

INTRODUCED: March 14, 2022

AN ORDINANCE No. 2022-091

To amend ch. 2, art. V of the City Code by adding therein a new div. 20 (§§ 2-1202.1—2-1202.5) for the purpose of establishing a Civilian Review Board.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: MAR 28 2022 AT 6 P.M.

WHEREAS, the Mayor and the Council believe that it is in the best interests of the citizens of the City of Richmond that the City establish a Civilian Review Board to review and provide findings on certain internal investigations conducted by the Department of Police and to make policy recommendations concerning law enforcement matters; and

WHEREAS, it is estimated that the annual operating costs for the Civilian Review Board will be approximately \$200,000, including 1,800 staff hours;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

§ 1. That Chapter 2, Article V of the Code of the City of Richmond (2020) be and is hereby amended and reordained by **adding therein a new** Division 20, consisting of sections numbered 2-1202.1 through 2-1202.5, as follows:

DIVISION 20

CIVILIAN REVIEW BOARD

Sec. 2-1202.1. Created.

In accordance with Code of the Virginia, § 9.1-601, there is hereby created a board of the City of Richmond with indefinite duration to be known as the Civilian Review Board for the purpose of (i) investigating and making recommendations to the Council, the Mayor, and the Chief of Police concerning internal investigations conducted by the Department of Police regarding (a) police officer-involved shootings; (b) deaths of persons while held in the custody of the Department of Police; (c) serious injuries to persons while in the custody of the Department of Police; (d) accusations of physical or verbal abuse by officers of the Department of Police; and (e) appeals by citizens of a finding or decision of the Department of Police; and (ii) providing recommendations on law enforcement practices, policies, and procedures. For purposes of section 2-773, the Board is classified as “advisory.”

Sec. 2-1202.2. Composition; terms of office; compensation; training.

(a) *Composition.* The Board shall be composed of seven members. Of the seven voting members, three of such members shall be appointed by the Council, three of such members shall be appointed by the Mayor, and one of such members shall be appointed by the Chief of Police. Pursuant to Code of Virginia, § 9.1-601(B), the composition of the Board shall reflect the demographic diversity of the city of Richmond. In addition, in order to be eligible to serve on the Board, the members of the Board shall meet the following conditions:

(1) Each member shall have been a resident of the city of Richmond for five of the last 10 years prior to the date of appointment and shall maintain such residency during such member's tenure on the Board.

(2) No person currently or previously employed as a law-enforcement officer as defined in Code of Virginia, § 9.1-101 shall be appointed to the Board.

(3) No person who is a family member of a person who is currently or who was previously employed as a law-enforcement officer as defined in Code of Virginia, § 9.1-101 shall be appointed to the Board. For purposes of this subdivision, the words "family member" mean a spouse, domestic partner, child, parent, guardian, or dependent.

(b) *Terms of office.* In order to facilitate the staggering of terms of the voting members of the Board, of the voting members initially appointed, one member appointed by the Council and one member appointed by the Mayor shall serve for terms of three years; one member appointed by the Council and one member appointed by the Mayor shall serve for terms of two years; and one member appointed by the Council, one member appointed by the Mayor, and the voting member appointed by the Chief of Police shall serve for terms of one year. Thereafter, all members shall be appointed for terms of three years from the date of appointment. Upon expiration of a member's term of office, that member shall continue to hold office until the successor thereof is appointed and qualified. All other aspects of the Board and its membership not addressed in Code of Virginia, § 9.1-601 or this division shall be governed by chapter 2, article V, division 1.

(c) *Compensation.* The members of the Board shall receive a stipend of \$100.00 for each meeting of the Board for which such members are actually engaged in the duties of the Board, subject to the appropriation of funds therefor; provided however, that no member shall

receive compensation for any amount exceeding \$1,200 within a calendar year. No member shall receive compensation for any meeting such member does not attend. If any member fails to attend three or more meetings within a calendar year without first obtaining approval from the Board, such member shall forfeit his or her membership on the Board.

(d) *Training.* After appointment to the Board, each member of the Board shall annually complete training courses on (i) diversity, equity, and inclusion, and (ii) law enforcement policies and procedures.

Sec. 2-1202.3. Duties; prohibited review.

(a) The Board shall perform the following duties:

(1) Within 90 days after all of the initial members of the Board are appointed, the Board shall conduct a meeting or meetings, as the case may be, to prepare recommended policies and procedures for the performance of the duties of the Board. Such policies and procedures shall include, at a minimum, a protocol, which protocol shall be agreed to by the Chief of Police, concerning (i) communication and the sharing of data between the Board and the Department of Police and (ii) the completion and submission of reports on matters being investigated by the Board. The Board shall adopt a resolution submitting to the Council the policies and procedures that it recommends and that the City Attorney has approved as to form and legality. The Council must adopt a resolution establishing the Board's policies and procedures pursuant to Code of Virginia, § 9.1-601(D) before such policies and procedures may become effective. The Board shall not begin any investigation or make any recommendations to the Council, the Mayor, or the Chief of Police until the Board's policies and procedures have been recommended and established in this manner. Any amendments to the Board's policies

and procedures shall be recommended and established in the same manner. The Board shall perform its duties in accordance with the policies and procedures established pursuant to this division.

(2) Review all investigations conducted by the Department of Police regarding:

a. Police officer-involved shootings.

b. Deaths of persons while held in the custody of the Department of Police.

c. Serious injuries to persons while held in the custody of the Department of Police.

d. Accusations of physical or verbal abuse by officers of the Department of Police.

e. Appeals by citizens of a finding or decision of the Department of Police.

(3) Review all investigations set forth in subdivision (a)(2) of this section to ensure the accuracy, completeness, and impartiality of such investigations and the sufficiency of any discipline resulting from such investigations.

(4) If the Board determines that, in order to carry out the duties set forth in this division, it must obtain information aside from any records or information furnished by the Department of Police, conduct independent investigations of the matters set forth in subdivision (a)(2) of this section. Such independent investigations shall comply with all existing federal, state, and local law, including, but not limited to, the Law Enforcement Officers Procedural Guarantee Act and protections afforded under the

United States Supreme Court decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967). In conducting such independent investigations, the Board may:

a. Conduct interviews of witnesses and request the production of books, papers, and other evidence necessary to perform its duties.

b. If, after making a good faith effort to obtain, voluntarily, the attendance of witnesses to interviews and the production of books, papers, and other evidence necessary to perform its duties, the Board is unable to obtain such attendance or production and subject to an affirmative vote of at least five members of the Board, apply to the Circuit Court of the City of Richmond for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence, as permitted by Code of Virginia, § 9.1-601(D).

c. Contract with a third-party investigator, subject to (i) an affirmative vote of a majority of the members of the Board, (ii) the availability of sufficient funds appropriated for such purpose, and (iii) compliance with chapter 21 of this Code.

(5) After the completion of any and all reviews or investigations undertaken in accordance with this division, provide the Council, the Mayor, and the Chief of Police with a written report of the Board's findings and, as the case may be, the written report of the findings of a third party investigator. Such findings may include recommendations for disciplinary actions or changes to law enforcement practices, policies, and procedures. The Board's written report and findings shall not be disclosed until all criminal and civil proceedings have concluded.

(6) At the conclusion of all investigations and all criminal and civil proceedings, publish on the City's website a summary of the Board's findings and recommendations for each matter reviewed or investigated by the Board. Such summary shall be approved as to form by the City Attorney and exclude personal identifying information or other information prohibited from disclosure pursuant to Code of Virginia, § 16.1-301. Any statement provided by a police officer pursuant to the United States Supreme Court decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967) shall remain confidential, but the summary may disclose whether the officer admitted or denied the allegations.

(7) Maintain the confidentiality of records obtained in accordance with this division to the extent permitted or required by law. Prior to the release of any information, records, or reports by the Board, the City Attorney shall review any and all records obtained by the Board to redact any information (i) related to a juvenile in accordance with Code of Virginia, § 16.1-301 or (ii) involving statements that may compromise the identities of confidential informants or undercover officers.

(8) To undertake any other duties as may be reasonably necessary for the Board to effectuate its purpose as set forth in this division.

(b) The Board shall not review or shall suspend its review of the following:

(1) Investigations completed by the Department of Police 60 days or more before all of the initial members of the Board were appointed.

(2) Investigations conducted by the Department of Police involving matters that are under or subject to an active criminal investigation or proceeding against any police officer. In such cases, the Board shall defer its review until the criminal

investigation or proceeding has been dismissed or concluded as a matter of law. In the event that a criminal investigation or proceeding is initiated during review, the Board shall suspend its review until the investigation or proceeding is concluded as a matter of law.

(3) Matters that are the subject of pending civil proceedings while those proceedings are pending, provided that the City Attorney must determine whether a civil proceeding is pending and when that civil proceeding is resolved. In the event that a civil claim is initiated during review, the Board shall suspend its review until the civil claim is concluded as a matter of law.

(4) Any financial or procurement decisions made by the Department of Police.

Sec. 2-1202.4. Administration.

(a) *Quorum.* Five voting members of the Board shall constitute a quorum.

(b) *Officers.* The Board shall select from among its voting membership a chairman and a vice chairman.

(c) *Meetings.* The Board shall meet at least monthly and as often as it deems necessary in order to complete its duties.

(d) *Freedom-of-Information.* All meetings and records of the Board shall be subject to and meeting minutes shall be kept in accordance with the provisions of the Virginia Freedom of Information Act.

(e) *Staff and Resources.*

(1) A full-time employee assigned by the Inspector General shall assist the Board in completing the duties set forth in this division.

(2) An employee of the Department of Police assigned by the Chief of Police shall serve as a liaison between the Board and the Department of Police.

(3) The City Attorney shall provide for legal counsel for the Board in accordance with section 4.17 of the City Charter to represent the Board in all cases, hearings, controversies, or matters involving the interests of the Board, and the costs of any outside counsel shall be paid from City funds appropriated to the Board.

(f) *Reporting.* The Board shall submit to the Council, the Mayor, and the Chief of Police a written annual report by no later than October 1 of each year. Such annual report shall exclude personal identifying information and other information prohibited from disclosure pursuant to Code of Virginia, § 16.1-301. Any statement provided by a police officer pursuant to the United States Supreme Court decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967) shall remain confidential, but the annual report may disclose whether the officer admitted or denied the allegations.

Sec. 2-1202.5. Response to Board recommendations.

For any and all of the Board's recommendations regarding the matters set forth in section 2-1202.3(a)(2), the Department of Police shall create a written record, which shall be made available to the public within 30 days after the Chief of Police's receipt of the Board's recommendations, of the Department of Police's responses to all of such recommendations. For any and all of the Board's recommendations pursuant to section 2-1202.3(a)(5), the Department of Police shall provide the Board with a written response to all of such recommendations.

§ 2. This ordinance shall be in force and effect upon adoption.

police policy and administration, in September 2021 to review and build upon the CRB Task Force Report and to conduct his own research and analysis in the development of a CRB in Richmond. Dr. Pelfrey was a member of the Mayor’s Task Force on Reimagining Public Safety and has assisted communities across the country in the establishment of CRBs.

This ordinance synthesizes the considerable input the City has received since the summer of 2020. It is critical that Richmond’s CRB be set up for success. This proposal creates a Board with clear and achievable objectives: to review and provide findings on every Richmond Police Department internal investigation alleging officer involved shootings, deaths or serious injuries in custody, abuse, or a citizen appeal of RPD’s findings, and to provide policy recommendations on policing. And, the proposal provides the CRB with the resources needed to accomplish this objective: power to conduct independent investigations, including hiring external investigators and requesting subpoenas; training for Board members; experienced staff support; funding; and a clear path for implementation.

FISCAL IMPACT / COST: In the Fiscal Year 2022 budget, there was \$204,199 allocated towards the establishment of a CRB.

FISCAL IMPLICATIONS: In the Fiscal Year 2022 budget, there was \$204,199 allocated towards the establishment of a CRB.

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: N/A

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: March 14, 2022

CITY COUNCIL PUBLIC HEARING DATE: March 28, 2022

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Government Operations

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

AFFECTED AGENCIES: Richmond Police Department

RELATIONSHIP TO EXISTING ORD. OR RES.: N/A

REQUIRED CHANGES TO WORK PROGRAM(S): N/A

ATTACHMENTS: (1) Richmond CRB Ordinance Outline; (2) Composition Proposal Report on the Composition of a Civilian Review Board for Richmond, Virginia; and (3) Final Report and Recommendations of the Task Force to Establish Civilian Oversight in Richmond, VA

STAFF: Maggie Anderson, Chief of Staff, Office of Mayor Levar Stoney
Megan Field, Senior Policy Advisor, Office of the Chief Administrative Officer