

# **CITIZENS REVIEW BOARD ANNUAL REPORT**

September 1, 2017 through August 31, 2018

## History of the Board, Charge, Meetings and Attendance

The Citizens Review Board (CRB) came into existence in September 1997. The Board reviews appeals from the outcome of citizen complaints to the Police Department concerning use of force, unbecoming conduct, arrest, and search and seizure and complaints of arbitrary profiling involving a sworn police officer. 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 the Board. The Board also serves in an advisory role to the Chief of Police, the City Manager, and the City Council. It is charged with making annual reports to the Chief of Police, the City Manager, the City Council and the Community Relations Committee. The Board typically meets on the second and/or fourth Tuesday of the month when appeals are received or as needed. There have been three (3) meetings during this reporting year.

## Current Membership

The eleven members are appointed each for three year terms, with no member serving more than two consecutive terms. Five members are appointed by City Council. The Mayor and City Manager each have three appointments. Currently, those serving are: Ms. Sandra Donaghy (Chair), Mr. Henry Black, Jr. (newly elected Vice Chair), Mr. Clarence Darnell, Mr. Antonio Gaither, Ms. Magaliz Giraud, Ms. Nancy Hightower, Mr. Marc Jensen, and Ms. Diane Langevin. Mr. David Smith did not meet attendance requirements and was removed from the board pursuant to the Council's Attendance Policy. Mr. Tom Bowers was appointed to serve the remainder of Mr. Smith's term. Ms. Theresa Halsey and Mr. Nicholas Wind-McJetters (Vice Chair for the past year) dutifully served as members whose terms expired and were not eligible for reappointment by the City Council. Ms. Paris Hopkins and Ms. Tonya Jameson were recently appointed to replace them. All other Board members have met the attendance policy; however, appointments and/or reappointments are pending by the Mayor. All members serving as of February 1<sup>st</sup> submitted the 2018 Ethics Disclosure Statement, as required by Council policy.

## Board Activity During this Reporting Period

With input from various community stakeholders, Charlotte Mecklenburg Police Department (CMPD), members of the CRB and the Charlotte Community Relations Committee, the governing ordinance of the Citizens' Review Board was amended in November 2013.

The amended ordinance requires that the Board hold an initial hearing within forty-five (45) calendar days of the date a citizen complainant files a timely appeal. Under the amended ordinance, an appeal is timely if filed within thirty (30) days of the date the citizen receives notice from CMPD of the disposition of the complaint. The initial hearings and the evidentiary fact-finding proceedings must be conducted pursuant to new Section 16-60 of the ordinance. If during the initial hearing the Board finds there to be a "substantial evidence of error" – which, for example, could mean that CMPD's investigation appears not to have resolved important questions concerning facts and issues that the Board believes a thorough investigation should have resolved, or that an initial review of the record reasonably suggests

the Chief's determination was in error – the amended ordinance provides that the Board must hold an additional evidentiary fact-finding proceeding regarding the disposition of the disciplinary charges entered by the Chief of Police in order to allow the Board to make a fully-informed final determination regarding the complainant's appeal.

During this reporting period, the board conducted one (1) evidentiary fact-finding proceeding and considered one (1) new appeal, each in accordance with the amended ordinance.

The evidentiary fact-finding hearing was pending at the time the Board issued last year's annual report. The hearing, regarding an appeal filed by James Yarborough, was held on September 26, 2017. This appeal challenged the Chief's determination that Mr. Yarborough's complaint concerning violations of CMPD's "Use of Force" policy was "not sustained." Following an initial hearing on July 31, 2017, the Board determined by unanimous vote, 9-0, that there was substantial evidence of error regarding the disposition of the disciplinary charges. After thoroughly and comprehensively considering the relevant statements, exhibits and sworn witness testimony, the Board members present at the September 26, 2017 evidentiary hearing voted 7 to 1 to make a final determination, pursuant to Section 16-60(g) of the Citizens Review Board Ordinance (the "Ordinance") that "by the greater weight of the evidence," the Chief of Police clearly erred in finding the allegations of excessive use of force were "not sustained." As a result, the Board made a recommendation to the Chief that CMPD's disposition of the use of excessive force charge be changed from "not sustained" to "sustained." The Board's written decision in this matter also included several policy recommendations – among them, suggestions for improving the department's use of force policies and training.

The only new appeal reviewed during this reporting period concerned the fatal shooting of Josue Javier Diaz by an undercover CMPD officer on January 26, 2017. The appeal was filed by Christina Diaz, wife of the deceased. Following an initial hearing, the Board found there was not substantial evidence of error regarding the Chief's determination that the shooting of Mr. Diaz was justified. Therefore, no further proceedings were held in this matter.

In response to action taken by City Council to amend the ordinance governing annual Board training requirements, members of the Board completed eight hours or more of training by participating in CMPD ride-alongs, a webinar entitled "Justice Based Policing" and a Charlotte Mecklenburg Police Department Transparency Workshop.

City Clerk staff designed and continually update the Citizens Review Board website that contains pertinent information about the Board, including history, statistics, current board roster, online appeal form, and links to related information.

In its 2016-17 annual report, the CRB recommended that CMPD compile a report of the policy recommendations made by the CRB in recent years and CMPD's responses to those recommendations. The Board wishes to note its appreciation for CMPD's significant efforts in preparing a comprehensive report that has served as a helpful taking-off point for productive discussions between the CRB and the Chief regarding ways to improve CMPD's policies and training. The Board looks forward to continuing those discussions in 2018-19 and beyond. The Board requested in its 2016-17 annual report that the report of CRB policy

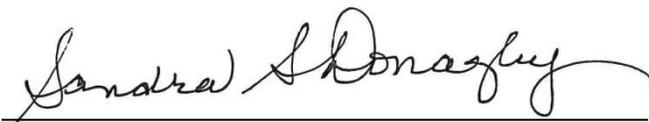
recommendations be made publicly available on the CRB's website. The CRB would ask City staff to work with CMPD to make this happen as soon as possible.

Finally, at the request of several City Council members, the Board's legal counsel has worked with the Mecklenburg County Bar (MCB) to develop a list of local attorneys willing to represent indigent citizens in appeals to the CRB on a pro bono basis. As of this writing, fifteen local attorneys have volunteered for this initiative. A local attorney who has appeared multiple times in CRB cases, Corey Parton, has volunteered to help train these volunteer lawyers. Planning for a training session is ongoing.

#### Recommendations to Council

All cases reviewed by the Board are reminders of the role the CRB plays in holding our police department accountable and in ensuring citizens have a forum to challenge CMPD's decisions regarding officer-involved shootings and police misconduct. We wish to express our appreciation to the Mayor, City Manager and City Council for the opportunity to serve our community in this fashion. We respectfully submit this annual report and request thorough consideration of the following recommendations offered to enhance the appeal process and effectiveness of this board:

1. It is important that membership of this Board remain diverse with respect to age, race, gender, sexual orientation, ethnicity, religious beliefs, disabilities, etc.
2. The Board would request that City Council continue to press the General Assembly to grant subpoena power to the CRB.



Chairperson

cc: Police Chief Kerr Putney  
Marcus Jones, City Manager  
Willie Ratchford, Community Relations Cmte.  
Patricia Albriton, Community Relations Cmte.