

**June 18, 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 ("the City"). 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, as defined herein, conduct a Hearing related to that Complaint, as authorized within Chapter 2, Article XVI of the City Code and these Procedures. 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 provides their name, address, and telephone number.
- c. For the purpose of these procedures:
  - i. A "Complaint" shall mean 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 ("Civilian Complaint"); or
  - ii. "Information relating to a Complaint" shall mean (i) 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 ("Police Conduct Complaint"); or (ii) information related to an investigation conducted internally by law-enforcement agencies serving under the authority of the City, 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 and shall set forth facts or information

sufficient for the PCRB to identify any law, policy, or procedure the misconduct may or is alleged to have violated.

- e. Upon receiving a Complaint or information relating to a Complaint, the PCRB shall determine whether (i) any applicable ordinance of the City permits or requires the PCRB to conduct a Hearing and (ii) whether, in the exercise of its discretion, it determines a Hearing is appropriate.
- f. The PCRB shall conduct Hearings in accordance with the procedures set forth herein which may be modified from time to time as circumstances concerning a particular Complaint may require, provided that (i) any such modifications are within the authority of the PCRB under City policy or ordinance; and (ii) 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 or a direct witness to police officer/employee misconduct set forth in the Complaint that is the subject of the Hearing;
  - ii. The Charlottesville Chief of Police ("the Chief of Police") or designated representative(s) of the Chief of Police appearing on behalf of the City Police Department; and
  - iii. The police officers/employees who are the subject of the Complaint.

## **2. Advisors/Representatives.**

- a. Right to advisor/representative of choice. Throughout the Hearing process, all parties may consult with and be represented by legal counsel or another individual advisor/representative of their choosing.
- b. Role of advisor/representative in meetings. 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 interviews or be privy to other investigative efforts of PCRB 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, the nature of their participation in the proceedings on behalf of a party shall be determined by the Board. No advisor or representative may in any manner disrupt such meetings and/or proceedings. Virginia licensed attorneys shall conduct themselves in any meeting or hearing proceeding held under these Procedures in accordance with the Rules of Professional Conduct of the Supreme Court of Virginia.

### 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 City Police Department which the PCRB shall request by notifying the Chief of Police of the Complaint. Within [10?] days of receipt of a request from the PCRB, the Chief of Police shall cause to be delivered to the PCRB:
    1. a complete copy of any internal affairs investigation file regarding the conduct or matter that is the subject of the Complaint. The file shall be redacted to preserve the confidentiality of any information related to a juvenile pursuant to Virginia Code Section 16.1-301, as amended, and to protect other information required by law to be confidential;
    2. the complete complaint history including any final disciplinary action taken against any officer or civilian employee who is the subject of the Complaint; and
    3. any material or evidence utilized or collected by the Police Department during its internal affairs investigation related to the Complaint 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, or the Chief of Police, upon concurrence of the City Attorney notifies the PCRB that the material or evidence is at issue in a pending civil action. In either such case, proceedings of the PCRB shall be suspended until notice of the conclusion of the criminal investigation or civil action or other basis to resume PCRB proceedings.
  - ii. Any additional 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 City Police Department and information provided by a party to the PCRB shall be presumptively confidential and may not be disclosed by the PCRB except upon a certification by vote of the PCRB that it is germane to a Hearing, serves the public interest to be disclosed in a Hearing, or, in the interest of fairness and due process, must be made available to the parties to the Hearing.

Upon the PCRB's receipt of a Virginia Freedom of Information Act ("FOIA") request for investigative information or records from the Charlottesville Police Department, or for personnel information or records of a police officer, the PCRB shall refer the request to the City's FOIA Officer ([foia@charlottesville.gov](mailto:foia@charlottesville.gov)) and the Chief of Police shall have the duty to respond to that request and the right to determine whether any discretionary exemption(s) will be asserted in accordance with applicable law.

#### 4. Policies Governing Hearings.

- a. Presumption of Lawful Conduct. The Hearing and related investigation are neutral fact-gathering processes. 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 the party 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. The application and/or weight of any such inference shall be determined by a standard of objective reasonableness under the circumstances.
- 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 or from consideration by the PCRB.
- 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. As a body empowered by the City Council to perform the functions set forth in Chapter 2, Article XVI of the City Code, the PCRB is subject to the requirements of FOIA, both as to access to PCRB records and as to requirements for open, public meetings. The PCRB shall exercise any discretion available to it under applicable FOIA provisions in the interest of transparency as dictated by the balance of public and private interests specific to any particular Complaint.

**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 of the parties regarding the conduct of the Hearing 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 subject to reasonable time limitations that the PCRB may impose.
  - iii. The PCRB and the parties may call witnesses or seek to introduce documentary or other 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, whether in the nature of "cross examination" or "direct examination" and the PCRB members may pose questions to any witnesses. The PCRB may permit examination, including cross examination, of witnesses by party representatives who are attorneys licensed by the Virginia State Bar. The PCRB shall determine whether any question is inappropriate for submission to a witness or rule on the propriety of questions allowed to be posed directly to witnesses.

- v. At the conclusion of the presentation of evidence, the parties may make closing arguments to the PCRB within any reasonable time limitation the PCRB may impose.
- 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. Members of the PCRB must be physically present in the same geographic location, except as may otherwise be authorized by FOIA or other provisions of state law.
- 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 either an audio or audiovisual recording of the Hearing, or a transcript of the Hearing prepared by a court reporter present at 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 City Ordinance, whether the PCRB wishes to consult with the Chief of Police and/or the supervisors of a police officer/employee whose conduct is a subject of the complaint, to make disciplinary recommendations, applying the Police Department Disciplinary Matrix, in cases that involve serious breaches of Police Department policies and professional standards, and other determinations as may be provided by City ordinance, any of which to be implemented by the City

official/employee with ultimate supervisory authority over officers and employees of the Police Department.

**6. Informal Resolution.**

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.

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