

TO: The City of Charlottesville
FROM: Madison Clark, McKayla Riter, Andy Block
DATE: March 29, 2023
RE: Charlottesville Boards and Commissions

INTRODUCTION

The City of Charlottesville has tasked the State and Local Government Clinic with improving the organization and management of its boards and commissions. Originally, the City requested that the Clinic look into how these processes could be improved by making changes to board and commission by-laws. However, after researching these issues, we became aware of other concerns that we believe must be addressed in order to make meaningful change.

This memo seeks to provide recommendations on how to address some of these central problems contributing to the lack of board and commission consistency and efficiency. It will begin by providing an overview of the current legal and policy structure governing Charlottesville's boards and commissions. Next, the memo will discuss the gaps in the existing framework and outline a model approach taken by the City of Hampton. It then suggests which issues the City should consider addressing and outlines the different legal methods that can be used to achieve these goals, noting the relative strengths and weaknesses of each approach. Finally, the memo concludes with suggestions for further research.

RESEARCH METHODS

The findings contained in this memo are the products of a thorough review of the following sources: state law, local ordinances, City Council's Rules and Procedures, the city Charter, the boards and commissions documents provided by City Clerks, conversations with actors from other municipalities and local government-oriented organizations, and webpages for specific boards and commissions.

We have also had regular meetings with staff from the City Attorney's office and the Clerk's office to review our approach and progress.

EXECUTIVE SUMMARY

This section provides a brief overview of some of our key findings and recommendations. While it is clear that city personnel are working hard to fulfill their board management responsibilities, structural issues get in the way. Some of these issues include the following:

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- A lack of guidance and consistency regarding what Council must include in an ordinance creating a new commission.
- Inconsistent appointment timing and procedures.
- Minimal on-boarding training or common training and guidelines across all boards and commissions.
- A lack of a city-wide record keeping and management system which may result in FOIA violations and City liability.
- Divided responsibilities in terms of board and commission management and support between staff in the Clerk's office, and staff liaisons, resulting in uneven communication and information sharing and oversight.

To address these issues we respectfully recommend that Council, either through ordinance or procedure, or some other written communication, do the following:

- Create uniform board and commission requirements and guidelines and retroactive amendments to existing ordinances, as necessary, to create a more uniform process.
- Create universal appointment schedules for all new members and maintain adherence to these unless new appointments are required by statute or ordinance or to reach a quorum.
- Create an in-person training conducted by relevant city staff, for all new board members to occur just prior to, or just after, the scheduled appointment times.
- Create a new, or better utilize the existing, information management system regarding board and commission operations, to give staff in Clerk's office, City Attorney's office, staff liaisons, the City Manager, and City Council members, access to real-time information on the work of the boards and commissions.
- Give Council authority to remove board and commission members for various objective factors such as too many absences.
- Assess the current management of boards and commissions and consider a more efficient support structure. More specifically, consider moving more board management authority directly under the City Manager as almost all staff liaisons, who have the most ongoing contact with each board and commission, work for the Manager.

CURRENT BOARDS & COMMISSIONS ORGANIZATION

• Introduction

In order to understand the gaps and inconsistencies in the operation and management of the various boards and commissions, and any recommendations to address these issues, it is helpful to first understand the range of boards and commissions as well as the existing organizational structure.

The City of Charlottesville currently has forty boards, commissions, and advisory groups which are governed by different legal rules, bylaws, and practices.¹ This section will provide an overview of the City's current system for organizing and managing boards and then highlight places where further guidance from Council will be most impactful. To this end, this section will first outline the existing ordinances, policies, and other informal rules currently governing these entities. Second, it will summarize the gaps in this framework and problems that have arisen. Finally, this section concludes with examples of policies used by other cities in the Commonwealth to manage their boards and commissions.

- **Existing Governing Laws & Procedures**

Charlottesville's boards and commissions serve many different functions and can largely be divided into two categories: advisory agencies and sovereign agencies. Advisory agencies are bodies created to advise Council on specific policy matters. Sovereign agencies are those that perform a delegated function of Council.² Both sovereign and advisory agencies can be created by state statute or local ordinance.³

- ***Advisory agencies***

The Virginia Code defines advisory agencies as “any board or commission, committee or post which does not exercise any sovereign power or duty but is appointed [...] for the purpose of making studies or recommendations or advising or consulting with governmental agency.”⁴ These boards are commonly created to research and advise Council on specific policy matters. Members of advisory agencies are appointed by Council and can be compensated for their attendance at regularly scheduled meetings and in training, but only if the city council action which established the group (1) specifically authorizes the amount of compensation to be paid (2) designates the manner of payment (3) identifies the fund or budget expenditure line item from which the compensation is to be paid.⁵

Examples of advisory agencies in Charlottesville include the Tree Commission, Housing Advisory Committee, the Human Rights Commission, and the Social Services Advisory Board.

- ***“Sovereign” Agencies***

For purposes of this memo, we are using the term Sovereign Agencies to refer to all boards and commissions that cannot be categorized as advisory agencies. These organizations tend to operate with greater independence from Council and have more features unique to the specific mandate of each board. Members of sovereign agencies are also appointed by Council. Their

¹ <https://www.charlottesville.gov/777/More-Boards-and-Commissions>.

² The term “sovereign agency” was created by the State and Local Government Clinic to refer to all boards and commissions that cannot be categorized as “advisory agencies.” There is currently no widely accepted term for such bodies at the state or local level.

³ The distinction between entities created by state mandate and those created by local ordinance has the strongest impact on Council's discretion over creation and oversight. The implications on both functions of Council are discussed in greater detail later in this section.

⁴ Va. Code §15.2-1411.

⁵ Va. Code §15.2-1411.

membership can be paid or unpaid. In contrast to advisory agencies, however, the process for determining compensation is not clearly defined by ordinance.

Examples of Sovereign Agencies in Charlottesville include the Personnel Appeals Board, the Redevelopment and Housing Authority, the Building Code Appeals Board, and the Economic Development Association.

- **Board Creation**

State law delegates to localities the power to “establish, consolidate, abolish or change departments, offices, boards, commissions and agencies of the municipal corporation and prescribe the powers, duties and functions thereof, except where such [bodies] or the powers, duties and functions thereof are specifically established or prescribed by its charter or otherwise by law.”⁶ In practice, this law allows for Council to create bodies under its own authority and to establish bodies required by state law. Advisory agencies and sovereign agencies can be creations of local ordinance or state law, and in all cases, Council is responsible for appointing officers and regulating the activities of the bodies.⁷ The principal difference between locally created and state-mandated boards is Council’s degree of control over the boards’ operation and dissolution.

- ***State-mandated boards***

When the Commonwealth mandates the creation of a board, a similar board creation process occurs. City Council members establish the board via ordinance, incorporating the required language from state law. As with boards created by the Council, the local government has discretion over appointments and finance, and may provide additional guidance where state law is silent.

In addition to the formal state and local laws regulating board creation, Charlottesville’s board creation process also appears to be regulated by informal procedures. One example of informal procedures concerns the contents of ordinances. As mentioned above, the contents of an ordinance establishing a board is not prescribed by law. Council is free to articulate a number of factors relating to the board’s composition or function. These informal procedures are not recorded. Nor are they uniform across boards. This lack of uniformity may hinder board effectiveness by making it more likely that boards will perform tasks and expend City resources in a way that is not beneficial to City Council’s oversight duties.

- ***Council-created boards***

When Council creates a board under its own authority, state law provides it with certain specified powers. Council may provide financial support to all boards via (i) reimbursement of the actual expenses incurred by members while serving on such advisory boards, committees, and commissions and (ii) compensation to members for their services for attendance at regularly

⁶ § 15.2-1107.

⁷ *See id.*

scheduled meetings, and for training in an amount determined appropriate by the governing body from available funds.⁸ State law also gives Council broad discretion to appoint advisory boards, committees, and commissions as it deems necessary to advise the governing body about any matter of concern to the locality and to staff those boards as Council deems appropriate.⁹

Boards of this kind are typically established via city ordinance. There is no rule prescribing the content of such ordinances. But these instruments usually outline the general powers and duties, number of members, and structure of leadership. Some ordinances also include reporting requirements¹⁰, quorum requirements¹¹, and meeting procedures.¹² Lacking more robust guidance addressing the contents of enacting ordinances, Council has occasionally left open important questions regarding boards' obligations and procedures, such as a board's need for bi-laws and funding requirements. We believe that this inconsistency contributes to confusion and inefficiencies among board members and staff.

- ***Individual councilor-created boards***

It is worth noting here, that individual Council members can also establish advisory groups on their own.¹³ These groups are established to research specific issues concerning Council. The Councilor seeking to create the board does not need to do so via ordinance; however, the council member is required to advise the City Manager, Clerk of Council and other Councilors of the date, time and purpose of any gathering that will involve spending city money.¹⁴ These groups present unique challenges for Council oversight. It is unclear whether the oversight powers of the Council and City Manager's office apply to these groups. It is also unknown whether these boards can continue to operate after the enacting Councilor leaves office. More research is needed in this area determine how these boards should be regulated.

- **Board Management and Oversight**

Once a board has been created, several officers and official bodies take on oversight roles. These actors are situated in the City Council's and City Manager's offices. We briefly described the roles and responsibilities of each below.

- ***City Council***

⁸ Va. Code § 15.2-1411.

⁹ Va Code §15.2-1411.

¹⁰ E.g., Charlottesville Code Ch.5 Sec. 5-195(b) ("The planning commission shall report its findings and recommendations concerning the repair or other disposition of the blighted property to the city council."): Charlottesville Code Ch 25 Sec. 25-1 (giving the Social Services and Community Attention Advisory Board the power to "make an annual report to the city council, concurrent with the presentation of the annual budget, concerning the information of the public welfare and community attention programs").

¹¹ E.g., Charlottesville Code Ch 15, Sec. 15-412 {"A quorum will consist of a towing member, a law enforcement member and a citizen member."}; Charlottesville Code Ch. 19, Art II Sec. 19-35 ("Two (2) members of the personnel appeals board shall constitute a quorum.").

¹² E.g., Charlottesville Code, Ch. 2 Art. XI Sec. 2-420

¹³ See Council Policies and Procedures, § II (C)

¹⁴ Council Policies and Procedures, § II (C).

While not overseeing the daily operations of any specific board or commission, Council is responsible for making appointments, defining the policy, and allocating the budget. Ordinances, and appointments are the main tools Council uses to regulate the day-to-day operation of boards. Their oversight function occurs primarily during their formal sessions, and several considerations have a defined place in Council's Order of Business.¹⁵ During business sessions, Council's Policies and Procedures require Council to make appointments to boards and commissions.¹⁶ During this time Council may also "conduct business and vote upon any matter properly before it, at any meeting at which a quorum is present."¹⁷ Such business can include the removal of members, the passing and amending of ordinances establishing boards and commissions, and the consideration of appropriations to the board.¹⁸ Council may also take this time to take part in an informal discussion of a subject without taking action.¹⁹ This informal discussion can include reviewing reports from advisory agencies or discussing other matters related to board oversight.²⁰

It is worth noting here that Council's formal oversight authority, including the ability to remove board members, varies depending on the boards' authorizing ordinances. Council has less authority to oversee or make changes to the operations of boards created by state mandate. For example, the City cannot require actions that are inconsistent with a board's mandate under state law. Additionally, Council cannot make appointments or removals that conflict with state requirements. Sovereign boards also have a greater degree of independence from Council. Once their powers have been delegated, commissions serving a sovereign purpose tend to act with greater independence. Their functions prescribed by ordinance and oversight may be delegated to other bodies in the local or regional government.

In contrast, Council has more formal oversight authority over advisory boards. Advisory agencies exist to support the work of Council and report directly to the body. As such, Council maintains a closer relationship with these organizations and can oversee their activities more directly. Furthermore, advisory agencies have a relatively more flexible mandate. Their missions are less prescribed by law and have fewer restrictions on their composition and the subject matter they can work on.

Taken together, Council's formal oversight authority exists on a spectrum: state-mandated sovereign boards have the fewest opportunities for oversight from Council, and locally-created, advisory agencies have the most opportunities for Council involvement.

It is important to note, however, that council does not engage in day to day oversight of the various boards and commission. Instead, both departmental staff, and the Clerk and her staff, exercise aspects of this responsibility.

- ***City Manager***

¹⁵ Council Procedures 1(B)(2)(3).

¹⁶ *Id.*

¹⁷ Council Policies and Procedures, (C)(1)(A)

¹⁸ *See id.*

¹⁹ Council Policies and Procedures, (C)(1)(b)

²⁰ *See id.*

The City Manager has “full executive and administrative authority and shall have the right to employ and discharge all employees under his control.”²¹ This control over employees does not extend to the members of boards and commissions themselves, but it does extend to employees who provide administrative support to boards such as the staff liaisons, staff in the City Attorney’s office, some staff in the Clerk’s office, and any employee that coordinates their work with a board or commission. It is important to note that with few exceptions, it is departmental staff who, in their capacity as staff liaisons, have the most ongoing contact with the various boards and commissions, who publicize and attend their meetings, set agendas, record minutes, respond to questions, onboard new members, and provide other kinds of daily support. It is also important to note, however, that they have little to no involvement in the application or appointment process, and must relay necessary information to the office of the Clerk to communicate to Council.

- ***Clerk of Council***

The clerk’s office is a hybrid between Council and City Manager appointed officials. The Clerk of Council serves at the pleasure of City Council and reports directly to it. Staff in the clerk’s office are hired and supervised by the Clerk of Council. However, as hired employees, they fall under the executive leadership of the City Manager. The Clerk of Council maintains the General Ordinance Book, which contains all ordinances and resolutions of a general and permanent character, properly indexed and open to public inspection.²²

Informally, the clerk’s office performs some oversight for boards and commissions. Staff publicize board vacancies and process all applications. They also must keep track of all terms of all members of boards and commission, and take on baseline onboarding for new members, which currently consists of providing written information regarding FOIA, Conflicts of Interests Act, and Public Records Act.

Unlike staff liaisons, however, staff from the Clerk’s office do not attend meetings of the various boards or commissions, unless they have been designated as the staff liaison. Nevertheless, staff are still expected to serve as a liaison between the boards and Council. If they receive information from department staff liaisons, they are able to alert Council to oversight problems or concerns from body members. Clerks’ informal oversight abilities are supplemented by the common practice of having some clerks serve as Staff Liaisons for specific boards.

Since most of their involvement with boards comes from informal practices and their formal roles as record keepers and liaisons, the Clerks’ main tools for regulating boards’ activities are less defined than Council, and not as regular as that of staff liaisons.

- ***City Attorney***

The City Attorney reports to the City Manager. Attorneys in this office have the management, charge and control of all legal business of the city and are the legal advisers to the city council, any committee thereof, the city officers and the several departments of the city government.

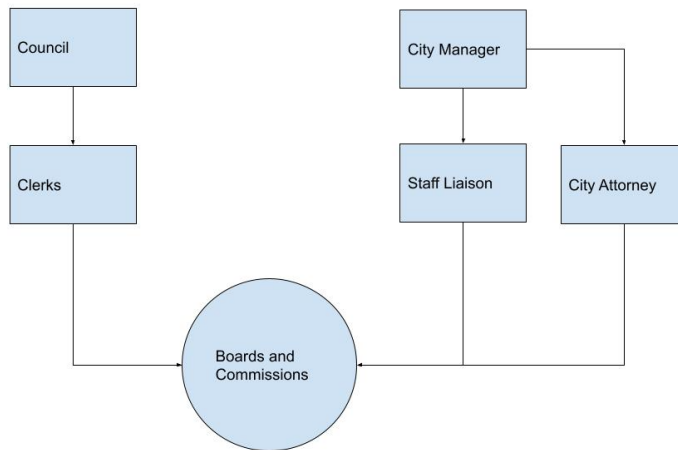
²¹ Charlottesville Charter, Sec 502.

²² Charlottesville Charter, Sec 6.

When required, they also furnish written or verbal opinions upon any subject involving questions of law submitted to them by any of them.²³

In their advisory role, staff attorneys can influence the oversight of boards and commissions by reviewing the actions of boards and commissions to ensure they are complying with state and local law. The City Attorney is also in a position to provide training and guidance on members' duties and obligation but, as far as we know, does not, or at least not regularly.

Figure 1.1 depicts the City of Charlottesville's current organizational structure as it relates to board and commission governance.



- **Board Dissolution**

Unless specified in the ordinance that created the board, Charlottesville has no formal procedure regulating the dissolution of boards. This occurs at the discretion of Council or as mandated by state statute.

CONCERNS WITH CURRENT STRUCTURE

Our research into the existing legal and policy framework, and conversations with City employees, have helped us identify the following issues contributing to Charlottesville's difficulty managing boards and commissions.

- **Board Creation**

Beyond the laws requiring appointments to be made on a regular schedule and funding to be dictated at a board's creation, Charlottesville currently has no other policies in place that dictate what Council must consider and address when creating a new board or commission. This has

²³ Charlottesville Code, Article V, Sec 2-213(a).

led to inconsistent requirements among existing boards and commissions and informational gaps.

Some city staff are also concerned that the city has too many council created boards or commissions and that some of the work might be better left to department led workgroups.

- **Board On-Boarding**

Training

Charlottesville board and commission appointees do not go through a formal training process before they begin their terms. Clerks do provide literature on FOIA requirements, but in-person on-boarding, and the content of such orientation, is dependent on staff liaisons and individual board processes. This is in part because terms are staggered and also because the city lacks a uniform approach to working with new appointees. Without proper training, board members are unlikely to understand their responsibilities, making more involved oversight necessary.

- **Board Oversight**

Appointments

Currently Charlottesville's boards and commissions do not run on a standardized appointment schedule. The Clerk of Council has attempted to establish a policy calling for appointments to be handled on a quarterly basis. However, it appears that Council does not adhere to this policy. Instead, positions are being filled on a rolling, as-needed basis. This is preventing the Clerks and Council from keeping track of when terms expire. Additionally, the staggered appointment schedules frustrate any efforts for more involved and consistent training.

Transparent Record Keeping

Charlottesville does not maintain a city-wide, centralized record keeping system which makes it difficult for clerks to review important documents. The City does have some online tools to store and organize information, but City employees lack the technical training needed to use these tools effectively. Without a centralized, and accessible, information management system, it is difficult to ensure that boards and commissions are following reporting requirements and abiding by City guidelines.

Divided, and Uneven, Oversight Responsibilities

The City's current organizational structure splits board management and oversight between city staff, and the Clerk of Council. The former, while having the most daily contact with the various boards and commissions, and being responsible for orienting new members, must depend on the Clerk and Council for critical aspects of their functioning – like new members and FOIA training. One staff liaison describe the application and appointment process as a “black box,” which provided no opportunity to input from the staff most familiar with the work.

Likewise, the Clerk must depend on the staff liaisons for critical information regarding member attendance and vacancies, and meeting minutes, in order to fulfill their responsibilities to Council. These split responsibilities, despite the best efforts and intentions of staff, can lead to inconsistent processes, incomplete information, and frustration.

Progress Reports and Updates to Council

Charlottesville has no uniform, formal guidelines in place that require boards and commissions to provide progress reports and updates to City employees at regular intervals. This makes general oversight and compliance checks difficult. Significantly, failure to address this issue may also make it hard for Council to assess a board's continued utility. Given the high numbers of boards and commissions, and the significant staff time devoted to managing and supporting these entities, it will be important to Council to establish a regular review process.

Removal

Currently, removal procedures for boards and commissions must be initiated by those entities themselves. Council does not have the independent authority to do so in most circumstances. Because removing members is politically difficult for boards, removal, even when necessary, is nearly impossible. Council's lack of authority in this area may frustrate effective oversight efforts.

- **Board Dissolution**

Charlottesville currently has no policies or procedures that govern the dissolution of boards. This means that boards with limited purposes may continue to exist even after accomplishing their goals, and may also begin to take on tasks outside their original scope of duties. If boards are allowed to continue existing in this way, it will be difficult for the City to maintain compliance with uniform procedures.

A POINT OF COMPARISON: HAMPTON, VA

Our research into effective board and commission management involved inquiries into how other municipalities organize and manage their boards. This section analyzes the relevant policies and procedures adopted by the City of Hampton, which has thirty-three boards and commissions²⁴ and which local government experts consider to be a locality that efficiently and effectively manages its many boards and commissions. While Charlottesville may ultimately decide to implement different measures, these practices may still provide helpful guidance.

- **Board Creation**

Like Charlottesville, Hampton's creation of boards and commissions must comply with state statutes and the general provisions found in ordinance, and like Charlottesville, Hampton also lacks guidance through an ordinance of what issues Council must address when creating a new board or commission. However, unlike Charlottesville, Hampton has created what it calls a Consensus of Council document (discussed further below) which dictates certain appointment terms and requirements for new boards.

²⁴ <https://hampton.gov/170/Hampton-Boards-Commissions>.

- **Board Oversight**

Appointments

Hampton conducts all appointments by adhering to Council guidelines known as the “Consensus of Council Document.” This document, among other things, covers topics such as standard term length, the reappointment process, and mid-term appointments. While this document is not legally binding, it is consistently utilized. The Full Consensus of Council document can be viewed in Appendix A. Some highlights include:

- appointments to boards are generally for one term
- reappointment is not automatic
- term limits start over after one year lapses
- unexpired portions of a term of more than 50% constitute a full term.

Training

In Hampton, the City Clerks, Manager, and Attorney meet with all new board and commission appointees for formal training at the start of their terms. Part of this training includes one-on-one guidance. Additionally, Hampton supplies each appointee with a packet called the “Commitment to Excellence.” This packet details the Code of Ethics appointees must adhere to, the scope of duties, standards of conduct, and best practices for communicating with the media and citizens. The full document can be found in Appendix B.

Accountability

To oversee its boards and commissions, Hampton utilizes a computer software program that allows Clerks to manage appointment applications and oversee board attendance and agendas. Board members are expected to upload this attendance and agenda information for each meeting. If clerks notice an issue based on this data, they will alert Council who then addresses the problem.

Progress Reports and Updates to Council

Hampton has no known formal policies in place that require boards and commissions to provide formal progress reports and updates to City employees. Hampton did previously require boards and commissions to present this information formally at Council meetings, however the City found that this was not effective and discontinued the practice.

Removal

In Hampton, City Council has the authority to remove board and commission members in most circumstances.²⁵ However, there is no uniform guidance that details when removal is appropriate. Instead, these requirements seem to be board-specific.²⁶

- **Board Dissolution**

²⁵ See, e.g., Bylaws of the Economic Development Authority of the City of Hampton (<https://hampton.gov/170/Hampton-Boards-Commissions>).

²⁶ *Id.*

From what we could tell, Hampton has no known policies in place that govern the dissolution of obsolete boards and commissions.

RECOMMENDATIONS

In response to the issues outlined in Section II, this Section provides recommendations on how the City of Charlottesville may address existing problems.

- **Board Creation**

Where boards are state-mandated, City Council will have to abide by distinct enabling legislation. However, Council should provide a list of factors that must be addressed in every enacting ordinance for discretionary advisory boards. It should also review existing ordinances to determine if amendments are necessary to detail these requirements. Factors should include:

- *Mission Statement and/or Purposes.*
 - Articulates the general task to be accomplished by the new board or commission
 - This will help focus the work of the group and help Council to identify instances where boards are experiencing mission creep or when they are no longer necessary
- *Duties and powers.*
 - Details the expectations of the board and their delegated powers.
 - This will help ensure that boards are operating within the scope of their responsibilities
- *Bylaw requirement.*
 - Requires boards to adopt bylaws and present them for Council's approval within a reasonable time after the board's creation
- *Membership.*
 - Detail how many members a board should have, membership terms, and the skills, licenses, or experiences that shall be required for membership
- *Attendance.*
 - Explicitly articulate an attendance requirement
 - This will help improve accountability and empower Council to remove board members who fail to attend board meetings
- *Staffing of Boards and Commissions.*
 - Each ordinance should specify whether the board or commission will be assigned a staff liaison or other staff person
 - It should also detail whether the board or commission may hire additional staff and whether the City Manager may appoint or remove additional staff
- *Funding and Compensation.*
 - Detail whether board members or support staff will receive compensation, and whether the board will have an additional budget to fund its activities

- *Sunset provisions.*
 - Establish dates to assess the continued need for a new board or commission or state that a board should continue to operate indefinitely
- *FOIA and other disclosure obligations.*
 - Identify relevant disclosure laws that the board must follow
- *Confidentiality Obligations.*
 - Boards intended to handle confidential or privileged information should also have language in the enacting ordinance, formalizing these obligations
- *Meeting Requirements.*
 - Set a meeting requirement to formalize the functions of boards and commissions or articulate the specific structure of board activities if meetings not required

• **Board Oversight**

Appointments

- *Recommendation 1: Adopt Specified Appointment Dates.*

To reduce confusion over when terms expire and provide an opportunity for more structured appointee trainings, the City should consider adopting an ordinance or other policy that specifies certain, limited, times throughout the year that appointments will take place. We recommend that the City handle appointments every four months.

- *Recommendation 2: Adopt Standardized Appointment Guidelines.*

To provide further consistency on appointment terms, the City should consider adopting guidance that standardizes all appointment processes. At a minimum, this guidance should, unless otherwise controlled by state code, consider instituting a standard term length for all appointees and should address the reappointment process and mid-term appointments procedures to ensure that all appointments stay on schedule and no member serves more terms than permitted.

Training

- *Recommendation 1: Implement In-Person, Standardized Training.*

After choosing those dates on which appointments will be made, the City should consider implementing a formal training program for all new appointees. At a minimum, this training should cover statutory requirements, such as FOIA, scope of duties, and reporting requirements to ensure that members understand the City's role in oversight. It also should identify and cover aspirational goals for board or commission membership. Staff from the City Manager's office, the Clerk of Councils office, and the City Attorney's office, should provide this training in order to cover all aspects of the process.

- *Recommendation 2: Develop Training Resources to Distribute to Members.*

In addition to providing formal in-person training to each appointee, the City should consider compiling training materials into a handbook that members could reference throughout their term if questions arose. This could take the form of a physical packet or an online reference page with links to information. Doing so would lessen the burden on Clerks who have to field questions from members. While the Clerk currently provides all new board members with a manual regarding FOIA, we would recommend expanding these materials, which can also help to ensure that all governing practices and procedures are followed.

Record Keeping

- *Recommendation 1: Develop & Institute Trainings for Online Record System.*

Charlottesville currently uses CivicClerk to maintain its public records, and the City website on the CivicPlus platform to host the appointee application pool. Online tools such as this can be valuable to regulate the administration of boards and commissions. However, without having gone through comprehensive training on these portals, the Clerk has been unable to determine if these systems will be able to provide the transparency necessary for effective oversight. Implementing tech training on this system would help clerks and staff liaisons use the system more effectively and potentially reveal useful features. Additional staffing would also likely be required to import historical data. Hampton credits its own use of the system Granicus with improving oversight of matters such as attendance. Once the boards uploaded the attendance records after each meeting, the town clerks were better able to track absences and report absentee members to Council.

- *Recommendation 2: Improve Coordination Between Clerks of Council and Staff Liaison.*

While the Clerk of Council and the staff liaisons each have oversight/record keeping responsibilities for boards and commissions, they do not have any formal channels of communication. We recommend creating a formal process that requires staff liaisons to report records including attendance records, meeting minutes, and agendas to the city clerks. Doing so will centralize records into an office that reports directly to Council, improving both the Clerks' and Council's ability to monitor the activities of the boards and commissions.

Removal

- *Recommendation 1: Give Council Removal Authority.*

Because it is politically difficult for boards to remove their own members, Council should consider adopting rules allowing it to independently remove members for such cause as violating attendance requirements. This would help ensure that member conduct conforms to City standards and help increase Council's oversight authority.

- *Recommendation 2: Institute Code of Ethics Detailing Criteria for Removal.*

To help standardize the removal process, Council should consider adopting guidance that details substantive grounds for member removal and the procedures that will be followed when

removing a member. This will help set expectations for board members and ensure fair and consistent treatment. Grounds for removal criteria might include things such as breach of ethical duties or attendance requirements.

Organizational Efficiency

- *Recommendation 1: Increase Oversight Discretion of the City Manager.*

Council should consider increasing the oversight capacity of the City Manager, specifically vesting this office with formal responsibilities for board member applications, training, appointment, removal, record keeping, and status reports to Council. Doing so would align with the existing chain of command since the City Manager's office oversees the work of both the staff liaisons and the departments working with particular boards.

- **Board Dissolution**

- *Recommendation 1: Include a Status Review Date When Creating New Boards.*

To ensure that boards and commissions which have completed their intended functions will not unnecessarily continue to exist or improperly take on new tasks, Council should consider adopting a rule that, unless otherwise set by statute, requires it to specify a tentative date for dissolution at the time each new board is created. This could either be done by inserting a sunset clause, which would automatically dissolve the board at a specified date, or through the use of a status review date, which would require Council to discuss each board's continued utility and provide reauthorization if necessary. Ideally, these requirements would be included in the legal authorities pertaining to board creation requirements.

- *Recommendation 2: Create a Process to Review the Continued Utility of all Non-mandated Boards or Commissions.*

Given the lack of ongoing oversight and assessment, and the time the staff must spend supporting boards and commissions, Council should create a process to review the ongoing value of each non-mandated board or commission and, when appropriate, dissolve, consolidate, or downgrade some of these entities.

- *Recommendation 3: Downgrade Boards to the Departmental Level Where Necessary.*

When the use of a board is no longer clear, or a board's mission has significant overlap with that of another board, Council should consider downgrading this board to the departmental level for the creation of a departmental workgroup. Doing so will continue valued community input, while also increasing efficiencies and the role of departmental staff.

POTENTIAL POLICY IMPLEMENTATION METHODS

The policy suggestions outlined above may take different legal forms, depending on the City's goals in implementing them. This section provides an overview of the two most common legal

authorities used to manage boards and commissions – ordinances, or some less binding form such as written procedures or memoranda – and suggests which authority might be best for each suggested policy.

- **Ordinances**

The most binding source of law that the Virginia Code gives Council the authority to enact is an ordinance. Unless otherwise provided for, an ordinance may only be enacted if adopted by a majority of Councilors present and voting at a lawful meeting.²⁷ Once enacted, an ordinance has the force and effect of law within the locality governed by the voting body. Because of this, any policy implemented via ordinance will be binding not only on board and commission members but on Council itself. Council would not have the flexibility to change or depart from these requirements without changing the ordinance.

Based on these characteristics, we recommend that Council use ordinances in the following ways. First, Council should adopt an ordinance that mandates what factors it must consider and include when creating a new board or commission. The ordinance would not mandate the substance of these requirements but would rather broadly mandate that such decisions be made. For example, the ordinance would mandate that Council include a mission statement when creating a new board but would not mandate what that mission statement was. This would encourage consistency despite Council turnover yet allow for flexibility in handling more individualized, substantive decisions.

Second, Council should consider adopting an ordinance broadly mandating minimum training and record-keeping requirements. This would bind other City employees tasked with oversight of boards and commissions and ensure that Council's judgment on the best way to handle these issues was effectuated.

Finally, Council should consider adopting an ordinance that asserts its authority to remove members of boards and commissions. Like board creation requirements, the substantive requirements for removal would likely be better addressed through non-binding council guidelines. However, if Council believes that its removal authority is an integral part of effective board management, it should consider memorializing this power in a legal authority that will apply to future governing Councilors as well.

- **Policies & Procedures**

Council could also implement some of the recommended policy changes through the use of non-binding policies and procedures. This could be accomplished by adopting a Consensus of Council document, such as used by Hampton, which is a non-binding resolution that reflects the Council's current policy on a particular issue. Alternatively, Council could amend their existing procedures to accomplish the same goal.

These policies would provide a series of recommendations that guide Council's decisions when establishing boards and commissions. Non-binding policies and procedures are more flexible

²⁷ Va. Code. 15.2-1427.

than an ordinance and would be easier to amend if the circumstances or needs of Council changed. As non-binding documents, however, they would lack the force of an ordinance. Council would be free to ignore them, and it would not be binding on any other officials in the local government. The City Manager and all employees that report to him would not be bound to follow its recommendations.

If Council chooses to address concerns using policies and procedures, we recommend that the instrument used focuses primarily on substantive board creation and removal matters. This process is almost entirely under the discretion of Council and would benefit the most from greater flexibility.

- **Curriculum**

Some of the issues addressed in this memo concern inconsistent and incomplete training for new board and commission members. Board members, and in turn the City itself, will benefit from a more involved curriculum addressing statutory requirements, such as FOIA, scope of duties, and reporting requirements. Staff from the city, including the City Attorney's office, could create and deliver these trainings.

CONCLUSION

In order to improve the quality of work of Charlottesville's boards and commissions, and to ensure that city staff are spending their time wisely and efficiently, Council should create more formal procedures and guidance for board creation, oversight, and dissolution. Doing so will create a more professionalized board process, and, hopefully, improve the performance of the boards and the staff that support them.

We understand that this will be a time consuming process, but we believe that it will help with overall government performance and service delivery. We should also note that, if it is the pleasure of Council, the Clinic is willing to continue to support this effort.

APPENDIX A

SUMMARY OF COUNCIL CONSENSUS ON BOARDS AND COMMISSIONS PRACTICES

The Hampton City Council had several conversations concerning the practices used in making citizen appointments to boards, commissions and committees. These conversations took place at a Council retreat held on August 2, 2016, and at its meetings on October 12 and 26, 2016.

The City Attorney read Section 3.12 of the Hampton City Charter: "No person, except a member of council, officer, or employee of the city, who is to be appointed to a term exceeding one year by the city council shall be eligible to serve more than two (2) complete terms in succession and the portion of an unexpired term occurring by reason of a vacancy."

Notwithstanding this guidance, the current Council wishes to institute guidelines and practices to utilize when making these political appointments to bodies. It is important to note that this summary serves to express Council's intent, but recognizes that specific circumstances may require Council to deviate from these guidelines.

It is Council's goal to offer Hampton citizens more opportunities to serve their city and to develop leadership for Hampton's future. Council desires to cast a wider net and to engage more citizens for service opportunities and to provide a means to develop talents for future service to the city.

The following summarizes the Council's intended practices:

Appointments to boards, commissions and committees (hereinafter referred to collectively as boards), are political appointments.

Appointments to boards are generally for one term and reappointment to an additional term is not automatic.

It is specifically stated that no stigma should be attached to individuals who are serving as an appointee and who are not reappointed in furtherance of Council's goal to provide opportunities for more citizens to serve.

A citizen who has served the limit of terms available on a particular board may be reappointed to that board after a period of one year has elapsed.

An unexpired portion of a term of more than 50% shall constitute a full term. A citizen may serve on up to two boards.

To be considered for appointment, a citizen must have an application on file in the city's Board Bank. These applications may be filed online or a member of the City Council staff will assist citizens in making application.

Council may choose to conduct interviews of potential appointees.

A citizen appointee may only serve in a leadership role on one board.

Staff will develop for Council's consideration a list of the basic expectations of citizen appointees, such as routine attendance, participation, required specific training, etc.

Council may also attach additional expectations to certain boards which require specific education, talent and/or skill sets.

The expectations shall be communicated in the board information provided online so applicants are aware of those expectations in advance of filing an application. Expectations will also be reiterated when a citizen is appointed by way of their formal notification of appointment and will be communicated by the staff administrative support at the appointee's orientation to the board.

Staff will develop a standard report to be used by city staff, providing administrative support to boards to report annually to Council with respect to appointees' adherence to the expectations mentioned above.

While Council values board recommendations on board vacancies, any such recommendation is not binding on Council's appointment.

Staff will work toward having each board post its minutes on the city's website.

This collective guidance shall be communicated to the citizens of Hampton via e-news, the city's website, the Council's minutes, and also by distribution to the chair and staff administrative support for each board in Hampton.

It should be reiterated that the foregoing is Council's expression of its intent and provides guidelines as to its policy and is always subject to various City ordinances and the State Code.

APPENDIX B

COMMITMENT TO EXCELLENCE



City of Hampton Boards,
Commissions, and
Committees



November 2020

Message from the Hampton City Council:

Thank you for your interest in serving on a board, commission, or committee and welcome to Team Hampton! Every day we strive to improve our citizens' lives and we are grateful for your assistance in making that happen. Our vision is: "We are Hampton, a vibrant waterfront community celebrating and embracing more than 400 years of history and innovation to create an even more dynamic future."

In your capacity as an appointee, it is important to remember you have a duty to act in the best interest of the people of Hampton. Transparency and accountability are important, so we have adopted by resolution this Commitment to Excellence for boards, commissions, and committees to formally recognize certain principles and standards that every member should follow to ensure that Hampton continues to thrive for future generations.

This Commitment to Excellence includes a Code of Ethics, Scope of Duties, Standards of Conduct, and Best Practices for Communicating with the Media and Citizens. These documents are designed to establish the standards expected to be followed as our appointee. Many of these items are requirements pursuant to the Virginia Conflict of Interests Act and the Virginia Freedom of Information Act, for which you will also receive in-person and/or virtual training from a member of City staff. Please note that in the event that provisions in this Commitment to Excellence are not adhered to – for example, posting racially insensitive statements on social media or accepting gifts in your official capacity for personal gain – the Council reserves the right to end your appointment.

We appreciate that you have chosen to devote your time by making a difference in our City. We cannot serve the people of Hampton to the best of our ability without your continual collaboration and support. Thank you for choosing Hampton!

Sincerely,

Donnie R. Tuck
Mayor

James A. Gray
Vice Mayor

Chris L. Bowman
Councilmember

Eleanor Weston Brown
Councilmember

Steven L. Brown
Councilmember

Billy Hobbs
Councilmember

Chris O. Snead
Councilmember



Message from the City Manager, Clerk of Council, and City Attorney

"We are Hampton, a vibrant waterfront community celebrating and embracing 400 years of innovation to create an even more dynamic future." We as staff honor Council's vision statement for our great City every day through our collective efforts. As a board, commission, or committee member, you, too, play a critical role in the realization of that even more dynamic future. Thank you for agreeing to be a major player in our work!

This Commitment to Excellence outlines the operational norms that help guide us in this work. These norms – some of which are legal in nature, such as the mandatory Conflict of Interest and Freedom of Information Act requirements, and some of which are Hampton-centric – ensure that we all know what is expected of us during our service. While training will be provided to all newly appointed members as they are selected to serve, we expect each member to periodically review and remain knowledgeable of these norms. We thus ask that you take time to review this Commitment to Excellence as you embark on or continue your service to our community. By signing your declaration of commitment, you agree to adhere to our communal standards each year of your service.

We are so glad to have you join Team Hampton! If any of us – or our staff – can help to enrich your volunteer service, please do not hesitate to contact us!

Mary B. Bunting
City Manager

Katherine K. Glass
Clerk of Council

Cheran Cordell Ivery
City Attorney



**CITY OF HAMPTON BOARDS, COMMISSIONS, AND COMMITTEES
COMMITMENT TO EXCELLENCE**

CODE OF ETHICS

Recognizing that individuals who are appointed by City Council are viewed by the community as influencers, they should display the highest levels of moral and ethical conduct, and any person serving on a City of Hampton board, commission, or committee shall comply with the following Code of Ethics:

1. Uphold the laws and regulations of the Commonwealth of Virginia and the City of Hampton, including the Code of Virginia, the Hampton City Code, and the Charter of the City of Hampton, and never intentionally violate them.
2. Give a full measure of service and effort to the position of trust for which guardianship has been granted, giving best thought and sincere effort in the performance of your duties.
3. Avoid adopting policies, engaging in activities, or supporting programs that discriminate against individuals on the basis of race, color, religion or creed, sex, national origin, age, or any other protected characteristic.
4. Comply with all provisions of the State and Local Conflict of Interests Act and Ethics in Public Procurement Act, including, but not limited to, those sections that regulate the solicitation and acceptance of money, gifts, or other things of value for services completed during the performance of your official duties.
5. Attend all Virginia Conflict of Interests Act, Freedom of Information Act, and Ethics in Public Procurement Act training sessions if required by your appointment.
6. Seek out legal counsel in the City Attorney's Office if you have any question about a potential conflict of interest.
7. Ensure the integrity of actions performed by boards, commissions, or committees by avoiding the disbursement of unfair privileges or special favors to anyone. You should never receive, for family members or yourself, favors or benefits or gifts under circumstances that might be interpreted by a reasonable person as influencing the performance of your governmental duties.



**CITY OF HAMPTON BOARDS, COMMISSIONS, AND COMMITTEES
COMMITMENT TO EXCELLENCE**

SCOPE OF DUTIES

1. Make no promises binding upon the duties of any office.
2. Do not use information learned confidentially during the performance of governmental duties to make a private profit for your family, employees, close family relations, yourself, or any business where you have a personal fiscal interest.
3. Report to the Hampton City Attorney's Office any misconduct, neglect of duty, or corruption when discovered.
4. Comply with the provisions of the Virginia Freedom of Information Act, including, but not limited to:
 - Not discussing public business outside of an open meeting in a group of three or more members of your body.
 - Complying with the principle that the public's business should be conducted openly by following and observing the spirit and letter of the Virginia Freedom of Information Act, using closed sessions only to deal with matters properly exempted under the law.
 - Maintaining confidentiality of all matters discussed during closed session and personnel matters.
 - Using City of Hampton email for official City business purposes in serving the interests of the City, and to correspond with our citizens in the course of normal operations.
5. When presenting individual positions and opinions, you shall purposefully state that you are not representing the City of Hampton or your body, nor will you convey an inference that you do. When you are speaking in your official capacity, you shall also not use the media or social media to criticize, question the integrity, or vilify the personal beliefs of citizens, City employees, or colleagues.
6. When responding to the media, you must make a clear distinction between personal belief or opinion and a decision made by your body.
7. Be an active listener, carefully considering all points of view and opinions.
8. If appropriate, work in partnership with other political subdivisions, organizations, and governmental agencies to further the interest of the City of Hampton.



**CITY OF HAMPTON BOARDS, COMMISSIONS, AND COMMITTEES
COMMITMENT TO EXCELLENCE**

STANDARDS OF CONDUCT

Recognizing that individuals holding public office are under continuous observation by interested City residents and the media, and recognizing that maintaining the dignity and integrity of public office is vital for maintaining high levels of public confidence in governmental institutions, every member of a board, commission, or committee shall adhere to the following Standards of Conduct:

1. Avoid the use of intimidating, abusive, or threatening gestures or language directed at citizens, colleagues, or City employees during the performance of public duties and public meetings.
2. Stay current on all tax obligations.
3. Adhere to the following Social Media Policy:
Members who use social media shall not do the following:
 - Post any materials of a sexually graphic nature;
 - Promote violence or suppression;
 - Post any materials that encourage or show illegal activity;
 - Use any speech containing obscene or sexually explicit language, images, acts, statements, or other forms of speech that ridicule, malign, disparage, or otherwise express bias against any race, any religion or any other protected class; and,
 - Use speech that could reasonably be considered as reckless.
4. Attend all scheduled meetings of your board, commission, or committee, resigning whenever personal circumstances preclude regular attendance. Refer to the bylaws of your particular board, commission, or committee for specific attendance requirements.
5. Make a diligent effort to be well prepared for every meeting.
6. Avoid criticism or personal attacks on City employees or colleagues that are unrelated to the public business before your board, commission, or committee. Maintain an attitude of consideration and courtesy toward all City employees and colleagues during every deliberation and discussion.
7. Refrain from the use of personal devices during meetings.
8. Dress Code: During board, commission, and committee meetings, all members should dress appropriately for the business environment.



CITY OF HAMPTON BOARDS, COMMISSIONS, AND COMMITTEES
COMMITMENT TO EXCELLENCE

BEST PRACTICES FOR COMMUNICATING WITH THE MEDIA AND CITIZENS

1. When responding to questions from citizens or the media, you should:
 - Remind the listener that you do not speak for the entire board, commission, or committee;
 - Clarify your position on a specific item; and,
 - Not comment on closed session matters unless and until the item is discussed in an open session meeting.
2. Every member shall acknowledge that personnel matters must remain confidential and the board, commission, or committee has an obligation to protect individual privacy.
3. Members will concentrate on issues and avoid making public comments about City employees, individuals, fellow board, commission, or committee members, media representatives, or community residents. The City Manager should be the primary contact for City matters. When requested to give an interview, the member asked should contact the City Manager's Office and she will, in turn, contact the Mayor and City Council to inform them of the subject matter of the interview. In addition, the staff liaison to that particular board, commission, or committee shall update the other members regarding the circumstances and substance of the interview as soon as practicable. This procedure does not prevent any member from responding to questions from the media.



**CITY OF HAMPTON BOARDS, COMMISSIONS, AND COMMITTEES
COMMITMENT TO EXCELLENCE**

ACKNOWLEDGMENT FORM

As a member of a City of Hampton board, commission, or committee, I agree to uphold and affirm the City of Hampton Boards, Commissions, and Committees Commitment to Excellence as articulated in the Code of Ethics, Scope of Duties, Standards of Conduct, and Best Practices for Communication with the Media and Citizens. In furtherance of that pledge, I will:

- Appreciate the individual contributions, perspectives, and talents of individual members;
- Help create an environment of civility and respect where individual members, the public, and City employees are free to work to their full potential and express their ideas;
- Conduct my public and private affairs with integrity, fairness, honesty, and respect for others;
- Respect the privacy and dignity of organizations and individuals;
- Focus on achieving meaningful solutions for the public benefit and strive to uphold the common good;
- Avoid and discourage actions that are harmful or divisive to the best interest of the City of Hampton; and,
- Treat everyone that I meet the same way that I wish to be treated.

I affirm that I have read and comprehend the City of Hampton Boards, Commissions, and Committees Commitment to Excellence. Failure to adhere to the policies articulated in this document may result in removal from the board, commission, or committee by the City Council.

Signature

Printed Name

Date

Board/Commission/Committee