

## **CITIZENS REVIEW BOARD ANNUAL REPORT**

September 1, 2019 through August 31, 2020

### **History of the Board, Charge, Meetings and Attendance**

The Citizens Review Board (CRB) came into existence in September 1997. The Board reviews appeals from the outcome of citizen complaints to the Police Department concerning: use of force; unbecoming conduct; arrest, search and seizure; and complaints of arbitrary profiling involving a sworn police officer. In addition, the disposition of the review of any discharge of an officer's firearm that results in the death or injury of a person may be appealed to the Board. The Board also serves in an advisory role to the Chief of Police, the City Manager, and the City Council. It is charged with making annual reports to the Chief of Police, the City Manager, the City Council, and the Community Relations Committee. The Board typically meets on the second and/or fourth Tuesday of the month when appeals are received, or as needed. There have been eight (8) meetings of the Board during this reporting year.

### **Current Membership**

The eleven members are appointed each for three-year staggered terms, with no member serving more than two consecutive terms. Five members are appointed by City Council. The Mayor and City Manager each make three appointments. Currently, those serving during this reporting period are: Henry Black, Jr. (Chair), who became an inactive member in September 2019 and whose term of office expired in July 2020; Faith Watson was recently appointed by the City Manager to replace Mr. Black; Tonya Jameson (Vice Chair who has been functioning as Acting Chair since September 2019); Tom Bowers; Brittenay Causieestko-Lee; Magaliz Giraud; Marc Jensen; Robert Keene; La Becky Roe; Jeffrey Simpson; Samuel Smith; and John Watkins. Ms. Causieestko-Lee and Ms. Roe were recently appointed to fill the seats previously occupied by Paris Hopkins and Nancy Hightower, respectively. All Board members have met the attendance policy and are currently working on completing their annual training requirements. All members serving as of February 1, 2020 submitted the 2020 Ethics Disclosure Statement, as required by Council policy.

### **Board Activity During this Reporting Period**

In response to a request from Police Chief Kerr Putney, the Board engaged in dialogue with and provided feedback to proposed revisions to directives related to when and how much force may be applied by officers when responding to resistant subjects. CMPD eventually adopted a number of the CRB's recommendations into its new policies, but CMPD declined to adopt others, including a "duty to intervene" policy. Some members of the Board attended the press conference during which the revised use of force policies (now response to resistance policies) were announced and made public.

During this reporting period, the Board received three appeals, filed on August 2, 2019, August 20, 2019 and November 14, 2019. The initial hearings to consider these appeals were scheduled for and held on September 10, 2020, October 1, 2019 and December 17, 2019, respectively. In the first appeal, the Board dismissed the appeal after the initial hearing and

made no recommendations to CMPD. In the second appeal, the Board dismissed the appeal after an initial hearing but also sent a letter to CMPD outlining its concerns regarding officers' actions leading up to the shooting, including: (1) the initial responding officers' failure to control the situation and appropriately utilize crisis intervention response strategies; and (2) CMPD's lack of coordination and communication – both among officers on the scene and with Mr. Morgan – following this initial encounter.

The CRB conducted one evidentiary fact-finding hearing during this reporting period. Specifically, this evidentiary hearing, regarding an appeal filed by Debra Franklin on behalf of her son, Danquirs Franklin, was held on February 6, 2020. This appeal challenged the decision of the Chief of Police, Kerr Putney, dated October 14, 2019, that the fatal shooting of Mr. Franklin by CMPD Officer Wende Kerl on March 25, 2019 was “Justified.” Attorney Luke Largess represented the Franklin family at the hearing. Following an initial hearing on December 17, 2019, the Board determined by unanimous vote, 9-0, that there was substantial evidence of error regarding the disposition of the disciplinary charges. After thoroughly and comprehensively considering the relevant statements, exhibits, and sworn witness testimony, the Board members present at the February 6, 2020 evidentiary hearing voted 7 to 0 that the greater weight of the evidence showed the Chief clearly erred in finding the shooting by Officer Kerl was “Justified.” Accordingly, the Board recommended that the Chief change his determination and enter a finding into Officer Kerl's permanent personnel file that the discharge of her firearm in the incident was “Not Justified” and discipline her appropriately. Neither the Chief nor the City Manager, however, elected to enact the Board's recommendation on disciplining Officer Kerl.

In addition, as part of the Franklin appeal, the Board made the following policy recommendations to the CMPD: (i) reaffirm its commitment to de-escalation policies and provide additional officer training on de-escalation; (ii) support the CRB's effort to petition local and state legislators for the Board to have the power to subpoena witnesses to appear at evidentiary hearings; (iii) adopt a new policy requiring all officers who are the subject of a complaint heard by the Board to attend the evidentiary hearing, should one be held; (iv) add language to the Response to Resistance policy instituting a duty of observing officers to intervene when de-escalation or compliance-gaining techniques prove ineffective; (v) adopt a policy and emphasize to officers that possession of a weapon, standing alone, does not relieve officers of their duty to attempt to de-escalate the situation whenever possible; (vi) use the videos from the Franklin incident in as much CMPD officer training as possible; and (vii) make as many of the CRB's policy recommendations as possible public. CMPD, at the time, agreed with policy recommendations (i) (reaffirming de-escalation); (v) (at least some of the Franklin videos will be used in CMPD training); and (vii) (making the policy recommendations public). Since that time, CMPD has moved to agree with policy recommendations (ii) (subpoena power for all witnesses to appear at evidentiary hearings) and (iv) (duty to intervene).

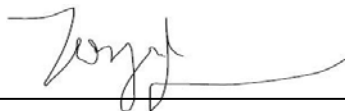
During this reporting period, to support further citizens who wish to file and proceed with appeals before the Board, the Board's legal counsel has worked with the Mecklenburg County Bar Association to form a group of local attorneys who have volunteered to provide pro bono services to assist anyone eligible in submitting and presenting an appeal.

City Clerk staff continually updates the Citizens Review Board website that contains pertinent information about the Board, including history, statistics, the current board roster, an online appeal form, and links to related information.

### **Recommendations to Council**

All cases reviewed by the Board are reminders of the role the CRB plays in holding our police department accountable and in ensuring citizens have a forum to challenge CMPD's decisions regarding officer-involved shootings and police misconduct. We wish to express our appreciation to the Mayor, City Manager, and City Council for the opportunity to serve our community in this fashion. We respectfully submit this annual report and request thorough consideration of the following recommendations offered to enhance the appeal process and effectiveness of this Board:

1. It is important that membership of this Board remain diverse with respect to age, race, gender, sexual orientation, ethnicity, religious beliefs, disabilities, etc.;
2. The Board requests City Council continue to seek granting of subpoena power to the CRB from the North Carolina General Assembly; and
3. The Board requests City Council amend the City Ordinance to add a new "Justified but Potentially Preventable" disposition for situations when the shooting itself may have been justified but immediately preceding police actions escalated the situation unnecessarily and contributed to creating the situation in which the shooting occurred.



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Tonya Jameson, Chairperson

cc: Police Chief Johnny Jennings  
Marcus Jones, City Manager  
Willie Ratchford, Community Relations Cmte.  
Michael Smalenberger, Community Relations Cmte.