

City of Durham

Civilian Police Review Board
Procedure Manual

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City of Durham
Civilian Police Review Board

Conduct of Members	
Section 1	Organization 2.1 Attendance
	1.1 Purpose of Rules of Procedure 2.2 Reporting
	1.2 Board Mission Membership Absences
	1.3 Membership Eligibility 2.3 Conduct Outside
	1.4 Term of Hearings
	1.5 Vacancies 2.4 Disqualification
	1.6 Removal from Hearing or Voting
	1.7 Liaisons and Administrative Matters
	1.8 Confidentiality Meetings and Hearings
	1.9 Officers and their Terms 3.1 Meetings
	1.10 Compensation Annual 3.2 Hearings
	1.11 Report Secretary to the 3.3 Setting of
	1.12 Board Counsel to the Agenda; Order of
	1.13 Board Training Business
	1.14 Resignation 3
	1.15 .
	1.16 4
Section 2	Meeting Frequency 3.5
	Quorum
	3.6 Voting
	3.7 Parliamentary Procedures
Section 3	Hearing Process; Written Decisions; Transmittal 4.1
	Board Duties and Responsibilities 4.2
	Jurisdiction
	4.3 Criteria for Holding a Hearing 4.4
	Findings
	4.5 Appeals Procedures
	4.6 Process for Rescheduling Hearings
	4.7 Hearing Procedure
	4.8 Written Recommendations; Findings; Transmittal and Filing
Section 4	

	4.9	Action by City Manager
Section 5		Amendments
	5.1	Adoption of these Rules of Procedure
	5.2	Amendments
Attachment A		Parliamentary Procedures

City of Durham – Civilian Police Review Board Rules of Procedure

Section 1. Organization

1.1 Purpose of Rules of Procedure

To establish procedures for organizing the business of the Civilian Police Review Board, hereafter referred to as “the Board,” in executing its duties and responsibilities.

1.2 Board Mission

The Durham City Council and the Durham Police Department agree to establish a Civilian Police Review Board. The purpose of the board is to hear cases of persons claiming to be aggrieved by the results of investigations of one or more officers or employees of the Police Department conducted by the Police Department’s Professional Standards Division.

1.3 Membership

The Board has nine members.

1.4 Membership Eligibility All members must:

- be at least 21 years of age
- have resided in the City of Durham for at least three years prior to appointment to the Board
- reside in the City of Durham throughout their term
- be current in the payment of local property taxes
- not be convicted of a felony or have pled *nolo contendere* to a felony
- not be convicted of a class A1, 1, or 2 misdemeanor within three years prior to appointment to the Board

1.5 Term

All terms of office shall be for four years. An individual appointed to complete the balance of a term caused by a vacancy will serve the balance of that term. Members who have previously served two year terms are eligible to serve for four-year terms.

If, at the scheduled conclusion of a member’s term, the City Manager has not appointed a replacement, that member’s term may be extended indefinitely by the Chair until a replacement is appointed by the City Manager.

1.6 Vacancies

Vacancies are filled by the City Manager. The appointee serves the balance of the replaced member’s term.

1.7 Removal

Members may be removed from the Board by the City Manager for cause, which includes any violation of sections 1.4 or 2.

Board members charged with a felony, a class A1, 1, or 2 misdemeanor during their term of office are automatically suspended from the Board until final disposition of the charges is reached.

1.8 Liaisons and Administrative Matters

The City Manager or his or her designee will handle administrative matters. The City Manager and the Police Department will appoint liaisons to the Board to assist it in its work. If necessary, the City Manager may ask other departments to appoint liaisons.

1.9 Confidentiality

Prior to serving, each board member must sign a confidentiality agreement that is satisfactory to the City Manager. This agreement will require that each member maintain as confidential any information that is not in the public record, that is classified as confidential by state law, or is otherwise lawfully classified as confidential by the City.

1.10 Officers and their Terms

The Board officers are a Chair and Vice-Chair. The Chair presides at all hearings and meetings, excuses members from hearings as provided in these Rules, makes other decisions provided for in these Rules and determines all issues, or a process for deciding such issues, not governed by these Rules. The Vice-Chair serves as Chair in the Chair's absence or incapacity.

Officers are elected by a majority vote of all members present at the first meeting that takes place on or after July 1 each year and take office immediately upon election. They serve a term of one year or until successors are elected. Officers are eligible for re-election.

A vacancy in the office of the Chair is filled by the Vice-Chair for the balance of the Chair's term. A vacancy in the office of the Vice-Chair will be filled by the Board electing a member to serve the balance of the Vice-Chair's term.

1.11 Compensation

Members will be compensated at a per meeting rate of \$25, paid semi-annually. In addition, members receive complimentary parking in a designated City of Durham parking lot for each meeting they attend.

1.12 Annual Report

At the end of each fiscal year (July 1 – June 30), the Chair shall prepare a report of the Board's activities for that fiscal year and submit it to the Board by the end of the first quarter of the next fiscal year. The report shall include:

- a summary of the number and types of cases heard, and the disposition of those cases
- the number of hearings held by the Board
- the number of meetings held by the Board
- the names of members and the dates their terms started
- if any members left the Board, the dates on which their positions became vacant
- the officers for the year
- a record of each member's attendance
- any other matters the Board determines to be appropriate for inclusion

Upon approval of the report by the Board, it will be presented to the City Manager.

1.13 Secretary to the Board

The City Clerk or a designee chosen by the City Clerk shall act as Secretary to the Board and shall keep minutes (summary actions) of its meetings and shall be custodian of all papers and records pertaining to the business of the Board.

1.14 Counsel to the Board

The City Attorney or a designee chosen by the City Attorney shall act as Counsel to the Board and shall provide legal guidance to the Board by offering information about and interpretations of relevant federal, state, and local laws, statutes, and regulations.

1.15 Training

Board members must satisfactorily complete the Durham Police Department's Citizens Police Academy.

In addition, each member must complete sixteen hours in a patrol car ride-along program and a comprehensive training program administered and/or conducted by the City Attorney's office and the Police Attorney's office.

This program will include but not be limited to the following topics:

- Citizens Review Board Rules of Procedures
- Investigative Stops
- Arrest, Search and Seizure
- Use of Force/Deadly Force Continuum
- Review of City Ordinances
- Internal Affairs Investigation Protocol
- Media Policies and Relationships
- Police/Community Relations Perspectives
- History and Philosophy of Law Enforcement and Police Ethics
- Cultural Sensitivity
- Interviewing and Listening Skills

All training must be completed in its entirety by a member before that member can participate in a hearing.

1.16 Resignation

Resignations should be given to the Chair or the Secretary, preferably in writing.

Section 2. Conduct of Members

Members must observe the following rules concerning their conduct. Failure to do so shall be reported by the Chair to the City Manager. If there is a question concerning whether a member has or has not followed these rules, the matter shall be determined by a majority vote of the Board.

2.1 Attendance

Board members must faithfully attend meetings and perform their duties. Members and alternates must attend at least 75% of the yearly meetings and hearings of the Board, and may be removed for failure to meet this standard. The Secretary to the Board shall keep a record of attendance. When a Board member has missed more than three meetings for the current year, the Chair and the City Manager shall be notified. Members are obligated to resign if they anticipate that they cannot meet this attendance requirement.

A member may request that the Chair excuse him or her from a meeting or hearing when an important conflict exists. If a conflict of interest, as described in Section 2.4, exists, the Chair must excuse the member from the hearing. Otherwise, the Chair may refuse to excuse a member when the member's absence would leave fewer than five members to hear a case, or where the Chair determines that other circumstances warrant the member remaining.

2.2 Reporting Absences

Members who are unable to attend a meeting or hearing are expected to give the Chair or the Secretary advance notice of their anticipated absence and indicate the general reason for being absent. At the meeting or hearing, the Chair or the Secretary will inform the Board of the absence and the member's reasons.

2.3 Conduct Outside of Hearing

Board members may not discuss any case with, or receive any information from, any parties or other interested persons outside the hearing on a case. This does not include information received or solicited from the Chair, the City Attorney's office, or the Board. After hearings are concluded, members may not discuss evidence regarding a case with any of the parties, their representatives, witnesses, or anyone other than Board members responsible for hearing the case.

Board members may not express opinions concerning a case before that case is heard, except for opinions regarding procedural or scheduling issues.

Board members must keep in mind that they serve as impartial, quasi-judicial decision-makers, and must avoid the appearance of impropriety.

2.4 Disqualification From Hearing or Voting

Conflict of Interest: No Board member may take part in the hearing, consideration, or determination of any case in which that member has a personal or financial interest. No Board member may participate in hearing any case where the member has a bias that is not subject to change regardless of the evidence. A Board member who perceives he or she has such a conflict or bias must reveal it to the Board prior to the hearing on a case. The Chair must then excuse the member from the hearing and all its related activities.

Voting: No Board member may vote in any final determination of a case unless that member was present for the entire hearing of the case. This prohibition does not apply to procedural issues, extensions, continuances, or other similar nonsubstantive issues.

Section 3. Meetings and Hearings

3.1 Meetings

The Board may hold meetings as necessary for the conduct of business, training, and work sessions. Meeting dates will be established by the Chair, with at least two weeks notice given to members and the Secretary, unless the meeting is a special meeting regarding matters that need immediate resolution. For such special meetings, at least 48 hours advance notice will be given. Meetings will be held in City Hall.

3.2 Hearings

The Board will hold hearings for the disposition of cases as soon as practical after determining that a hearing to resolve a complaint should be held. Hearings will be held in City Hall. At the discretion of the Chair, hearing dates may be rescheduled to accommodate the presence of the complainant, the complainant's witnesses, the complainant's attorney, the police officer, the police officer's witnesses, the police officer's attorney, and representatives of the Police Department. In addition, the Chair may reschedule hearings because of a holiday, weather, anticipated lack of a quorum, or other unusual circumstances.

The Chair must give at least two weeks advance notice of the hearing date to all Board members, the Secretary, the complainant or his or her representative, and the Police Department Attorney. The Police Department Attorney will be responsible for notifying the police officer(s) and any other Police Department employee(s) who are expected to testify at the hearing.

An emergency hearing may be called without two weeks notice if the Chair determines that a case is urgent and/or unusual circumstance require its immediate resolution.

3.3 Setting of Agenda; Order of Business

Prior to the start of the meeting, a proposed agenda will be distributed to the members by the Chair. A member wishing to add an item to the agenda should ask the Chair to include it on the agenda, who may do so at his or her discretion.

At the start of each meeting, a written or oral agenda prepared by the Chair will be given to each member and the Secretary. Additions to the agenda may be proposed by any member, and will be added to the agenda, provided no objection is raised by any member. If there is an objection, then a vote shall be taken on the addition, and the item will be added to the agenda only if a majority approves of that addition.

The order of business at hearings shall be as follows, unless varied by majority vote:

- Call to Order
- Roll Call (including requests for members to identify conflicts or early departures)
- Approval of Summary of Minutes for Previous Meetings
- Approval of Written Findings of Prior Decisions
- Old Business
- New Business
- Explanation of Procedure for Cases by Chair
- Swearing In of Witnesses
- Hearing Case-related Testimony
- Determination of the Case Findings
- Adjournment

3.4 Meeting Frequency

The Board shall hold regular meetings not less than once a quarter. The Board may hold more frequent meetings if necessary.

3.5 Quorum

The Board will conduct no business unless a majority of the Board is present at a meeting or hearing.

Unless otherwise specified in these Rules, approval of any action or recommendation by the Board requires an affirmative vote of a majority of those present at a meeting or hearing.

3.6 Voting

All members are required to vote, unless excused by the Chair. A failure to vote by a member who is physically present at the meeting place or who has withdrawn without being excused (either by the Chair or by a majority vote of the Board) shall be recorded as an affirmative vote.

3.7 Parliamentary Procedures

Consideration of cases and other business will be in accordance with the Board's Rules of Parliamentary Procedures, Attachment A, which are adopted and incorporated into these Rules.

Section 4. Hearing Process; Written Decisions; Transmittal

4.1 Board Duties and Responsibilities

The Board has the following general duties and responsibilities:

- Conduct regular business
- Review appeals submitted by complainants not satisfied with the conclusions of a review conducted by the Police Department's Professional Standards Division, approved by the Chief of Police
- Determine the necessity for a hearing
- Conduct hearings
- Make findings of fact

4.2 Jurisdiction

The Board may consider appeals of the results of investigations of the following actions taken by Police Department officers or employees:

- Use of force
- Unethical conduct and/or conduct unbecoming an police department personnel
- Arrest, search, and seizure

The Board may only consider appeals submitted after the Chief of Police has considered the complaint and the investigation, and has made one of these final determinations:

- Sustained
- Not Sustained
- Exonerated
- Unfounded
- Policy Failure

The Board may not review appeals of decisions made by the City Manager.

4.3 Criteria for Holding a Hearing

The Board may hold an appeals hearing when it appears, based upon a preponderance of the evidence, that the conclusions reached by the Professional

Standards Division and the Chief of Police in a specific case of alleged violations may have been an abuse of discretion by the Police Department.

4.4 Findings

After hearing the testimony presented by the parties involved in a complaint, the Board will make the following determinations:

- Was the investigation conducted by the Police Department deficient because of an abuse of its discretion?
- Was (were) the finding(s) of the investigation deficient because of an abuse of discretion?

4.5 Appeals Procedures

All requests for appeals must be filed in writing with the City Clerk's office. The request must state the nature of the original incident and the reason for the appeal. The citizen must file the request within 14 calendar days of receiving written notice from the Police Department of the disposition of the complaint. The citizen must provide a valid, current address where all correspondence can be sent.

Absent exigent circumstances that justify a departure from the rule, the Board is without authority to hear appeals if the complainant has not filed a formal complaint with the Police Department or otherwise requested disclosure of the result of the relevant Professional Standards Division investigation within 90 days of the date of the incident. The Board has the discretion to determine whether exigent circumstances exist on a case-by-case basis.

Upon receipt of the request for appeal, the City Clerk's Office will forward the request to the Chief of Police and the Board. As soon as practical, the Chief of Police or his or her designee will prepare a case summary and forward it to the Board. Unless special circumstances exist, the case will be discussed at the next regular meeting of the Board.

The Board, in closed session, will consider the case summary and the appeal request. By majority vote, the Board will determine the necessity for a hearing. In public session immediately thereafter, the Chair will indicate whether the Board has decided to hold a hearing.

The Chair will also notify the complainant and other involved parties, in writing, of the Board's decision as to whether or not to hold a hearing.

If a hearing is to be held, the Chair will use his or her discretion to schedule a date and time for the hearing, based upon consultations with the members of the Board, the complainant or his or her representative, and the Police Department Attorney. The hearing should be scheduled within three months after the decision to hold a hearing is made. However, this timeframe may be modified,

if necessary, to meet reasonable requests submitted by those expected to attend the hearing.

Pursuant to state personnel privacy laws and the open meetings law, these hearings will be closed to the public and the media.

The Board may not hear any appeal in which a claim for damages has been presented to the City or a lawsuit has been filed in any court of competent jurisdiction regarding the subject matter of the appeal before the Board.

4.6 Process for Rescheduling Hearings

If any of the participants in a hearing wants to change the hearing date, a written request must be given to the Chair at least seven calendar days prior to the scheduled hearing date.

If an applicant withdraws a request, the case is closed. If a hearing involves multiple complainants, all must withdraw their complaints before the case is closed.

Cases continued by the Board for lack of information or for necessary actions to be taken by the applicant shall be to a date certain. If the applicant does not submit the information or take the requested actions by the continuance date, the Board may either continue the case again or dismiss the case without prejudice to the applicant's right to initiate a new application. The Board may not grant multiple continuances without good cause. All re-applications must be received by the City Clerk within 21 days of the complainant's notification that his or her case has been dismissed for lack of compliance with the Board's requests.

4.7 Hearing Procedure

Prior to hearing testimony, the Chair will briefly explain the nature of the hearing. The Chair will also make all parties aware of any time limits that will be imposed on their testimony.

Prior to the start of the hearing, both parties shall submit to the Board their list of witnesses, the evidence to be offered on their behalf. It is the responsibility of each party to manage their allotted time to meet the overall time limits imposed by the Board.

All witnesses must testify under oath or affirmation. All hearings will be recorded.

Board members with a conflict of interest or bias must request to be excused prior to the start of the hearing. Any Board member with special knowledge about a case should disclose it so that the parties may address such information in their testimony.

All parties have a right to be represented by counsel or a person of their choice. The City Manager at his or her discretion may provide counsel to the defending officer or employee. The City Attorney's office will provide legal counsel to the Board on procedural matters.

The hearing will proceed as follows:

- First, the Complainant will offer evidence and witnesses in support of his or her appeal.
- Second, the Police Department officer(s) or employee(s) against whom the complaint has been filed, and witnesses in his or her support, will be asked to testify.
- Third, the Police Department's Professional Standards Division investigator will be asked to testify.

All witnesses will be sequestered during the hearing. Each witness may be accompanied by his or her own attorney during the conduct of his or her testimony. No person other than the members of the board, the counsel to the board, the secretary to the board, the witness and the attorney for the witness shall be present during the testimony. Each witness and his or her attorney must leave the hearing room at the conclusion of his or her testimony.

No cross-examination of opposing witnesses or parties may be conducted by any party or any party's attorney.

In an effort to convey testimony to the Board, a witness or party may consent to being examined by his or her attorney or other representative.

At the conclusion of their evidence, each party has the right to make a closing statement.

Members of the Board may request additional information and question the complainant, the police officer or employee, counsel or representatives, and witnesses at any point during the process. The Chair will rule on any objections or requests from participants in the hearing regarding the hearing procedure or the admissibility of evidence.

Speakers and Board members must be recognized by the Chair before they may be heard. The Chair may limit and/or cut off evidence or testimony that is irrelevant, repetitive, incompetent, or hearsay. Board members may ask the Chair to limit and /or cut off testimony.

After all evidence has been presented, the Chair shall ask the parties if additional relevant information exists that would justify a continuance.

Members may limit the length of a hearing or set a time of adjournment by majority vote. The Chair may exclude from participation or remove from the hearing room any person who engages in improper conduct.

4.8 Written Recommendations; Findings; Transmittal and Filing

After all testimony and evidence has been presented to the Board, the Board will consider its findings. The Board may make its determinations immediately after the conclusion of the testimony phase of the hearing or continue the hearing to a date certain, no more than 45 days later, to consider its findings and make its determination.

Once it has reached its conclusions, the Board will issue written recommendations to the City Manager and the Chief of Police. Those recommendations may be approved at the same meeting, or at another meeting held within 45 days. If absences at the next meeting result in the inability to get majority approval of findings, absent members may be polled by e-mail or in writing. Any votes gathered in this fashion will be added to the Board's minutes.

When the Board determines that a hearing will not be held to examine a complaint, the Board is still authorized to issue recommendations based upon the issues presented in the complaint, or upon general trends that it observes based upon multiple complaints.

The Board Chair must sign all recommendations. The Secretary will maintain a file of all recommendations.

4.9 Action by City Manager

The Manager will review the Board's recommendations, take such action as he or she deems appropriate, consistent with state law and city policy, and shall advise the Police Chief of any intended action.

The City Manager will notify all parties and the Board within seven days of this communication to the Chief.

The decision of the City Manager is final and binding on all parties.

Section 5. Adoption and Amendments to Rules

5.1 Adoption of these Rules of Procedure

The City Council, by majority vote, shall adopt these Rules of Procedure. The Rules may be suspended by a vote of a majority of members eligible to vote on the matter being considered.

5.2 Amendments

Recommendations for amendments to these Rules may, within the limits allowed by law, be approved by an affirmative vote of not less than five members of the Board, provided that the general substance of the amendment is first presented to the Board members in writing at a meeting preceding the meeting at which the vote is taken. All recommended amendments will be submitted to the City Council for its consideration. The amendment will be adopted only after receiving the Council's approval.

ATTACHMENT A TO RULES OF PROCEDURES

Parliamentary Procedures for the Citizens Review Board

The Durham Citizen Review Board shall observe the following parliamentary procedures. The Board may suspend these procedures by a 4/5 vote. Deviations from these procedures shall not be grounds for voiding a vote unless the deviation is called to the attention of the Chair at the same meeting when it occurs, and the Board, by majority vote, agrees that as a result of the deviation a previous vote should be voided.

A. Authority of Chair

If a situation is not covered by these rules, the Chair shall determine the appropriate procedure. The Chair's decision may be changed by a majority vote of the Board.

B. Motions

Formal decisions including but not limited to approval of Rules of Procedure, all actions concerning cases, and all selections of officers will be made by motion, which, except as provided below, must be seconded. The mover may withdraw the motion at any time before it is voted on. Only one substantive motion and friendly amendments to such motion may be considered at a time.

Friendly amendments are the norm in board proceedings, and all amendments to a motion must be offered as friendly amendments. A motion proposing a friendly amendment does not need a second. A friendly amendment is valid only when accepted by the maker of the original motion and, once accepted, it becomes a part of the original motion. An unlimited number of friendly amendments are allowed. If a friendly amendment is not accepted by the motion-maker it may be offered as a subsequent motion after the vote on the first motion has occurred.

Motions to continue are encouraged if additional information would be useful in considering the outcome of the case or if there are other reasons a continuance is advisable. A motion to continue may be made at any time and takes precedence over all other substantive motions and amendments. It requires a simple majority of Board for approval. When the matter is reopened after continuance, any substantive motions on the table at the prior meeting will still be on the table.

A motion to adjourn is not in order if there are motions/amendments pending on a case that has not been continued.

C. Voting/Consideration of Cases

1. For a vote to occur, the Chair may call for a vote or a member may call the question and the Chair must agree.
2. The Chair will announce the final decision on a case. A vote to continue a case may occur at any time.

3. Before a vote, motions as they may have been amended must be restated by the Chair, the Secretary, or by a Board member who proposed either the motion or amendments to such motion, unless the motion was made immediately prior to the vote. The restatement shall include all conditions that are proposed.
4. Voting on cases shall be by roll call. Votes on other matters may be taken by ayes and nays, by a show of hands, or in any other reasonable fashion determined by the Chair.
5. Because decided cases cannot be reopened, the granting of continuances when information is lacking is encouraged. After debate but prior to the first vote on a case, the Chair shall ask all parties if there is any information that has not been presented that is relevant, or if there is any information that needs to be clarified. If it appears that additional information would be relevant but cannot be presented at the hearing, a motion to continue is in order.