

Adopted by City Council on November 4, 2019

**AN ORDINANCE
ADDING ARTICLE XVI-POLICE CIVILIAN REVIEW BOARD
TO CHAPTER 2 (ADMINISTRATION)**

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia, that:

Chapter 2 of the Code of the City of Charlottesville (1990) is amended as follows:

ARTICLE XVI. – POLICE CIVILIAN REVIEW BOARD

Sec. 2-450.-Title

This article shall be known as the Charlottesville Police Civilian Review Board Ordinance.

Sec. 2-451.-Police Civilian Review Board established; immunities.

There is hereby created a Charlottesville Police Civilian Review Board which shall be referred to as the Police Civilian Review Board for purposes of this article. The Police Civilian Review Board shall enjoy the protection of sovereign immunity to the extent allowed and provided pursuant to Virginia statutory and common law.

Sec. 2-452.-Powers and duties of the Police Civilian Review Board.

The Police Civilian Review Board shall have the following powers and duties:

- (a.) Develop and administer a process for receiving civilian complaints about the Charlottesville Police Department;
- (b.) Review Charlottesville Police Department internal affairs investigations at the request of the civilian complainant;
- (c.) Conduct hearings and make findings concerning Charlottesville Police Department internal affairs investigations initiated by civilians;
- (d.) Organize and conduct community outreach sessions;
- (e.) Provide policy recommendations to the City Council and Charlottesville Police Department

Sec.-2-453.- Police Civilian Review Board membership.

The Police Civilian Review Board shall be composed of seven voting members and one non-voting member appointed by the City Council. The members shall be removable by the City Council.

Adopted by City Council on November 4, 2019

The seven voting members of the Police Civilian Review Board shall be residents of the City of Charlottesville except that the member who represents an organization that seeks racial or social justice on behalf of historically-disadvantaged communities shall either be a resident of the City of Charlottesville or the organization they represent shall perform advocacy on behalf of City of Charlottesville residents.

The seven voting members shall include: at least three members who come from historically disadvantaged communities that have traditionally experienced disparate policing or who are residents of public housing and at least one other member who represents an organization that seeks racial or social justice on behalf of historically-disadvantaged communities.

The non-voting member of the Police Civilian Review Board shall consist of an individual with policing expertise or experience.

No Police Civilian Review Board voting member shall be a current City of Charlottesville employee, a current candidate for public office, a former member of the Charlottesville Police Department, an immediate family member of a current Charlottesville Police Department employee, or a current employee of a law enforcement agency.

Sec. 2-454.- Police Civilian Review Board membership appointment, and terms.

(a) *Appointment Process.* The City Council shall appoint the members of the Police Civilian Review Board. The Council shall announce a public application process with applications available online and by hardcopy in English and Spanish for individuals interested in serving on the Police Civilian Review Board.

The City Council shall interview candidates for the Police Civilian Review Board in a closed session pursuant to the Virginia Freedom of Information Act.

The Council shall convene in an open session held pursuant to the Virginia Freedom of Information Act and appoint members of the Police Civilian Review Board.

(b) *Terms.* The first Police Civilian Review Board shall consist of three voting members appointed for individual terms of eighteen months and four voting members appointed for individual terms of three years.

All subsequent members of the Police Civilian Review Board shall serve terms of three years.

The non-voting member with policing expertise or experience shall serve a term of three years.

Adopted by City Council on November 4, 2019

Sec. 2-455.- Police Civilian Review Board vacancies.

If a Police Civilian Review Board member's service on the Board ends before the conclusion of the Board member's term, the City Council shall appoint an individual to complete the remainder of the term.

Sec. 2-456.-Police Civilian Review Board executive director.

The City Manager shall appoint a Police Civilian Review Board Executive Director with the approval of a majority vote of the City Council.

Before the Police Civilian Review Board Executive Director is appointed, the City Manager shall convene an interview pane that includes two members of the Police Civilian Review Board. If the two members of the Police Civilian Review Board serving on an interview panel recommend a candidate for appointment as Executive Director, the City Manager shall provide a written justification to the Board if they select a different candidate.

The City Manager shall supervise and evaluate the Police Civilian Review Board Executive Director. The Police Civilian Review Board may, by a majority vote, request a conference between the Board's Chair and the City Manager to discuss the Executive Director's performance. The City Manager shall provide the Police Civilian Review Board a written justification for rejecting its recommendation to terminate the Executive Director.

Sec. 2-457.-Police Civilian Review Board legal counsel.

The Police Civilian Review Board shall be empowered to employ its own legal counsel. The Police Civilian Review Board's Executive Director, the City Attorney, and the Police Civilian Review Board Chair shall work collaboratively to select legal counsel for the Board on an annual basis utilizing best practices for procuring legal services. The Board's legal counsel shall advise the Board on all legal questions the Board may have concerning complaints, reviews of internal affairs investigations, policy recommendations, and community forums. The Board and Executive Director may consult the Office of the City Attorney for legal advice concerning legal questions not related to the four aforementioned topics.

Sec. 2-458.-Police Civilian Review Board policy recommendations.

The Police Civilian Review Board may recommend policies or procedures to the City Council or the Charlottesville Police Department concerning police practices.

If the Police Civilian Review Board adopts a formal position statement on a policy amendment or recommendation of a proposed amendment to Charlottesville Police Department administrative and operational policies, the Charlottesville Police Department shall respond, in writing, to the Police Civilian Review Board and the City Manager within thirty days. The

Adopted by City Council on November 4, 2019

Charlottesville Police Department shall indicate whether it will adopt the recommendation or amendment or take an alternative action. If the Charlottesville Police Department does not adopt the recommendation or amendment, the Department shall provide the Police Civilian Review Board with a written justification for its decision. The Police Civilian Review Board may request reconsideration of the Charlottesville Police Department's decision by providing a written request to the Chief of Police and City Manager.

The Charlottesville Police Department shall provide any proposed amendment to policies or general orders found listed on the November 4, 2019 City Council Resolution, as may be amended from time to time, to the Police Civilian Review Board at least thirty days before its enactment. The Police Civilian Review Board may provide comment upon the proposed policy or general order's impacts, including but not limited to, on historically disadvantaged communities that have traditionally experienced disparate policing.

If the Police Civilian Review Board adopts a formal position statement on a proposed amendment to any proposed amendment to policies or general orders found listed on the November 4, 2019 City Council Resolution, as may be amended from time to time, the Charlottesville Police Department shall respond, in writing, to the Police Civilian Review Board and the City Manager within thirty days. The Charlottesville Police Department shall indicate whether it will adopt the Police Civilian Review Board's position. If the Charlottesville Police Department does not adopt the position, the Department shall provide the Police Civilian Review Board with a written justification for its decision. The Police Civilian Review Board may request reconsideration of the Charlottesville Police Department's decision by providing a written request to the Chief of Police and City Manager.

Upon the determination of the Chief of Police, in consultation with the City Manager and Police Civilian Review Board Executive Director, that it is impractical to present an amendment to a policy listed on the November 4, 2019 City Council Resolution to the Police Civilian Review Board at least thirty days before its enactment, the City Manager may waive the thirty day advanced review requirement. The amendment shall still be presented to the Police Civilian Review Board for review and comment.

Sec. 2-459.-Police Civilian Review Board community engagement and outreach.

The Police Civilian Review Board is authorized to engage in community outreach efforts to discuss and gather information about community relations between the Charlottesville Police Department and the general public.

The Police Civilian Review Board may request the City Council to conduct a joint meeting to discuss issues of concern between the Charlottesville Police Department and the general public.

Sec. 2-460.-Police Civilian Review Board complaint intake.

Adopted by City Council on November 4, 2019

The Police Civilian Review Board is authorized to develop and administer a process for receiving civilian complaints about the Charlottesville Police Department.

(a.) Complaint Intake.

A Complaint shall be in writing and shall be deemed filed when delivered or emailed to the Police Civilian Review Board's Executive Director. A Complaint shall contain:

- (i) identifying information for the person filing the Complaint;
- (ii) a statement describing the reasons for the Complaint;
- (iii) the specific police behavior of concern;
- (iv) a description of the incident in which the behavior occurred; and
- (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.

(b.) Complaint Processing.

The Police Civilian Review Board shall immediately forward the Complaint to the Charlottesville Police Department for investigation. The Charlottesville Police Department shall complete its investigation and provide an Investigation Report to the Police Civilian Review Board within seventy-five (75) days. The Executive Director will assist and answer questions a Complainant may have about the Complaint process. The Executive Director will provide an update to the Police Civilian Review Board about open Complaints at each Police Civilian Review Board meeting.

(c.) Complaint Results.

The Charlottesville Police Department shall provide the Police Civilian Review Board and the Complainant a letter with its finding concerning the Complaint. If the Charlottesville Police Department makes a finding of unfounded, exonerated, or not resolved the Complainant may file a Review Request pursuant to Sections 2-450 and 2-451 by the Police Civilian Review Board within seventy-five (75) days of receiving the Charlottesville Police Department finding. Additionally, the Police Civilian Review Board may initiate a Review Request, by a majority vote, if the CPD makes a finding of unfounded, exonerated, or not resolved and the Board receives the written consent of the Complainant to proceed with a Review Request.

(d.) Charlottesville Police Department Complaints.

The Charlottesville Police Department shall forward a copy of any internal affairs complaint filed by a civilian with the Department to the Police Civilian Review Board's Executive Director within two business days of receipt of the complaint. The Charlottesville Police Department's internal affairs process shall permit a complainant to decline to have a copy of their complaint forwarded to the Police Civilian Review Board. If the complainant elects to not have their complaint forwarded to the Police Civilian Review Board, a copy of the complaint shall not be provided to the Police Civilian Review Board.

Adopted by City Council on November 4, 2019

Sec. 2-461.-Police Civilian Review Board internal investigation review.

(a). Scope of Board Review Authority.

The Police Civilian Review Board may review Charlottesville Police Department internal affairs investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the Charlottesville Police Department has completed an internal affairs investigation of a CPD officer and the investigation resulted in a finding of unfounded, exonerated, or not resolved; and (2) a Review Request is filed by a civilian with the Police Civilian Review Board's Executive Director. A request shall be deemed filed when it is received by the Executive Director. The Board shall not review:

1. Any Complaint related to an incident that occurred before the date of the Charlottesville City Council's adoption of this Article;
2. A Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Complaint;
3. A Review Request filed more than seventy-five (75) days after the date of the Charlottesville Police Department notice sent to the complainant that informs the complainant of the completion of the Charlottesville Police Department's internal affairs investigation (unless the Police Civilian Review Board determines that there is good cause to extend the filing deadline); or
4. A Review Request concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any City of Charlottesville grievance proceeding (inclusive of a grievance initiated pursuant to the Virginia Law Enforcement Officers Procedural Guarantee Act); or
5. Any portion of an internal affairs investigation which is sustained.

The Police Civilian Review Board may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Police Civilian Review Board shall not act on any Review Request that is the subject of a grievance proceeding until any and all appeals are resolved.

(b.) Deferral of Pending Proceedings.

If at any point in the review process the Police Civilian Review Board learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any grievance proceeding, the Police Civilian Review Board shall:

Adopted by City Council on November 4, 2019

1. Suspend its review;
2. Defer the review pending resolution of the criminal, civil or grievance proceeding by the trial court or Personnel Appeals Board panel;
3. Notify the complainant, in writing, of any deferrals; and
4. Track any deferred matter and notify the complainant once the proceedings are closed and the Review Request may proceed.

The Police Civilian Review Board may request assistance of the City Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.

The Police Civilian Review Board may act on a Review Request after the City Attorney determines that the trial court or Personnel Appeals Board has resolved the pending criminal, civil, or grievance matter.

(c.) Access to Materials.

Upon scheduling a Review Request for a hearing before the Police Civilian Review Board, the Board shall notify the Charlottesville Chief of Police. The Charlottesville Police Department shall prepare each Board member a complete copy of the internal affairs file that is the subject of the Review Request. The City Attorney shall review the file and redact any information related to a juvenile pursuant to Virginia Code Section 16.1-301, as amended or as otherwise required to redact by law.

In addition to a complete copy of the internal affairs file, the Charlottesville Police Department shall produce the officer's complete complaint history including any final disciplinary action taken against the officer that is the subject of the Review Request.

Additionally, the Police Civilian Review Board shall have access to any material or evidence utilized by the Charlottesville Police Department during its internal affairs investigation related to the Review Request unless the Chief of Police, upon concurrence of the Charlottesville Commonwealth's Attorney, determines that the material or evidence is the subject of an active criminal investigation.

Police Civilian Review Board members may review the internal affairs file and the aforementioned disciplinary actions upon signing a notice of confidentiality in which the Police Civilian Review Board member agrees that they will not disclose the contents of an internal affairs file or disciplinary action taken against the officer. Failure to adhere to the notice of confidentiality shall result in the Council removing the Board member from the Police Civilian Review Board.

Finally, the Police Civilian Review Board shall have access to raw and aggregated data on the timing, findings, and dispositions of CPD internal affairs investigations.

Adopted by City Council on November 4, 2019

(d.) Review Request Hearing.

The Police Civilian Review Board shall conduct a hearing on all Review Requests that it finds to be in conformance with the criteria established in Section 2-450.

The Police Civilian Review Board may not subpoena witnesses or evidence nor may it take testimony under oath.

The individual filing the Review Request shall state the specific reason(s) for the Review Request. The individual may also present any evidence, including witnesses, supporting their reasons for filing the Review Request. The Police Civilian Review Board may question the individual filing the Review Request and any witnesses that the individual presents.

Upon the completion of the individual filing the Review Request's presentation, a CPD representative familiar with the internal affairs investigation that is being reviewed by the Police Civilian Review Board shall present a statement which summarizes all findings of fact and a review of all evidence collected and received during the investigation. The Police Civilian Review Board may ask the CPD representative questions about the investigation.

(e.) Findings.

At the conclusion of the Review Request, the Police Civilian Review Board shall, within thirty days, determine, by a preponderance of the evidence, and by a majority vote of Police Civilian Review Board members one of the following findings:

1. The Police Civilian Review Board concurs with the findings of the Charlottesville Police Department investigation; or
2. The Police Civilian Review Board advises the City Manager that the Charlottesville Police Department investigation's findings are not supported by the information reasonably available to the Charlottesville Police Department and make further recommendations to the City Manager concerning disposition of the Review Request; or
3. The Police Civilian Review Board advises the City Manager that the Charlottesville Police Department's investigation is incomplete or unsatisfactory and provide the specific reasons for this finding; or
4. After an investigation pursuant to Section 2-462, if the Police Civilian Review Board still finds that an investigation is unsatisfactory or incomplete, it may make a finding to that effect and provide the specific reasons for its finding.

Sec. 2-462.-Investigations.

(a.) Criteria.

If a Complaint investigation initiated pursuant to Section 2-460 is not completed by the Charlottesville Police Department within seventy-five days of Complaint receipt or if, at the

Adopted by City Council on November 4, 2019

conclusion of a Review Request, the Police Civilian Review Board advises the City Manager that the Charlottesville Police Department's investigation is incomplete or unsatisfactory and provides the specific reasons for this finding, then the Police Civilian Review Board's Executive Director shall request a conference with the Charlottesville Police Department Chief of Police.

(b.) *Conference.*

The Executive Director and the Chief of Police shall conduct a conference within thirty (30) days of either criteria being met in subsection (a) of this Section. The purpose of the conference will be to discuss the delay of a Complaint's investigation or the Police Civilian Board's specific concerns about a Review Request investigation. The Executive Director and Chief of Police shall attempt to address the Board's concerns.

(c.) *Report to Board.*

The Executive Director shall report back to the Police Civilian Review Board after their conference with the Chief of Police. If the Police Civilian Review Board remains unsatisfied with the Executive Director's report, the Board may vote to request an investigation concerning the Complaint's incomplete investigation or to address the specific reasons the Police Civilian Review Board cited in its referral of a Review Request to the Executive Director.

(d.) *Investigation.*

If the Police Civilian Review Board votes to request an investigation pursuant to subsection (c) of this Section, the Executive Director shall forward the request to the City Manager. The City Manager, in consultation with the Executive Director, shall procure an investigator independent of the Charlottesville Police Department to examine the Police Civilian Review Board's specific concerns about the Review Request or the incomplete investigation of a Complaint. The results of the investigation shall be provided to the City Manager and the Executive Director.

Any investigation initiated by the City Manager shall comply with existing federal, state, and local law and protections including the Virginia Law Enforcement Procedural Guarantee Act as well as the United Supreme Court's decision in *Garrity v. New Jersey*. Notwithstanding this provision, only the Chief of Police may issue a "*Garrity* warning" to compel a statement from a Charlottesville Police Department employee.

E. Investigation Results.

Upon completion of the investigation, the Executive Director shall provide the Police Civilian Review Board with the results of the investigation. If the investigation is the result of an incomplete Complaint investigation, the investigation shall be provided to the Complainant and the Charlottesville Police Department. If the investigation is the result of a Review Request, the Police Civilian Review Board shall reconvene, complete its deliberations, and issue its finding.

Adopted by City Council on November 4, 2019

Sec. 2-463.-Police Civilian Review Board recommendations and annual report.

The Police Civilian Review shall provide the City Council a list of recommendations, if the Board determines any recommendations are necessary, for the Council's consideration to include in its annual legislative program present to the General Assembly. These recommendations shall be due to the Council by August 15 of each year.

The Police Civilian Review Board shall provide the City Council with an annual report by December 1 of each year. The report shall detail the Police Civilian Review Board's calendar year activities with sections related to the appointment of committees and their actions; the establishment of any community advisory panels; an overview of complaints received during the calendar year including the number of complaints, the complaints' findings, and the number of complaints deferred due to pending proceedings; the number and outcome of any independent investigations; an overview of proposed policy recommendations and amendments to Charlottesville Police Department policies and whether the recommendations and amendments were implemented by the Charlottesville Police Department; the number, type, and attendance at community listening sessions; recommendations the Police Civilian Review Board wishes to make about policing within the City of Charlottesville; and any other information that the Police Civilian Review Board deems necessary to provide a complete overview of the Board's activities.

Sec. 2-464.-Police Civilian Review Board by-laws.

The City Council shall approve Police Civilian Review Board's initial bylaws that shall govern the procedures, practices, and internal operations of the Police Civilian Review Board. The Police Civilian Review Board may amend its bylaws. Any proposed amendment must be presented by a Police Civilian Review Board member in writing at a regular Board meeting. The Police Civilian Review Board may adopt the amendment at its next regular meeting upon an affirmative vote of four Board members.