

**CITY OF CHARLOTTE
CITIZENS REVIEW BOARD**

**RULES OF PROCEDURE
(Amended April 14, 2015)**

Authority and Purpose

The Charlotte City Code, Section 16-56, *et seq.*, creates the Citizens Review Board and grants the Board the power to hold hearings:

(a) upon an appeal by a complainant of the disciplinary disposition imposed by the Chief of Police for certain allegations of misconduct against a sworn Charlotte-Mecklenburg police officer.

(b) upon an appeal from an injured person of the disposition of any review of the discharge of a firearm by an officer.

(c) upon an appeal from the next of kin of the disposition of any review of the discharge of a firearm that resulted in the death of an individual.

These Rules of Procedure are promulgated pursuant to the authority set forth in Division 2, Chapter 16 of the City Code. Any conflict between these Rules of Procedure and the Code shall be resolved in favor of the Code.

Rules

1. Communications with the Board

All appeals and motions, other than motions made during a hearing, must be in writing and filed with the City Clerk at 600 East Fourth Street, Charlotte, North Carolina, except emergency scheduling matters may be presented directly to the Chair, or the Vice-Chair or Attorney in the absence of the Chair.

2. Appeals

The Chief of Police shall inform the complainant(s) of his decision. If the complainant(s) disagrees with the Chief's decision, he or they may appeal to the Board for review. The complainant must file his appeal with the City Clerk within thirty (30) calendar days of receiving the Chief's decision. The complainant, on a form approved by the Board, must state the nature of the incident that led to the complaint and the basis on which the complainant contends that the action taken by the Chief was in error. The City Clerk shall forward the request to the Chair; upon which, the Chair will be deemed to have immediately notified the Clerk to request the entire internal affairs case file from the Chief of Police, and the Clerk shall promptly do so.

In cases where all statements already have been transcribed, the Chief shall deliver (or in the case of a voluminous case file, make available) to the Clerk the entire internal affairs case file within five (5) business days. In cases where all statements have not been transcribed at the time

an appeal is filed, the Chief shall deliver (or in the case of a voluminous case file, make available) to the Clerk the entire internal affairs case file (including transcripts of all statements) within ten (10) business days, provided that in exceptional circumstances the Chief may request a reasonable extension of time, not to exceed ten (10) additional business days, to complete the transcription of statements.

Upon receipt of the internal affairs case file from the Chief, the Clerk shall promptly deliver copies of the entire case file to the members of the Board or, in the case of a voluminous case file, shall promptly provide copies of the summary of the investigation to Board members and notify them that the entire case file is available for their review. The Clerk, at the request of a Board member, shall coordinate with the Chief regarding arrangements for a Board member's review of the case file.

Additionally, in every case the Chief shall make available to the Clerk, simultaneous with the delivery of the hard-copy case file, the audio recordings of all interviews conducted in connection with the internal investigation. The Clerk shall promptly arrange to have the audio recordings made available to Board members by a secured link, and shall provide instructions to Board members for accessing the secured link. The Chief also shall make the audio recordings available to Board members at any appeal proceeding, and shall facilitate the playing of audio recordings at the Board's request.

3. Initial Hearings

The Board shall hold a hearing, in closed session, within forty-five (45) days of receipt of the notice of appeal, unless the Board elects not to hear an appeal in the event civil, criminal or civil service proceedings are pending. At least six (6) members of the Board must be present to conduct an initial hearing. The purpose of the hearing shall be to determine whether to conduct additional evidentiary fact-finding proceedings. In order to hold evidentiary fact-finding proceedings, the Board must determine that there is substantial evidence of error regarding the disposition of the disciplinary charges entered by the Chief of Police.

To assist the Board in its consideration of the internal affairs case file and in reaching a decision whether to conduct evidentiary fact-finding proceedings, the Board, in closed session, may at its option:

- (i) receive a presentation from, and address questions to, complainant and/or the complainant's representative, in the absence of any representative of the Department;
- (ii) receive a presentation from, and address questions to, the Department's investigator in the absence of the complainant and any representative of the complainant;
- (iii) request, receive and review such portions of the Department's investigative file as the Board or its Chair or Vice-Chair may designate;
- (iv) direct further investigation by the Department.

At no time shall the Board allow the complainant or any representative of the complainant to question or hear any testimony from the Department's investigator, and at no

time shall the Board allow the Department's investigator to question or hear any testimony from the complainant.

As a general rule, the Board expects that the internal affairs investigator responsible for the case, and only that investigator, will give the Department's presentation at the initial hearing. The officer who is the subject of the complaint shall not attend the initial hearing in person. Rather, the Department shall make the officer available at CMPD headquarters on a standby basis in the event the Board determines, at its option, that it would be helpful to hear from the officer.

If necessary the Board may recess the session for up to fourteen (14) days to allow for the production and consideration of any requested portions of the investigative file or for any further investigation requested by the Board.

At any time during its deliberations, the Board may dismiss an appeal upon a decision by a majority of the Board that the complaint is without sufficient merit to justify evidentiary fact-finding proceedings.

Following deliberations, the Board shall inform the parties of its decision whether to hold evidentiary fact-finding proceedings and notify them of the date for any further proceeding. Although the parties may initially be notified orally, the Board must send to the parties a written decision on whether evidentiary fact-finding proceedings shall be held. This decision will not make findings of fact, but shall state reasons for the decision. In public session, the Chair shall announce the Board's decision and the date, time and place of the evidentiary fact-finding proceedings, if such proceeding are to be held. The Clerk shall announce the decision as soon as the parties are notified.

4. Scheduling of Evidentiary Fact-Finding Proceedings

All evidentiary fact-finding proceedings shall be held as soon as reasonably possible so that the proceedings can be concluded within forty-five (45) days of the Board's decision to hold them. Requests for continuances pursuant to Ordinance Section 16-60(e) may be granted only by the Chair, or the Vice-Chair or Attorney upon the unavailability of the Chair and Vice-Chair. In all cases, appeals must be concluded within sixty (60) calendar days from the date of the decision to conduct evidentiary fact-finding proceedings.

5. Pre-Hearing Conference and Marking of Exhibits

As soon as practical before the scheduled evidentiary fact-finding proceedings, the opposing parties (through counsel or other designated representative) shall meet and discuss the possibility of entering into stipulations of fact or law, shall mark, number and exchange copies of all documentary exhibits expected to be used in the course of the proceedings, and shall indicate whether their authenticity is questioned. The parties shall list the names of witnesses who will testify, along with a description of the nature of their testimony. The parties also shall determine a time that non-documentary evidence will be reviewed prior to the proceeding. If the citizen is not represented by counsel, the Board's Attorney, as soon as practicable before the scheduled evidentiary fact-finding proceedings, shall schedule a meeting with the citizen and all other

parties to facilitate the exchange of information described above and address any other matters necessary for an efficient presentation of the evidence during the proceedings.

The parties shall exchange copies of any written arguments, briefs, or memoranda of law that either side wishes the Board to review in connection with the evidentiary fact-finding proceeding. Use of such written materials is discouraged. If used, however, exchange of any written arguments, briefs, or memoranda of law should occur at least two business days prior to the proceeding.

All parties and counsel or representatives shall sign a confidentiality agreement with the City of Charlotte before any information to be revealed by the Police Department in the course of the proceeding or any information of the Board's decision will be made available to them. If such agreements are not executed, this fact shall be reported to the Board, which shall dismiss the appeal.

6. Conduct of Evidentiary Fact-Finding Proceedings

(a) Opening of Proceedings. At least six (6) members of the Board must be present to conduct evidentiary fact-finding proceedings. All such proceedings are closed to the public. The Chair of the Board shall convene the proceedings and determine on the record that no unauthorized persons are present. The Chair will then introduce the Board, its Attorney and its Reporter. The Chair will then ask all parties whether they have read and understood these rules and the City ordinance concerning this Board. An explanation of these Rules and the City Code, Section 16-56 *et seq.*, shall be given by the Chair or the Attorney for the Board, if needed. The Chair will then ask whether there are any stipulations. The Chair will present the basis on which the Board decided to hold evidentiary fact-finding proceedings on the matter so that it may be included in the record. The Board must determine on the record that the Board has jurisdiction before receiving any evidence.

(b) Presentation of Evidence. The Chair functions as the presiding authority on all matters of conduct, procedure, and admissibility of evidence. The North Carolina Rules of Evidence as applied in Superior and District Courts of the General Court of Justice are not required to be followed in these proceedings. All reasonably relevant evidence may be admitted. The Chief or his designee, the officer or officers who are the subject of the complaint and their separate counsel, if any, and complainants appearing before the Board are allowed to be represented by counsel or any person of their choice, to call witnesses, to present other evidence, to cross-examine witnesses against them, and to be present during all proceedings except the Board's deliberations.

Technical objections are discouraged. The Chair rules on all objections to evidence, and, if appropriate, raises objections and controls the presentation of evidence on the Chair's own motion. Nevertheless, each Board member is of equal right and power to each other Board member in the conduct of the proceedings, and the Chair controls the presentation of evidence subject to the consent of the Board. Approval of the rulings and other actions of the Chair is implied by the absence of objection by any Board member. If a Board member objects to the Chairman's ruling, the Board shall make the final decision on the objection by majority vote.

At any time during the proceedings, the Board may, by a majority vote, request additional information from the parties.

(c) Order of Examination of Witnesses. The Clerk shall swear or affirm all witnesses. The Complainant then offers his or her evidence. Cross-examination may then be had by the Chief or his designee, the Officer or Officers who are the subject of the complaint, Board members, the Chair, and the Board's Attorney. Redirect and re-cross examination, if requested, then proceeds in this same order. The Chief may then offer his other evidence in the same sequence. The parties are encouraged to be direct and brief in their examinations, consistent with full presentation of all pertinent evidence.

(d) Deliberations. In its deliberations, the Board shall determine whether, by the greater weight of the evidence, the Chief of Police clearly erred in the disposition of the citizen's complaint. The burden of proof lies with the complainant at all stages of the proceedings and deliberations. At any point after the conclusion of a party's offering of evidence during a hearing, the Board may deliberate to determine whether the complainant has met the burden of proof.

(e) Other. A Board member must be present during all proceedings prior to the deliberations in order to participate in the Board's deliberations. Board members must also be present during all of the Board's deliberations to be entitled to vote on the case. All decisions during deliberations shall be made by majority vote of all members present and participating. No Board member qualified to vote on an issue presented shall abstain therefrom. Decisions of the Board shall be made in writing, with findings of fact, and the Board's recommendation, and presented to the Chief of Police and the City Manager. Any Board member may dissent in whole or in part, but dissents are strongly discouraged. The complainant shall be notified in writing of the Board's decision and, to the extent permitted by applicable law, the reasons for the decision.

7. Role of Chairperson and Vice-Chairperson

The role and duties of the Chairperson (or Chair) are those provided in the Charlotte City Code, Section 16-56, *et seq.*, which authorizes the Board. The Vice-Chairperson (or Vice-Chair) may perform those duties in the absence of the Chair or the Chair's inability to do so. Beginning September 1, 2009, the Board shall elect prior to September 1 each year a Chair and Vice-Chair to serve a one-year term. In the event a Chair or Vice Chair cannot finish a term for any reason, the Board will elect one of its members to finish out the unexpired term. Individuals may be elected to the offices as long as they are eligible to serve on the Board. Individuals serving as Chair must have been a member of the Board for at least a year prior to beginning any term as Chair.

8. Role of the Board's Attorney

The Attorney for the Board serves as the Board's advisor on legal questions, ordinance interpretation, and the interpretation and application of these rules. In the event the Chair or Board is uncertain whether a Board member has a conflict with a matter that is to come before the Board the Attorney shall determine if a conflict exists. The Attorney is also available to assist the Chair in the drafting of the Board's decisions, findings of fact, and recommendations. The Attorney will also assist the Board as necessary to insure that the ordinance and these rules are followed. References to "Attorney" include his authorized designee.

9. Conflict of Interest

Members who in a particular case have a conflict of interest as defined by City policy in effect at the time must notify the Chair of the nature of the conflict. If the member is not certain whether a conflict exists the Chair or the Board may decide or request that the Attorney for the Board make the decision.

10. Notice of Rules

The City Clerk shall provide copies of these Rules of Procedure to all interested parties. The Clerk shall also send a copy of these Rules of Procedure to each complainant, or counsel for such party if known, promptly upon receipt of notice of appeal from a complainant. Failure to send these rules, or failure of such complainant or counsel to receive them, shall not relieve the complainant or counsel of notice of these Rules and their applicability.

11. Construction of Rules

These rules shall be construed to promote the just and speedy and inexpensive determination of matters heard by the Board. In the absence of the Chair at a meeting or hearing, the Vice-Chair may discharge the duties of the Chair.

12. Confidentiality Requirements

All Board members must sign a confidentiality agreement. North Carolina General Statute Section 160A-168, and Section 16-58(a)(4) of the Charlotte City Code, constrain Board members from disclosing personnel information received as a member of the Board. Board members who violate the agreement, statute, or ordinance may be removed from the Board by the Charlotte City Council pursuant to Section 16-56 of the Ordinance.

Except for (i) official recordings made by the City Clerk or (ii) recordings made by a court reporter in connection with preparing a transcript of any proceedings, no portion of any open or closed session of the Board may be audio or video recorded by any Board member, complainant, witness, representative of the complainant or the Police Department, or any other person, without the express written permission of the Chair. In the case of any recording made by a court reporter, the court reporter (i) shall not be considered a custodian of the recording for purposes of Chapter 132 of the North Carolina General Statutes governing public records and (ii) shall maintain the recording and any transcript in strict confidence, with transcripts to be

distributed only to the City Clerk, the Board and, in the case of a hearing, the parties (Police Department and complainant).

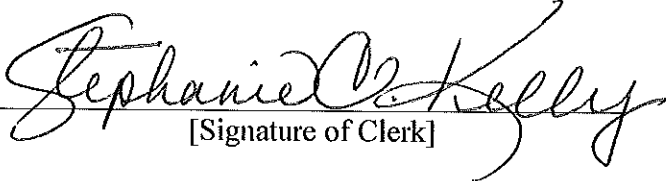
13. Public Statements by Board Members

As a general rule, only the Chair, Vice Chair, and Attorney are authorized to make public statements on behalf of or concerning the Board. Board members other than the Chair and Vice Chair shall not make any public statements concerning the Board unless (i) the Chair, Vice Chair, and the Attorney are unavailable or (ii) the individual Board member's views are not being adequately addressed by the Chair or Vice Chair. In no event, however, shall a Board member, in making any public statement, represent his or her views as the views of the Board unless so authorized by the Board. Additionally, Board members must at all times comply with City of Charlotte Code of Ethics for Board and Committee Members, as adopted by the City Council on October 28, 2013 (the "Code of Ethics"). In the event a Board member intends to make a public statement that advocates a position contrary to Council policy, the Board member must notify the Mayor and City Council of his or her intention pursuant to Section 1 of the Code of Ethics and, in addition, must also provide such notice to the Chair and Vice Chair.

As used herein, "public statements" means any statement concerning the Board made to third parties but shall not include statements made (i) during the course of official Board proceedings or (ii) in the course of conducting Board business. Nothing herein shall be deemed to limit in any way the right of a Board member to express or present his or her views during official Board proceedings or in the conduct of Board business.

Violation of this rule shall subject a Board member to removal by the City Council pursuant to Section 16-56 of the Ordinance.

SO ENACTED, April 14, 2015.


[Signature of Clerk]

