

Police Civilian Review Board Meeting
April 8, 2021 at 6:30 p.m.
Agenda
<https://www.charlottesville.gov/zoom>

- I. Call to Order (Bellamy Brown, Chair)
- II. Agenda Approval
- III. Adoption of Minutes
- IV. Public Comment (3 minutes per speaker)
- V. Status of Complaints & Complaint Process Review
- VI. Update on Executive Director Process
- VII. Update on Hearing Procedures
- VIII. Report of Call with Chief Brackney
- IX. Discussion of PCRB – City Council Ordinance Work Session Proposal
- X. Public Comment (3 minutes per speaker)
- XI. Upcoming Training Events
- XII. Adjournment

-Next NACOLE training April 29th at 6:00 pm

Individuals with disabilities who require assistance or special arrangements to participate in the public meeting may call the ADA Coordinator at (434) 970-3182 or submit a request via email to ada@charlottesville.gov. The City of Charlottesville requests that you provide a 48 hour notice so that proper arrangements may be made.

Remote participation supported for the duration of the City Manager's Declaration of Emergency issued March 12, 2020.

CHARLOTTESVILLE POLICE CIVILIAN REVIEW BOARD
MINUTES

Date: March 11, 2021

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

Board Members Attending: Bellamy Brown, Nancy Carpenter, William Mendez, Phillip Seay, and James Watson

Staff: Lachen Parks, Maxicelia Robinson

Guests: Police Chief Rashall Brackney, Acting City Attorney Lisa Robertson, City Council Member Michael Payne

Chair Bellamy Brown called the meeting to order at 6:30 p.m. He announced the resignation of Board member Dorenda Johnson, and thanked her for her service.

Agenda Adoption – The Agenda was approved as proposed by unanimous vote. (Motion: N. Carpenter; Second: P. Mendez)

Adoption of Minutes – Chair Bellamy asked the Board to approve the minutes for the three previous meetings. Ms. Carpenter stated that she would like the Minutes from February 11 to reflect the discussion late in the meeting where it was agreed that the Board would revisit the election of officers and Mr. Mendez’ offer to resign as Vice Chair. Mr. Watson moved that the Board accept the Minutes for the November 24 and December 27 meetings and that the February 11 Minutes be revised to reflect the omissions identified by Ms. Carpenter. Motion seconded by P. Mendez. The motion passed unanimously.

Public Comment Session I

Walter Heineke – Mr. Heineke expressed concerns that there had been three resignations from the board and stated that he would like to hear from the individuals who had resigned. He suggested that part of the reason for the resignations was that the Board is not moving fast enough on updating its enabling ordinance and bylaws. He wants the Board to move rapidly to expand its powers to be consistent with Commonwealth criminal reform legislation.

Harold Folley – Mr. Folley stated that the People’s Coalition wants new powers for the board (“teeth”), and a stable and long-lived structure for police oversight. He expressed shock that Ms. Johnson has resigned and wanted to know why. He inquired about status of annual report.

- Mr. Mendez stated that he had not had time to work extensively on the annual report. Chair Brown noted that Sec. 2-463 of the Ordinance indicates report is not due until April 15 and that progress will be reported at the next Board meeting.

Maisie O'Steen – Ms. O'Steen expressed her thanks to the Board for their service. She noted the difficulty of moving forward without an Executive Director and asked whether the job would be reposted. She indicated that the People's Coalition will help spread the word to suitable candidates.

- Mr. Watson said that there have only been two resignations since the board actually began its work. He noted that the work is hard and that the resignations were not necessarily due to policy disagreements. He also expressed regret that Ms. Johnson has left the Board.
- Ms. Carpenter noted that the COVID State of emergency was declared one year ago, just as the Board was about to convene; COVID has upset everything and has slowed us down. The Board is moving forward as quickly as possible despite not being able to meet in person.

Status of Complaints

Chair Bellamy reported that this year the Board has received 13 complaints, either directly to CRB or forwarded from the Charlottesville Police Department, and that and all of the investigations are closed. Ms. Carpenter asked whether we are receiving all complaints. She expressed concern to Chief Brackney that the new complaint form, with its opt-out choice, was unclear and might discourage complainants from filing complaints with the Board.

Chief Brackney affirmed that when complainants check the opt-in box on the complaint form, the CPD sends the entire complaint to the Board. She noted that the statute specifies complaints will be sent to the Executive Director, but she has agreed, in the absence of an Executive Director, to send complaints to the Chair or his designee instead. She then reviewed the development of the language in the complaint form, indicating that it draws heavily from the form used by Fairfax County and recommended by NACOLE and the Interim Board. She felt that legally the CPD had to provide complainants the opportunity to make an affirmative choice to opt in and could not make it automatic. The new form also clarifies if a complaint is made by a third party. The Board does not receive internally initiated complaints or if the complainants opt out. The Charlottesville IT department is working on an automated procedure where the CPD and Executive Director would receive complaints simultaneously, and to redact sensitive information. She is working with the Board Chair to improve communications.

The Chief directed the attention of the Board to the monthly reports on IA investigations issued by the CPD. She stated that the reports include an “unprecedented” amount of data, including demographic information on complainants and involved officers, findings of the investigations, and corrective actions.

Mr. Mendez asked if the CPD keeps the results of individual disciplinary actions confidential. Chief Brackney stated that CPD does not publicize information related to personnel actions for individual officers, but does identify corrective actions in their monthly reports. She noted that the CPD sustains a high proportion of complaints.

The Chief asked that the Board correct an erroneous statement by Mr. Mendez. Mr. Mendez stated that he had misspoken when he said that the CPD had provided an Internal Affairs report to a local newspaper, and apologized to the Chief.

Mr. Watson suggested that the UVA Police website provided an example framework for filing complaints. Chief Brackney indicated that complaint process needed to be more formal and detailed than the main UVA Police website.

Update on Executive Director Process

Chair Bellamy indicated that he has talked with City Manager Boyles regarding the pool of Executive Director candidates and that only one candidate had indicated ongoing interest in the post. This, and the long duration since the initial posting, suggest that the opening should be advertised again. Mr. Mendez suggested that if there had been any outstanding candidates, the interview process might not have “stalled” when it did. Ms. Carpenter agreed that the posting should be re-advertised, Mr. Watson suggested that the opening should be posted on the NACOLE job list, and Mr. Mendez indicated that he would notify the People’s Coalition when the job was posted. Ms. Carpenter moved that the Executive Director post be re-advertised. The motion was carried unanimously.

Update on Hearing Procedures

Chair Brown stated that the draft hearing procedure and public comments had been sent to the Board’s independent council for review. They were scheduled to have a revised draft “tomorrow.” He suggested that the revised document could then be put on the Board’s website and voted on at next meeting. Ms. Carpenter asked if all of the public comments had been considered, or is the Board going to discuss them further. Mr. Brown stated that some of the People’s Coalition and other public comments may be incorporated in new draft, but we can discuss further amendments before the procedure is approved.

Ordinance and Bylaws Work Group Report –

Mr. Mendez reported on the meeting of the Ordinance and Bylaws Working Group that took place on March 4. There was good attendance from public stakeholders (Harold Folley, Katrina Turner, Gloria Beard, Sarah Burke, Maisie O’Steen, Janice Redinger.) Board members Mendez and Chair Brown were also present.

The first topic addressed was the template provided by City Attorney Robertson as a basis for a revised ordinance. Mr. Mendez thanked Ms. Roberson for providing the document. He noted that while the template incorporated almost all the powers enumerated in the 2020 legislation, it lacked detail on issues related to independent investigation powers, information access, disciplinary power, and auditor/monitor function. There were few implementation provisions and detailed procedures still need to be worked out.

The Work Group also discussed approaches for implementing disciplinary power enabled by the 2020 legislation. Sarah Burke provided an issue paper on alternative approaches to disciplinary authority. After considerable discussion, the sense of the Work Group was that giving the board unconditional power to determine disciplinary action would be very difficult to achieve under the current City Charter and ordinances. A more practical approach would be to give the Board power to independently investigate “serious” misconduct and make specific disciplinary recommendations to the Chief of Police. The Chief could then implement the recommendation or,

if she chose not to, provide a written explanation. The Board and/or the complainant could then appeal the Chief's decision to the City Manager.

Next steps for the Work Group are to edit the template, possibly finalizing a revised draft by the next Board meeting, and to begin work on Procedures.

Mr. Watson asked if the ordinance could be amended to remove the opt-in requirement (to assure the Board received all complaints.) He noted that in some cities oversight bodies receive all complaints, although this requirement could be burdensome for our Board. Mr. Mendez agreed that it is important for Board to have access to all complaints; this might be achieved by having a single complaint intake interface and database to which both the CPD and Board (Executive Director) would have access. Chair Brown noted that the Board can develop procedures to assure the confidentiality of complaints.

New Business

Mr. Watson noted that the Board would not be spending all the allocated money for this year. He suggested that we should ask the City Council to use the left-over money to create a scholarship fund for local minority youth to attend PVCC and attain a degree in criminal justice. This would be a good way to reinvest in the community. Mr. Mendez asked if there were any other similar programs run by the CPD or Police Foundation program that we could team with. Ms. Robertson noted that the Board would need to ask the City Council to re-allocate funds.

Ms. Carpenter said that the CPD has just completed Cultural Climate Survey. She asked if the Board could see it, as an aid to fulfilling its mission? Ms. Robertson indicated we can vote to make a request to the Chief and indicated that this was an example of how important it is have procedures (related to information access). Mr. Mendez suggested that the Board request the survey form first, to see questions asked were relevant, and moved to make such a request. Phillip Seay stated that we should be aware that the results could be confidential and not intended for dissemination. Motion: C. Carpenter; Second: P. Mendez - motion was carried unanimously.

Mr. Mendez noted that Ms. Carpenter had asked for the board to revisit the election results. Ms. Carpenter stated that she no longer wished to revisit the results of the election, at least until the Executive Director is hired.

Public Comment Period #2 –

Harold Folley – Mr. Folley stated that he does not want funds allocated for the Board to go to other programs; the funds may be lost if we do. He also stated that we should encourage the City Council to fill the open Board seats.

- Mr. Watson replied that the money for a scholarship program would otherwise go to waste.
- Ms. Roberston stated that the ED post is fully funded for the next fiscal year. In response to a question from Mr. Seay, she explained that the Budget is not a “check book”, and only a few departments have “carryover” funds (not including the CRB.)
- Chair Bellamy and Ms. Carpenter noted that there are other unmet needs in the community.

Don Gathers – Mr. Gathers suggested that steering young people to police work is not desirable “in the current client.” He favors finding a way to pay Board and Commission members for work they do.

Walter Heineke – Mr. Heineke had two suggestions for how to use the extra money: (1) Hire a temporary auditor and see how it works out and help decide if we need a permanent post. (3) Conduct massive outreach campaign staffed by young people of color to educate the affected community. He also recommended that all important powers be put in the ordinance, rather in procedures, so that they will be “taken seriously.”

- Mrs. Robertson noted that the 2020 legislation clearly specifies the powers available to the Board, and that both the ordinance and procedures need to be approved by the City Council. Thus, there is little danger that “procedures” will not be taken seriously. She suggested we put all the powers in the ordinance, and all details in the procedures.

Upcoming Training Events

Chair Bellamy announced that the third NACOLE training session would be presented on March 25 at 6:00 PM. The final two sessions are scheduled for April 26 and May 9.

The Board voted to adjourn at 8:17 P.M.

Next Meeting: April 8, 2020 at 6:30

CHARLOTTESVILLE POLICE CIVILIAN REVIEW BOARD
MINUTES

Date: February 11, 2021

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

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

Staff: Brian Wheeler, Maxicelia Robinson

Guests: Incoming City Manager Chip Boyles, Acting City Attorney Lisa Robertson, City Council Member Michael Payne, Cynthia Hudson Esq.

Chair James Watson called the meeting to order at 6:33 p.m.

Agenda Adoption – Member Carpenter requested that Public Comments be moved earlier in the meeting. Chair Watson suggested that Public Comments be received after the introduction of Ms. Hudson and Mr. Boyles. She also suggested that the Election of Officers occurred directly after the public comments. Chair Watson suggested that the Election occur immediately after hearing from Mr. Boyles. The Board agreed to these changes in the agenda.

Adoption of Minutes – Chair Watson asked the Board to approve the minutes two previous meetings. Ms. Robinson indicated that there had not been enough time to circulate the minutes to Board Members and public for review. Therefore, the vote was postponed.

Introduction of Independent Counsel Cynthia Hudson, Esq., Sands Anderson – Ms. Hudson introduced herself and summarized her experience. She had been Commonwealth Chief Deputy Attorney General before joining Sands Anderson. She stressed her public sector, civil rights, and policy experience. She noted that policing reform and CRB matters are a continuing interest for here and that she was involved in the CRB implementation in Hampton VA. Ms. Carpenter asked how Ms. Hudson felt about securing stronger powers for CRBs. Ms. Hudson cited how Attorney General Herring’s opinion on the Charlottesville CRB had helped CRBs to proliferate. She also cited her experience with police procedures and attitudes. Chair Watson then asked the Board members (and Councilor Payne) to introduce themselves to Ms. Hudson.

Introduction to Chip Boyles, New Charlottesville City Manager – (Appointment becomes official February 12.) Mr. Boyles noted that he comes to Charlottesville city government from the Thomas Jefferson Planning District Commission, where he was the Director. His background includes city management in small towns and larger cities throughout the mid-Atlantic and South. He said he is eager to learn more about PRB and will attend as many meetings as possible. He wants to hear about Police oversight and be an effective liaison to City Council and departments. Ms. Carpenter asked about his influence on the city budget. He noted that much work has already

been done but he hopes to have “impact as well as input.” Most of his work so far has been on Capital Improvement Plan but work on the operating budget will begin soon. Ms. Carpenter asked about reallocating Police funds to other community functions. He noted that his job is to implement directions from the City Council, but he is not opposed in principle to shifting funds when all information has been carefully considered. Chair Watson asked about progress on hiring an Executive Director, which he considered to be crucial. Also, he expressed concern about the Board losing budget under COVID pressure. Mr. Boyles responded that there are many high-priority appointments needing to be filled and rapid hiring of the right people, including the Executive Director, is a key goal. Counselor Paine indicated that City Council supports adequate funding the Board, including the salary of the Executive Director. Chair Watson suggested that staff assistance, training, and legal support may also be necessary and require additional funding.

Public Comment Session I

Kate Fraleigh – Identified herself and noted that 11 members of the public were attending the meeting

Gloria Beard – Ms. Beard expressed support for Board and stated that an Executive Director is urgently needed.

Sarah Burke – Ms. Burke also stated the need to hire a suitable Executive Director as quickly as possible. She noted that the Interim CRB had also wanted an auditor/monitor to evaluate and analyze patterns in police activities, but that this had been stripped from the current ordinance. She also asked how community inputs will be taken into account in revising the ordinance.

Board Discussion – Chair Watson agreed that Board needs to connect better with the community in light of COVID. Ms. Carpenter noted that the hearing procedures had been shared with the community and a revised ordinance will soon be drafted for public input. Chair Watson suggested a Facebook Live conversation to explain our capabilities to the communities, citing Dr. Cameron Webb’s weekly program. Ms. Johnson suggested an appearance on radio 101.3 to better explain our mission. Mr. Brown noted that there is an information disconnect, and the public believes we have more power than we do under the current ordinance. Chair Watson noted the lack of investigative authority and the resultant delay of Board involvement in the complaint process. Ms. Johnson agreed that many people don’t know what the Board is and what we can and can’t do. Mr. Seay noted that its difficult to get people to learn and understand the oversight and investigation process; he volunteered to provide information on police procedures and citizen rights.

Election of Officers –

Chair Watson opened the floor to nominations for Chairman. He stated that he is not interested in returning as Chair or Vice Chair. Ms. Johnson nominated Ms. Carpenter for Chair. There being no second, Mr. Mendez then nominated Bellamy Brown; Seconded by Mr. Brown. Mr. Bellamy was elected (Brown, Mendez, and Watson - Yes; Carpenter, Johnson - No.) Mr. Bellamy

nominated Mr. Mendez for Vice Chair; Seconded by Mr. Mendez. Mr. Mendez was elected (Brown, Mendez, and Watson –Yes; Carpenter, Johnson - No.)

Status of Complaints – Chair Bellamy reported that this year the Board has received 13 complaints, and that 10 are closed and three are active. Ms. Carpenter asked when the three unresolved complaints would be resolved. Chair Bellamy stated that the complaints had been filed on different dates, and he would provide the requested information to Ms. Carpenter after the meeting. She asked for assurance that complaints are tracked so complaints are dealt with in a timely manner. Mr. Watson noted that we have a tracking sheet on the Board’s SharePoint site. He noted that the Board had received a complaint from Mr. Gilmore and was following the case closely but noted that we lack investigative power and we cannot yet get formally involved. He noted that revisions to the ordinance would allow for more proactive involvement.

Update on Hearing Procedures – Chair Brown indicated that the draft procedures had been posted to the web, given to the People’s Coalition, and a copy has been sent to our independent counsel. Mr. Watson stated the need for legal review; Chair Brown stated that we expect review from our independent Counsel within a week or so. Vice Chair Mendez suggested that the Board have a physical postal delivery address to receive comments. Ms. Robinson said she would work on that.

Ordinance and Bylaws Work Group Report – Vice Chair Mendez presented a short document on a proposed oversight model. He characterized it as a “wish list” that includes important elements for effective oversight which will be sent out for further review. He then went briefly through the document. Important new powers include:

- Board authority to all review complaints (without a formal review request, and sustained complaints.)
- Independent investigative power of complaints and internally initiated investigations
- Disciplinary recommendations, changing categories in discipline matrix
- Audit/Monitor to evaluate patterns of police misconduct, review policies/procedures
- Clarifies Board ability to issue public findings, recommendations
- Requirements that the CPD provide data to support all Board functions
- Subpoena power when necessary
- Independent counsel enabled to support all board functions
- Define board powers and roles when there is no Executive Director

He proposed that we post the document on our website for public review and engage with City Council and City Attorney concerning the proposed powers. Ms. Carpenter asked if the document embodies the full power of the new legislation. Mr. Mendez responded that it did with the exception that the exercise of disciplinary power remains to be worked out; the current document includes disciplinary recommendations rather than outright power to directly enforce discipline. He stated the proposed structure will require legal review.

Upcoming Training Events – Mr. Watson stated that NACOLE can host a second training session on February 25th at 6:00, and that the training will continue on the third Thursdays of the next three months.

Public Comment Period #2 –

Kate Fraleigh – Asked how many complaints came through the PD and when the complaint form would be fixed to be opt-out rather than opt-in.

Elizabeth Stark – Ms. Stark requested that the Board establish meeting times so that all members can attend.

Sarah Burke – Ms. Burke noted an uncomfortable dynamic on the Board having to do with gender issues and imbalance of power which has led to some members having limited influence on Board actions. She stated that the power dynamics need to be addressed if the Board is to serve the public as it should. More collective decision making is required. She also stated that we should ask for all the powers the Commonwealth offers us, including binding disciplinary authority.

Katrina Turner – Ms. Turner stated that the board was not allowing women on the Board to have a voice. [some remarks lost due to internet interruption] She cited historical lack of appreciation of black women. She asked why men are in charge and objected to the results of the election.

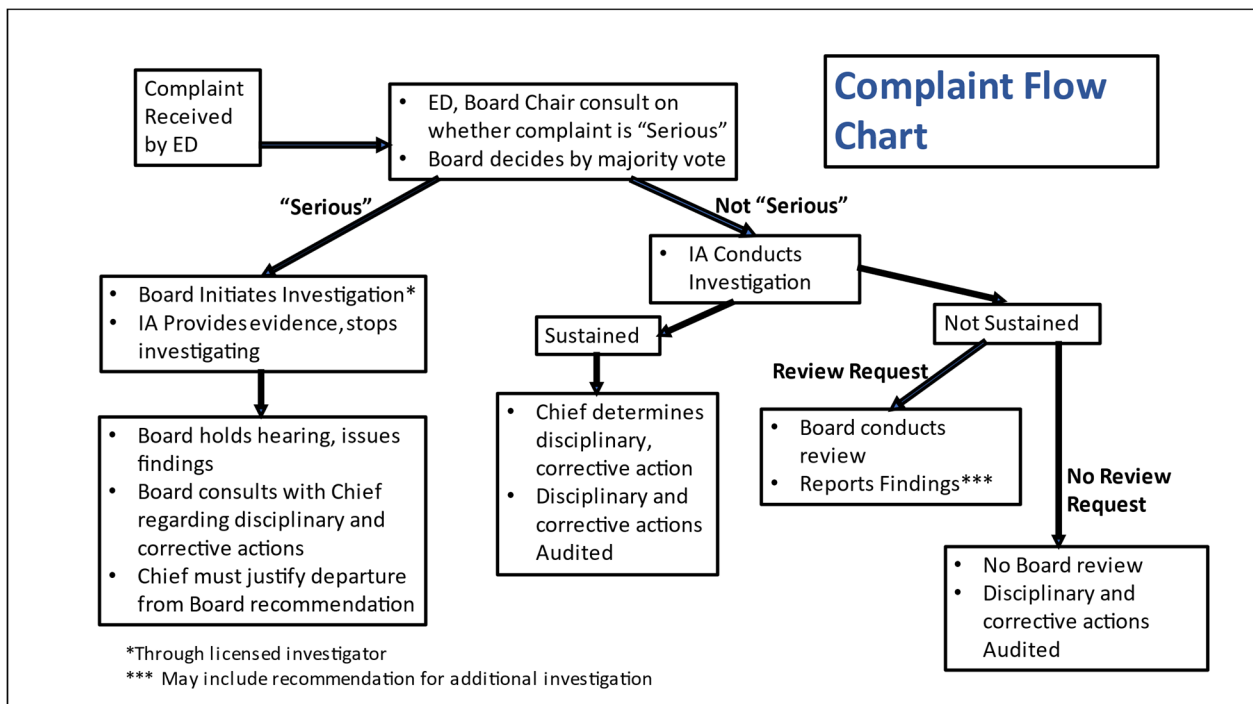
Chair Bellamy promised to send detailed information on the numbers of complaints to Ms. Fraleigh. He denied that there was any intention to deny opportunity or influence to female members of the Board. Approaches for addressing perceived gender inequality on the Board were discussed. It was agreed that the election of officers would be revisited at the next meeting; and Mr. Mendez offered to resign if it would facilitate functioning on the Board.

Chair Brown adjourned the meeting at approximately 8:42 P.M.

Next Meeting: March 11, 2020 at 6:30

Simple Summary of Proposed Oversight Model

- Board (ED) receives all complaints
- Independent investigative authority. The Board may identify “serious” complaints and pursue investigations immediately without waiting for IA to complete its work.
- Complaint review authority (similar to current ordinance, except that the Board will have subpoena power, power to review wider range complaints)
- Expanded access to information including (“All information, evidence, data, and files necessary for the Board to fulfill its duties...“)
- Subpoena power (Board may demand provision of evidence and production of witnesses)
- Board may make disciplinary/corrective action recommendations in cases of “serious” misconduct
- Chief may propose alternative disciplinary/corrective with written justification
- Board may appeal Chief’s alternative to City Manager
- Executive Director acts as Monitor/Auditor (reviewing trends in IA investigations and other relevant data)



Recommended Revisions to the Ordinance Template

1) There needs to be a clear statement in the ordinance that the Board, (Executive Director) is to get prompt access to all citizen complaints, no matter how received or by whom. (Unless the ED has access to complaints, we can never be sure that we have seen them all, which is necessary for us to do our job.) It would be desirable to have a shared website or database of complaints.

2) There needs to be an explicit statement that the CPD (and other city departments) will provide all the information that the Board needs to fulfill its functions (investigation, review, and auditor/monitor.) One question is how specific this provision needs to be; some municipalities provide long lists of specific information that must be provided. Others make simpler, blanket statements. See examples in Appendix 1. A key issue is the ability to get access to current IA files and evidence (for review requests and independent investigations) and closed IA files, even “sustained” ones (to support auditor/monitor function.)

(3) As written, this section 2-452(a)(8), related to subpoena power, is focused on the production of evidence (SDT.) The 2020 legislation (Sec 9-601(D)) extends subpoena power to compelling the testimony of witnesses.

(4) Sec. 2-451. (Immunities) The current language states that the board shall “enjoy the protection of sovereign immunity to the extent allowed and provided by Virginia statutory and common law.” Can we add a statement, as do some other municipalities, that “The City of Charlottesville will provide legal defense if the Board is subject to civil litigation related to the performance of its duties.”?

(5) Specify in § 2-453, that the City Council can remove Board members for cause only. (Grounds for removal will be specified in the Procedures document.)

(6) In § 2-453 (line 126) Allow the non-voting board member to have “law enforcement” experience; this might broaden the pool of volunteers (the current language specifies “policing.”)

(7) Sec. 2-456. (Executive Director) This section should list the Executive Director’s specific duties and powers related to

- complaint intake,
- monitoring of ongoing IA investigations,
- initiating (with Board approval) independent investigations of serious misconduct,
- consulting with the Police Chief on issues relating to IA investigations and disciplinary matters,
- convening hearings to make findings related to complaint review requests and independent investigations,
- monitoring and conducting audits of IA investigations, police encounters, and other issues as directed by the Board or City Council, and
- (my favorite) appointing a scribe to take minutes at Board meetings. (See also the job description.)

(8) Sec. 2-460 (a) Complaint Intake. As noted above, a mechanism need to be in place to assure that the Board (ED) is rapidly notified of all complaints. (If the CPD receives a complaint by whatever route, it should go into a common database and be shared immediately with the Board, or at least with the Executive Director.) A complaint should be deemed to have been received when it is filed on the CRB

complaint website or when a written form is received by the ED or their designee. If complaints are received in writing, they should be entered (transcribed or scanned) into a joint CPD-CRB database immediately. All complaints received by the CPD will be forwarded to the CRB within 2 business days. (Some of this detail can be left to the Procedures document.)

(9) Sec. 2-460 (Complaint Contents) The current language implies that a complaint must contain all the elements listed in this section. Add “To the extent possible...” (We can make clear in the Procedures document that witnesses’ personal information will be kept confidential.)

(10) (b) Complaint Processing. Adjust the language to incorporate the following steps.

- When a complaint is received, the ED and Board Chair review the complaint to determine if the alleged misconduct warrants independent investigation as defined in the Board procedures^{1,2}
- If the ED and Chair determine that the complaint warrants independent investigation, they will notify the City Manager to that effect.
- The Board Chair or Board members may all call a special meeting, as described in Procedures, if they feel a complaint warrants independent investigation.³
- The City Manager will engage an independent investigator to conduct the investigation.⁴
- Upon notification that the Board is conducting an independent investigation, the CPD Internal Affairs division will cease its own investigation and turn all relevant records, data, evidence, and files to the independent investigator.
- The independent investigator shall complete their investigation and report the results to the Board within 30 days.⁵ An extension of up to 30 days may be granted with the approval of a Board majority.
- If the ED and Board Chair determine that the alleged misconduct does not require independent investigation, they shall report this finding to the Board, and the IA will continue its investigation of the complaint.
- The IA shall complete its investigation (of complaints that are not “serious”) and provide an investigation report to the Board within 45 days.⁶

(11) Sec. 2-460(c) Complaint Results. (Note that this section now applies only to complaints that were not selected for independent investigation by the Board.) As noted above, change the deadline for issuing a finding to 45 days unless the case is subject to litigation or subject to other unavoidable delay. Also, instead of furnishing the complainant and Board with a letter explaining the findings, the IA should

¹ The condition for conducting an independent investigation would include alleged misconduct defined as “serious” (see Appendix 2), as well as considerations of the degree of public concern.

² We can move the details of independent investigation to Sec. 2-463 (see (22), below)

³ There’s a balancing act here: we want the ED and Chair to be able act quickly if they think a complaint is serious, but we also want to keep the Board involved in making these decisions.

⁴ In practice, it would be much better to have an investigator already under an “on-call” contract, much like our independent counsel. (All this is subject to budget constraints.)

⁵ The scope of complaint investigations would be described in the Procedures document; at a minimum, it will fulfill all the procedural requirements of CPD General Order 49-99.

⁶ The current ordinance allows 75 days, but the internal CPD target is 45 days, so let’s be consistent. The same extensions for cases that are under litigation would apply.

provide the ED and Board with the full investigative report. Also, allow the Board to conduct a complaint review without a formal review request, as long as the complainant does not object.⁷

(12) Sec. 2-460(d) Charlottesville Police Department Complaints. This section is superseded by changes in 2-460(a) assuring that the ED reviews all complaints as they come in.

(13) Sec. 2-461(a) Scope of Board Review Authority. Add an option (3) allowing a review if there is: "A majority vote of the Board in favor of reviewing the complaint."

(14) Sec. 2-461(a)(5) New language concerning what the Board may not review: "Any portion of an internal affairs investigation which is sustained, except that the Board may examine the nature of the misconduct for which the complaint was sustained and the disciplinary category to which it was assigned."

(15) Sec 2-461 (b.) Deferral of Pending Proceedings. Perhaps we can take most of the detail out of this section. Just say that if litigation is ongoing concerning a complaint, the review process will be suspended as described in the Procedures document.

(16) Sec 2-461 (c.) Access to Materials. As noted in (2) above, the access to information provisions of the ordinance needs to be broad and clear. There should be a paragraph in this section stating that the IA will immediately provide all files and evidence from an ongoing IA investigation if the Board decides to conduct its own investigation.

(17) Lines 372-3. The language about the Board having access to "raw and aggregated data on the timing, findings, and dispositions of CPD internal affairs investigations..." would be superseded by the general information access statement that the Board should have access to any and all data (including IA reports) that it needs to fulfill its functions.

(18) Sec 2-461 (d.) Review Request Hearing. Again, most of the procedural details related to hearings can go in the Procedures document. Ideally, most of the procedures for a review hearing and investigative hearing should be the same. We do need to specify that the ED can call a hearing at the request of a majority of the Board. The general principles that the complainant may present witnesses and evidence and be represented by counsel or other designee should also be included. The language about the Board not being able to subpoena witnesses or evidence needs to be revised to be consistent with the 2020 legislation.

(19) Sec 2-461 (e) (2) Findings. If the Board finds that the findings of the IA are not "are not supported...", the recommendations they make may include reclassification of misconduct within the CPD Discipline Matrix.

(20) Sec. 2-462.-Investigations. This section needs to be extensively revised to focus on independent investigations initiated by the Board for serious allegations, not just for the case where an AI

⁷ Because these complaints have been screened to be not "serious", there will be less need to explicitly review findings that are sustained. However, all IA reports will be subject to periodic audit.

investigation is not completed in 75 days. Most of the points relating to independent investigation from (11) can go here.

(21) There should be a separate section on Disciplinary/Corrective⁸ Action. It should include:

- Board's power to initiate investigations of complaints of serious misconduct as defined in the Board's Procedures document, and serious incidents as defined in Sec 2-452(b)
- Procedures for investigation of serious misconducts or incidents to be defined in Procedures document (see Note 7.)
- Power to hold hearings on serious misconduct⁹
- If, during their investigation, the Board identifies evidence suggesting misconduct not alleged in a complaint, they may initiate investigation and make findings on these actions as well.
- If, during their investigation, the Board identifies evidence suggesting violation of law, they will immediately report their findings to the Chief of Police, provide the evidence to the CPD, and cease investigation of the alleged violation.
- If the Board determines that allegations of serious misconduct are sustained, it will make a report to this effect to the Chief of Police and City Manager. The report will include the nature of the alleged misconduct, the evidence used to support the findings, and the specific Policies and/or General Orders that have been violated.
- If an allegation is sustained, the Board will recommend options for corrective action and/or discipline. The recommendations will be generally in conformance with CPD General Order 517.00.
- The Police Chief, Executive Director, and Board Chair may¹⁰ meet to discuss to Board's recommendations. The Chief of Police will implement the recommendations of the Board or, if she decides not to accept Board recommendations, she shall notify the Executive Director, provide written reasons for not accepting the recommendations, and specify what alternative corrective/disciplinary action she proposes to implement.
- The Chief will not impose the alternative disciplinary/corrective action for 10 days after notifying the Executive Director. During this period, the Board may, by majority vote, appeal the Chief's decision to the City Manager, providing the reasons for the appeal in writing.^{11, 12}

(22) Sec. 2-452(a)(4) and (7), It would be desirable if our powers related to "investigations" and "reports" would be defined to include periodic "audits" and "analysis of trends" related to police-public interactions.

⁸ "Corrective" is put here to clarify that Board powers extend to recommendations for training, restitution, or other restorative measures

⁹ The Board actions on discipline would not necessarily require a hearing. Hearings could be held at the request of the complainant, the accused officer, or to exercise subpoena power when necessary. The hearing process could be the same as for review requests(?)

¹⁰ This meeting is put here to be consistent with the legislation's requirement for "consultation." If the Chief and Board generally agree on appropriate disciplinary action, the meeting will be perfunctory.

¹¹ This decision will be made in an open Board meeting, so will become public. Not clear at this point what the City Manager's options are...

¹² The Chief retains authority to place officers on administrative leave during investigations. The chief's disciplinary power during an investigation needs to be defined.

(23) The ordinance should allow the Board to function as much as possible without an Executive Director. Possible language might be, "When the position of Executive Director is vacant, the Board Chair shall fulfill the functions of the Executive Director related to the receipt of complaints and review requests, monitoring the progress of Internal Affairs investigations, initiating independent investigations and hearings, and consultation with the Chief of Police related to Internal Affairs findings and disciplinary recommendations."

(24) Add a section on Mediation or Alternative Conflict Resolution. "The Board may establish procedures for..."

Appendix 1. Examples of information access language:

“The monitor shall have complete and unrestricted access to all complaints, investigative records and information obtained or developed by professional standards unit related to an administrative investigation of a complaint, whether the information exists in electronic format or hard copy, including information stored on the professional standards unit database...” (Boulder CO)

“Boise City Code provides the Office of Police Oversight with, “full, unrestricted and complete access to any and all information, files, evidence or other material which the Director shall deem necessary in the performance of the duties specified and responsibilities set forth in this chapter.” § 2-22-06(B). As a result, all City employees, volunteers, contractors, and those persons operating on behalf of the City shall fully and without delay comply with all such requests made by the Director or his or her designee.” (Boise, ID, Procedures)

Appendix 2. Suggested Definition of “Serious” Misconduct

For purposes of determining the Board’s authority to conduct independent investigations and make disciplinary recommendations, “serious breaches of departmental and professional standards” shall include:

1. unlawful or inappropriate arrest
2. excessive or inappropriate use of force (7-1, 7-2)¹³
3. unlawful or inappropriate search or seizure
4. the use of abusive racial, ethnic or sexual language or gestures (1-3, 1-5)
5. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability (1-6, 6-1, 6-2, 6-3, 6-5, 6-8, 6-9)
6. acting in a rude, careless, angry, retaliatory, or threatening manner not necessary for self-defense (1-3, 7-1, 7-2)
7. reckless endangerment of detainee or person in custody, including failure to provide appropriate medical aid (11-7)**¹⁴
8. violation of laws or ordinances (5-1)¹⁵
9. other serious violations of Charlottesville Police Department General Orders, including the Charlottesville Police Code of Conduct and Biased Policing Policy, that occur both on or off duty.

¹³ Numbers in parentheses refer (approximately) to the corresponding sections of the Charlottesville Police Disciplinary Matrix

¹⁴ Section 11-7 of the Disciplinary Matrix refers only to prisoners.

¹⁵ Probably beyond the authority of the Board to investigate.