpenter, Dorenda Johnson, William Mendez, James Watson, Stuart Evans, and Phillip Seay

Staff: Brian Wheeler, Michele Vineyard, and Maxicelia Robinson

Guests: City Manager Dr. Tarron Richardson, Mayor Nikuyah Walker, City Attorney John Blair, Del. Don Scott, Sen. Jennifer McClellan, Del. Lamont Bagby, and Adele McClure

Chair James Watson started the meeting at 6:34 p.m. Chair Watson greeted the guests in attendance and explained the outline of the meeting for the night.

Agenda Adoption – Chair Watson asked for any proposed changes to the agenda; no changes were proposed. The agenda was adopted without formal vote and without objection.

Adoption of Minutes – Chair Watson asked the Board to approve the minutes; Nancy Carpenter asked if, moving forward, the minutes could include a description of the public comments. Chair Watson indicated that he agreed with implementing such a change; no objection was made. The minutes for the July 7, 2020 meeting was adopted without formal vote and without objection.

Discussion with Black Legislative Caucus Members – Members of the PCRb and City officials introduced themselves to the representatives from the Black Legislative Caucus (“BLC”). Delegate Bagby, Delegate Scott, and Senator McClellan discussed topics on the agenda for the General Assembly’s Special Session, including criminal justice reform, potential legislative related to civilian review boards, and other related topics. Delegate Scott spoke about the need for restorative justice and allowing former offenders to get out of the criminal system. Senator McClellan then spoke in more detail about “broad outlines” of the proposed civilian oversight bill, including potential subpoena power; she spoke how the BLC did a series of townhalls across the state and noted that many citizens feel there is a growing inability to hold police accountable for misconduct. Senator McClellan spoke about providing resources for mental health related calls, including a potential bill to create a system to direct mental health professionals to such incidents first and use law enforcement as backup to such calls. Senator McClellan spoke about a bill related to police reform, including banning chokeholds and no-knock warrants. Senator McClellan also stated there was a proposed bill to reduce mandatory minimums in criminal sentencing. Senator McClellan noted the General Assembly also plans to address COVID related issues, such as evictions, outstanding utility bills, etc. Chair Watson opened the discussion to questions from CRB members.

Bill Mendez asked questions about potential lawsuits related to statewide-CRBs and the interplay of the Dillion-rule; Senator McClellan noted that the proposed legislation would address that issue and would enable civilian review boards. Board members continued to discuss issues with BLC members, including questions related to body cameras, additional funding for staff/localities who opt to utilize civilian review boards, etc.

Public Comment Period #1 – Chair Watson opened the floor for public comment and invited attendees to direct comments to members of the BLC as they wish. The following individuals participated in public comments:

- Sarah Burke – Sarah noted that she was an original CRB member. She noted that the initial CRB struggled with legal limitations. She brought the following issues to the attention of the members of the BLC: the interplay of the collective-bargaining law and the newly proposed legislation; issues related to Virginia’s FOIA law, the newly proposed legislation, and the discretionary exemption for law enforcement disciplinary records, including excessive use of force incidents. She notes the latter issue makes it hard for the public to know how officers are disciplined. She is concerned that boards would not be able to publicly discuss disciplinary issues or results of investigations.
 - Delegate Scott stated that the new legislation would take the disciplinary process away from the bargaining process and would not allow law enforcement to circumvent local disciplinary processes. He stated that the draft of the new legislation he has seen specifically allows review boards to make the information public. Senator McClellan echoed Delegate’s Scott comments, and noted that she believes there are assembly members working on bills to specifically address Sarah’s concerns related to FOIA.
- Harold Folley – Mr. Folley introduced himself and the work he has done with the People’s Coalition. He emphasized the importance of data – and asked BLC members what proposals there might be related to data and law enforcement reform.
 - Senator McClellan stated that the bill provided boards the ability to request data from law enforcement and make that data public. Senator McClellan acknowledged she could not remember more specific detail but noted that other bills likely include additional provisions related to data. Delegate Scott noted that, in the prior sessions, the General Assembly passed a bill that requires collection of new types of data and that this collection process is likely just beginning. Delegate Bagby discussed the importance of collecting data in a form that is usable and also in a manner that cannot be influenced, or manipulated, by law enforcement officers.
- Elizabeth Stark – Ms. Stark stated that she is glad to see this bold legislation being presented in the special sessions. Ms. Stark asked what would happen if the legislation isn’t success – and where would that leave existing review boards. She asked if it was possible to solely address existing boards with legislation.

- Senator McClellan stated that she is fairly confident that enabling legislation that passes and it will, at a minimum, that authorizes what the three current boards are already doing. She noted that the new legislation will almost certainly do more. And the BLC will push for more in January if it is unsuccessful this summer.

Members of the BLC left the meeting to attend to other matters.

Discussion of status of PCRB – Chair Watson discussed events in the recent past, noting that the current and initial board have felt a lot of resistance to the work they have tried to achieve. Chair Watson discussed feeling in limbo and wondered if the CRB would have been seated had George Floyd not been murdered. Chair Watson invited board members to discuss their feelings about where the CRB currently stands and how each member feels. Ms. Johnson stated that she was disgruntled because she does not feel the CRB has the support of the Mayor or City Council and noted the CRB needs that support to be successful. Ms. Carpenter expressed her frustration, questioned if the CRB has support from City Council, noted her hope that the General Assembly (“GA”) will pass legislation to strengthen the CRB, and stated the current ordinance/bylaws are insufficient to achieve the aim of the CRB. Mr. Seay offered his thoughts, noted his support of new legislation from the GA, hopes there is buy-in included from law enforcement, and stated that it is not clear to him what the CRB can legally pursue at this point. Vice-Chair Evans discussed the substantial delays with the CRB process thus far, noted his reluctance to continue participating on the CRB without City support, and noted that the City’s actions conflict with their statements. Mr. Mendez discussed ways around the barriers the City has erected, stated that conflicts on one issue should not get in the way of future work, and discussed other positive aspects of interactions between the CRB and City so far. Chair Watson discussed the time pressures of his commitment to the CRB and wondered if his time would be better spent in another area of service since the City has not provided the support the CRB expected. Discussion of concerns and impediments to the CRB’s work continued.

CRB Requests to CPD & City – Vice-Chair Evans discussed the history and reasons behind proposing requests for documents and information from the City/CPD. Vice-Chair Evans made a motion to send the requests (included in the meeting packet) to the City/CPD. Ms. Carpenter seconded the motion. Brief discussion was held, with Mr. Mendez wondering if we should include more broad, comprehensive requests; Vice-Chair Evans noted that these requests are only the first round, nothing prohibits the CRB from voting on future requests. Vice-Chair restated that motion, referencing page 6 of the meeting “packet” as the requests being voted on to be sent to the City/CPD for response. A vote was held on the motion: Carpenter (Yes); Evans (Yes); Johnson (Yes); Mendez (Present); Watson (Yes); Mr. Mendez subsequently changed his vote from Present to Yes. Motion passes 5-0.

Website – Chair Watson encouraged folks to visit our website, compare it to other CRBs in Virginia, and invited the public for feedback. Chair Watson also suggested that the website have a Spanish-language option.

Independent Counsel – Vice-Chair Evans makes a motion to authorize hiring of independent counsel for the CRB; Mr. Mendez seconded the motion. A vote was held on the motion: Carpenter (Yes); Evans (Yes); Johnson (Yes); Mendez (Yes); Watson (Yes). Motion passes 5-0.

Executive Director – Chair Watson moved discussion to the topic of the vacant Executive Director position. Discussion on a variety of topics related to this issue occurred. Mr. Mendez noted that the current draft of the ED job description is pretty general and if the CRB does not find an individual for this job soon, the CRB will be very behind on the work it is tasked with. In response to a question from Ms. Carpenter, Mr. Mendez provided more feedback about why he believes the job description is general and could fit an ED under any set of ordinances/bylaws.

Public Comment Period #2 - Chair Watson opened the floor for public comment with respect to the ED job description. Mr. Mendez noted that the CRB is open to taking comment in writing as well. The following individuals participated in public comments:

- Walt Heinecke – Mr. Heinecke stated you can criticize the City for many things, but stated the City did a good job in appointing current members. On the ED job descriptions, he stated it is “not out of bounds” for the CRB to wait until the City Council acts on the CRB’s prior requests. He also asked the CRB members to make sure they are confident that the differences in the two sets of ordinances/bylaws will not negatively impact the search for an ED.
- Sarah Burke – She pointed out several differences between the initial and current governing ordinance/bylaws, including: the initial set provided for more power in the CRB itself, rather than the ED; under the current ordinance, any conferencing about issues the CRB raises excludes CRB members and only allows for the ED to conference; under the current provisions, the ED alone makes major decisions about future oversight, including whether an auditor is needed. Ms. Burke discussed several other differences in the role of the ED under the different set of governing provisions, noting that the current ordinance/bylaws puts an extraordinary amount of power in the ED. Ms. Burke further noted that many things an ED is charged with doing must happen within 60 days of hire.
 - Mr. Mendez responded to Ms. Burke’s comments noting that City Council assured him that the 60-day timeframe set forth in the current provisions is flexible. Mr. Mendez also noted that he included a provision in the job description that allows the CRB to weigh in on assessing the performance of any ED that is hired.

Executive Director (cont.) – Chair Watson, Ms. Carpenter, and Mr. Mendez continued discussing thoughts and concerns related to whether to ask the City to approve the current job description for the ED and post the job for hiring. Mr. Mendez makes a motion to send the draft ED job description to the City for review, comment, and approval; Chair Watson seconded the motion. A vote was held on the motion: Carpenter (No); Evans (No); Johnson (Yes); Mendez (Yes); Watson (Yes). Motion passes 3-2.

Public Comment Period #3 – Chair Watson opened the floor for public comment. The following individuals participated in public comments:

- Walt Heinecke – He stated that he thinks it is important that the CRB be really specific when we ask for the City’s opinion about why the changes to the initial ordinances/bylaws were not palatable. He suspects that the changes were more political rather than based in

legal issues. He does not think a lawsuit is a major challenge because, if sued, the City could revert to the ordinance/bylaws currently in place if the initial bylaws were challenged.

- Sarah Burke – She asked why the CRB is limiting the number of public speakers, time, and areas when the public can commit. She said specificity with the City is really important. She urged the CRB be careful and deliberate with how it words its request for the ED job description. She stated the same applies to the CRB’s request for an explanation for the changes made by the ordinance/bylaws. She further stated that the initial CRB did not want the City to get sued and took care to craft provisions that were not illegal. She noted that any legislation passed by the GA would just put the power back in the City’s hands and would likely not take effect until January 2021 at the earliest.

Ms. Burke raised her hand for a second time to add additional comments. She noted that, in 2016, Chief Longo required officers to keep narratives of stops. She suggested to that the CRB ask CPD if they are still requiring officers to take this step. She further suggested that the CRB offer the public a chance to provide input on the types of requests the CRB makes to the City/CPD.

- Rory Stolzenburg – He discusses FOIA and believes the CRB has the ability to request records, including just by verbal request, within the timeframe set forth in FOIA. He believes it is reasonable to construe the CRB’s requests as FOIA requests. He also directs the CRB’s attention to the newly open Fourth Amendment Analyst position with CPD; he stated that the requirements for the position raise some serious questions, believing that the salary range that is specified is too low. He also noted that the position had been open for 18 months.

Chair Watson adjourned the meeting at approximately 9:15 P.M.

Next Meeting: September 10, 2020 at 6:30 P.M.

Prepared by: Stuart Evans