AN ORDINANCE AMENDING CHAPTER 16, ARTICLE II, DIVISION 2 OF THE CHARLOTTE CITY CODE ENTITLED "CITIZENS REVIEW BOARD"

ORDINANCE NO. _____

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE, NORTH CAROLINA:

Section 1: Chapter 16, Article II, Division 2 Citizens Review Board, of the Charlotte City Code is hereby amended to read as shown in the attached Exhibit A, which is incorporated and made a part of this ordinance.

Section 2: This ordinance shall become effective as of January 1st, 2021.

Exhibit A

DIVISION 2. - CITIZENS REVIEW BOARD[3]

Footnotes:

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Editor's note— Ord. No. 5259, § 1, adopted November 25, 2013, amended division 2 in its entirety to read as herein set out. Formerly, division 2 pertained to similar subject matter, and derived from the Code of 1985, §§ 16-34—16-42; Ord. No. 1779, § 1, adopted March 26, 2001, and Ord. No. 2344, § 1, adopted July 28, 2003.

Sec. 16-56. - Creation; composition; terms; compensation; appointments; vacancies; quorum; removal.

(a) There is hereby established a citizens review board to be composed of 11 members: five members to be appointed by the city council, three members to be appointed by the mayor and three to be appointed by the city manager. The appointing authorities shall strive to appoint a board that represents the diversity of the community.

(a1) Candidates for the board may be interviewed by a panel comprised of a representative from the community relations committee, the citizens review board, and the city manager's office to assess core characteristics necessary to serve on the board. Such panels shall provide their assessments to the relevant appointing authority.

(b) Members must be continually domiciled within the county and must be registered to vote within the county. Current and former city employees, and the spouse, parents, and children of a current or former CMPD officer, shall not be eligible to serve on the board.

(c) Board members shall attend and successfully complete the Charlotte-Mecklenburg Police Department's Citizens' Academy and receive training on relevant legal, policy and cultural awareness issues as required by the city manager. This training must be completed prior to any board appointee serving as a member of the board. In addition, each members of the board shall participate in at least eight hours of training each calendar year, which training may include a four-hour "ride-along" with a CMPD officer.

(d) Individuals with a felony conviction or a Class A1 misdemeanor conviction shall not be eligible to serve on the board. In addition, individuals with a Class 1 or Class 2 misdemeanor conviction within three years of their nomination for appointment shall be ineligible to serve. Further, conviction of or a plea of nolo contendere to a felony, a Class A1 misdemeanor, a Class 1 misdemeanor, or a Class 2 misdemeanor during the term of office shall automatically terminate membership on the board, irrespective of any appeals. Board members charged with a felony, a Class A1 misdemeanor, a Class 1 misdemeanor, or a Class 2 misdemeanor during a term of office shall be automatically suspended until disposition of the charge, and a quorum shall be established from the remaining membership.

(e) Prior to serving, each board member must sign a confidentiality agreement that is satisfactory to the city and which shall require that members maintain as confidential any information classified as confidential by state law or otherwise classified as confidential by the city.

(f) The members shall serve staggered terms of office for three years, with no member serving more than two consecutive terms.

(g) The board shall elect a chairperson and vice-chairperson from the membership.

(h) When a vacancy occurs, the original appointing authority shall appoint a person to serve for the unexpired term of the vacant position.

(i) Six members shall constitute a quorum in order to hold business meetings and hearings. Members are required to attend all business meetings and hearings in accordance with the attendance policies promulgated by the city council. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided in this section.

(j) All members shall serve without compensation.

(k) Members of the board shall be subject to removal from office by a two-thirds vote of the city council.

(Ord. No. 5259, § 1, 11-25-2013; Ord. No. 9118 , § 1, 6-26-2017)

Sec. 16-57. - Meetings.

(a) The citizens review board shall hold regular meetings as scheduled by resolution of the board. The affirmative vote of a majority, a quorum being present, shall be required before any recommendation is made on any matter considered. A majority vote shall be required for any decision made by the board.

(b) Special meetings may be called by the chairperson to carry out any duties described in section 16-58 by giving each member notice in writing, by providing personal notice, or by leaving notice at the member's residence not less than 72 hours prior to the time set for the meeting.

(Ord. No. 5259, § 1, 11-25-2013)

Sec. 16-58. - Duties and responsibilities.

(a) The citizens review board shall:

(1) Serve as an advisory board to the chief of police, the city manager, and the city council.

(2) Hear appeals by the citizens who filed complaints of disciplinary dispositions imposed by the chief of police or his designee relating to allegations of misconduct against a sworn police officer. The board may hear appeals of complaints regarding alleged violations of the following rules: response to resistance (use of force), unbecoming conduct, arrest, search and seizure, ~~and~~ arbitrary profiling, and neglect of duties. In addition, the disposition of the review of any discharge of a firearm by an officer which results in the death or injury of a person may be appealed to this board by the person injured or the next of kin if death occurs. When a death results and there is no next of kin, any member of the city council or the chairperson of the community relations committee may file an appeal pursuant to section 16-59. The disciplinary actions that may be reviewed shall include the findings of the chief of police that an allegation has been categorized as: sustained, not sustained, exonerated, or unfounded. The dispositions that may be reviewed for the discharge of firearms shall include: justified, not justified, or accidental. The board may review only appeals of citizen complaints arising from incidents that occur after the effective date of the ordinance from which this section derives. The board may not review appeals of decisions of the city manager or the civil service board. No hearing conducted under this division is intended to supplant civil or criminal remedies or proceedings, nor civil service proceedings under Section 4.61 of the City Charter.

(3) The board, in its discretion, also may make recommendations to the chief of police and the city manager concerning policies, procedures or training of police officers.

(4) As required by state law, maintain as confidential all personnel information to which the members gain access as a member of the board. In addition, board members shall be required to execute and adhere to a confidentiality agreement that is satisfactory to the city.

(b) The citizens review board shall promulgate rules and regulations to effect its exercise of authority under this division and shall keep such rules and regulations on file with the city clerk.

(Ord. No. 5259, § 1, 11-25-2013; Ord. No. 5948 , § 1, 6-8-2015)

Sec. 16-59. - Request for appeal hearing.

(a) Under this division, all complaints will be investigated by the police department. Upon completion of an investigation, the chief of police shall, consistent with state law, notify the complainant by certified letter of the disposition of the complaint. The complainant also shall be informed of his right to appeal the decision of the department to the citizens review board.

(b) All appeals to the citizens review board must be made on a form approved by the board and filed with the city clerk's office. The request must state the nature of the incident and the basis on which the complainant contends that the action taken by the chief of police was in error. The citizen may seek the assistance of the community relations committee in drafting and filing his appeal. The citizen must file this appeal within 30 calendar days of receiving written notice of the disposition of the complaint. The citizen must provide a valid current address for the purpose of all notifications required to be made pursuant to this division.

(c) Upon receiving a request for an appeal hearing, the chairperson of the board shall direct the chief of police to deliver the entire internal affairs case file to the city clerk for delivery to the members of the citizens review board. The chairperson may request additional information from the complainant if deemed necessary.

(d) The board may elect not to hear an appeal under this division if civil, criminal or civil service proceedings are instituted and pending.

(Ord. No. 5259, § 1, 11-25-2013)

Sec. 16-60. - Hearing.

(a) Upon receiving a request for an appeals hearing, the board shall hold a hearing within 45 calendar days of the request. Notwithstanding the foregoing, the board may elect not to hear an appeal under this division if civil, criminal or civil service proceedings are instituted and pending.

(b) The hearing shall be conducted in closed session to ensure compliance with all applicable laws, including those related to the confidentiality of criminal information or intelligence and personnel matters. The parties may be represented at the hearing by counsel or any other person of their choice.

(c) The hearing will begin with the complainant and the department respectively, each in the absence of the other and the other's representatives, presenting statements of facts to the board. Following receipt of the statements of facts, the board may, in its discretion, request additional statements, material, or information from the complainant and/or the department. After receiving the parties' statements and any additional material or information provided. the board shall conduct deliberations in the absence of the complainant and the department.

(d) Following the deliberations contemplated in subsection (c), in a public session, and consistent with subsection 16-58(a)(4), the chairperson shall indicate whether the board has decided to conduct additional evidentiary fact-finding and, if so, shall announce the date, time and place of the proceedings. In order to conduct additional evidentiary fact-finding, the board must determine that there is substantial evidence of error regarding the disposition of the disciplinary charges entered by the chief of police. The chairperson shall notify the complainant and other involved parties in writing of the decision and, if evidentiary fact-finding proceedings are to be held, also shall advise all parties in writing of the reasons for the decision to hold evidentiary fact-finding proceedings.

(e) If the citizens review board decides to conduct evidentiary fact-finding proceedings, those proceedings shall be concluded within 45 calendar days of the date of the decision to hold them pursuant to section 16-60. Should the complainant or the department desire to continue the evidentiary fact-finding proceedings to a date other than that set by the board, the complainant or the department shall submit a written request for a change of the date of the proceedings, stating the reason for the request. The chairperson shall approve or disapprove such request, provided that such request is received by the board at least seven calendar days prior to the date set for the evidentiary fact-finding proceedings. For good cause, the chairperson may continue the proceedings from time to time, but all appeals must be concluded within 60 calendar days from the date of the decision to hold an evidentiary fact-finding proceeding.

(f) Evidentiary fact-finding proceedings shall be conducted as follows:

(1) All witnesses must testify under oath.

(2) All of the proceedings before the board shall be recorded.

(3) All parties involved shall have the right to be represented by counsel or any other person of their choice.

(4) The board shall receive and evaluate evidence which may include testimony of the complainant, officers, and other witnesses, and documentary and physical evidence. The complainant shall offer evidence first in support of his appeal. The department shall have the right to cross examine the complainant and his witnesses. Thereafter, the department shall have the right to offer evidence, and the complainant shall have the right to cross examine the department's witnesses. At the conclusion of all the evidence, the complainant or his representative, followed by the department, may make a closing statement.

(5) Members of the board may question witnesses or request additional information or further investigation at any point in the process.

(6) Members who, in a particular case, have a conflict of interest shall not attend or participate in the proceedings and decision-making process.

(g) At the conclusion of the evidentiary fact-finding proceedings, the board shall determine whether, by the greater weight of the evidence, the chief of police clearly erred by:

(1) Finding in a disciplinary action that allegations were sustained, not sustained, exonerated or unfounded; or

(2) Finding in connection with the discharge of a firearm that the officer's action was justified, not justified, or accidental.

(h) Upon conclusion of the appeal process, the complainant shall be notified in writing of the decision of the board who were present at the hearing and, to the extent permitted by applicable law, the reasons for the decision.

(Ord. No. 5259, § 1, 11-25-2013)

Sec. 16-61. - Reserved.

Sec. 16-62. - Action by chief of police and city manager.

(a) The chief of police shall review the determination and findings of fact of the citizens review board and any other information at his disposal. The chief of police shall take such action as he deems appropriate, consistent with state law and city policy. The chief of police will then, within seven calendar days of the receipt of the board's recommendations, report his decision to the city manager.

(b) The city manager shall review the decision of the chief of police and, within seven calendar days of the receipt of the decision of the chief of police, take such action as he deems appropriate, consistent with state law, and shall advise the chief of police of any intended action.

(c) The city manager shall notify all parties, including the citizens review board, of the decision of the city manager consistent with state law and city policy. The city manager also shall advise the city council of the outcome of the appeal. Notifications made under this subsection must be made within seven calendar days of the date that the decision of the city manager was initially communicated to the chief of police.

(Ord. No. 5259, § 1, 11-25-2013)

Sec. 16-63. - City clerk's duties; meeting places; staff.

(a) Under this division the city clerk shall:

(1) Act as secretary to the citizens review board;

(2) Keep the minutes of its meetings;

(3) Be custodian of all papers and records pertaining to the business of the board; and

(4) Perform such other duties as the board may require.

(b) The city council shall provide sufficient and reasonable rooms and use of public buildings for meetings and hearings of the board as may be necessary.

(c) The city manager shall assign staff to support the functions of the citizens review board.

(Ord. No. 5259, § 1, 11-25-2013)

Sec. 16-64. - Miscellaneous.

(a) The citizens review board shall make a semiannual and an annual report of its actions for each preceding year. These reports shall be kept in the files of the board and a copy delivered to the chief of police, city manager, city council and the community relations committee.

(b) The board shall receive annually a report from the police chief concerning all complaints against department personnel and the disposition of such complaints.

(c) The board shall recommend changes to the citizens review process to city council as deemed appropriate and approved by a majority of the board.

(d) The board shall promote its visibility within the community by adopting procedures to educate citizens about the board process, and enhance citizen participation through process and procedural changes as deemed appropriate.

(e) The board shall conduct legal, policy and cultural awareness training for its members, in addition to that provided pursuant to subsection 16-56(c), on a continuing basis as deemed appropriate.

(Ord. No. 5259, § 1, 11-25-2013)