

**CHARLOTTESVILLE POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES**

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CHARLOTTESVILLE POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES

ARTICLE 1

POWERS AND DUTIES

The powers and duties of the Police Civilian Oversight Board (PCOB) are set forth within Virginia Code §9.1-601 and within Charlottesville City Code Chapter 2, Article XVI, Sections 2-450 through 2-468, hereinafter known as the enabling ordinance.

ARTICLE 2

PURPOSE

The purpose of the Board is to establish and maintain trust between and among the Charlottesville Police Department, the City Council, the City Manager, and the public (§2-450 of the enabling ordinance.) In furtherance of that goal, the Board shall 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. The Board’s functions, as outlined below, shall pursue the following principles and objectives:

- A. Ensuring that police officers act with integrity and treat every person with equal dignity;
- B. Empowering and inspiring self-governance and a culture of mutual respect;
- C. Seeking social and racial justice;
- D. Engaging in community outreach and amplifying the voices of the socially, politically, and economically disenfranchised;
- E. Listening to and building cooperation between all stakeholders to find and develop common ground and public purpose;
- F. Championing just, equitable, and legitimate policing policies and practices; and
- G. Processing complaints, reviewing police practices and internal investigations, issuing findings, writing public reports, and making recommendations.

ARTICLE 3

BOARD MEMBERSHIP

- A. **Appointment and Terms.** Board members will be appointed by the City Council, after an open application process, for staggered three-year terms, as described in § 2-453(a) of the enabling ordinance.
- B. **Composition.** The Board shall consist of up to seven voting members and one nonvoting member. The Board shall reflect the demographic diversity of the City of Charlottesville, as defined in § 253(b) of the enabling ordinance.
- C. **Conduct.** Each member of the PCOB shall conduct themselves in accordance with applicable

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state statutes, and with the provisions of Charlottesville City Code Chapter 2, Article XVI. (A board member's failure to adhere to applicable law may result in civil or criminal proceedings against the member, or lawsuits against the City government).

- D. Each member of the PCOB shall execute and comply with the terms of a Confidentiality Agreement, to carry out the requirements of City Code Sec. 2-453(e)
- E. Each member shall adhere to the PCOB Code of Ethics found in Article 34.
- F. **Conditions for Removal.** Members of the PCOB serve at the pleasure of the City Council. The following conduct shall be specific grounds for removal from office (but are not intended as an exclusive list of the potential grounds for removal):
 - i. Violation of any confidentiality obligations required by law, or set forth within City Code Chapter 2, Article XVI;
 - ii. Ex parte communications with persons who have matters pending before the PCOB;
 - iii. Neglect of duties (including, without limitation, absence from three (3) consecutive PCOB meetings, or absence from four (4) PCOB meetings within any 12-month period);
 - iv. Failure to adhere to the Code of Ethics set forth within these procedures;
 - v. Failure to comply with any law(s) applicable to the transaction of the PCOB's business or to the member's service as a public official (including, without limitation: violation of the Virginia State and Local Government Conflicts of Interest Act, violation of the Virginia Freedom of Information Act); or
 - vi. Any other action that constitutes either misfeasance or malfeasance of or in performance of a PCOB member's duties.
- G. **Resignation.** A Board member may resign at any time by doing so in writing (or by electronic means.) The resignation will take effect immediately upon notification of the Executive Director or Board Chair.
- H. **Continued Service.** Members appointed by City Council to the PCOB shall serve their terms in office. In the event that a member's term has expired, the member may continue to serve in a hold-over capacity until they are either re-appointed by Council, or until Council has appointed a different person to fill the succeeding term.
- I. **Election and Terms of Officers.** The Chair and Vice Chair of the Board shall be elected at the first regular meeting of each calendar year and shall serve for terms of one year. No Board Member shall serve more than two consecutive terms as Chair. The election shall proceed as follows:
 - i. The current Chair will ascertain if a quorum of the Board is present. If not, the election of officers will be postponed until the next regular meeting at which a quorum is present.
 - ii. The current Chair will open the floor to nominations for the coming year's Chair. Nominations shall remain open until no more nominations are received.
 - iii. The current Chair will then open the floor to nominations for the coming year's Vice Chair. Nominations shall remain open until no more nominations are received.
 - iv. Members may decline nominations for Board offices at any time until the members are polled.
 - v. When nominations are completed, the Executive Director shall poll the members as to which nominee they prefer for Chair. After all members of the Board have voted for Chair, the Executive Director shall poll the members as to which nominee they prefer for Vice Chair. Members may abstain from voting for Chair and Vice Chair if they

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- choose.
- vi. The Office of Chair and Vice Chair will be awarded to the nominees with the most votes for each office.
- vii. The current Chair may second nominations and vote in the election of officers.

J. Duties of Officers.

The Chairperson shall preside over all Board meetings at which they are present. Additionally, the Chairperson shall prepare all Board meeting agendas in consultation with Board professional staff members. The Chairperson shall also draft all Board communications and serve as the Board's media point of contact. Finally, the Chairperson may assign ad hoc tasks to one or more Board members.

The Vice-Chairperson shall preside over all Board meetings in the absence of the Chairperson and shall perform any other duties delegated to them by the Chairperson. The Vice-Chairperson shall take minutes at all Board public meetings unless the Board votes to allow its Executive Director to take minutes.

K. Committees and Advisory Panels.

- i. Committees. The Board may establish committees and advisory panels to aid in the fulfillment of its mission. Committees may be ad hoc or permanent. Any member of the Board may propose the formation of a committee to address specific topics or tasks. Proposals should be in writing and indicate the mission and scope of the committee, the duration of its activities, and resources required to fulfill its objectives. The Board shall approve the formation of committees by majority vote. Membership on committees shall be voluntary and limited to members of the Board.

The members of each committee shall select a committee Chair. The committee Chair shall report periodically to the full Board regarding the activities undertaken by their committee and progress made towards their stated goals. The status of permanent committees shall be reviewed annually and may be terminated by Majority vote of the Board. Ad hoc committees will expire when their stated objectives have been fulfilled or when they are terminated by majority vote of the Board.
- ii. Advisory Panels. The Board may also establish advisory panels to expand and facilitate interactions with the public on issues related to police oversight. Members may propose the establishment of advisory panels in the same manner as for committees; proposals should describe the nature of the panel's mission and the target audience for Board outreach and, if possible, public volunteers or organizations who will be participating in the panel. The formation of advisory panels shall be approved by a majority vote of the full Board. Advisory panel members may choose a Chair, Secretary, or other leadership from among themselves; non-Board members may act in leadership positions in advisory panels, as long as such leadership does not constitute a conflict of interest. Advisory panels may not exercise powers specifically delegated to the Board.
- iii. FOIA Compliance. Board members serving on committees and advisory panels must adhere to all applicable requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)

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ARTICLE 4

MEETINGS OF THE BOARD

- A. **Regular Meetings.** Regular Meetings shall be held once per month on a schedule that is convenient to Board members. The time and location of the meetings will be determined by consultation between the Board and the City Manager. The Board may by majority vote change the time and place of regular meetings.
- B. **Special Meetings.** Special Meetings may be called by the Board Chair or by request of any two Board members to the Chair or Executive Director.
- C. **Notice.** Public notice of regular meetings must be provided per City policy [and VA FOIA?]. Whenever possible, the Board shall provide written summaries of proposed agenda items as part of the agenda package. Public notice of special meetings must be provided at the same time as notice is provided to the Board Members.
- D. **Meeting Procedures.** Roberts' Rules of Order 12th Edition, Sec. 49:21 Rules for Small Boards shall be used as guidance for the conduct of meetings. During meetings:
- i. Board members must be recognized by the Chair before speaking or introducing motions.
 - ii. The Chair will recognize members in order which they ask to be heard.
 - iii. The Chair may participate in discussions and vote on motions but must relinquish the gavel if he/she wishes to introduce a motion.
 - iv. The Chair will work to assure that the opinions of all members are heard.
 - v. Board members are expected conduct themselves civilly and respectfully.
- E. **Public Comment Period.** At least one public comment period will be held at each regular and special meeting of the Board. More than one comment period may be held at the discretion of the chair. If two or more comment periods are scheduled, the Chair may limit the subjects of comments to items on the agenda in one comment session. During public comment periods, participants will be called on in the order that they request to be recognized. Each commenter will be limited to three minutes. Individuals may ask to be recognized more than once during a meeting or during a comment period; such individuals may be recognized by the chair, time permitting, after all others have had one chance to speak. The Board will develop and publish guidelines for public participation during its meetings.
- F. **Minutes.** Minutes of regular and special meetings shall be taken by the Vice Chair or, if delegated by the Board, the Executive Director, as described in §2-454(d) of the enabling ordinance.

ARTICLE 5

EXECUTIVE DIRECTOR

- A. **Appointment.** The City Manager shall appoint an Executive Director with the approval of a majority vote of the City Council, as described in §2-455 of the enabling ordinance.
- B. **Duties.** As authorized in §2-455, the Executive Director shall support the Board in the implementation and exercise of all its functions authorized under this ordinance and to undertake or ensure the performance of specific tasks assigned by the Board, including the monitoring of investigations conducted by the Department. If authorized by the City Manager or their designee, the Executive Director

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may engage the services of such investigators as may be necessary to perform the Executive Director's duties to conduct or to monitor investigations. Specifically, the Executive Director shall support the Board in the areas listed below and as detailed in the Division of Labor Protocol¹ found in Appendix 1:

- | | | |
|--|--|-------------------------------|
| i. Board Meetings | ix. Committees | xvii. Staff Management |
| ii. Investigations | x. Advisory Panels | xviii. Annual Report |
| iii. Disciplinary Recommendations | xi. Forums | xix. Strategic Vision |
| iv. Auditing | xii. Commendations | xx. Legal Compliance |
| v. Review | xiii. Interdepartmental Relations | xxi. Budget |
| vi. Mediation | xiv. External Relations | xxii. Special Projects |
| vii. Subpoenas | xv. Training | xxiii. Fundraising |
| viii. Annual Expenditures | xvi. Issue and Policy Management | |

C. Supervision. The City Manager shall supervise the work of the Executive Director and may delegate that responsibility to a Deputy City Manager. The City Manager's annual evaluation of the Executive Director's performance shall consider a written performance review submitted by the Board to the City Manager. The Board may request that the City Manager meet with the Board's Chair to discuss the Executive Director's performance.

- i. A written performance review by the Board shall include input and review of all Board members.
- ii. Prior to meeting with the City Manager, the Board Chair shall have a shall solicit comments from each Board member to ensure all positions are represented.

D. Vacancy. If there is a vacancy in the position of Executive Director, the City Manager or their designee may designate some other City employee who is not an employee of the Department to act as Executive Director until a new Executive Director is hired.

- i. The City Manager shall consult with the Chair to assess the needs of the Board and determine the "best fit" for "acting Executive Director".
- ii. The City Manager shall fill the position as soon as practicable but shall not delay the selection of a new Executive Director more than 6 months from the beginning of the vacancy. The City Manager shall submit a written explanation to City Council if there is a delay in the selection of the Executive Director beyond this period. The written explanation shall specify an action plan to expedite the selection of the Executive Director.

ARTICLE 6

JURISDICTION

The Board's jurisdiction extends to all civilian complaints alleging misconduct by sworn officers and civilian employees of the Charlottesville Police Department, irrespective of duty status. For purposes of this Article, "misconduct" is defined as any conduct actionable under CPD General Orders 517.00 (Disciplinary Procedures) Parts 1 and 2, 400.05 (Bias-Based Policing), and 400.00 (Code of Conduct), as amended, as well as any other violation of procedures and policies applying to police conduct. The Board may also independently investigate incidents, including the use of force by a law enforcement officer, death or serious injury to any individual held in custody, or serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law enforcement officers and civilian employees of the Department.

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ARTICLE 7

**STANDING TO FILE COMPLAINTS
AND REVIEW REQUESTS**

- A. **Complaints.** The following have standing to have their complaints alleging misconduct by sworn officers or civilian employees considered by the PCOB:
- i. Any individuals directly affected by incidents of police misconduct (who were physically present and in physical or verbal contact with police during the alleged misconduct)
 - ii. Designated representatives of individuals affected by police misconduct
 - iii. Parents, guardians, legal custodians of minors or persons under a disability who have alleged to have been victims of police misconduct.
 - iv. Any witnesses to incidents of police misconduct who were present during the alleged misconduct
 - v. Any individual with material information concerning police misconduct
- B. **Review Requests.** Any individual whose complaint has been investigated by the Charlottesville Police Department had standing to file a review request.
- C. **Timeliness.** Complaints must be filed with one year (365 days) of any incident of alleged police misconduct. Review requests must be filed within 75 days of the issuance of a Closure Letter by the Charlottesville Police Department. The CPD must make a good faith effort to ensure that the closure letter has been received by the complainant. The Board may extend the above deadlines for cause, as stated in § 2-458(D) of the enabling ordinance.
- D. **Permission to file on behalf of another individual.** Representatives filing complaints or review requests on behalf of others must have written approval to do so from the individual directly affected by police misconduct. The Executive Director shall ascertain if such approval has been given.

ARTICLE 8

FILING COMPLAINTS

The process, as set out in detail in a Standard Operating Procedure established by the City Manager in consultation with the Chief of Police and the Executive Director, shall permit Complainants to file Complaints online, in writing, or orally. The SOP permits the Complainant to choose whether the Complaint will be investigated by the Board only or by the Department with monitoring by the Executive Director. Regardless of how a Complaint is received, it shall be promptly provided to the Department and to the Executive Director. The Executive Director, in consultation with the Board, may decline to investigate a Complaint.

- A. **Exclusions.** The Board shall not consider complaints, incidents, claims or listed in Charlottesville Code 2-458(c.)
- B. **Exceptions to time limits.** The Board may review investigations beyond the time limits specified in Section 2-458 if:
- i. The board determines that there is good reason for doing so, or
 - ii. As part of an audit taking place under Section 2-462(b).

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ARTICLE 9

INITIAL REVIEW OF COMPLAINTS

A. Case File. Upon the receipt of a complaint, the Executive Director shall create a case file for the complaint, designate a number for the complaint, enter the case in a database, and preserve any body-worn camera evidence.

B. Initial Evidence Collection. The Executive Director may request additional information from the complainant, and collect any evidence necessary for the initial review.

C. Screening. The Executive Director shall screen each complaint and shall take one of the following actions:

- i. Recommend to the Board to decline to investigate the complaint;
- ii. Refer the complaint to the Commonwealth Attorney for possible criminal prosecution;
- iii. With the agreement of all parties, refer the complaint to mediation per Article 26;
- iv. Refer the complaint to independent investigation conducted by the Board;
- v. Refer the complaint to the CPD for investigation because the complaint falls outside of the authority of the Board to review;

D. Recommendation Not to Investigate

In some cases, a preliminary review of the publicly or immediately available evidence may disclose that a complaint lacks merit, and a full investigation would be prejudicial to the complainant and to the public. In those instances, the Executive Director may advise the Board that such investigation will not accomplish the goals of the Board. By a majority vote the Board shall refuse to investigate. In those cases, the complainant shall be notified in writing that the Board will not be investigating, provided with the reasons for the decision, and provide the opportunity to have the complaint sent to CPD for investigation.

ARTICLE 10

WITHDRAWAL OF COMPLAINTS

A complaint may be withdrawn orally or in writing from further consideration at any time by the complainant. A withdrawal made orally shall be memorialized as soon as practicable with the date and reason for the withdrawal (if provided). The Board may decide by majority vote to continue the investigation of a withdrawn complaint if they consider that doing so is in the public interest, keeping in mind the complainant's legitimate privacy concerns.

ARTICLE 11

**REFERRALS TO THE
COMMONWEALTH ATTORNEY**

A. If the Executive Director becomes aware that the misconduct alleged in the complaint or disclosed by investigation may be criminal in nature, he or she shall refer the case to the City of Charlottesville Commonwealth Attorney for possible criminal prosecution.

B. The Executive Director shall give written notification of such referral to the Board, the Chief of Police of the CPD, the City Manager, the City Attorney, the complainant, and subject officer(s). If requested by the Commonwealth Attorney, the Executive Director shall delay notification of the referral to one or more of these parties until the Commonwealth Attorney determines that notification is appropriate.

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C. The Executive Director shall transmit copies of all relevant files to the Commonwealth Attorney, maintain a record of each referral, and record the disposition of each referred matter.

D. The Executive Director will confer with the Commonwealth's Attorney, the City Attorney, and the Board's own legal counsel as to whether competing public interests and civil rights involved permit the resumption of continued, parallel investigation by the Board. 2-458(e)(2). If the Executive Director is advised that a parallel investigation is advisable, he shall certify in writing to the Board that this is the case and initiate or resume an investigation as appropriate.

ARTICLE 12

REFERRALS TO THE SURROUNDING JURISDICTIONS/AGENCIES

If the Board receives complaints regarding the conduct of non-CPD officers and employees, the Executive Director shall notify the complainant of the lack of jurisdiction to investigate and forward the complaints to the appropriate agency with the permission of the complainant.

ARTICLE 13

INVESTIGATIONS (GENERAL)

The standards and principles in this section, have been guided and adapted in part from the Quality Standards for Investigations (QSI) which provide a framework for conducting high-quality investigations for Offices of Inspector General (OIGs) affiliated with the Council of the Inspectors General on Integrity and Efficiency (CIGIE). Additionally, guidance has been incorporated from the National Association for Civilian Oversight of Law Enforcement (NACOLE) and affiliated practitioners and agencies.

A. Direct Investigations or Delegation of Investigations

The Executive Director shall be responsible for directly investigating complaints and incidents or engaging independent investigators as authorized in §2-455(c) and §2-458(g).

In utilizing the discretion to directly investigate or delegate, the Executive Director shall consider the following factors:

- i. Complexity of the investigation (i.e. number of allegations, number of officers involved, seriousness of the allegations at hand, etc.)
- ii. Public interest in the case at hand
- iii. Timeliness assessment (i.e. whether the investigation can be completed in a time-frame that does not cause undue burden for the execution of the other duties of the Executive Director)
- iv. Fiscal impact- availability of funds in the operating budget at the time the complaint is received

B. General Standards

The Executive Director will incorporate the standards and principles outlined here into the Auditing, Investigations and Monitoring (A.I.M) Manual within 90 days of passage of these articles. The A.I.M. Manual shall be revisited every 3 years to ensure it represents the latest standards in the field. The A.I.M.

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Manual defines required qualifications for investigators, procedures for initiating independent investigations, required elements of investigations, and reporting and recordkeeping procedures.

The general standards for Board investigations are:

i. Qualifications

Individuals assigned to conduct the investigative activities must collectively possess professional proficiency for the tasks required.

This standard places upon the Board, via the Executive Director, the responsibility for ensuring that investigations are conducted by personnel who collectively have the knowledge and skills required to perform the investigative activities.

ii. Independence

In all matters relating to investigative work, the Board must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude.

This standard places upon the Board, via the Executive Director, the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. There are three general classes of impairments to independence: personal, external, and organizational.

iii. Due Professional Care

Due professional care must be used in conducting investigations and in preparing related reports.

This standard requires the Board, via the Executive Director, a constant effort to achieve quality and professional performance. It does not imply infallibility or absolute assurances that an investigation will reveal the truth of a matter.

In addition to the general standards in the field, the Board will also adhere to the requirements as outlined in §2-458(a)-(e).

C. Compliance

Any investigation shall comply with all federal, state, and local laws as outlined in §2-458(a).

D. Compelled Statements

The Board may not compel a statement from any Department employee.

This prohibition does not preclude the Board requesting voluntary statements from subject officers or other employees of the Department in the course of investigations of complaints or incidents, or from separately applying for a subpoena to the Circuit Court for the City of Charlottesville. If a subpoena is obtained, the Circuit Court for the City of Charlottesville can compel attendance of witnesses and the production of books, papers, and other evidence necessary to perform the investigative duties pursuant to §2-452(c) & §2-458(f).

E. Exceptions to time limits for investigation

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The Board may review investigations beyond the time limits specified in §2-458 subsections (c)(1) and (c)(2) if: (1) The board determines that there is good reason for doing so, or (2) As part of an audit taking place under Section 2-462(b).

- i. For cases that are beyond the time limits, the Executive Director will assist the Board by interviewing the complainant to determine the reasons for the late filing.
- ii. The Executive Director shall deliver the reasoning as communicated by the complainant via a written Memorandum of Good Reason (MGR).
- iii. The Board shall consider whether the complainant had a “good reason” at the next regular business meeting of the Board. By a two-thirds vote, the Board can certify that there is “good reason” and submit the waiver of the time limit exception to the City Manager.
- iv. Upon receiving the two-thirds vote, the Board -via the Executive Director- shall submit the waiver request to the City Manager who shall decide on the waiver within 72 hours. If the City Manager does not respond to the waiver request within 72 hours, the request shall be deemed to have been granted.

F. Suspension of Investigations

If a Complaint asserts criminal conduct by an employee of the Department, or if at any point in an investigation of a Complaint or Incident the Board becomes aware that an employee may have committed a criminal offense, the Board shall:

- i. Suspend the investigation and notify the Chief of Police and Commonwealth's Attorney of the alleged conduct, ensuring that no statements obtained from the Police Department employee(s) whose actions are the subject of the matter are shared with criminal investigators or any prosecuting authority except in accordance with applicable law; and
- ii. Evaluate, in consultation with Board legal counsel, the City Attorney, and the Commonwealth's Attorney, whether competing public interests and civil rights involved permit the resumption of continued, parallel investigation by the Board

ARTICLE 14

INVESTIGATIONS OF COMPLAINTS

A. The Board's authority to conduct independent investigations of complaints of employee misconduct by the Department is derived from §2-452(c) and §2-457(a).

B. The investigation shall be completed in an expeditious and efficient manner. Good faith efforts will be made to obtain the voluntary attendance of witnesses and the production of relevant evidence.

- i. If the complainant refuses or fails to cooperate in the investigation, the Executive Director may recommend that the Board refer the investigation to the CPD. The Board shall adopt or disapprove the Executive Director's recommendation by a majority vote. Alternatively, the Executive Director may continue with the independent investigation, if in the Executive Director's judgement, a fair and complete investigation is possible without full cooperation of the complainant.
- ii. If the subject officer, or an employee of the CPD refuses or fails to cooperate in the investigation, the Executive Director shall notify the relevant Chief of Police in writing.

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ARTICLE 15

INVESTIGATIONS OF INCIDENTS

A. The Board's authority to investigate and issue findings on incidents, including the use of force by a law enforcement officer, death or serious injury to any individual held in custody, serious abuse of authority or misconduct as defined in the Ordinance, allegedly discriminatory stops, and other incidents regarding the conduct of law enforcement officers and civilian employees of the Department is derived from §2-452(c) and §2-457(b).

- i. These incidents do not require a complaint to be filed and the Board, *sua sponte*, may investigate incidents fitting the criteria.
- ii. These matters will follow the same investigatory protocol as investigations of complaints with the addition of the Preliminary Investigative Report as referenced in §2-458(h)
- iii. The Board shall authorize an investigation of incidents by a majority vote.

ARTICLE 16

**INVESTIGATIONS OF POLICIES,
PRACTICES, AND PROCEDURES**

A. The Board's authority to investigate policies, practices, and procedures of the Department through the Executive Director and to make recommendations regarding changes to such policies, practices and procedures, as set forth within Sec. 2-462 of the Ordinance is derived from §2-452(c).

- i. The Executive Director may seek to contract independent contractors and firms through competitive and non-competitive procurements to undertake investigations under this subsection.
- ii. The completion of retrospective examinations and audits of patterns in Internal Affairs investigations, arrest and detention, and other public-police interactions shall not preclude the Board from exercising the Powers and Duties under this subsection.
- iii. The Board shall authorize an investigation of policies, practices, and procedures by a majority vote.

B. The investigation shall be completed in an expeditious and efficient manner. Good faith efforts will be made to obtain the voluntary attendance of witnesses and the production of relevant evidence. The Executive Director shall provide a report of all investigations of policies, practices, and procedures, and recommended changes to the Board for review and approval.

ARTICLE 17

**MONITORING OF INVESTIGATIONS
OF COMPLAINTS**

A. The Executive Director's authority to is actively monitor all investigations of Complaints of employee misconduct conducted by the Department is derived from §2-452(c) and §2-457(a).

B. While monitoring investigations, the Executive Director shall have access to records and witnesses to the same extent as the Department, subject to the limitations or requirements set out in this Ordinance. Such monitoring may include reviewing the:

- i. Investigative plan of the Department;

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- ii. Reviewing with the Department any records within the Department's digital evidence management system;
- iii. Reviewing with the Department any pertinent law enforcement records within the Department's Records Management System;
- iv. Observing any and all real-time interviews of witnesses with the Department;
- v. Reviewing all recorded interviews which the Executive Director chooses not to attend in real time;
- vi. Providing feedback during the interview to be relayed to Department staff conducting the interview;
- vii. Providing feedback to Department staff in determining next steps in the investigative process; and reviewing facts gained from investigation with Department staff.

C. For active investigations, the Executive Director shall be limited in their participation to the same extent the Department is limited in its participation in such investigations. The Executive Director may monitor the Department's administrative investigation of employee misconduct after the close of the active investigation in the same manner as all other investigations of employee conduct handled by the Department as described in this section.

D. When monitoring Department investigations, during the pendency of the investigations the Executive Director shall not disclose information to the Board, any Board member, or any person other than as authorized in writing by the Chief of Police or the City Manager.

ARTICLE 18

SUBPOENAS

A. Subpoenas

If, after making good faith efforts, the Executive Director is unable to obtain the voluntary attendance of witnesses and the production of books, papers, and other evidence necessary to perform the investigative duties, the Executive Director, pursuant to §2-452(c) & §2-458(f), may recommend that the Board apply to the Circuit Court for the City of Charlottesville for a subpoena compelling the attendance of such witness or the production of such books, papers and other evidence.

- i. The Executive Director shall deliver a Memorandum of Subpoena Recommendation (MSR) to the Board within 48 hours after the last effort to obtain voluntary attendance of witnesses or production of evidence. This notification shall be made electronically to the Board Chair and Vice Chair.
- ii. Upon receiving the MSR, the Board Chair shall distribute it to the Board and request that the Board convene for a Special meeting. The meeting will be publicly noticed per VFOIA public meeting requirements.

B. Special Meeting- Subpoena

If after receiving the MSR from the Executive Director and the presentation at the Special Meeting, the Board determines that there is evidence (including witnesses) within the control of the Police or other city Department and or independent third parties, which the Board is unable to obtain voluntarily, the Board by two-thirds vote may direct the Executive Director, on behalf of the Board, to apply to the Charlottesville Circuit Court for a subpoena.

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- i. If a two-thirds (2/3) vote is not achieved, the Executive Director will immediately continue with the investigation with the information collected up to that point.
- ii. If a two-thirds (2/3) vote is achieved, the Executive Director will work with the Independent Counsel to apply for the subpoena within 72 hours of the vote. A delay in the application of the subpoena beyond this time period shall be documented in writing and included in the case file.

C. Service of a Subpoena

Upon approval of the subpoena by the Circuit Court, the Board shall delegate service of the subpoena to the City of Charlottesville Sheriff's Office.

ARTICLE 19

DISPOSITIONS OF INVESTIGATIONS

At the conclusion of the investigation of a complaint or incident, the assigned Investigator shall forward the file with a report of investigation to the Executive Director. The Executive Director shall take one of the following actions:

- i. Direct the investigator to undertake additional investigation;
- ii. Refer the complaint to the Commonwealth Attorney's Office where there is a criminal element to the allegations and suspend the investigation until criminal matter is resolved;
- iii. Certify the results of the Investigative Report for complaints pursuant to §2-457(a);
- iv. Certify the results of the Preliminary Investigative Report for investigations of incidents as provided in §2-457(b) and §2-458(h);
- v. If an Investigative Report or Preliminary Investigative Report is certified, by the Executive Director, he/she shall then submit the report to the Board, the City Manager, City Attorney, Chief of Police, employees identified as having committed employee misconduct, and to the complainant.

ARTICLE 20

HEARINGS - GENERAL

A. Hearing Examiner. Hearings that are convened to address investigations of complaints and incidents under Section 2-457 and complaint review requests under Section 2-459 of the Board's enabling ordinance shall be presided over by Hearing Examiners. Hearing Examiners may have professional experience in mediation, police oversight, or other relevant area of jurisprudence. Hearing Examiners shall be engaged by the Executive Director. In selecting Hearing Examiners, the Executive Director shall take due precautions to avoid bias, conflict of interest, or the appearance thereof.

- i. **Duties of Hearing Examiner.** A Hearing Examiner shall referee the hearing such that the structure and format of the hearings outlined in the structure and format sections in Articles 21-23.
- ii. While the Hearing Examiner is responsible for ensuring the orderly proceeding of the hearings, the Board is primarily responsible for eliciting evidence from the hearing.

B. Advisors/Representatives. Right to advisor/representative of choice. Throughout the Hearing process, all parties may consult with and be represented by legal counsel or another individual

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advisor/representative of their choosing at any meeting or proceeding related to the Hearing process. A representative is not required and the complainant and subject officer are each responsible for ensuring their advisor's presence at the hearing.

C. Interpreter. Any party requesting an interpreter shall provide at least 14 working days written notice of this request to the Executive Director.

D. Continuance and Delay. The Executive Director may continue the hearing due to the unanticipated unavailability of a witness or representative if good cause is shown, or due to the unavailability of an interpreter. Should the subject officer fail to appear within 30 minutes after the scheduled time for the hearing, the hearing will proceed and the allegations may be sustained absent good cause.

E. Waiver of Hearing. The complainant may indicate in writing to the Executive Director that they waive their right to attend their scheduled hearing within 10 calendar days of being notified of the hearing date. The Board may then, at its discretion, decide the issue based on the evidence in the record.

ARTICLE 21.

PRELIMINARY HEARING CONFERENCE

The Board may, at its discretion, convene a Pre-Hearing Conference, during which preliminary matters related to the Hearing are discussed and/or resolved. The parties will be provided advance written notice of the date, time, and location of the pre-hearing conference.

ARTICLE 22.

FACTFINDING HEARINGS

A. Purpose. Fact-finding hearings shall be open to the public and conducted for the board to understand the allegations of misconduct and the facts as determined during the board's investigation and as presented by the involved parties.

B. Standard of evidence and findings. The Hearing and related investigation are neutral fact-gathering processes. Findings shall be made based on a preponderance of the evidence.

C. Rules of evidence. The hearings need not be conducted according to technical rules of evidence. Relevant evidence shall be admitted, subject to the guidance below, if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Hearing Examiner may exclude irrelevant and unduly repetitious evidence. The Hearing Examiner's decision to exclude evidence shall be final.

The following evidence may be excluded:

- i. Information or documents about the complainants' past encounters with the police if in the estimation of the Hearing Examiner does not show *modus operandi*, or a pattern or practice of behavior that may be very helpful in reaching factual conclusions;
- ii. The complainant's criminal record, unless record is permissible impeachment (e.g., prior conviction for forgery or perjury);

D. Structure and Format. The fact-finding hearing shall proceed in the following order:

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- i. Call the hearing to order; Explain the purpose of the hearing;
- ii. Give background on the objectives and procedures of the hearing
- iii. Review possible decisions; and
- iv. Review the applicable standards of evidence.

E. Presentation of Evidence. Once the preliminary information stage is completed, the Hearing Examiner shall conduct the hearing in the following order and manner:

- i. The Hearing Examiner shall ask for statements from the board's investigator, who shall present a summary of the complaint and a summary of their investigation of the complaint;
- ii. The Hearing Examiner shall ask for statements the complainant and their representative, if applicable;
- iii. The Hearing Examiner shall ask for statements witnesses identified by the complainant, if any; and
- iv. The Hearing Examiner shall ask for statements from the subject officer, if attending and voluntarily choosing to make a statement.
- v. The Hearing Examiner will guide the use of evidence. The parties may refer to any relevant documentary evidence and exhibits during their statements.

F. Presence of witnesses. Witnesses may not be present during the statements of the parties.

G. Questions. The board members may ask questions of the parties and witnesses at the conclusion of each of the parties' and witnesses' statements. The Hearing Examiner shall recognize each board member who indicates they want to ask a question. Once all board members have completed their questions, the parties may submit questions to ask about or clarify a point the board members may have missed, confused, or misstated.

H. Orderly business of the hearing. The Hearing Examiner shall ensure that the hearing proceeds in an orderly fashion. Participants who repeatedly interrupt the orderly business of the hearing may be required to leave the hearing by the Hearing Examiner.

I. Board legal counsel consultation. The Board shall have access to legal counsel from either the City Attorney or the Independent Legal Counsel. Whenever there are legal issues where the Board needs guidance, the City Attorney and Independent Counsel shall confer to determine whether a conflict of interest exist and the advice the Board seeks should be provided by the Independent Legal Counsel. The Board shall seek the opinion of their Independent Legal Counsel when a case raises substantial legal issues of first impression outside of the City of Charlottesville ordinance.

- i. If the Board needs additional evidence or an opinion from the Independent Legal Counsel or the City Attorney to reach its findings, it may continue the deliberations phase of the hearing to a future date, not to exceed 14 calendar days, if the necessary counsel is unavailable.

J. Deliberations. The Hearing Examiner shall close the fact presentation portion of the hearing and open the board's deliberations of the finding unless the board votes to deliberate in a later public meeting due to the length of the hearing or complexity of the case. A separate meeting for deliberations will take place no later than fourteen calendar days from the hearing. The Board shall not consider any information not received in the Hearing Packet or during the hearing. In conducting the deliberation, the Hearing Examiner shall:

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- i. Guide the discussion to elicit the Board's finding in the case by asking each Board member to briefly state their opinions on each evaluation criterion. Board members may defer responding or simply state their agreement with previous speakers. After each member has had opportunity to comment on each criterion, the Examiner shall open the floor to additional discussion as appropriate in his judgement;
- ii. Elicit closing remarks and recommended finding from the investigator and questions from the Board for the investigator;
- iii. Present the findings options; and
- iv. Poll the Board on their preferred findings.

K. **Findings.** The board may choose to find:

- i. Complaint not sustained, for one of two reasons:
 - There is insufficient evidence to sustain the Citizen Complaint; or
 - The facts alleged in the Citizen Complaint are true, but do not constitute misconduct by the Subject Officer because the Subject Officer's actions were lawful, justified, and proper.
- ii. Complaint sustained. A complaint shall be sustained when the Oversight Board determines that:
 - The facts alleged in the Citizen Complaint are true; and
 - The Subject Officer's actions were not lawful, justified, and proper.
- iii. This decision shall be reached by majority vote of a quorum of Board members in open session.

L. **Serious breach of departmental and professional standards.** Upon the entering of a sustained finding, the Executive Director shall open the discussion as to whether the officer's conduct constituted a serious breach of departmental and professional standards to determine if the Board may make disciplinary recommendations. The board may consult with a representative from the Department and review the applicable department and professional standards. The board may vote to conduct this portion of the deliberations on another date, not to exceed 14 days from the date of the fact-finding hearing, to provide time for the board members to become familiar with the applicable department and professional standards or other information required to understand complex cases.

M. **Findings Report and Notification.**

- i. Within 7 calendar days of the last date of the hearing, the Executive Director shall inform the complainant and subject officer, in writing, whether the allegation was sustained or not sustained. Notice to both shall include whether any of the sustained allegations were found to be a serious breach of departmental and professional standards. Notice to the subject officer will include their ability to file a grievance through Charlottesville's grievance procedure subsequent to further action by the Department, if applicable.
- ii. Within 10 calendar days of the last date of the hearing, the Executive Director shall submit a Findings Report, together with the Hearing Packet, which shall include all findings made by the Board, to the City Manager and the Chief of Police.

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ARTICLE 23

REVIEW HEARINGS

A. Purpose. Review hearings shall be conducted for the board to analyze the sufficiency (thoroughness, completeness, objectivity, impartiality, and accuracy) of the Internal Affairs Division (IAD) investigation of a complaint and its findings. A Department IAD representative shall be present at every hearing.

B. Standard of evidence and findings. The board may find that CPD IAD investigation was or was not sufficient based on a preponderance of the evidence of the complaint presented at the hearing and on professional investigation standards. The may also consider whether the findings of the IA investigation were consistent with the evidence available to the CPD.

C. Structure and Format. The review hearing shall proceed in the following structure:

- i. The Hearing Examiner shall relay the same preliminary information as required for fact-finding hearings.

Presentation of Investigation/Evidence:

- ii. The Hearing Examiner shall ask for statements from, the Executive Director, who shall present a summary of the complaint, the IA investigation of the complaint, and review the basis for the IA finding;
- iii. The Hearing Examiner shall ask for statements from, the complainant and their representative, if applicable, either of whom may summarize the complainant's experience during the incident and the effect of that experience on the complainant;
- iv. The Hearing Examiner shall ask for statements from, witnesses identified by the complainant, if any; and
- v. The Hearing Examiner shall ask for statements from, the subject officer, if attending and voluntarily choosing to make a statement.

D. Questions of the parties. The Hearing Examiner shall adhere to the same rules for questions as required in fact-finding hearings. Additionally, the parties may ask questions directly to the Department IAD representative present.

E. Orderly business of the hearing. The Hearing Examiner shall adhere to the same rules for the orderly business of the hearing as required in fact-finding hearings.

F. Deliberations. The Hearing Examiner shall close the fact presentation portion of the hearing and open the board's deliberations of the finding. The Board shall consider the following options for a finding:

- i. The Board concurs with the findings of the Charlottesville Police Department investigation; or
- ii. The Board advises the City Manager that the CPD investigation's findings are not supported by the information reasonably available to the CPD and make further recommendations to the City Manager concerning disposition of the Review Request; or

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- iii. The Board advises the City Manager that the CPD investigation is incomplete or unsatisfactory and provides the specific reasons for this finding.

G. Deliberations. The Hearing Examiner shall conduct the deliberations in the same manner as they conduct the fact-finding hearing deliberations.

H. Policy Recommendations. Once the board has made its finding, the Executive Director shall ask the Board members whether the information presented at the hearing suggests that Board should make policy recommendation(s) to the Chief of Police and City Manager.

I. Serious breach of departmental and professional standards. Upon entering any sustained finding the Executive Director shall open the discussion as to whether the officer's conduct constituted a serious breach of departmental and professional standards to determine if the Board may make disciplinary recommendations or if the Department disciplined the officer appropriately.

ARTICLE 24

RECORD OF HEARING

The Board shall make an audio or video recording of all hearings that shall serve as an official record. The Board shall provide a transcript of the proceedings to any party that requests it.

ARTICLE 25

DISCIPLINARY MEETING

A. Purpose. Should the board find that a sustained complaint constituted a serious breach of departmental or professional standards, the Board shall meet to determine disciplinary recommendations to make to the Department no later than 30 calendar days from the last date of the fact-finding or review hearing. These recommendations may pertain to policies and procedures and/or the subject officer to disincentivize similar future misconduct. In making such recommendations, the Board may review policies, practices, and procedures of the Department, including written policies, procedures, and standing orders.

B. Structure. The board's Executive Director shall provide a written report to the board and make a presentation of the report, which shall include a summary of the following:

- i. The opinion of the officer's direct supervisor;
- ii. The opinion of the complainant;
- iii. The opinions of witnesses, if appropriate;
- iv. The opinion of the officer, if they wish to participate;
- v. Prior sustained community member complaints against the officer; and
- vi. Which section of CPD's disciplinary matrix or other general order applies to the wrongful conduct.

C. Notice to officer. Prior to the meeting, the Executive Director shall have notified the officer of the meeting and of the range of potential disciplinary actions. The officer may submit a written statement to the Executive Director to be considered during the meeting.

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D. Recommendations. All recommendations of the Board shall be established by majority vote of a quorum of Board members. The recommendations shall be publicly announced unless the Board specifically finds a compelling reason to impose confidentiality consistent with law. The Board will submit disciplinary recommendations to CPD and the City Manager in writing within 10 calendar days from the date of the disciplinary meeting.

ARTICLE 26

MEDIATION OF COMPLAINTS

A. Authority. As authorized by § 2-460 and § 2-468, the Board may refer complaints to mediation. Mediation is a way for the complainant and the subject officer to meet face-to-face with a neutral third party in an attempt to resolve their differences that arose from the interaction that yielded the police complaint, with the aim of building the trust between the community and the CPD. The Board's mediation process and role is not to resolve disputes between the City and a complainant.

- i. The PCOB does not have any authority to decide or resolve any claims or disputes, for monetary or other relief, that a particular complainant may have against the City of Charlottesville, its public officials or employees.
- ii. For purposes of Va. Code §2.2-4116(B) and (C), the PCOB does not have any authority to make commitments on behalf of City Council for participation in any dispute resolution proceeding(s), or as to any binding agreement(s).
- iii. Except for matters expressly described in Va. Code §2.2-4119(B), records of dispute resolution proceedings are subject to the Virginia Freedom of Information Act.

B. Mediation Services. The Board shall be permitted, through the Executive Director, to contract for mediation services. In considering contractors for mediation, the Board shall consider vendors in the following order:

- i. Existing ADR or mediation contracts the City of Charlottesville currently has with other departments like the Office of Human Rights;
- ii. Cooperative agreements. Cooperative purchasing can be an important alternative means to secure necessary goods and services by aggregating volume and reducing administrative overhead. The City engages in cooperative purchasing in a manner that ensures compliance with applicable laws; considers price reasonableness; considers participation of local vendors; and with a full review of both the requirement and the contract under consideration;
- iii. Recommendations of NACOLE affiliated agencies;
- iv. Formal and informal procurements through RFPs/RFQs

C. Eligibility for Mediation. Upon receiving the complaint form, the Executive Director shall explore the eligibility for mediation referral and submit Memorandum of Mediation Referral (MMR) to the Board by its next business meeting.

In selecting a case for mediation, the Board shall consider:

- i. Amenability or willingness of parties to participate. The Executive Director may consult directly with the complainant and the subject officer to ascertain amenability. Both parties must voluntarily agree to participate.
- ii. Seriousness of allegations. Use-of-force allegations shall be ineligible for mediation.

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- iii. Officer Complaint History. Cases involving officers with a history of citizen complaints shall be ineligible for mediation. No case will be referred for mediation if the officer has been named in three citizen complaints in the past 12 months.

During this period the complaint will receive a “Suspended” status until the Board renders a decision on the referral. By a majority vote from the Board, the Executive Director will refer the complaint to mediation. The Executive Director shall then notify the complainant and the subject officer of the time, date and location of the mediation session. The complaint will be “Suspended” during mediation process until the mediation completes.

D. Good Faith Participation by Complainant. Once the matter has been referred to mediation, if the complainant fails to participate in good faith in the mediation process (as determined by the mediator), the Executive Director may take any such action under Article 9 as applicable.

E. Good Faith Participation by Subject Officer. If the subject officer refuses to participate in good faith in the mediation process, the Executive Director shall notify the Chief of Police. In addition, the Executive Director may take any such action under Article 9 as applicable.

F. Participants. The mediation session will involve the complainant, the subject officer, the mediator and an interpreter, if requested. In the case of a minor or incompetent adult, a parent, legal guardian or personal representative must be present. In appropriate cases arising from the same set of facts, more than one complainant and more than one subject officer may be asked to participate in the same mediation session. No other person may be present or participate in mediation sessions, except as determined by the mediator to be required for a fair and expeditious mediation of the complaint.

G. Mediation Statements. No oral or written statement made during the mediation process may be used by the Board, the CPD or the City as a basis for any discipline or recommended discipline of any subject officer or officers, or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

H. Confidentiality. The parties and mediators shall not disclose to anyone oral or written statements made during the mediation session for any reason, including any statements made or documents prepared for the mediation procedure by any party, attorney or representative for any party or other participant. Parties who attend mediation sessions will be required to sign a confidentiality agreement submitting to these terms. Parties may mutually agree to make specific aspects of the mediation public.

I. Subpoenas. The parties shall not subpoena the mediator, or documents or records submitted to the mediator, for any later judicial or administrative proceedings related to the dispute, and the mediator shall not voluntarily testify on behalf of any party at any subsequent proceeding.

J. Duration. The mediation session(s) will continue as long as the mediator believes it may result in the resolution of the complaint, except that it may not extend beyond thirty (30) days from the date of the initial mediation session without the approval of the Executive Director.

K. Resolution. If mediation resolves the complaint such that neither party wishes to pursue or contest the complaint, resolution of the complaint shall be evidenced by a written agreement signed by the mediator, the complainant and the subject officer.

L. Mediation Agreement. The mediator shall provide copies of the mediation agreement to the parties and the Board. The Board shall place a copy of the mediation agreement in the complaint file. The Board shall send notification of case resolution by mediation to the subject officer, complainant, and CPD.

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M. Lack of Resolution. If the mediation does not resolve the complaint, and the complainant still wishes to pursue the complaint, the Executive Director may take any such action under Article 9 as applicable.

ARTICLE 27

AUDITING

A. Authority. The Executive Director’s authority to conduct audits is derived from §2-462(b).

B. Scope of Audits. The Board may direct the Executive Director on its behalf to conduct retrospective examinations and audits of patterns in Internal Affairs investigations, arrest and detention, and other public-police interactions. The Board may request information from the Department, may seek subpoenas as authorized above, and may conduct such an investigation as is necessary to permit the Board to perform the audit.

- i. The Executive Director may seek to contract independent contractors and firms through competitive and non-competitive procurements to undertake audits under this subsection.
- ii. The completion investigation of policies, practices, and procedures of the Department through the Executive Director and to make recommendations regarding changes to such policies, practices and procedures, as set forth within Sec. 2-462 of the Ordinance shall not preclude the Board from exercising its other Powers and Duties under this subsection.
- iii. The Board shall authorize audits by a majority vote.

ARTICLE 28

PEACEFUL ASSEMBLIES MONITORING

A. Members May Monitor Peaceable Assemblies. Nothing in these articles shall prevent members of the Board from observing or monitoring peaceful assemblies as defined by §18-35 or §18-36 of the City of Charlottesville Code.

B. Training and Identification. Members of the Board monitoring such demonstrations or gatherings will be appropriately trained in applicable law and monitoring procedures. They will clearly identify themselves to police and participants as monitors and shall not participate in assemblies they are monitoring.

C. Reports. Members of the Board shall report their experiences and findings to the Board at the next regular Board meeting after observing any gathering or demonstration.

D. Information on Complaint Process. Board members may inform attendees of peaceful assemblies or demonstration of procedures for reporting police misconduct to the Police Department or to the Board.

ARTICLE 29

REVIEW OF ANNUAL POLICE EXPENDITURES

A. Purpose. Virginia Code §9.1-601(D) states “The governing body of the locality shall establish the policies and procedures for the performance of duties by the law-enforcement civilian oversight body.”

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The purpose of these Board Operating Procedures is to establish the parameters within which the Board will exercise its responsibilities.

B. Enabling legislation. The powers and duties of the PCOB are set forth within Virginia Code §9.1-601(C)(6) and within Charlottesville City Code Chapter 2, Article XVI, Section 2-463.

C. Review of Annual Police Department Expenditure Estimates.

- i. Annually, the City Manager prepares a proposed budget for public input and City Council consideration, as required by Section 19 of the City Charter. (“City Manager’s Proposed Budget”)
- ii. As part of the annual budget process, all City departments—including the Police Department—are required to prepare and submit to the Budget Office an estimate of the amount of money needed during the ensuing fiscal year. The Budget Office reviews the estimates and begins building detailed information and recommendations for consideration by the City Manager.

D. Proposed Police Operational Expenditures. Prior to releasing the City Manager’s Proposed Budget, the Budget Office will share one (1) near-final version of its recommendations for the Police Department’s estimated expenditures for the ensuing fiscal year, at the same time the Budget Office’s analysis and recommendations are initially provided to the City Manager.

- i. The Budget Office will share the estimated expenditures with the Executive Director on a mutually-agreed timeline, calculated to allow the Executive Director to share the information with the Board and offer them at least one opportunity to review the estimated expenditures at one of their regular meetings, prior to the City Manager’s making any final decision on the amounts to be approved within the City Manager’s Proposed Budget.
- ii. The Budget Office will build into its annual Budget Process calendar a timeline for the exchange of information and recommendations required by this Procedure. The PCOB’s comments and recommendations shall be set forth in writing, and transmitted to the City Manager, on or before a specific date identified by the Budget Office within the Budget Process Calendar.
- iii. After conclusion of the public hearing on the City Manager’s Proposed Budget, City Council may make changes. Following the presentation of the City Manager’s Proposed Budget to City Council in March, the PCOB may submit written comments to the City Council anytime prior to the date set for the final public hearing on the City Manager’s Proposed Budget. Additionally, the Board may designate its chair, or another member, to offer comments and recommendations to City Council during the public hearing(s).

E. Proposed Police Capital Expenditures. Generally, the City’s annual budget does not project revenues or operational expenditures beyond the next ensuing fiscal year. However, the City’s Capital Improvements Plan does include revenue and capital expenditure estimates proposed for major equipment purchases and major construction or renovation projects. The Capital Improvements Plan for an upcoming Fiscal Year (and the next four fiscal years)—5 years total—is typically developed separately from the City’s operational budget.

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- i. When a proposed Capital Improvements Plan may include major equipment purchases or other capital items associated with the Police Department, the Budget Office shall notify the Executive Director, and will share records pertaining to those items, on a mutually-agreed timeline calculated to allow the Executive Director to share the information with the PCOB and offer them at least one opportunity to review the estimated expenditures at one of their regular meetings, prior to the public hearing to be conducted regarding the proposed CIP.
- ii. It shall be the responsibility of the Budget Office provide a copy of the Budget Process Calendar to the Board to ensure that any comments on proposed Capital Improvements Plan items relating to the Police Department are submitted in writing to the Budget Office during or prior to the annual public hearing on the proposed CIP.

F. Role of Budget Office. The Board's work in reviewing and making recommendations regarding the Police Department's annual budgeted expenditures shall be with the Budget Office, City Manager and City Council. The Police Department is not required to consult with the Board prior to submitting its annual expenditure estimates (operational or capital) to the Budget Office. However, nothing in these Procedures shall preclude a representative of the Board, or the Executive Director, from meeting with the Chief of Police, a Deputy City Manager, or a member of the Budget Office during any of the processes referenced within this Operating Procedure.

ARTICLE 30

COMMUNITY ENGAGEMENT

As authorized in §2-465, the Board and the Executive Director shall engage in community outreach to seek the assistance and input of community members.

A. Community Listening Sessions. At least twice a year, the Board shall host public community listening sessions to discuss policing matters of pressing public concern, including the impacts of local policing on historically disadvantaged communities that currently experience or traditionally have experienced disparate policing.

B. Community Training. At least twice a year, the Board shall host public community trainings on topics like legal observation of peaceful assemblies and "know your rights" in interactions with the police. The board will poll the community to determine what training the community needs.

C. Community Events. At least once a year, the Board shall participate in community-sponsored events where they can educate the community about the Board and its purpose.

ARTICLE 31

EFFECTIVE DATE OF REGULATIONS

These Articles shall take effect immediately upon approval by the City Council.

ARTICLE 32

DEFINITIONS

Whenever used in these regulations, unless plainly evident from the context that a different meaning is intended, the following terms are defined as follows:

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Allegation(s): The conduct that forms the basis of a complaint for misconduct.

Board: The Police Civilian Oversight Board, which consists of 8 members appointed by the City Council of Charlottesville.

Board Member Complaint: a complaint filed by City resident against a Board member for alleged violations of the Code of Ethics.

Board Member Complaint Subcommittee: A committee of at least two complaint examiners, appointed by the Executive Director, that reviews and determines the merits of allegations lodged against Board Members.

Chief of Police: The Chief of the City of Charlottesville Police Department.

Complainant: The person filing an investigation complaint or a review request with the PCOB who is alleging misconduct by sworn officers or civilian employees considered by the PCOB:

- (1) Any individuals directly affected by incidents of police misconduct (who were physically present and in physical or verbal contact with police during the alleged misconduct)
- (2) Designated representatives of individuals affected by police misconduct
- (3) Parent or guardian of minor alleging police misconduct or custodians of an individual with diminished mental capacity
- (4) Any witness to incidents of police misconduct who was present during the alleged misconduct

Complaint: An allegation of misconduct made by a person against a sworn officer or Department employee irrespective of duty status.

Designated representatives: Any designated individual shall provide written documentation certifying the complainant's agreement to represent them.

Hearing Examiner: The person designated by the Executive Director to referee the hearing in the structure and format as outlined in Articles 23-25.

Day: In computing any period of time prescribed or allowed by the Ordinance or these operating procedures, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Discriminatory: Conduct by a member of the CPD that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the Commonwealth of Virginia and the City of Charlottesville.

Incident: Refers to an event or occurrence where a member or employee of the CPD is involved regardless of whether a member of the public was present.

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Preliminary hearing: A proceeding overseen by a hearing examiner at which preliminary matters related to the Hearing are discussed and/or resolved. Preliminary matters may include (but are not limited to) discussion of admission of testimony and other evidence into the record.

Ex parte: A Latin phrase referring to communication that is made by a party outside the presence of the other party.

Force: In investigating incidents where physical force was utilized, the Board will consider whether the force was “Excessive” or “Unnecessary” or “Unreasonable” use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the “reasonableness” of a use of force include the following:

- (1) the severity of the crime at issue;
- (2) whether the suspect posed an immediate threat to the safety of officer or others;
- (3) whether the subject was actively and physically resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance;
- (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the CPD, including adherence to the Response to Resistance (i.e. Use of Force) Framework; and
- (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.

Mediation: An informal dispute resolution process, facilitated by a neutral third party, whereby the complainant and the subject officer meet in good faith to discuss the alleged misconduct with the goal of reaching a resolution of the complaint.

Mediator: A neutral third party who has contracted with the Board to attempt to mediate disputes between complainants and subject officers.

Misconduct: Abuse or misuse of police power (as outlined in Article 7 of these Procedures) by a sworn officer directed toward any person who is not a sworn officer or employee of the Department, even if the person(s) are not present. In determining whether misconduct has occurred, the Board will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices and training of the CPD. Generally, misconduct is any behavior actionable under police General Orders, guidelines, or policies.

Modus operandi: Latin phrase meaning a particular way or method of doing something, especially one that is characteristic or well-established.

Preponderance of Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

Recusal: the withdrawal of a Board member from deliberating and voting in a case on the grounds that they are unqualified to perform legal duties under the Ordinance because of a possible conflict of interest or lack of impartiality.

Relevant Evidence: Evidence is relevant if:

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(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

Resolution: As it relates to mediation, refers to cases where both parties (the complainant and subject officer) have come to an understanding. In these instances, the Executive Director may recommend the Board not investigate further and notate that the case was resolved through mediation.

Retaliation: Action that discriminates against a person for making or attempting to make a complaint pursuant to the Ordinance, including action taken against a person because he or she has opposed any practice made unlawful by the Ordinance or because he or she has made a complaint or expressed an intention to file a complaint, testified, assisted, or participated in any manner in an investigation, mediation, hearing or another proceeding under this Ordinance.

Sua Sponte: Latin phrase for "of one's own accord; voluntarily." Used to indicate that the Board has taken notice of an issue on its own motion without a formal complaint or suggestion from a specific party.

Subject Officer: A sworn member of the CPD against whom an allegation of misconduct has been made in a complaint.

Technical Rules of Evidence: Refers to such rules of evidence as those found in Virginia's Rules of Evidence, contained in Part II of the Rules of the Supreme Court of Virginia and in the Code of Virginia or any other official codebook, manual, or protocol.

Witness: a person who testifies with first-hand knowledge of the incident in question.

Witness Officer: A sworn member of the CPD who may have witnessed an incident that resulted in a complaint of allegations of misconduct.

ARTICLE 33

CODE OF ETHICS¹

A. Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

B. Personal Integrity

¹ The Code of Ethics was developed by the National Association of Civilian Oversight of Law Enforcement (NACOLE.)

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Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

C. Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

D. Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

E. Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including, but not limited to: age, ethnicity, citizenship, color, culture, race, disability, gender, gender identity, gender expression, housing status, marriage, mental health, nationality, religion, sexual orientation, socioeconomic status, or political beliefs, and all other protected classes.

F. Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

G. Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

H. Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

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I. Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

ARTICLE 34

COMPLAINTS AGAINST BOARD MEMBERS

A. Purpose. The purpose of this section is to provide procedures for filing and processing complaints against Board Members in a timely, transparent, and consistent manner.

B. Filing a Complaint Against a Board Member

- i. Any resident can file a complaint against a Board Member for a violation of the Code of Ethics. The Board Member Complaint shall be filed with the Executive Director of the Board the same way they can file a police misconduct Complaint (see Article 9).
- i. A complainant must include in the Board Member Complaint Form (or in a statement of their own formatting) the reason(s) for the Board Member Complaint.
- ii. Upon receipt of a Board Member Complaint, the Executive Director will draft and send a letter to the complainant acknowledging receipt of the Board Member Complaint and delineating next steps.
- iii. The Executive Director may seek to appoint a subcommittee of no fewer than two disinterested individuals to review the Board Member Complaint (Board Member Complaint Subcommittee or Subcommittee). The Executive Director will consider enlisting members of the City of Charlottesville Human Rights Commission or City of Charlottesville staff.

C. Board Member Complaint Subcommittee Review

- i. The Board Member Complaint Subcommittee will perform a thorough review of the allegations of the complaint.
- ii. The review by the Subcommittee may include an interview of the complainant, the Board Member(s) that are referenced in the complaint and may consider such additional information the Subcommittee deems necessary to complete the review. The Executive Director shall provide any administrative and functional support to the Subcommittee to carry out their duties. Any public meetings will comply with VFIOA public meeting requirements.
- iii. Upon completion of its review, the Board Member Complaint Subcommittee will draft and send a report to the City Council Liaison to the Board, the Executive Director, the Board, and the complainant detailing the findings and recommendations of the Subcommittee.
- iv. The Subcommittee Report shall include a summary of the circumstances of the incident(s) of alleged Board Member misconduct, the evidence related to whether there was any misconduct, and any suggested findings related to each allegation. The preponderance of the evidence standard shall be used to make determinations concerning Board Member misconduct allegations.

D. Board Review of the Board Member Complaint Subcommittee Report

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- i. Upon publication of the Board Member Complaint Subcommittee Report, the Executive Director, in consultation with the Chair, will prepare and post an appropriate notice of when the Board will consider the Board Member Complaint Subcommittee Report (Subcommittee Report). The Board shall endeavor to include the discussion at the next Business Meeting but may delay the discussion until the subsequent Business Meeting depending on the activity on the agenda.
- ii. When considering a Subcommittee Report, the Chair will invite the Board Member Complaint Subcommittee to present and summarize its findings to the Board.
- iii. Opening the deliberations, the Chair will encourage a full and frank discussion of the issues raised in the Board Member Complaint. The Board will be free to ask Board Member Complaint Subcommittee questions about its review and findings.

E. Board Findings

- i. After deliberations are completed, a majority of the disinterested Board Members must vote on (1) its conclusions about the Board Member Complaint and (2) its recommendation to the City Council about a fair disposition of the Board Member Complaint.
- ii. The Executive Director will draft and send correspondence informing the complainant of the Board's Findings.

F. The Board Member Complaint Final Report

- i. The Board may vote to: concur with the Subcommittee; not concur with the Subcommittee (in which case the Board may make recommendations to the City Council concerning disposition of the Board Member Complaint); or find that the investigation is incomplete or otherwise unsatisfactory and provides a detailed written explanation of the basis for such finding.
- ii. The Board's vote will be memorialized in a Board Member Complaint Final Report (Final Report) drafted by the Board.
- iii. The Chair will circulate the draft of the Final Report for comment with the Agenda for the meeting following the Board Member Complaint deliberation.
- iv. The Board will discuss and vote to approve the Final Report.
- v. Upon certification through Board vote, the Executive Director will send the Final Report to the City Council and the Complainant.