

SUBSTITUTE NO. 1 TO ORDINANCE NO. 20-034 As Amended*

**AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY CODE TO
CREATE A CITIZEN COMPLAINT REVIEW BOARD**

WHEREAS, the Administration and City Council concur that a Citizen Complaint Review Board is necessary for the City of Wilmington; and

WHEREAS, pursuant to the powers granted in City Charter §§ 1-103 and 1-104, the City has the authority to create a Citizen Complaint Review Board.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON

HEREBY ORDAINS:

SECTION 1. Chapter 2 of the City Code is hereby amended by adding a new Division 18, §§ 150.80 through 150.86, by adding the underlined language to read as follows:

DIVISION 18. – THE CITIZEN COMPLAINT REVIEW BOARD

Sec. 2-150.80. – Establishment, composition, qualifications.

- (a) Establishment. Pursuant to Charter Section 8-403, there is established as an independent board in the Office of the Mayor a Citizen Complaint Review Board (the “CCRB” or the “Board) to address and participate in the resolution of complaints filed by citizens against the Wilmington Police Department and/or its officers and members. Public complaints against members of the Wilmington Police Department (the “WPD”) shall be investigated by the CCRB. The legislature intends that the Board address the resolution of these complaints to the greatest extent permitted by Title 11, Chapter 92 of the Delaware Code, as it exists or may from time to time be amended, by the collective bargaining agreement then in place, and by the rules and regulations of the WPD.

- (b) Composition. The CCRB shall be comprised of nine (9) members appointed by the Mayor with advice and consent of Wilmington City Council: One (1) shall be a member of the Mayor’s Office; three (3) shall be members of the Wilmington City Council, or three (3) members of the public, nominated by the Mayor upon the recommendation of the President of City Council; five (5) shall be nominated by the Mayor upon the recommendation of the following organizations, one member (1) from each: the Delaware Chapter of the American Civil Liberties Union (“ACLU”); the Delaware Chapter of the National Association for the Advancement of Colored People (“NAACP”); the Wilmington HOPE Commission; the Latin American Community Center (“LACC”); and the

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Sponsor:

Council
Member
Johnson

Co-Sponsors:

Council
President
Shabazz

Council
Members
Oliver
Harlee

Clergy of the City of Wilmington. The majority of the composition of the CCRB shall not have a law enforcement background.

- (c) Qualifications. In the nomination and confirmation of members to serve upon the CCRB, consideration should be given to a candidate's professional experience in the fields of the law, civil rights and law enforcement. In making a recommendation, the President of Council or the organization shall provide to the Mayor and City Council the resumes and all other submissions that establish the candidate's qualifications. If, for any reason, an organization declines to recommend a member, or if any of the organizations cease to exist, the Mayor may designate another organization to recommend a candidate to the CCRB. The Mayor shall have the authority to remove an organization and its representative for good cause and, thereafter, may designate another organization to recommend the nomination of a member. Any member of the clergy appointed to the Board shall represent the public interest and may not render decisions based on any personal religious belief.
- (d) Chairperson. Each year during or before the month of December, the Mayor shall select the Chairperson of the CCRB from the members who are not from the Office of the Mayor. The Chairperson shall serve one (1) year from January 1 until December 31.
- (e) Terms of the Members. The terms of the members who are not City Councilpersons shall be three (3) years. The Wilmington City Council members shall serve until the end of the current session of Council. In order to achieve staggered terms, during the initial creation of the first CCRB, three (3) of the five (5) members recommended by the organizations as determined by the Mayor shall serve a one-year term.
- (f) Duties of the Mayor's Office Member. Except the member from the Office of the Mayor, no member of the Board shall have been employed by the WPD. The Mayor's Office member shall serve as the chief administrator of the Board, supervise its civilian employees, supervise intake and communications on behalf of the Board with complainants and victims, and serve as a voting member. The Mayor's Office member shall assist the Board by receiving complaints, performing investigations, and hiring and assigning civilian staff. They shall ensure the training of Board members and staff. They shall review completed investigations, sit in on pending cases and may ask questions and may make policy recommendations to the Board as a whole.
- (g) Vacancy. In the event of a vacancy on the Board during the term of office of a member for any reason, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.
- (h) Budget. Each year, the Board shall be allocated an operating budget

which shall be proposed by the Mayor in the City's Annual Budget and adopted by Wilmington City Council. During the first quarter of the year, the Board shall submit a proposed annual operating budget to the Mayor and annual financial statements for consideration at a budget hearing to be conducted by Wilmington City Council. The appropriation for the CCRB shall be a line item in operating budget of the Wilmington Police Department. Within forty-five (45) days of the first full sitting Board, the Board shall submit to the Mayor a proposed budget to cover initial costs and expenses related to the hiring, and training of employees and Board members, secure necessary infrastructure and equipment, conduct a public awareness campaign, and otherwise implement the requirements of this Ordinance.

Sec. 2-150.81. – Duties and Powers of the Board.

- (a) Duty to Receive Complaints. The Board shall have the duty to receive and investigate complaints from members of the public about uniformed and sworn personnel of the WPD that allege misconduct involving inappropriate behavior or actions, including, but not limited to, excessive use of force, abuse of authority, unlawful arrest, unlawful stop, unlawful searches, theft, discourtesy or the use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, age, sexual orientation, gender identity or expression, disability, and any other categories protected under law. The term “member of the public” is intended to have the broadest possible meaning and interpretation and includes complaints made by other police officers or personnel.
- (b) Power to Investigate and Report. In performing its duty, the CCRB may conduct investigations, hold hearings, make findings and issue reports, all or any of which may be either public, private, or confidential as the CCRB determines in its discretion based upon the circumstances of the case and the requirements of the law. A semi-annual report of its investigations shall be submitted to the Mayor, Chief of Police and Wilmington City Council. The Board may use all the powers set forth here as well as those set forth in the Charter and City Code to carry out its investigations. The Board may in its discretion make recommendations to the Chief of Police, Mayor, Wilmington City Council, and to the public regarding policies and procedures of WPD. The Board may also investigate and make recommendations regarding undesirable general practices and patterns of behavior involving the interaction of the Police Department with the public at large, public safety concerns, failures of communication with the public, or any other area regarding police practices and policy or police and community relations. The findings and recommendations of the Board, and the basis therefore, including those that may relate to suggested general policies and procedures not specific to any particular investigation or complaint, may be submitted to the Chief of Police. The findings, recommendations, their bases, and any report or communication of the CCRB containing them may only be used in a manner consistent

with Title 11, Chapter 92 of the Delaware Code, as it exists now or may from time to time be amended.

- (c) Rules. Pursuant to Charter Sections 4-406 and 4-407, the CCRB shall promulgate rules and regulations in the prescribed manner.
- (d) Subpoena authority. Pursuant to Charter Section 4-409, the Board may issue subpoenas ad testificandum and duces tecum.
- (e) Mediation. The Board may establish a mediation program where a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.
- (f) Public Education. The Board shall inform the public about the Board and its duties and shall develop and administer an ongoing program for the education of the public. The Board shall hold public meetings and shall regularly report to the public on its activities and other policing information it determines to be in the public interest.

Sec. 2-150.82. – Cooperation of the Police Department.

- (a) The Wilmington Police Department shall provide such assistance as the Board may reasonably request, cooperate with investigations by the Board, and provide to the Board records and other materials necessary for its investigations, except such records or materials that may not lawfully be provided to the public. To the extent permitted by the Title 11, Chapter 92 of the Delaware Code, as amended, by the collective bargaining agreement in place at the time of an investigation, and by the disciplinary rules and regulations of the WPD, the Chief of Police shall ensure that officers and employees of the WPD appear before and respond to inquiries of the Board and its investigators.
- (b) The provisions of this Ordinance shall not be construed to limit or impair the authority of the Chief of Police to discipline members of the WPD nor obviate the responsibility of the WPD to investigate citizen complaints or incidents to which WPD is made known, involving uniformed and sworn members of the WPD, and to promptly inform the CCRB of all such complaints or incidents. Nor shall the provisions of this section be construed to limit the rights of members of the WPD with respect to disciplinary action, including, but not limited to, the right to notice and a hearing, which may be established by any provision of law or otherwise.
- (c) The CCRB in its discretion may decide to proceed with the investigation and review of civilian complaints regardless of any pending or parallel disciplinary proceeding or criminal investigation, but in no case may any information, reports, findings, testimony or other evidence obtained by the CCRB be used in any disciplinary proceeding unless such is permitted by Title 11, Chapter 92 of the Delaware Code, as amended, by the collective

bargaining agreement in place at the time and by the rules and regulations of the WPD.

- (d) The Chief of Police shall ensure that any adverse action by a member of the WPD towards an individual which is due to an action taken to exercise his or her rights to file a misconduct complaint, or which likely would deter an individual from exercising their rights or making or supporting a complaint, is prohibited.
- (e) All City officials and departments shall fully cooperate with the implementation of this Ordinance.

Sec. 2-150.83. – Complainant Confidentiality.

During the investigatory process, neither the identity of, nor personally identifiable information about, complainants or witnesses shall be released beyond the CCRB staff, Board members, and WPD staff engaged in the specific investigation of the complainant's allegation. If the complaint is substantiated and is referred to a CCRB hearing, the complainant's identity may be released in the course of any public hearing about the alleged misconduct.

Sec. 2-150.84. – Meetings of the Board.

- (a) The full Board shall meet at least nine times per year, at which meetings it shall consider cases referred to it and conduct any other business, no less than once every other month.
- (b) The Board shall have the authority to conduct public hearings related to issues of public concern with WPD policies, patterns, or practices. The Board may choose to summon the Police Chief or other employees of the WPD to testify at such hearing.
- (c) At each monthly public meeting, the Board shall include a public comment period during which members of the public may address the Board on issues germane to the Board's jurisdiction. Public comments will be limited to five minutes per speaker.

Sec. 2-150.85. – Public Reporting.

- (a) The Board shall publish on its public website on a quarterly basis the number of complaints it receives; the race, ethnicity, gender, and age of the complainant; the basic facts of the complaints (with personally identifiable information redacted); the disposition of each complaint (to degree permitted by law); and any other information the Board shall determine is relevant to carry out the Board's duties and responsibilities.

- (b) The number of use of force incidents by the WPD, including data disaggregated by the race, gender, ethnicity, and age of the civilian; the type/brief description of force used; the reason for use of force; the civilian injuries that took during incident involving use of force, if any; and the officer injuries that took place during incident involving use of force, if any.
- (c) Any reporting request of and to be provided by WPD's Office of Professional Standards shall be in accordance with Delaware Attorney General Guidelines and in conformance with all applicable governing laws, rules and regulations.
- (d) The amount of money the City of Wilmington expended in settlements or judgments to resolve tort, civil rights, or other legal claims filed against the WPD, as well as the basic facts associated with those claims to the extent permitted by law or not otherwise restricted from disclosure.
- (e) The Board shall publish an annual report, available on its public website, compiling the statistics for each calendar year and identify any significant trends, patterns, areas of concern, or areas of excellence, within the WPD's practices.

Sec. 2-150.86. – Communication Regarding Status of Complaints.

- (a) Within seven business days of the receipt of a complaint, the Board shall notify a complainant by telephone or letter that the Board has received his/her complaint and shall identify the case number.
- (b) The Board shall, within seven business days of sending to the Chief of Police its findings and recommendations in a case, write to the complainant with such findings and recommendations.

Sec. 2-150.87. – Training.

The Board and its employees shall obtain the training necessary to carry out its duties. Such training shall be predominately obtained from such independent, third-party sources that have experience regarding internal affairs and civilian review investigations and audits. A policy as to training shall be adopted by the Board at the outset of its operation and updated annually. The cost of such training shall be set forth in the Board's budget proposal.


SECTION 2. Any prior ordinances or parts thereof inconsistent herewith shall be amended and supplemented to conform to the provisions contained herein.

SECTION 3. If any part of this Substitute Ordinance is declared unconstitutional or illegal, the remaining provisions shall not be affected and shall continue in full force and effect.

~~**SECTION 4.*** This Substitute Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of Delaware.~~

First Reading... ..July 9, 2020
Second Reading... .. July 9, 2020
Third Reading... .. Nov. 19, 2020

Passed by City Council, Nov. 19, 2020



President of City Council

ATTEST: _____
City Clerk

*Note: Pursuant to Sec. 2-202 of the Charter, allowed to become law after a 10-day waiting period without the Mayor's signature.

Approved this ____ day of _____, 2020

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Mayor

SYNOPSIS AND FISCAL IMPACT: This Substitute Ordinance amends the City Code by creating a Citizen Complaint Review Board authorized to investigate citizen complaints against law enforcement officers employed by the Wilmington Police Department, make reports of those investigations and recommend practice changes to the extent consistent with the current law as it exists now or may be amended in the future. The Substitute Ordinance will have a fiscal impact because the Board will require a budget to carry out its duties, but the amount or nature of the budgetary needs of the Board is not known.

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***Note: See Floor Amendment page attached for Section 4.**

FLOOR AMENDMENT TO SUBSTITUTE NO. 1 TO ORDINANCE NO. 20-034

- **Description of Floor Amendment:** This floor amendment amends Substitute No. 1 to Ordinance No. 20-034 to clarify the effective date of the Ordinance and to set a deadline for the first meeting of the Civilian Complaint Review Board.

TEXT OF FLOOR AMENDMENT

- **On page 7, strike Section 4 in its entirety and replace it with the following:**
 - “This Substitute Ordinance shall become effective upon its passage by City Council and approval by the Mayor. The Delaware General Assembly might amend Title 11, Chapter 92 of the Delaware Code during its 151st Session, which could affect the scheduling of the Civilian Complaint Review Board’s first meeting. Regardless of whether the Delaware General Assembly enacts such legislation, the first meeting of the Civilian Complaint Review Board shall occur no later than January 1, 2022.”