

Purpose of a Proposed Ordinance

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

- establish a volunteer Civilian Review Board, to be governed by this enabling ordinance and its own bylaws, policies, and procedures;
- hire a professional Oversight Staff, consisting of at least two full-time City employees;
- describe the duties, powers, and functions of the Board;
- describe the duties, powers, and functions of the 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

By this ordinance, the City of Charlottesville (the “City”) establishes:

1. a Police Civilian Review Board (the “Civilian Review Board” or “Board”), consisting of seven volunteer voting members and two volunteer non-voting members; and
2. an Oversight Staff, consisting of at least two full-time City employees (“Oversight Staff”).

MISSION STATEMENT

The City endeavors to provide objective and independent civilian-led 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, generally, 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 misconduct;
- 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 Board and Oversight Staff;
- ensuring timely and effective compliance with established policies and procedures;
- preparing or assisting in preparation of public reports from the Board;
- actively participating in community outreach and engagement; 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");
- analyzing data and identifying trends in IA complaint processing and disposition;
- analyzing data and identifying trends in CPD patterns and practices, including patterns of instances of use of force and officer-involved death, and practices of arrest and stop and frisk (termed "investigative detention" by the City and the CPD);
- evaluating CPD policies and training protocols;
- identifying evidence-based best policing practices and recommending policies and training to the City and the CPD;
- preparing or assisting in preparation of public reports from the Board;
- actively participating in community outreach and engagement; and
- collaborating effectively with community members, the Board, other members of Oversight Staff, the CPD, City Officials, and City Staff.

OVERSIGHT STAFF -- HIRING & TERMINATION

Hiring: The City Manager shall hire members of the Oversight Staff with substantial guidance from the Board. 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. The search committee shall consist of no more than seven people, including the City Manager or designee, four voting Board members, and one non-voting Board member or designee. The search committee shall:

1. field candidate materials, select candidates for interview, and conduct interviews consistent with legally required City hiring practices;
2. conduct final interviews in a public forum (noticed no fewer than fifteen days prior to the date of the forum), with an opportunity for community members to submit questions and to comment upon and rank-order candidates through an anonymized hardcopy or online form or survey;
3. develop and publicize the aggregated results of the rank-ordering of candidates; and
4. make a hiring recommendation to the City Manager.

If the City Manager rejects the search committee's hiring recommendation, the City Manager shall publicly provide a reason in writing for rejecting the recommendation.

Termination: All members of the Oversight Staff shall report directly to and are fireable by the City Manager. The Civilian Review Board may recommend termination of a member of the Oversight Staff. The City Manager shall publicly provide a reason in writing for rejecting a termination recommendation of the Board or for terminating an Oversight Staff member without a Board recommendation to do so.

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, under "Specific Duties, Powers & Functions"), but, generally, such duties and powers shall include:

- developing and administering a process for receiving civilian complaints;
- reviewing completed IA investigations;
- in limited circumstances, 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 -- APPOINTMENT, TERMS OF SERVICE & REMOVAL

Appointment: Subject to the membership restrictions (described below, under "Membership Restrictions"), the City Council shall appoint members of the Civilian Review Board and shall endeavor to create a fair, objective, independent, diverse, 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 another city or 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, under "Removal and Vacancy"), 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 (defined as applicants who submit a complete application and are not disqualified as described below, under "Membership Restrictions");
3. provided the Board is currently constituted, at least one opportunity for current Board members to question and rank-order all qualified applicants;

4. at least one public forum (noticed no fewer than thirty days prior to the date of the forum), with an opportunity for community members to submit questions and to comment upon and rank-order all qualified applicants through an anonymized hardcopy or online form or survey ; and
5. publication of the aggregated results of the rank-ordering of all qualified applicants by Board members and the public.

The City Counsel shall publicly provide a reason for:

1. rejecting a recommendation of the current Board to appoint or not appoint a qualified applicant;
2. making or failing to make an appointment of a qualified applicant in a manner that deviates significantly from the aggregated results of the rank-ordering by Board members or the public.

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 four members who come from historically-disadvantaged communities that have traditionally 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.

If the applicant pool for a selection cycle would result in a Board composition that is not appropriately representative of the groups referenced immediately above, the City Council shall seek additional applicants, specifically requesting applications from applicants 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, 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: Except the non-voting Board member who is a current City Councilor, no 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 determine the terms of non-voting members.

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 publicly provide a reason in writing for rejecting a removal recommendation of the Board or for removing a Board member without a Board recommendation to do so.

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 system described above, under "Selection") 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, assisted by Oversight Staff, 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. .

The Board and the CPD shall enter into a memorandum of understanding (an "MOU"), defining the terms of their relationship and mutual obligations. The Board is authorized to negotiate the provisions of an MOU, assisted by Oversight Staff and the Board's legal advisor (described below, under "Support"). If a provision of an MOU conflicts with a provision of this enabling ordinance (as described below, under "Right of Access" and other provisions), the provision of the enabling ordinance shall govern.

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 Board's mission, this enabling ordinance, an MOU, 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.

As needed, the City, assisted by Oversight Staff, shall provide Board members with additional training, including relevant training by subject matter experts on mental health, trauma-informed policing, civil rights and constitutional law, race and racism, community organizing and outreach, mediation, investigation, and policing practices, policies, and administration.

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 materials to or remove materials from the Board's website.

The City Attorney, or its designee, shall serve as legal advisor to the Board. 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 budgets of the Board or Oversight Staff to pay outside counsel.

The City, including all city departments, boards, commissions, and staff 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.

SPECIFIC DUTIES, POWERS & FUNCTIONS

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 Board or the CPD:

1. review the complaint;
2. review an IA or other internal CPD investigation into the complaint;
3. under limited circumstances, and independent of an existing IA or other internal CPD investigation, investigate the complaint, (described below, under “Investigations”);
4. administer a public or private hearing to review an IA investigation or disposition (described below, under “Hearings”); 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, or hearing (described below, under “Findings, Recommendations & Public Reports”).

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 criminal investigation or proceeding has ended or is on appeal, and that the Board’s review or investigation of the complaint 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 into any officer-involved death, defined as any police-civilian interaction that results in a death.

Before the Board may initiate an independent investigation, Board members or Oversight Staff shall meet with CPD Officials to determine whether a matter that qualifies for independent investigation 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 without further action.

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 or another policing matter of pressing public concern. 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, analyzing data and identifying trends in CPD patterns and practices. Oversight Staff has discretion to determine the scope and substance of audits, including examinations of:

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. trends in the findings and dispositions of completed IA investigations;
5. trends in patterns of instances of use of force and officer-involved death, particularly as to the presence of a discriminatory impact on historically-disadvantaged communities that have traditionally experienced disparate policing;
6. trends in practices of arrest and stop and frisk (termed “investigative detention” by the City and the CPD), particularly as to the presence of a discriminatory impact on historically-disadvantaged communities that have traditionally experienced disparate policing;
7. compliance by the CPD and the Board with applicable training, practices, and policies;
8. data on 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, under “Findings, Recommendations & Public Reports”), detailing the findings and conclusions of any audit and, at its discretion, recommending policy, systemic, or training reform.

Policy Review: The Board and Oversight Staff are authorized to serve as policy advisors on policing matters to City Council and the CPD. Before the CPD may issue a new policy or general operating order, it shall transmit the draft document to the Board and Oversight Staff and shall provide the Board and Oversight Staff at least 30 days to review the proposed policy or order. By public report (described below, under “Findings, Recommendations & Public Reports”), the Board or Oversight Staff may comment upon the proposed policy or order and may evaluate its impacts, particularly on historically-disadvantaged communities that have traditionally experienced disparate policing. Before issuing a public report on a proposed policy or order, the Board or Oversight Staff shall seek community input.

At any time, the Board or Oversight Staff are 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 protocols or community-policing initiatives.

Community Engagement and Community Relations: The Board, supported by Oversight Staff, 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 pressing public concern, including the impacts of local policing on historically-disadvantaged communities that have traditionally experienced disparate policing; and
2. host public police-community relations meetings, in which Board members, supported by Oversight Staff, mediate discussions between CPD Officials and community members about policing matters of pressing public 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 Board and Oversight Staff 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.

At least quarterly, the Board assisted by Oversight Staff, shall issue a public report (described below, under “Findings, Recommendations & Public Reports”), detailing the Board’s community outreach and engagement, public input, and any recommendations for community-policing initiatives or for improved police-community relations.

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, under “Confidentiality”), 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. 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 arrest, stop and frisk (termed “investigative detention” by the City and the CPD), and instances of use of force, including data on the impacts of these practices on historically-disadvantaged communities that have traditionally experienced disparate policing.

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, and 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 Board or Oversight Staff has concluded a complaint review, independent investigation, hearing, audit, or policy review (described above, under multiple provisions), the Board or Oversight Staff 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 Board, assisted by Oversight Staff, shall determine whether the complaint's allegations are sustained or unfounded, or whether another disposition is appropriate. The Board 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 Board or Oversight Staff 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 Board, Oversight Staff, 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 recommendation by the Board or Oversight Staff, the response shall provide a reason for its disagreement or inaction. Thereafter, the Board or Oversight Staff may publicly request reconsideration, by transmitting a written public request for reconsideration to the Chief of Police and the City Manager.