

Police Civilian Review Board Meeting

September 9, 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. Status of Complaints
- V. Financial Status Report
- VI. Update on Executive Director Process
- VII. Public Comment (3 minutes per speaker)
- VIII. Legislate Recommendation Discussion
- IX. Operating Procedures Discussion
- X. Public Comment (3 minutes per speaker)
- XI. PBA/PCRB Issues Discussion
- XII. Public Comment (3 minutes per speaker)
- XIII. Adjournment

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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: July 8, 2021

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

Board Members Attending: Bellamy Brown, Nancy Carpenter, Jeff Fracher, Dierdre Gilmore (joined late), William Mendez,

Staff: Brian Wheeler, Maxicelia Robinson

Guests: Assistant City Manager Ashley Marshall, Cynthia Hudson (CRB counsel), Councilor Michael Payne

Chair Bellamy Brown called the meeting to order at 6:32 p.m.

Agenda Adoption – Mr. Brown suggested of the discussions of the hearing procedures and proposed ordinance be combined. Motion by Mr. Mendez; Seconded by Mr. Fracher, and the amended agenda was approved unanimously (4-0).

Adoption of Minutes – The Minutes from the June 10 board meeting were approved unanimously (4-0).

Public Comment Session I

Jeff Fogel – Mr. Fogel Shared experiences concerning the functioning of the CPD Internal Affairs Division. He stated that his client Laquinn Gilmore was interviewed by IA with the assurance that a copy of the interview recording would be made available to him. Subsequently, the CPD refused to provide a copy, stating that the City Attorney had not allowed it. He also stated that the CPD refused to identify the officers present during the incident and refused to hold a lineup or allow the Mr. Gilmore to look at photographs to identify the officers. He as not allowed to see body camera footage of the incident, but the footage was later release by the Chief of Police and used to refute his claims of property damages. Mr. Fogel stated that the IA process was very unwelcoming and hard on complainants.

Katrina Turner - Ms. Turner discussed her complaint from five years ago, which has been referred to the Human Rights Commission. She stated that police violated procedures, altered records, and did not properly investigate her complaint. The special investigator refused to speak to her. She had received no cooperation whatever from CPD on any of her requests. She wished that there had been a strong CRB when she initially filed her complaint and stated that having a strong CRB will “help people like me” make sure that complaints are properly investigated. She inquired as to whether she can bring her case back to CRB.

Status of Complaints

Chair Brown reported that this year that 13 cases been forwarded to the Board of a total of 21 filed. Ten of 13 are cases closed; three remain open at the date of this meeting. Complaints filed in the last month include one by an African American female alleging a lack of professionalism, and one alleging rudeness, intimidation, lack of professionalism file by a Hispanic female.

Update on Executive Director Process

Chair Bellamy stated that he was recusing himself from this discussion and from any Board activities associated with the selection of an Executive Director because he is a candidate for the position. He called on Vice Chair Mendez to preside over this item of business. Dr. Fracher summarized the interview process so far, stating that eight highly qualified candidates had been interviewed in the first round, and that the current schedule called for making recommendations to the City Manager by the end of July. In response to a question from Ms. Carpenter, Mr. Mendez stated that the next steps, as he understood them, would be a second round of interviews attended by two Board members, and a final closed meeting attended by all three Board interviewers at which final recommendations for the Executive Director post will be discussed with the City Manager's representative. Dr. Fracher stated that he was favorably impressed by the candidates so far; the Assistant City manager has done a good job of selecting qualified individuals for interviews and structuring the interview process to be maximally informative. He stated that the next round of interviews has not yet been scheduled.

Public Comment Period #2 –

No one requested to speak at this time.

Update on Hearing Procedures and Enabling Ordinance

Mr. Mendez reported on meetings between Board members, Councilor Snook, and other stakeholders related to the proposed ordinance. He noted that the expanded scope of the contract with the Boards independent counsel allows Ms. Hudson to take over the task of incorporating stakeholder comments and drafting final versions for full Board review. He noted that a draft ordinance could be ready in a few days, and the intent is to provide ample opportunity for public comment once the Board has agreed on a preliminary version. Ms. Hudson noted that the documents (ordinance and hearing procedures) are close to being ready for review by the full Board, and suggested the Board may wish to consider holding a closed session to receive legal advice on the documents; she emphasized the importance of having a draft the adequately represented the views of the entire Board. Ms. Carpenter suggested that holding a closed session might not be consistent with the Board's policy of maintaining openness and transparency and stated that she was unclear as to why such a meeting would be desirable. Ms. Hudson reiterated that the decision to hold a close session was entirely up to the Board and she gave examples of why a closed session might protect the Board from future controversies. After further discussion¹ (and ascertaining that other members of the Board could attend), Mr. Mendez made a motion that the Board hold a special meeting at 6:30 PM July 14 to discuss the proposed procedures and ordinance, with the understanding that the Board could decide at that time whether it was necessary to go into closed session. The motion passed unanimously.

¹ The meeting may be viewed at <https://boxcast.tv/channel/arevwckqrofmm9t57myy?b=j68utccyfnwqkqs9qxq2>

Chair Brown stated that the hearing procedures draft has been extensively reviewed and has incorporated comments from stakeholders. Only a small number of very recent comments need to be addressed

Mr. Mendez inquired as to best way for us to distribute the documents among the Board before the Board has conducted formal discussion. Ms. Hudson indicated the meeting would have to be noticed as (potentially) closed. The intent of FOIA law is then that Board members would maintain confidentiality of the distributed documents. Ultimately, the need for confidentiality depends on whether there is a decision to go into closed session.

Public Comment Period 3

Harold Folley – Stressed the need for both the Board and City Council to GSD (get stuff done.) He pointed out that discussions of oversight may be confused by concerns related to spikes in violent crime. In his opinion, oversight is about maintaining rules for both the public and police. Allowing the police to review their own behavior has not worked. Charlottesville needs a strong oversight board.

Chair Bellamy announced that the special meeting on the 14th has been formally noticed.

The Board voted to adjourn at approximately 7:30.

Next (Special) Meeting: July 14, 2021, at 6:30

**CHARLOTTESVILLE POLICE CIVILIAN REVIEW BOARD MEETING
MINUTES**

Date: August 12, 2021

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

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

Staff: Brian Wheeler, Maxicelia Robinson

Guests: City Councilor Michael Payne, CRB Counsel Cynthia Hudson

Chair Bellamy Brown called the meeting to order at 6:35 p.m.

Agenda Adoption – Vice Chair Mendez proposed an alternative agenda that placed public comment periods after the discussions of hearing procedures and the proposed ordinance but before the Board votes on these issues. This would allow the Board to hear public concerns before voting. Ms. Carpenter proposed that the agenda should begin with a moment of silence in remembrance of the events of August 12, 2017; Seconded by Fracher. The revised agenda was adopted unanimously, and Chair Brown lead the Board in a moment of silence.

Adoption of Minutes – Mr. Mendez reported that the July 8 minutes were currently lost somewhere on his computer, and he would provide them shortly. The Board voted (Motion: Fracher; Second: Carpenter) to approve the July 14 minutes unanimously.

Status of complaints – Chair Brown reported that two complaints had been forwarded to the Board since our last meeting, one by an African American female for “professionalism” and one for failure to adequately address a noise complaint. All complaints have been closed at the time of the meeting.

Executive Director Recruitment Process – Chair Brown recused himself from discussion of this item on the basis that he has been a candidate for the Executive Director position. Vice Chair Mendez reported that the interview panel had identified two very qualified candidates and, in consultation with the Deputy City Manager, recommended them to the City Manager for consideration. Mr. Mendez stated that one of the candidates had received and accepted another offer, but that City Manager was in the process of making a job offer to the second highly qualified individual. Dr. Fracher stated that the initial interview process had involved participants from many city departments, but the final two candidates were preferred both by the participating Board members and City Manager’s representatives. In reply to a question from Ms. Carpenter, Dr. Fracher and Mr. Mendez confirmed that the interview panel conformed to the letter of the Board’s current enabling ordinance. Mr. Mendez thanked the interviewers for their hard work.

Discussion of Hearing Procedures –

Vice Chair Mendez asked if there had been any new public comments on the Hearing Procedures and whether any significant changes had been made since the last meeting. Chair Brown responded that there had not been any new comments nor had any significant changes been made. There were no other comments or question from Board members

Public Comment Session I (Hearing Procedures)

Sarah Burke – Ms. Burke stated it was unclear whether verbal comments have been incorporated since the last meeting. She requested an update.

In reply, Ms. Hudson noted that the draft copy displayed at the last meeting was not the latest version. The most current version responds to many of the issues raised at the special meeting, including a provision that allows cross examination at the discretion of the Board that recognizes concerns related to both potential intimidation and due process. She noted that there was still a placeholder “10 days” in Section 3(a)(1) related to the time allowance for the CPD to provide evidence to the Board. Chair Bellamy suggested that it would be natural to interpret this as meaning 10 business days, with agreement from Board Members Fracher and Watson.

Mr. Watson inquired as to what power the Board had to enforce the information provision requirement. Ms. Hudson stated that the ordinance provides for enforcement. Ms. Carpenter asked about concerns related to requiring complainants to submit questions in writing. Ms. Hudson indicated that the latest draft allows, but does not require, any parties to submit written questions, and gives the Board final say as to what questions are asked at the hearing, reiterating that the Board could also allow cross examination at its discretion. She also noted that the concern relating to allowable inferences based on failure to appear (Section 4(b)) was addressed by requiring that such inferences be based on objective standards of reasonableness.

Vote on Hearing Procedures – Vice Chair Mendez moved that the Board to Adopt the Hearing Procedures with the amendment that specifies 10 business days in Section 3(a)(1); Seconded by Fracher. The motion was carried unanimously.

Discussion of Proposed Ordinance

Vice Chair Mendez noted that the revised version of the ordinance furnished to the Board incorporated responses to several last-minute public comments. Most of the changes from the previous version were minor edits with two substantive changes: First, in response to a concern raised by Ms. Burke, the new language has been inserted in Section 2-466 to the effect that the City Council has final approval of changes to Board Operating Procedures, but only after a majority of the Board recommends such changes. In addition, added language in Section 458(c) allows the Board to review IA investigations outside of the time limits specified in 458(b) if the Board determines there is good reason to do so (for example, if new evidence becomes available.) It also makes clear that the Board can still have access to closed IA files if they are needed as part of an audit.

Public Comment Period #2

Teresa Hepler – Ms. Hepler complimented the Board on it’s hard work in producing an ordinance that balances concerns of the Council and the public. She expressed concern that the current

ordinance language does not guarantee that all complaints will be investigated. She wanted stronger assurances that the Board would have the authority to investigate any complaints.

Sarah Burke – Ms. Burke also thanked the Board. She wanted assurance that the Board can continue to function during the interim while the Council is considering the new ordinance. She recommended that the ordinance be amended to give the Executive Director or his/her staff power to conduct investigations and audits without hiring an investigator. She indicated that this would be a cost-saving measure and could result in more investigations. She expressed concern that the Board’s power to review IA investigations still requires a review request. Finally, she questioned why the Board’s authority to make disciplinary recommendations was restricted to serious allegations and requested that Draft documents should be provided to public in advance whenever possible.

Mr. Mendez responded to several comments. He stated that the Board will continue to operate (and is in fact required to do so) under force of the current ordinance until a new ordinance is approved, however long that takes. He noted that the power of the Executive Director (ED) had been discussed by the Board and the decision was made not to assign primary investigatory role to the ED in order to emphasize the authority of the Board to conduct fully independent investigations. He suggested that the operating procedures might include provision that would specify limited conditions under which a qualified Executive Director could conduct investigations. In response to Ms. Hepler, he stated that the current ordinance language relating to investigations was meant to be as broad as possible, and that specific criteria for initiating investigations would be spelled out in the Operating Procedures. He also stated his willingness to postpone voting on the ordinance until outstanding issues had been resolved.

Chair Brown recommended moving forward with a vote, noting that amendments would be possible at a later date. Ms. Carpenter and Dr. Fracher agreed that the Board should vote. Mr. Mendez noted that extensive discussions would be required to a Council vote and that “this was nobody’s last bite at the apple.”

Vote on Proposed Ordinance

Mr. Mendez suggested that the Board might wish to vote on a formal transmittal resolution to go along with the ordinance. Ms. Hudson suggested that it would be easier to just vote on the ordinance since the proposed resolution had not been discussed by the Board. Mr. Mendez moved that the proposed ordinance be approved by the Board and sent to the City Council for their consideration; Seconded by Watson. The motion was carried unanimously.

Old Business

Chair Brown noted that the Ms. Carpenter expressed the desirability of obtaining all the results of the CPD Climate Survey. Ms. Carpenter moved that the Board request the results; Seconded by Fracher, and the motion was approved unanimously

Chairman’s Statement

Chair Brown read a personal statement concerning “Police Leadership and Its Community Impact.” The full text of the statement is included below as Attachment 1.

Dr. Fracher stated that his discussions with stakeholders generally support the substance of Mr. Bellamy's comments related to low morale on the CPD. Mr. Watson stated that discussing the topics raised by Mr. Brown represented a major step in continuing transparency to the public; he expressed a strong desire to see the actual data related to police attitudes.

Public Comment Session #3 -

Jeff Fogel: - Mr. Fogel stated that the Board was "getting ahead of yourselves" if it concludes that all the problems with police morale are due to bad management, noting that the PBA has historically been against strong police oversight. He suggested that the negative comments from the police rank and file may have been in part a response to the CPD's decisive actions on specific incidents of misconduct. He noted that he has often stated his concerns with the IA process, but the Board needs more specific information related to police leadership. In his experience, the mentality of police rank-and-file has been a major problem. He urged the Board not to "jump on board" with the PBA.

Adjournment:

The meeting was adjourned by unanimous Vote at 7:48 PM.

Next Meeting: September 9, 6:30 PM.

Attachment 1. Chairman's Statement on Police Leadership and Its Community Impact

Good evening members of the Board, City Leadership, and the Community. While I am currently Chairman of the Civilian Review Board, the views in this statement are purely my own. I believe there is a crisis in leadership and morale in the Charlottesville Police Department. Over the course of the past year, I have been meeting with officers from the Charlottesville Police Department in order to become a better-informed member of the Police Civilian Review Board. Many of those conversations led me to speak with other senior leaders in our community for corroboration and additional facts. Those sources will remain confidential; however, the content of this statement has been corroborated by at least two sources for the facts presented. This statement is made without regard to race or gender, but rather leadership capacity and effectiveness.

Over the course of my discussions with CPD officers and other senior local leaders, the Board has learned of the existence of a "Command Climate Survey," which was designed to provide an internal gauge of the conditions of the Charlottesville Police Department. The Police Civilian Review Board was provided with one of the seventy survey response forms. The respondent states that, "[leadership] takes problems around the department personally, [leadership] is not open to evaluation and improvement, and that the survey will not be taken seriously by [leadership] and used to move the department as a whole in a positive direction." It's further stated the officer is, "actively seeking employment elsewhere with [leadership] and their decisions being a major factor." Of particular note the officer states, "I would really like to see the morale in the department be in a much better place. This is huge in retaining staff. Pay is important, but appreciation is key!!!"

It's also my understanding that the other sixty-nine responses present a similarly dire picture. Additionally, the Police Benevolence Association (PBA), has subsequently conducted another survey under which 80-90% of the sixty-five responding officers reported a negative view of the climate inside of the Charlottesville Police Department due to the perceived leadership shortcomings. I have also been made aware that officers of the PBA have been threatened with retaliation if the survey is published.

Through additional conversations with senior local government leaders, the problems with police morale and unresponsive and inflexible management have been known for some time; but no action has been taken to date.

It is my recommendation that community members email and call all members of City Council and the City Manager everyday until action is taken on behalf of the greater good of the community. Additionally, it is my recommendation that community members follow my lead and support city council candidates in favor of strong police oversight for Charlottesville City Council in November. If there was ever a case showing why this Board should be fully funded and supported, this is it, due to the fact that this is the only government entity that has been transparent with the public on this matter in bringing this to the public's attention. A strong policing oversight body would also provide officers with a place to bring reports of abuses or policy violations without fear of retaliation or fear of an unfair process.

REORGANIZATION OF CIVILIAN REVIEW (OVERSIGHT) BOARD BYLAWS (OPERATING PROCEDURES)

Ordinance Section	Implementing Section of Operating Procedures	Specific Provisions
Sec. 2-450.-Title	ARTICLE 1. NAME	<ul style="list-style-type: none"> Change name to Police Civilian <u>Oversight</u> Board; name change is intended to convey a broader focus than solely review
Sec. 2-451.-Police Civilian Oversight Board Established; Immunities.	ARTICLE 2. PURPOSE	<ul style="list-style-type: none"> Modify mission statement from 2019 Bylaws reflecting oversight functions (investigation, review, audit, policy recommendations) No immunities language needed in addition to that in the ordinance
Sec. 2-452.-Powers and Duties of the Police Civilian Oversight Board	--	<ul style="list-style-type: none"> Separate Article not needed; implementing procedures for powers are found in subsequent sections
Sec. 2-453.- Police Civilian Oversight Board Membership Appointment, and Terms.	ARTICLE 3. BOARD MEMBERSHIP AND TERMS OF OFFICE	<ul style="list-style-type: none"> Remove staggered terms? Specify grounds for removal of Board members
	ARTICLE 4. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES	<ul style="list-style-type: none"> Minimal change from 2019 Bylaws Community advisory committee language needs expanding(?)
Sec. 2-454. – Public Meetings.	ARTICLE 5. QUORUM, VOTING, MEETINGS, MINUTES, AND ETHICS	<ul style="list-style-type: none"> Add or reference code of conduct and ethics, applicable COI and FOIA provision
Sec. 2-455.-Police Civilian Oversight Board Executive Director	ARTICLE 6. STAFF	<ul style="list-style-type: none"> Define general duties of ED providing support to COB Clarify ED role in initiating and supervising investigations Define conditions under which ED may <u>conduct</u> an investigation themselves(?) Role in appeal process and hearings Role in evaluating need for additional staff Developing budgetary estimates
Sec. 2-456.-Police Civilian Oversight Board Legal Counsel.	ARTICLE <u>76a</u> . INDEPENDENT COUNSEL	<ul style="list-style-type: none"> Specify role of counsel in investigations and hearings (attend and provide support to Chair)
Sec. 2-457. – Receipt and Investigation of Complaints – Authority and Complaint Intake	ARTICLE <u>78</u> . COMPLAINTS	<ul style="list-style-type: none"> Assure board receives all complaints (not just opt-in); develop coordinated approach with CPD Procedures for receiving complaints in non-standard forms Compliance with 9.1-600

<p>Sec. 2- 458. – Review of Police Department Internal Investigations</p>	<p>ARTICLE 7a<u>9</u>. BOARD AUTHORITY TO REVIEW INVESTIGATIONS</p>	<ul style="list-style-type: none"> • Define procedures and criteria for selecting complaints for review when a review request is not filed (clarify 2-458(c)); justification by public majority vote • Board will review <u>all</u> allegations where a timely review request is filed • Specify nature of evidence to be to furnished to Board by CPD • Scheduling review hearing (hearing must occur within 30 days or at next regular Board meeting?) • Notification requirements for complainants, witnesses, supervisors, and subject officers • Time limits for CPD to respond to requests for evidence • Justifications for CPD refusing to provide evidence or requesting extensions • Hearing procedures described in Article 14 • Deliberation procedures and publication of findings
<p>Sec. 2- 459. - Independent Civilian Oversight Board Investigation</p>	<p>ARTICLE 8<u>10</u>. INVESTIGATIONS</p>	<ul style="list-style-type: none"> • Criteria for initiating independent investigations; clarify 2-459(a)(1) • Procedure for engaging independent investigator • Independent investigator qualifications (coordinate with City Manager re contracting) • Add allowance for pre-qualification or retainer contract(?) • Procedure for defining scope of investigations (will be variable depending on nature of allegation) • Define investigative work product (summary of evidence, recommended findings of fact and disciplinary category; latter document confidential?) • Procedures for handling and preservation of evidence and work products • Procedures when evidence cannot be obtained (report to Chair immediately)

Sec. 2-460. - Disciplinary Recommendations	ARTICLE 911 . DISCIPLINARY RECOMMENDATIONS	<ul style="list-style-type: none"> • Receive investigative report with recommended findings of fact and disciplinary category • Make findings of fact based on investigative report and/or hearing evidence • Identify “serious breaches” based on criteria specified in this section • Assign sustained serious allegations to disciplinary categories in the CPD Disciplinary Matrix (decisions supported by vote in open meeting) • Forward to Chief for final disciplinary action • Refer sustained non-serious allegations to CPD for disciplinary action
Sec. 2- 461. - Board Review of Law Enforcement Policies, Practices and Procedures	ARTICLE 12. POLICY REVIEW AND ANNUAL REPORT ARTICLE 13.11 . AUDITS	<ul style="list-style-type: none"> • Articles combined; 2-461(a) deals with policy review, 2-461(b) deals with audits • Procedures for developing policy recommendation (who may introduce, approval by majority vote, public comment requirements) • Clearly specify nature of issues that may be dealt with in audits (see 2019 proposed ordinance) • Procedures for Board to commission audit by ED • Nature of documents and material that may be sought (any relevant documents, evidence, including closed IA reports) • Audit of closed IA reports cannot modify disciplinary findings or place subject officers in additional jeopardy • Time limits for provision of documents/evidence? • Refer to Sec. 2-463 subpoena power • Nature of audit reports; provision for public discussion
Sec. 2- 462. - Request Annual Reports of Police Expenditures	--	<ul style="list-style-type: none"> • No need to expand power in ordinance(?)
Sec. 2- 463. Authority to Hold Hearings and Issue Subpoenas	ARTICLE 1014 . HEARINGS	<ul style="list-style-type: none"> • Build on interim hearing procedures • Detailed provisions for different types of hearings (complaint review, independent investigations, hearings on other issues)

		<ul style="list-style-type: none"> • Criteria for requesting subpoenas (any time during investigations, complaint review or audit when good faith efforts fail), procedures for doing so (majority vote of Board) • Who drafts request for Circuit Court? (City Attorney or independent Council)
Sec. 2- 464. - Suspension of Complaint Investigations	--	<ul style="list-style-type: none"> • Dealt with in the ordinance
Sec. 2-465. - Police Civilian Oversight Board Recommendations and Annual Report.	--	<ul style="list-style-type: none"> • No need to further address
Sec. 2-466. - Police Civilian Oversight Board Operating Procedures	ARTICLE 145. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS	<ul style="list-style-type: none"> • Reiterate requirement that City Council approve initial procedures and changes as described in 2-452(b) • Add target date for startup of new Board?
Section 2-467. - Community Engagement and Community Relations	ARTICLE 136. PUBLIC ENGAGEMENT	<ul style="list-style-type: none"> • Except perhaps define role of ED in outreach • Authorize/require social media presence?
Section 2-468. - Training	--	<ul style="list-style-type: none"> • No need to further address
Section 2-469. – Commendations for Exceptional Community Service	--	<ul style="list-style-type: none"> • No need to further address
Section 2-470. Mediation	--	<ul style="list-style-type: none"> • Address alternative dispute resolution at a future date?