

ARTICLE XVI. POLICE CIVILIAN OVERSIGHT BOARD¹

Sec. 2-450. Title.

This article shall be known as the Charlottesville Police Civilian Oversight Board Ordinance.

(Ord. No. O-21-183, §§ 1, 2, 12-20-21)

¹Editor's note(s)—Ord. No. O-21-183, §§ 1, 2, adopted Dec. 20, 2021, repealed the former Art. XVI, §§ 2-450—2-464, and enacted a new Art. XVI as set out herein. The former Art. XVI pertained to the police civilian review board, and derived from an ordinance adopted Nov. 4, 2019(1)); and Ord. No. O-21-062, 5-3-21.

Sec. 2-451. Police civilian oversight board established.

Pursuant to Virginia Code § 9.1-601, there is hereby established a Charlottesville Police Civilian Oversight Board, which shall be referred to as "the board," with powers granted as provided within this article. The board is a body established and appointed by the city council of Charlottesville pursuant to Virginia Code § 9.1-601(B) to perform functions authorized by the city council in accordance with Virginia Code § 9.1-601(C). It shall not be able to bring suit or to be sued in its own name, except to the extent needed to request and defend subpoenas as authorized by this article.

(Ord. No. O-21-183, §§ 1, 2, 12-20-21)

Pursuant to Virginia Code §9.1-601, there is hereby created in the City of Charlottesville a Police Civilian Oversight Board, with powers granted as provided within this article. The board is appointed by the City Council in accordance with Virginia Code § 9.1-601(C).

The board may not sue or be sued in its own name, except as necessary to request and defend subpoenas authorized by this article.

Purpose. (NEW)

To enhance public safety and protect civil rights by providing independent, objective oversight of the Charlottesville Police Department, fostering accountability, transparency, and community trust in law enforcement.

To ensure fair and effective policing through impartial review of police conduct, policies, and practices, and promoting constitutional policing standards.

To serve as a bridge between the community and the police department, investigating complaints, recommending policy improvements, and working to eliminate bias and misconduct to build a more just and equitable system of public safety.

Definitions. (NEW)

"Serious abuse of authority or misconduct" includes:

- (1) Discriminatory conduct or harassment based on protected characteristics including race, color, religion, gender, national origin, age, disability, sexual orientation, gender identity and expression, marital status, familial status, or immigration status;
- (2) Unprofessional behavior, including rude, careless, angry, retaliatory, or threatening conduct;
- (3) Reckless endangerment of any person, including citizens, detainees, or individuals in custody;
- (4) Violation of laws, ordinances, or department policies and procedures, including the department code of conduct;
- (5) Criminal or other misconduct, on or off duty, that impacts job performance or public trust;
- (6) Knowingly and intentionally making false statements, including falsifying, concealing, or covering up material facts, or creating false documents, while under oath or during official duties;
- (7) Engaging in any sexual activity while on duty;
- (8) Any other serious violation that undermines the integrity of the department or public trust.

Sec. 2-452. Powers and duties of the police civilian oversight board.

- (a) *Purpose.* The purpose of the board is to establish and maintain trust between and among the Charlottesville Police Department, which shall be referred to as "the department," the city council, the city manager, and the public.
- (b) *Objectivity.* It is of fundamental importance that members of the board be fair and objective in the conduct of their duties, and that they be perceived as fair and objective in the conduct of their duties.
- (c) *Powers and duties.* The board shall have the following powers and duties:

(a) The Director of the Office of Police Civilian Oversight (or designee) and the Board shall have the following powers and duties:

- (1) To receive, investigate, and issue findings on complaints from civilians regarding the conduct of law enforcement officers and civilian employees of the department;
- (2) 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 this section, allegedly discriminatory stops, and other incidents regarding the conduct of law enforcement officers and civilian employees of the department;
- (3) At the conclusion of any investigation conducted pursuant to paragraphs (1) and (2), above, if the board has found that an employee has committed misconduct, to recommend disciplinary action to the chief of police;
- (4) To investigate policies, practices, and procedures of the department and to make recommendations regarding changes to such policies, practices, and procedures, as set forth within section 2-462 of this article;
- (5) To review investigations conducted internally by the department, as set forth in section 2-458 of this article, and to issue findings regarding the accuracy, completeness, and impartiality of the investigations and the sufficiency of any discipline resulting from such investigations;
- (6) To request reports of the annual expenditures of the department, and to make recommendations to the city council concerning future appropriations;
- (7) To make public reports on the activities of the board, including investigations, hearings, findings, recommendations, determinations, and oversight activities;
- (8) To hold hearings and, if, after making a good faith effort to obtain the voluntary attendance of witnesses and the production of books, papers, and other evidence necessary to perform its duties, the board is unable to obtain such attendance or production, to 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; and
- (9) To undertake other duties, as reasonably necessary, for the board to effectuate its lawful purpose as provided for in this article, to effectively oversee the department.

(1) Investigate and issue findings on:

- a) Citizen complaints about sworn and civilian department employees' conduct;
- b) Incidents involving use of force, in-custody deaths or injuries, serious misconduct, discriminatory stops, and other relevant incidents;
- c) Department policies, practices, and procedures.

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- (2) Review internal department investigations for accuracy, completeness, impartiality, and disciplinary sufficiency.
- (3) Recommend disciplinary action to the chief of police when misconduct is found.
- (4) Make recommendations on:
- a) Changes to department policies, practices, and procedures;
 - b) Future appropriations to the city council, based on department annual expenditure reports.
- (5) Publish reports on board activities, including investigations, hearings, findings, recommendations, and oversight activities.
- (6) Hold hearings and, if necessary, apply to the Circuit Court for subpoenas to compel witness attendance or evidence production.
- (7) Undertake other duties as necessary to effectively oversee the department and fulfill the board's lawful purpose.
- (d) ~~Definition of "serious abuse of authority or misconduct."~~ "Serious abuse of authority or misconduct" shall include the following:
- (1) ~~Verbal or other conduct regarding an individual or group that maligns or shows hostility for the individual or group because of race, color, religion, gender, national origin, age, disability, sexual orientation, or gender identity and expression;~~
 - (2) ~~Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;~~
 - (3) ~~Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;~~
 - (4) ~~Reckless endangerment of a citizen, detainee, or person in custody;~~
 - (5) ~~Violation of laws or ordinances;~~
 - (6) ~~Criminal or other misconduct occurring on or off the job which is related to job performance or is of such a nature that to continue the employee in the assigned position or in any city employment capacity would constitute negligence in regard to the city's duties to the public or to other city employees;~~
 - (7) ~~In any matter within the jurisdiction of any officer, department or agency of the city:~~
 - a. ~~The knowing falsification, concealment or cover-up of a material fact; and/or~~
 - b. ~~The knowing making of any false, fictitious, or fraudulent statement or representation, and/or the making or using of any writing or document knowing the same to contain a false, fictitious or fraudulent statement or entry;~~
 - (8) ~~Sexual activity, including consensual sexual activity, on the job; and~~
 - (9) ~~Other serious violations of Charlottesville or department policies or procedures, including the department code of conduct.~~
- (e) ~~Access to department information.~~ The board is authorized to receive, and shall be provided full access to, all department reports, files and records pertinent to board investigations of complaints and incidents or to its review of department internal affairs investigations, as authorized in this article. All records, documents, and materials in the possession of the department or the city that are determined by the board to be necessary and requested by the board to carry out its authorized powers and responsibilities shall be provided to the board subject to board procedures adopted, with council approval, for the protection of confidential information as defined in such procedures. Within forty-five (45) days of the enactment of this article, the

city manager, in consultation with the chief of police and the board, shall establish a standard operating procedure setting forth how this access shall be given by the department to the board, how personal information shall be managed and protected by the board in accordance with the requirements of Virginia Code § 2.2-3800 et seq., and under what circumstances or conditions it may be made available to the parties.

Access to department information.

- (a) The Director of the Office of Police Civilian Oversight (or designee) shall have full access to all department reports, files, and records pertinent to board investigations and reviews of internal affairs investigations, as authorized by this article.
- (b) The department and city shall provide all necessary records, documents, and materials requested by the board to fulfill its authorized duties, subject to board procedures approved by the council for protecting confidential information.
- (c) Within 45 days of this article's enactment, the city manager, in consultation with the chief of police, director of the Office of Police Civilian Oversight and the board, shall establish a standard operating procedure that outlines:
1. How the department will provide access to the board;
 2. How the board will manage and protect personal information in accordance with Virginia Code § 2.2-3800 et seq.; and
 3. Under what conditions information may be made available to relevant parties.
- (f) ~~Department information to which the board may not have access.~~ the executive director and the board shall not have access to:
- ~~(1) Juvenile records;~~
 - ~~(2) Records that may reveal the identity or personal information, as defined in Virginia Code § 2.2-3801, of a confidential informant;~~
 - ~~(3) Investigative files for an active civil or criminal investigation by the commonwealth attorney, the Virginia Attorney General, the Virginia State Police, or the United States Department of Justice;~~
 - ~~(4) Files related to an active EEOC claim, human rights commission investigation, or civil claim involving a department employee;~~
 - ~~(5) Files containing information exempt from public disclosure pursuant to Virginia Code §§ 2.2-3706(B)(2), (3), (4), (5), (6), (7), (8), (10), (11); 2.2-3706(C); 2.23706.1(C)(1) through (C)(6); 2.2-3706.1(D); and 2.2-3706.1(E); or~~
 - ~~(6) Any information that the police department is not legally authorized to share.~~

Limitations on Access to Department Information.

The Director and the Board shall not have access to:

- (a) Juvenile records;
- (b) Information identifying confidential informants, as defined in Virginia Code § 2.2-3801;
- (c) Active investigative files from:
1. Commonwealth Attorney
 2. Virginia Attorney General

3. Virginia State Police

4. United States Department of Justice

(d) Files related to active:

1. EEOC claims

2. Human rights commission investigations

3. Civil claims involving department employees

(e) Information exempt from public disclosure under Virginia Code §§ 2.2-3706(B) (2-8, 10-11), 2.2-3706(C), 2.2-3706.1(C)(1-6), 2.2-3706.1(D), and 2.2-3706.1(E);

(f) Any information the police department is not legally authorized to share

~~(g) *Disputes over access.* If the executive director and the board seek access to information the disclosure of which the department believes would compromise ongoing investigations, disclosure may be withheld until such time as the need for maintaining confidentiality is no longer present, or until the city manager has determined that the matter will not be compromised by the release of the information. If the board believes that the city manager is unreasonably withholding such information, the board may consider whether to seek a subpoena requiring the production of such information pursuant to subsection 2-458(f).~~

Disputes Over Access to Information

(a) If the Director or the Board seeks access to information that the Police Department believes would compromise ongoing investigations, the Police Department may temporarily withhold disclosure.

(b) Withholding shall continue only until:

1. The need for confidentiality no longer exists; or

2. The City Manager determines that disclosure will not compromise the matter.

(c) If the Director or the Board believes information is being unreasonably withheld:

1. The Director shall consult with the Police Chief to resolve the dispute.

2. If unresolved, the Director and Police Chief shall jointly present the matter to the City Manager for a final decision.

3. The City Manager shall issue a written decision within five (5) business days.

(d) If dissatisfied with the City Manager's decision, the Board may, by two-thirds vote, direct the Director to seek a subpoena for the information as provided in this Article.

(e) The Board shall give the City Manager and Police Department reasonable notice of its intent to seek a subpoena and shall cooperate in limiting the subpoena's scope to protect confidential information.

~~(h) *Procedures must be adopted before the board begins to operate.* The board shall not exercise the powers and duties set forth within paragraphs (c)(1) — (9) until city council approves operating procedures, after consultation with the board, pursuant to subsection 2-460(a).~~

(Ord. No. O-21-183, §§ 1, 2, 12-20-21)