

**March 10, 2021 – DRAFT CHARLOTTESVILLE POLICE CIVILIAN
REVIEW BOARD HEARING PROCEDURES**

1. Hearings and Meetings

- a.** The PCRB may, from time to time, hold meetings for such purposes as it deems advisable and consistent with the authority granted to it by ordinance of the City of Charlottesville. Meetings shall be conducted in accordance with Robert’s Rules of Order or such other procedures as the PCRB may adopt. Any PCRB-adopted procedures shall control.
- b.** The PCRB may, from time to time, upon receipt of information relating to a Complaint, conduct a Hearing related to a Complaint.

 - i.** The PCRB may receive information relating to a Complaint from any person or entity provided the information is submitted to the PCRB in writing and the person making the submission identifies their name, address, and telephone number.
- c.** A Complaint shall mean:

 - i.** A complaint from a civilian regarding the conduct of law-enforcement officers and civilian employees of a law-enforcement agency serving under the authority of the City of Charlottesville (“Civilian Complaint”); or
 - ii.** Information relating to incidents, including the use of force by a law-enforcement officer, death or serious injury to any person held in custody, serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law-enforcement officers or civilian employees of a law-enforcement agency serving under the authority of the City of Charlottesville (“Police Conduct Complaint”); or
 - iii.** Information related to an investigation conducted internally by law-enforcement agencies serving under the authority of the City of Charlottesville, including internal investigations of the conduct or behavior of law enforcement officers and of civilian employees of such law-enforcement agencies, and taking issue with the findings, accuracy, completeness, and impartiality of such investigations and the sufficiency of any discipline resulting from such investigations (“Internal Affairs Review”).
- d.** Any Complaint shall set out with particularity any claim of misconduct by a law enforcement officer and/or a civilian employee under the authority of the City of Charlottesville and shall set forth facts or information sufficient for the PCRB identify any law, policy, or procedure the misconduct may or is alleged to have violated.

- e. Upon receiving a Complaint, the PCRB shall determine whether (i) any applicable ordinance of the City of Charlottesville permits or requires the PCRB to conduct a Hearing to review the Complaint and (ii) whether, in the exercise of its discretion, it determines a Hearing is appropriate.
- f. The PCRB shall conduct Hearings concerning Complaints in accordance with the procedures set forth herein provided that it may make modifications to these procedures from time to time as circumstances concerning a particular Complaint may require provided that no such modification shall operate to deprive any party to a Hearing of substantial justice.
- g. The parties to a Hearing shall include:
 - i. Any person or entity who alleges they were the subject of police misconduct related to the Complaint that is the subject of the Hearing;
 - ii. The police officials who are the subject of the Complaint.

2. Advisors.

- a. Right to advisor/representative of choice. Throughout the Hearing process, each party has the right to choose and consult with an advisor. An advisor may be any person, and may be, but is not required to be, an attorney.
- b. Role of advisor/representative. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the Hearing which right shall not include the right to be present during investigative efforts related to the Complaint. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, unless the advisor is also an attorney licensed by the Virginia State Bar, they may not speak on behalf of the parties, submit written statements attributed to the party, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

3. Investigation.

- a. Upon receipt of a Complaint, the PCRB shall compile or cause to be compiled a Written Record related to the Complaint. The Written Record shall include:
 - i. Material from the Charlottesville Police Department which the PCRB shall request by notifying the Charlottesville Chief of Police of the Complaint. Upon receiving such a request, the

Charlottesville Police Department shall, within ____ days[?], provide the PCRB with:

1. a complete copy of any 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 be redacted by law;
 2. the complete complaint history including any final disciplinary action taken against any officer or civilian employee who is the subject of the Complaint;
 3. any material or evidence utilized or collected by the Charlottesville Police Department during its internal affairs investigation related to the Complaint unless the Chief of the Charlottesville Police Department, upon concurrence of the Charlottesville Commonwealth's Attorney, determines that the material or evidence is the subject of an active criminal investigation;
 4. raw and aggregated data on the timing, findings, and dispositions of Charlottesville Police Department internal affairs investigations; and
 - ii. Any additional written information provided by a party to the PCRB that the party believes to be relevant to a Complaint at any time prior to the commencement of the Hearing.
- b. Investigative material from the Charlottesville Police Department shall be presumptively confidential and may not be disclosed by the PCRB except upon a certification by the PCRB that it is germane to a Hearing, serves the public interest to be disclosed in public proceedings of the PCRB, and, in the interests of fairness, must be made available to the parties to the Hearing.

4. Policies Governing Hearings.

- a. Presumption of Lawful Conduct. The Hearing and related investigation are a neutral fact-gathering process. All parties are presumed, until findings are made to the contrary, to have acted lawfully and in accordance with applicable policies and procedures. That presumption may be overcome only by a PCRB finding that there is sufficient evidence, by a preponderance of the evidence, that any person or entity acted unlawfully or in violation of applicable policies or procedures.

- b. Participation by the Parties and Witnesses. In the absence of a lawfully issued subpoena, no party or witness is required to participate in a Hearing but the PCRB may infer from a party's or a witness's voluntary absence from a Hearing, despite notice and a request to appear, that their truthful participation would have been adverse to the interests of such voluntarily absent party or witness.
- c. Prior or Subsequent Conduct. Prior or subsequent conduct of a party may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. The determination of relevance of such conduct will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of unlawful conduct or conduct that violates applicable policies or procedures.
- d. Relevance. The PCRB may determine in any Hearing the relevance of any proffered evidence and to include or exclude certain types of evidence from the Hearing.
- e. Rules of Evidence. Virginia's Rules of Evidence, contained in Part II of the Rules of the Supreme Court of Virginia and in the Code of Virginia and in applicable case opinions are not binding in Hearings but may be the basis for arguments in support of the admission or exclusion of evidence which the PCRB may consider in determining, in its discretion, whether to admit evidence.
- f. Expert Consultation(s). The PCRB may consult disinterested medical, forensic, technological, or other experts, as defined by applicable law, when expertise on a topic is needed in order to achieve a fuller understanding of the issues presented by the Complaint.
- g. Virginia Freedom of Information Act. The activities of the PCRB are subject to the requirements of the Virginia Freedom of Information Act.

5. Conduct of Hearings.

- a. Information Provided to Decision Maker. Prior to the Hearing, the PCRB shall review the Written Record.
- b. Purpose of the Hearing. The Hearing is an opportunity for the parties to address the PCRB about issues relevant to the Complaint.
- c. Order of Hearing.
 - i. The PCRB shall hear any motions or requests at the commencement of the Hearing and may rule on them or defer ruling upon them as the PCRB determines to be appropriate.

- ii. Each party may make an opening statement at the commencement of the Hearing.
 - iii. The PCRB and the parties may call witnesses or seek to introduce documentary evidence not already part of the Written Record. The PCRB shall determine the order in which parties shall present evidence.
 - iv. The parties may submit written questions to the PCRB to pose to witnesses and the PCRB members may pose questions to any witnesses. The PCRB shall determine whether any question is inappropriate for submission to a witness.
 - v. At the conclusion of the presentation of evidence, the parties may make closing arguments to the PCRB.
- d. Notice of Hearing. The PCRB shall provide written notice to the parties of no less than 14 days of the date, time, and location of the Hearing. The hearing may be continued by the PCRB from time to time until completed.
 - e. Location of Hearing. A Hearing may be conducted with all parties physically present in the same geographic location or, at the discretion of the PCRB, any or all parties, witnesses, or other participants may appear at the Hearing virtually, with technology enabling participants simultaneously to see and hear each other.
 - f. Pre-Hearing Conference. The PCRB may convene a Pre-Hearing Conference during which preliminary matters related to the Hearing are discussed and/or resolved. The parties will be provided advance written notice of the date, time, and location of the pre-hearing conference.
 - g. Recording of Hearing. The PCRB shall make arrangements to create an audio or audiovisual recording, or transcript, of the Hearing.
 - h. Determination by the PCRB. After the Hearing, the PCRB will objectively evaluate all relevant evidence, both from the Written Record and presented during the Hearing, and make a written finding within the time and in the form provided by the enabling Ordinance, for each allegation of misconduct in the Complaint:
 - i. Whether there was a preponderance of evidence that the misconduct alleged in the Complaint occurred;
 - ii. Whether the PCRB concurs with any finding by the Charlottesville Police Department concerning the misconduct;
 - iii. Whether the PCRB finds that the Charlottesville Police Department's investigation, if any, of the Complaint is incomplete or unsatisfactory and, if so, in what regard;

- iv. With respect to any Civilian Complaint or Police Conduct Complaint, to the extent permitted by Charlottesville City Ordinance:
 - 1. Whether the PCRB wishes to consult with a Charlottesville Police Department officer's or employee's direct supervisor or commander, to make binding disciplinary determinations in cases that involve serious breaches of department and professional standards as defined by the City of Charlottesville which determinations may include letters of reprimand, suspension without pay, suspension with pay, demotion within the department, reassignment within the department, termination, involuntary restitution, or mediation, any of which is to be implemented by the local government employee with ultimate supervisory authority over officers or employees of law-enforcement agencies serving under the authority of the locality.

6. Informal Resolution.

- a. At any time after receiving a Complaint and before issuance of the written findings required at the conclusion of a Hearing, the PCRB and any party may propose an informal resolution of the Complaint which may be adopted if all parties and the PCRB agree to such a resolution.