

Purpose of a Proposed Ordinance

The Initial Civilian Review Board has concluded that an ordinance must do the following, at a minimum, to create an effective Department of Police Oversight:

- establish a volunteer Civilian Review Board, to be governed by this enabling ordinance and its own bylaws, policies, and procedures;
- establish a professionally staffed Oversight Office;
- describe the duties, powers, and functions of the Board;
- describe the duties, powers, and functions of the Oversight Office and Oversight Staff; and
- describe the manner by which the Board may and shall interact and collaborate with Oversight Staff, the Charlottesville Police Department, the City of Charlottesville, and the people of the City of Charlottesville.

The following is language that we propose to be included in the Ordinance.

Proposed Ordinance Language

DEPARTMENT OF POLICE OVERSIGHT

By this ordinance, the City of Charlottesville (the “City”) establishes a Department of Police Oversight (the “Department”), consisting of:

1. a Civilian Review Board (the “Civilian Review Board” or “Board”), to be staffed and administered by seven volunteer voting members and two volunteer non-voting members; and
2. an Oversight Office, to be staffed and administered by at least two full-time City employees (“Oversight Staff”).

DEPARTMENT OF POLICE OVERSIGHT -- MISSION STATEMENT

Mission Statement of the Department of Police Oversight: The Department aims to provide evenhanded and independent oversight of the Charlottesville Police Department (the “CPD”) in an effort to enhance transparency and trust, to promote fair and effective policing, and to protect the civil and constitutional rights of the people of the City of Charlottesville.

To achieve its mission, a Civilian Review Board shall collaborate with and be assisted by a professional Oversight Staff in pursuit of the following principles and objectives:

- ensuring that police officers act with integrity and treat *every person* with equal dignity;
- empowering and inspiring self-governance and a culture of mutual respect;
- seeking social and racial justice;
- engaging in community outreach and amplifying the voices of the socially, politically and economically disenfranchised;
- listening to and building bridges between all stakeholders to find and develop common ground and public purpose;
- championing just, equitable, and legitimate policing policies and practices; and
- processing complaints, investigating incidents, reviewing police practices and internal investigations, identifying policing trends, analyzing data and policies, issuing findings, writing public reports, and making recommendations.

OVERSIGHT STAFF -- GENERAL DUTIES, POWERS & FUNCTIONS

The City authorizes and tasks at least one member of an Oversight Staff with providing administrative and technical support to the Civilian Review Board. The precise scope of the Oversight Staff's administrative duties and powers shall be defined by employment contract, but, at a minimum, such duties and powers shall include:

- planning, organizing, and supervising Board activities, events, and trainings;
- developing and administering a process for receiving civilian complaints of police (mis)conduct;
- developing and administering data-keeping procedures;
- communicating with City Staff to ensure compliance with Board bylaws;
- communicating with CPD officials to ensure compliance with commitments made by the CPD to the Board;
- communicating with the Commonwealth Attorney's Office;
- communicating with and disseminating information and reports to members of the public;
- coordinating community outreach events;
- acting as custodian of records for the Department of Police Oversight;
- ensuring timely and effective compliance with established policies and procedures;
- preparing or assisting in preparing public reports from the Board; and
- collaborating effectively with community members, the Board, other members of Oversight Staff, the CPD, City Officials, and City Staff.

The City authorizes and tasks at least one member of the Oversight Staff with evaluating and analyzing long-term issues and trends in the CPD's practices and policies. The precise scope of the Oversight Staff's auditing duties and powers shall be defined by employment contract, but, generally, such duties and powers shall include:

- auditing ongoing investigations of the CPD's Internal Affairs unit ("IA");
- providing independent oversight aimed toward improving the quality of service of the CPD;
- identifying trends in IA complaint processing and disposition;
- analyzing long-term patterns and practices that warrant further public input;
- analyzing data and identifying trends in CPD arrest and investigative-detention practices;
- analyzing data and identifying trends in CPD instances of use of force and officer-involved death;
- evaluating CPD policies and training protocols;
- identifying evidence-based best policing practices and recommending policies and training to the CPD;
- preparing public reports regarding recommendations and findings; and
- actively participating in community outreach and engagement.

OVERSIGHT STAFF -- SELECTION & REMOVAL

Selection: The City Manager shall hire members of the Oversight Staff. The hiring process for new Oversight Staff members shall include the creation of a search committee, which shall conduct a national search for qualified candidates and shall provide some opportunity for public input. The search committee shall follow all hiring practices of the City of Charlottesville. The search committee must consist of the City Manager and at least two members of the Civilian Review Board. Before making a hiring decision, the City Manager shall consider public input and any hiring recommendation of the search committee. The City Manager shall provide a reason for rejecting a hiring recommendation of the search committee.

Removal: All members of the Oversight Staff shall report directly to and are removable by the City Manager. The Civilian Review Board may recommend removal of a member of the Oversight Staff. The City Manager shall provide a reason for rejecting a removal recommendation of the Board.

CIVILIAN REVIEW BOARD -- GENERAL DUTIES, POWERS & FUNCTIONS

The City authorizes and tasks a Civilian Review Board with civilian oversight of the CPD. The precise scope of the Board's oversight duties and powers shall be defined by the specific provisions of this enabling ordinance (described below), but, generally, such duties and powers shall include:

- developing and administering a process for receiving civilian complaints;
- reviewing completed IA investigations;
- in limited circumstances (described below), investigating civilian complaints;
- holding hearings and making findings and recommendations;
- producing public reports and issuing policy proposals; and
- collaborating effectively with community members, Oversight Staff, and the CPD, City Officials, and City Staff.

CIVILIAN REVIEW BOARD -- SELECTION, TERMS OF SERVICE & REMOVAL

Selection: Subject to the membership restrictions (described below), the City Council shall appoint members of the Civilian Review Board and shall endeavor to create a fair, objective, independent, and representative body. The Board shall be composed of seven voting members and two non-voting members. All Board members must be City residents, except when a Board member moves outside the City to a neighboring county during a term, in which case the member may complete the term with Board approval.

Except in the event of a short-term vacancy (described below), the City Council shall implement a selection system for voting Board members that includes the following:

1. a publicly announced application process with applications available online and by hardcopy in English and Spanish;
2. a publicly disseminated list of the names of all qualified applicants;
3. at least one public forum for community members to question all qualified applicants (noticed no fewer than thirty days prior to the date of the forum); and
4. at least one opportunity for current Board members to question all qualified applicants, provided the Board is currently constituted.

If reflected in the applicant pool, the City Council shall appoint voting members who are representatives of the following groups (though one member may be representative of more than one group):

1. at least one member who is a resident of public housing;
2. at least three members who represent historically-disadvantaged communities, particularly communities that have experienced disparate policing; and

3. at least one member who represents an organization, office, or agency that seeks racial or social justice or that otherwise advocates on behalf of historically-disadvantaged communities, particularly communities that have experienced disparate policing.

Moreover, the City Council shall endeavor to appoint "an engaged, diverse selection of members representative of the community on the whole, inclusive of members of minority and low wealth communities, and members who have had direct experience with past and current Charlottesville Police Department (CPD) policing practices.

If the applicant pool for a selection cycle would result in a Board composition that is not fairly representative of the groups referenced immediately above, the City Council shall seek additional applicants, specifically requesting applications from candidates who represent the missing group or groups. The City Council shall leave Board positions open and shall continue diligently to process applications, as needed, until it appoints an appropriately representative board. If, for this or another reason, the City Council has failed to appoint a full complement of seven voting Board members, the Board nevertheless may continue to operate, subject to its bylaws.

At its discretion (but subject to the restrictions immediately below), the City Council shall appoint:

1. one non-voting Board member who is a current City Councilor; and
2. one non-voting Board member who has policing expertise or experience.

Membership Restrictions: No voting Board member may be:

1. a current employee of the City;
2. a current candidate for public office;
3. a current or former employee of the CPD;
4. an immediate family member (partner, spouse, child, parent, sibling, or former guardian) of a current employee of the CPD; or
5. a current employee of another law enforcement agency.

Terms of Service: Except as to the inaugural Board, the City Council shall appoint voting members for three-year terms with the possibility of renewal, but with no voting member serving more than two consecutive terms. The City Council shall stagger Board members' terms. To that end, the City Council shall appoint three voting members of the inaugural board to eighteen-month terms and four voting members to three-year terms.

The City Council shall appoint non-voting members without term.

Removal & Vacancy: All Board members shall report directly to and are removable by the City Council. The Board may recommend removal of a Board member. The City Council shall expeditiously provide a reason for rejecting a removal recommendation of the Board.

In the event of a Board member's resignation, removal, or vacancy for another reason, the City Council may appoint immediately (not subject to the selection system described above) a new Board member for the remainder of the term of the vacated Board seat, except that the City Council shall endeavor to preserve a representative board, and shall give preference to a prospective appointee who represents a missing group or groups.

CIVILIAN REVIEW BOARD -- GOVERNANCE, TRAINING & SUPPORT

Self-Governance: The Board is authorized to develop and implement its own bylaws, administrative systems, and operating policies and procedures, consistent with existing federal and state law and this enabling ordinance. Although the Board is self-governing, it shall be assisted (as described below) by Oversight Staff, City Staff, and the CPD.

Training: At least once every two years, and within six months of Board appointments, the City, assisted by Oversight Staff, shall provide new Board members with a training of at least eight hours, presented by the National Association for Criminal Oversight of Law Enforcement or a comparable professional organization. Unless impractical, the training should be tailored to the mission of the Department of Police Oversight, this enabling ordinance, and the Board's bylaws and policies and procedures.

At least once every two years, and within six months of Board appointments, the City, assisted by Oversight Staff and other relevant city departments, shall provide new Board members with a training:

- explaining the legal and ethical obligations of members of a public board;
- explaining CPD procedures and policies;
- describing the substance of CPD personnel files and the scope of prevailing confidentiality rules;
- reviewing completely, at least one closed and anonymized CPD IA investigation; and
- educating the Board on relevant CPD and City databases, administrative systems, and operations.

Additional training may also be provided.

As needed, the City, assisted by Oversight Staff, shall provide Board members with additional relevant training by subject matter experts, including presentations on mental health, trauma-informed policing, civil rights and constitutional law, race and racism, community organizing and outreach, mediation, policing, use of force scenarios, and/or investigations.

Support: The City shall video- and audio-record all public Board meetings and, unless impractical, all public Board events. The City shall make the recordings available to the public.

The City shall host and administer the Board's website and shall provide each Board member with a city email address to be used exclusively for Board work. The City shall not interfere unreasonably with the Board's decisions, assisted by Oversight Staff, to post to or remove materials from the Board's website.

The City Attorney, or its designee, shall serve as legal advisor to the Board unless otherwise determined by the City Attorney. As to a particular matter, and in the event that there is a conflict of interest that precludes effective representation by the City Attorney's Office, the City of Charlottesville shall retain outside counsel to advise the Board. The City shall not use the Department's budget to pay outside counsel.

The City, including all city departments, boards, and commissions, shall endeavor to cooperate with and assist the Board, and shall comply with, or expeditiously provide a reason for rejecting, all reasonable Board requests.

Stipend: The City shall provide voting Board members with a minimum annual stipend of \$1,500 annual for Board service. A voting Board member may decline the stipend, but the City must offer it annually.

**DEPARTMENT OF POLICE OVERSIGHT --
SPECIFIC DUTIES, POWERS & FUNCTIONS**

The term "Department of Police Oversight" shall be interpreted to mean Oversight Staff and the Civilian Review Board.

Complaints: The Board shall have the authority, assisted by Oversight Staff, to develop and administer a process for receiving civilian complaints against the CPD.

The City shall authorize the Board, to take the following actions, consistent with existing federal and state law, as to any complaint against a member of the CPD, received by the Department or the CPD:

1. review the complaint;
2. review an IA or other internal CPD investigation into the complaint;
3. under limited circumstances (described below), investigate the complaint, independent of an existing IA investigation;
4. administer a public or private hearing to review an IA investigation and/or disposition of the complaint; and
5. make independent findings of fact and offer disciplinary or other recommendations to the Chief of Police and City Manager after a review, investigation, and/or hearing.

The Board may not review or investigate a complaint concerning a matter that is the subject of a pending criminal investigation or proceeding, undertaken by the City Commonwealth's Attorney. If the Board has commenced reviewing or investigating a complaint and is thereafter made aware of a pending criminal investigation or proceeding, the Board shall:

1. immediately suspend its review or investigation, pending resolution of the criminal investigation or proceeding;
2. notify the complainant, in writing, of the suspension;
3. track the suspended matter; and
4. notify the complainant, expeditiously and in writing, that the investigation or proceeding has ended or is on appeal, and that the Board's review or investigation thereby may recommence.

Investigations: The Board shall have the authority, assisted by Oversight Staff, to independently investigate civilian complaints in circumstances where an IA investigation was or is unsatisfactory or untimely.

An IA investigation shall be considered unsatisfactory upon a vote of a majority of current Board members. If the Board determines that an IA investigation is unsatisfactory, it shall provide the City and the CPD with written reasons for the determination.

An investigation shall be considered untimely where IA has not disposed of a complaint within 75 days of the date it received the complaint.

Even without a civilian complaint, the Board may initiate an investigation in any police-civilian interaction that results in an officer-involved death.

Before the Board may initiate an independent investigation, Board members or Oversight Staff shall meet with CPD Officials to determine whether the matter may be resolved without an independent investigation. If CPD Officials are unavailable to meet within 30 days of a request to meet by Board members or Oversight Staff, the Board may initiate an independent investigation without further action. If a majority of current Board members remains unsatisfied with a proposed alternative resolution after meeting with CPD Officials, the Board may initiate an independent investigation.

The Board, assisted by Oversight Staff, may only conduct an investigation consistent with existing federal and state law, including the Virginia Law Enforcement Officers Procedural Guarantees Act.

Hearings: The Board shall have the authority, assisted by Oversight Staff, to administer public hearings about any Board-related matter. If the subject of a hearing is a civilian complaint:

1. the complainant shall have a right to offer testimony and introduce relevant documents and physical and testimonial evidence; and
2. an IA representative and the Board's legal advisor shall attend and be available to answer questions from the Board.

The hearing shall be public, but, consistent with existing federal and state law, the Board may enter into closed session to discuss:

1. personnel files or information,
2. information that could publicly identify, even contextually, a juvenile or a victim of sexual assault, or
3. another matter, legally recognized as confidential.

Audits: Oversight Staff shall have the authority, assisted by the Board, to conduct monthly audits. Oversight Staff has discretion to determine the scope and substance of audits, including trends in data on:

1. the timing and processing of ongoing and completed IA and Board investigations;
2. the timing of communications and collaboration between the CPD and the Board;
3. the timing of information-sharing, including disclosure of files, documents, evidence, and data between the CPD and the Board;
4. the findings and dispositions of completed IA and Board investigations;

5. arrests, investigative detentions, use of force instances, and officer-involved deaths, including data on the impacts of these practices on historically distressed communities and protected groups;
6. training information and data;
7. compliance by the CPD and the Board with relevant training and policies;
8. the CPD's minority-recruitment and retention efforts; and
9. any other relevant matter of public interest.

At least quarterly, Oversight Staff, assisted by the Board, shall issue a public report (described below), detailing the findings and conclusions of any audit and, at its discretion, recommending policy, systemic, or training reform.

Policy Review: The Department of Police Oversight (the Board and Oversight Staff) is authorized to serve as a policy advisor to the CPD. Before the CPD may issue a new policy or general operating order, it shall transmit the draft document to the Department of Police Oversight and provide the Department with at least 30 days to review the proposed policy or order. By public report (described below), the Board or Oversight Staff may comment upon the proposed policy or order and may evaluate its impacts, particularly on historically distressed communities and protected groups. Before issuing a public report on a proposed policy or order, the Department shall seek community input.

At any time, the Department is authorized to issue a public report, making proposals to the CPD for policy, systemic, or training reform, including providing the CPD with draft policies or orders or recommending to the CPD particular training regimens or community-policing initiatives. The CPD shall not be compelled to follow Department recommendations, but shall respond to all recommendations and provide a detailed reasoning for its decisions, actions, or inactions.

Community Engagement and Community Relations: The Department of Police Oversight is authorized to engage in community outreach and to enlist the assistance and input of community members. At least quarterly, the Board, assisted by Oversight Staff, shall:

1. host public community listening sessions to discuss policing matters of community concern, including the impacts of local policing on historically distressed communities and protected groups; and
2. host public community/police-relations meetings, in which Board members, supported by Oversight Staff, mediate discussions between CPD Officials and community members about policing matters of community concern, including questions about transparency,

availability, legitimacy, mutual respect and trust, equitable treatment, social and racial justice, equal rights, and community safety and order.

If the CPD plans to present documentation or other materials at a community listening session or community/police-relations meeting, CPD Officials shall provide the materials to the Department no fewer than five days prior to the meeting. The Board, assisted by Oversight Staff, shall review the materials and, at its discretion, make them available to the public.

Right of Access: With respect to reviews of complaints, hearings, independent investigations, or audits, the City shall ensure that the Board and Oversight Staff have access, consistent with existing federal and state law and confidentiality requirements (described below), to relevant CPD files, documents, data, and physical and testimonial evidence, including:

1. personnel files of the CPD subjects of complaints;
2. IA investigative files and accompanying documents and physical and testimonial evidence;
3. all files and accompanying documents and physical and testimonial evidence, related to any police-civilian interaction that results in an officer-involved death;
4. raw data on the timing, findings, and dispositions of IA investigations; and
5. raw data on investigative detentions, arrests, and use of force, including data on the impacts of these practices on historically distressed communities and protected groups.

With respect to these files, documents, evidence, data, and testimony to which the Board has a right of access, the Board shall provide written notice to the City and the CPD of its demand for specific materials, and the City and the CPD shall comply expeditiously. If the Board demands information that could identify, even contextually, a juvenile or a victim of sexual assault, the City or the CPD may forward the information to the City Attorney's Office for redaction, consistent with existing federal and state law. If materials are available for review only on CPD premises, the CPD shall provide a reason for limiting access to the materials and shall expeditiously provide reasonable access to its premises for review of these materials on premises.

With respect to files, documents, evidence, data, or testimony outside the Board's right of access, the Board may not compel production of such materials, subpoena a witness, nor place a witness under oath, including the subject of the complaint. However, the Board may provide written notice to the City and the CPD of a request for the production of relevant evidence or documentation or for the opportunity to interview or take testimony, not under oath, from any relevant witness, including the subject of the complaint. The City and the CPD shall expeditiously provide a reason for rejecting a Board request for relevant documents, evidence, interviews, or testimony. Alternatively, the Board may request that the City Manager compel an

interview or the taking of testimony, under oath, from a CPD employee, or the production of relevant documents or evidence in the possession of the CPD or another City department. The City Manager shall expeditiously provide a reason for rejecting a Board request for the City Manager to act.

Confidentiality: All Board members must sign a Notice of Confidentiality, and no Board member may disclose publicly:

1. the contents of an IA file or any other personnel record if inconsistent with state and federal law and without prior approval of the Chief of Police, the City Manager, or another authorized official; or
2. unless an officer consents to a statement's disclosure, any statement made by a CPD officer, pursuant to the officer's testimonial obligations under *Garrity v. New Jersey*, 385 U.S. 493 (1967), except that a board member may disclose an acknowledgement by a CPD Official or other authorized official that the officer admitted or denied an allegation.

Findings, Recommendations & Public Reports: Once the Department of Police Oversight (either the Board or Oversight Staff) has concluded a complaint review, independent investigation, hearing, audit, or policy review (all described above), the Department may issue a written public report, including findings of fact and recommendations. If the subject of a review, investigation, or hearing is a civilian complaint, the Department shall determine whether the complaint's allegations are sustained or unfounded, or whether another disposition is appropriate. The Department has no disciplinary authority, but, if a majority of current Board members determine that a complaint's allegation is sustained, the Board may recommend:

1. discipline,
2. reopening an IA investigation,
3. training,
4. mediation, and/or
5. policy or systemic reform.

Once the Department has issued a written public report for any reason, it shall expeditiously transmit the report to the Chief of Police and the City Manager. Within 30 days, the CPD must respond publicly to the Department and the City Manager. The CPD must indicate whether it:

1. agrees with any findings of fact;
2. plans to implement any recommendations;
3. plans to open or reopen an investigation; and/or

4. plans to take another action, and if so what.

If the CPD's response disagrees with a finding of fact or refuses to follow a Department recommendation, the response shall provide a reason for its disagreement or inaction. Thereafter, the Department may publicly request reconsideration, by transmitting a written public request for reconsideration to the Chief of Police and the City Manager.

Neither a public report, a CPD response, nor a request for reconsideration may disclose publicly the identity of an officer or a complainant.

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