

COUNCIL WORKSHOP AGENDA ITEM SUMMARY

TOPIC: Civil Liberties

RESOURCES: Ron Carlee, City Manager
Robert Hagemann, City Attorney
Rodney Monroe, Chief of Police
Kerr Putney, Deputy Chief of Police
Mark Newbold, Deputy City Attorney-Police
Willie Ratchford, Community Relations Committee

KEY POINTS:

- On December 8, 2015, Chief of Police Rodney Monroe and Community Relations Committee Director Willie Ratchford briefed the City Council on a request to consider enactment of a local Civil Liberties (Civil Rights) Ordinance
- On January 12, 2015, Council adopted a motion that:
 - acknowledged the role that CMPD plays in the application of fair and equal justice;
 - embraced principles related to Civil Rights;
 - directed the City Manager to have CMPD undertake a comprehensive review of its Directives, Standard Operating Procedures, training and other policies in light of the principles embraced by the Council; and
 - asked the City Manager and City Attorney, in cooperation with the Chief, to prepare a proposed Civil Liberties resolution or ordinance
- Staff having completed the tasks charged by Council, the Council will be presented with:
 - the outcome of CMPD's review;
 - a proposed Civil Liberties Resolution;
 - an ordinance that would amend the Citizens Review Board Ordinance to give the board jurisdiction to hear complaints of arbitrary profiling

COUNCIL DECISION OR DIRECTION REQUESTED:

Schedule a June 8 public hearing on the proposed Civil Liberties Resolution and amendments to the Citizens Review Board ordinance. Consider adopting the resolution and ordinance on June 8 or at a later date.

ATTACHMENTS:

Model Ordinance: Local Civil Rights Restoration Act
Motion adopted by City Council on January 12
City Attorney Memorandum
CMPD chart
City Manager Memorandum
Proposed Resolution on the Protection of Civil Liberties
Proposed Ordinance amending the Citizen Review Board Ordinance

Model Ordinance: Local Civil Rights Restoration Act

This model legislation's sections include the following:

- Limits on intelligence collection and surveillance to functionally restore the Fourth Amendment's warrant requirement;
- Limits on profiling according to political speech or activity;
- A prohibition on profiling according to race, religion, country of origin, or gender;
- Data collection and disclosure requirements to ensure transparency of potential profiling;
- A prohibition on federal immigration enforcement operations by local officials; and
- A provision for a civil action and damages to enable the measure's provisions to be enforced by aggrieved individuals acting in the public interest.

More information: <http://constitutioncampaign.org/lcrra>

Ordinance to restore Fourth Amendment protections and ensure the focus of local law enforcement agencies on their core public safety mission by limiting their surveillance, intelligence collection, and immigration enforcement activities, and ensuring transparency into potential profiling by race, religion, or national origin

Whereas [list local law enforcement agencies] (“local law enforcement agencies”) are accountable to this municipality; responsible for its public safety while granted limited resources; and charged with a mission to serve and protect its law-abiding residents, rather than to monitor, harass or intimidate them;

Whereas the Constitution and Bill of Rights ensure the rights of law-abiding Americans to be free from arbitrary state scrutiny, surveillance, searches, interrogations, seizures, or arrest;

Whereas public trust in law enforcement officers, and their reciprocal respect for the rule of law, are vital to promoting public safety;

Whereas federal agencies responsible for collecting domestic intelligence, such as the Federal Bureau of Investigations (“FBI”), have repeatedly and systematically exceeded their authorities, violated the privacy and First Amendment rights of law-abiding Americans and even veterans subjected to unjustified and unreasonable surveillance;

Whereas oversight by neither the Congress nor the Article III Judiciary has achieved transparency into the expanding array of domestic spying and surveillance programs and policies pursued by federal agencies, with mounting support from local agencies;

Whereas the Inspector General of the Department of Homeland Security (“DHS”) found in March 2010 that local immigration enforcement under 287(g) of the Immigration and Nationality Act has led to rampant racial profiling and widespread violations of the rights of US citizens, and documents obtained from Immigration and Customs Enforcement (“ICE”) and the FBI in June 2011 prove that the agencies colluded to mislead local jurisdictions about the Secure Communities Initiative;

Whereas several States, including Arizona and Georgia, have sought to institutionalize suspicion by association by requiring incremental scrutiny of individuals, including US citizens, based on their national origin;

Whereas federal legislation needed to curb rule of law abuses—such as the JUSTICE Act, the End Racial Profiling Act, and comprehensive immigration reform—has not been enacted and does not appear near the top of the national agenda;

Whereas the ongoing secrecy surrounding domestic surveillance activities has precluded the effective operation of democratic checks and balances; and

Whereas the experiences of localities across the United States demonstrate conclusively that allowing local law enforcement agencies to focus on their core public safety mission (without the distraction or counter-productive pursuit of federal immigration enforcement or intelligence collection mandates) enhances public safety,

BE IT RESOLVED:

That [the City of _____] remains firmly committed to the protection of civil rights and civil liberties for all people, and enacts this ordinance to secure those aims.

I. Definitions

- A. "Observation" or "monitoring" means surveillance, monitoring, or data collection facilitated by human intelligence, undisclosed participation by law enforcement agents or informants, warrantless wiretaps, remote or live imaging, data recorded from cellular telephones, internet, and other telecommunications devices, or other routine or spontaneous investigative activities.
- B. "Data Centers" means any facilities accepting public funds to facilitate the collection, dissemination, or analysis of intelligence data concerning non-criminal behavior collected through observation by federal, state, or local law enforcement agencies.
- C. "Non-Criminal Intelligence Information" means information about activities that are not criminal in nature, collected outside the context of an investigation of a criminal act that has occurred.
- D. "Local Law Enforcement Agencies" include [_____].
- E. "Investigatory Activity" means any stop, interrogation, search, seizure, use of force, or arrest.
- F. "Frisk" includes a pat down.

II. Safeguards on Surveillance

- A. **Information Collection:** Law enforcement agents shall conduct searches of individuals in this jurisdiction only on the basis of probable cause that a criminal offense has been committed, or on a basis previously held by a court to be consistent with rights under the Constitutions of the United States and State of [State].
 - 1. In accordance with federal law, Reasonable Suspicion that a criminal offense has been committed may justify a cursory frisk of outer clothing, or the collection or retention of intelligence information related to suspected criminal activity.
 - 2. Local law enforcement agencies shall not engage in efforts to collect or retain information about the lawful activities of individuals or groups without reasonable suspicion that such activities relate to criminal activity.
 - 3. Observation or searches unsupported by individualized suspicion are per se unreasonable and may not provide a basis for arrest, prosecution, or the collection or retention of intelligence information.
 - 4. Local law enforcement agencies may not pursue, engage in, or support either electronic or physical surveillance activities unless supported by reasonable

suspicion that a criminal offense has been or may be committed, or a judicial warrant specific to the time, place, and target of such surveillance.

5. Intelligence collection activities unsupported by reasonable suspicion that a criminal offense has been or may be committed, or a judicial warrant, are per se unreasonable and prohibited.

B. Information Dissemination:

1. Local law enforcement agencies may not supply Intelligence Information to federal officials absent reasonable suspicion that a criminal offense has been or may be committed. Incident reports concerning allegedly suspicious activities may not be reported to databases directly or indirectly accessible by federal officials absent reasonable suspicion that a criminal violation has been or may be committed.

2. Intelligence Information may not be disseminated to military or private sector organizations. Intelligence related to a criminal investigation that has been collected by local authorities may be disseminated only to law enforcement agencies; local authorities may not include military or private sector actors, nor Data Centers (see I.B.) through which military or private sector actors could gain access directly or indirectly to such data.

3. Local law enforcement agencies shall **not participate in inter-agency bodies** that disseminate non-criminal intelligence information unless those bodies comply with 28 C.F.R. Part 23 and its requirements regarding information receipt, maintenance, security, and dissemination.

III. Limits on Undercover Infiltration and Political Profiling

A. Local law enforcement authorities shall not engage in undercover infiltration, or undisclosed participation of any kind, in groups or organizations pursuing First Amendment-protected (speech, political or religious) activity, absent probable cause that a criminal offense may be committed.

B. Any investigation involving religious institutions or political organizations shall be pursued through the most minimally invasive methods available, and shall require active and recurring internal oversight.

C. Local law enforcement authorities may not select individuals, organizations, associations, or institutions for any investigatory activity, to any extent, on the basis of their First Amendment-protected (speech, political or religious) activities.

D. Local authorities shall not collect, disseminate or maintain non-criminal Intelligence Information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information relates to criminal activity and there is reasonable suspicion to believe that the Subject may be involved.

IV. Profiling According to Race, Religion, National Origin, or Political Point of View

A. Local law enforcement agents and agencies shall not select individuals for observation, interrogations, searches, frisks, or arrests based in any part on the individual's race, ethnicity, country or region of origin, or religion (except where trustworthy information relevant to the locality and timeframe links an individual of a particular race, ethnicity, country or region of origin, or religion to a specific criminal incident or scheme, and other factors support reasonable suspicion).

B. Local law enforcement agents and agencies shall not demand an individual's identification absent reasonable suspicion of criminal activity.

C. Measures to Verify Potential Profiling According to Race, Religion, or National Origin: Following any observation, stop, frisk, search, interrogation, or arrest of any individual, the agent initiating that activity shall record the following information about the Subject on a standardized Encounter Form:

1. the date, time, and location of the investigatory activities;
2. the particular investigatory tactics employed;
3. the amount of time, if any, during which the subject(s) of the investigatory activities was detained;
4. a description of any frisk or search, including the areas, vehicles, materials, or units of stored (physical or electronic) information searched;
5. whether force was employed, and if so, for what reason, of what sort, and the effect of such force on the subject(s);
6. the nature of the suspicion prompting the investigatory activity, and the specific basis or bases for that suspicion;
7. the approximate age of the subject, as perceived by the officer;
8. the sex and gender of the subject, as perceived by the officer;
9. the country or region of origin of the subject, as perceived by the officer;
10. the religion of the subject, as perceived by the officer.
11. the race or ethnicity of the person observed, searched, or interrogated, as perceived by the officer.
12. with what criminal violation, if any, any subject was ultimately charged;

A. Privacy.

1. The identification of characteristics described in sections IV(A)(7-11) above (e.g., age, sex, gender, country or region of origin, religion, and race or ethnicity)

shall be based on the observation and perception of the law enforcement agent conducting the stop, search, or other investigatory activity. A subject of investigatory activities shall not be asked to provide such information.

2. Data collected pursuant to IV(C) shall (i) exclude personally identifiable information; (ii) be stored separately from databases accessible to operational law enforcement personnel from any agency; (iii) be maintained securely, protected by encryption or other security measures to protect against theft or unauthorized access, and; (iii) be audited and analyzed on an annual basis by an independent entity responsible for analysis.

B. Accountability. Encounter Forms shall be identifiable by sequential serial numbers. Those assigned to particular agents will be tracked and recorded. Agents shall deliver copies of each Encounter Form to the local law enforcement agency, which shall periodically deliver them to an independent entity responsible for analysis.

C. Transparency.

1. Subjects of investigatory interactions such as stops, frisks, interrogations, searches or arrests shall receive copies of the Enforcement Form relating to their interaction. Encounter Forms shall include guidance on how to file a complaint about, or commendation of, the agent with whom they interacted.

2. Subjects of observation or monitoring shall not receive such documentation, but monitoring activities shall be documented through Encounter Forms, and subjected to an internal audit to ensure compliance.

3. The information collected through Encounter Forms shall be aggregated and publicly disclosed every six months in a report to the [local legislative body] including statistics reflecting the rates at which Subjects of various races, religions, and national origins are represented at each investigatory stage.

4. The report, as well as individual Encounter Forms, shall also be made available to litigants who allege discriminatory profiling (See Section VIII), or defendants seeking to exclude from prosecution evidence obtained through a potentially unconstitutional search.

V. Limits on Local Immigration Enforcement Activities

A. Local law enforcement agencies shall not participate in activities related to enforcing federal immigration laws.

1. **Local immigration enforcement.** Local law enforcement agencies shall not engage in agreements with the Department of Homeland Security (“DHS”) components, including Immigration and Customs Enforcement (“ICE”), to facilitate the enforcement of federal immigration law. Programs for which such engagement is prohibited include, but are not limited to: agreements under section 287(g) of the Immigration and Nationality Act; the Secure Communities Initiative; the Criminal Alien Program; and Next Generation Identification.

2. **Detainers.** Facilities under the jurisdiction of this body shall not be used to detain individuals held for suspected immigration violations. Law enforcement agents shall not make arrests or detain individuals based on administrative warrants or requests by federal agencies for removal, including those generated by the federal Immigration and Customs Enforcement agency (ICE) or the National Crime Information Center (NCIC) database. Local officials shall not hold individuals based on detainers requested by ICE.

3. **Sharing Arrest Data.** Local law enforcement agencies may not share arrest data (including but not limited to fingerprints) with state or federal counterparts, including the Federal Bureau of Investigations (FBI), unless it relates to suspected violent felonies. Data pertaining to individuals suspected of misdemeanors or nonviolent felonies shall not be shared with other law enforcement agencies absent an express duty under federal or state law.

B. Privacy.

1. Local law enforcement authorities shall not monitor, stop, detain, question, interrogate, or search a person solely for the purpose of determining that individual's immigration status. The use of an otherwise valid criminal investigation or arrest as a pretext to ascertain information about an individual's immigration status is prohibited.

2. Local law enforcement authorities shall not inquire about the immigration status of any crime victim or witness, or suspects of alleged misdemeanors, nor shall they refer such information to federal immigration enforcement authorities.

3. Local law enforcement authorities shall not initiate a criminal investigation based solely on information or suspicion that an individual has committed a civil violation by residing in the United States without proper authorization.

4. Local law enforcement agencies shall tow a vehicle of an unlicensed driver only after granting an opportunity to allow the unlicensed driver to secure his or her vehicle on the scene, or to contact another source to recover the vehicle

VI. Limits on Cooperation with Federal or Military Officials

A. Activities undertaken by local law enforcement agencies in coordination with federal counterparts, including joint intelligence analysis activities involving Data Centers or federal intelligence agencies, shall be strictly limited to:

1. Criminal law enforcement, or
2. Disaster preparedness and recovery activities.

B. Local law enforcement agencies may coordinate their activities with military or National Guard personnel only to the extent their activities relate specifically to disaster preparedness and recovery.

C. **Disaster Response.** Under no circumstances will due process be suspended: even in the event that a natural disaster precludes the normal operation of courts, local agencies or deputized private contractors shall not be authorized to impose summary penalties without judicial process (as, for example, occurred in New Orleans in 2005).

VII. Limits to Protect Dissent

D. Law enforcement activities undertaken in the context of political demonstrations, or other activities protected by the First Amendment, shall be subject to the following limitations:

1. **Free Speech zones:** No fences shall be erected, or exclusion zones delineated, that curtail public access to public streets.
2. **Mass arrests:** Arrests of individuals engage in First Amendment protected activity must rely on articulable facts supporting probable cause to believe that that every individual subjected to arrest committed a criminal offense, beyond their presence in a particular location at a particular time. Arrests to pre-empt criminal activity are not authorized. Any individual arrested for failure to obey a time, place, or manner restriction must be allowed an opportunity to depart from the area.
3. **Police checkpoints:** No screening checkpoint shall subject any individual to a search absent reasonable suspicion of criminal activity.
4. **Condition of confinement** during mass arrests: Individuals subjected to arrest for participation in First Amendment protected activity shall not be subjected to shackling absent a specific threat of violence, shall be allowed access to counsel within six hours, and shall be given a copy of any incident report relating to their arrest to use for exculpatory purposes.
5. **Use of force:** no non-lethal weapons may be used until after an act of proportionate violence is committed, nor may undercover law enforcement agents commit the act serving as a predicate for the deployment of nonlethal weapons, nor in any circumstances may rubber bullets, bean bags, or wooden dowels be aimed at areas above the thighs.
6. **Crowd control technology:** Any purchase by law enforcement authorities of equipment for crowd control purposes (including but not limited to tasers, tear gas, pepper spray, and Long Range Audio Devices (LRADs)) shall require prior notice to the public, a meaningful opportunity to comment, and the affirmative approval of the City Council.

VIII. Transparency and Accountability Provisions

A. **Training.** Local law enforcement agencies shall conduct training activities to ensure that all officers are knowledgeable about the provisions of this ordinance.

B. **Equipment Purchases.** Any purchase by local authorities of electronic technologies to enable monitoring or information collection (including but not limited to electronic body

scanners, drone aircraft, driver's license plate scanners, and closed circuit television cameras) shall require prior notice to the public, a meaningful opportunity to comment, and the affirmative approval of the City Council.

C. Accountability for Potential Abuses. Law enforcement officials shall not engage in the unnecessary use of force, nor may they tamper with evidence or hide exculpatory evidence. Allegations that officials either employed unnecessary force, tampered with evidence, withheld potentially exculpatory evidence, or engaged in biased policing practices violating Section III(B), shall be cause for an independent investigation by a civilian review board and, where justified, appropriate departmental disciplinary measures or dismissal.

D. Public Right to Observe Police Activities. Law enforcement officials shall respect the rights of members of the public to observe and to capture video and/or sound recordings of police activities during the discharge of their public duties. In exercising these rights, members of the public do not have a right to physically or otherwise interfere with the discharge of officers' duties, nor do members of the public have a right to otherwise violate the law.

IX. Civil Action and Injunctive Relief

A. Any person subjected to law enforcement activity exceeding the limits imposed by this Ordinance may file in a court of competent jurisdiction a civil action for declaratory or injunctive relief against either

1. the local law enforcement agency employing the individual agent whose conduct constituted a violation,
2. the individual agent(s) responsible for the injury, or both.

B. Litigants shall be allowed access to aggregate data collected under Section III-A.

C. A disparate impact on communities of a particular race, country of origin, religion, or sexual orientation shall constitute a violation of this Ordinance.

X. Severability

A. The provisions of this Ordinance shall be severable. If any phrase, clause, sentence or provision of this Ordinance is declared by a court of competent jurisdiction to violate the Constitution of the United States or the Constitution of the State of [State], or if its applicability to any agency, person or circumstance is held invalid, the validity of the remainder of the Ordinance and its applicability to any other agency, person or circumstances shall not be affected.

XI. Distribution

A. Local agencies shall train all officers on the implications of this Ordinance for their respective responsibilities. Agencies shall also conduct written and behavioral assessment to ensure that this measure is understood and followed by officers.

B. The [city executive official] shall send copies of this ordinance to our US Congressional and Senate representatives, the US Senate Committee on the Judiciary, the US Senate Select Committee on Intelligence, the US House of Representatives Committee on the Judiciary, the US House of Representatives Permanent Select Committee on Intelligence, the US Attorney General, and the President of the United States.

MOTION ADOPTED BY CITY COUNCIL
January 12, 2015

I make a motion as follows:

- (A) The Mayor and Council understand the critical and important role that the Charlotte-Mecklenburg Police Department plays in the application of fair and equal justice under the Constitution. To this end, we express our deep appreciation and admiration for their commitment to all members of our community. We further recognize CMPD's desire to serve all, and to continue to foster and maintain public trust with all members of our community.
- (B) The Mayor and Council hereby embrace the following Civil Rights principles as policy guidance in support of CMPD's mission to protect the community:
 - (1) Arbitrary profiling by law enforcement based on race, color, religion, sex, national origin, sexual orientation, disability, or political affiliation is unacceptable;
 - (2) A person's First Amendment rights to engage in political activity, to peacefully assemble, and to protest and engage in peaceful demonstrations should be fully respected; the infiltration, monitoring, or other response to such activities unrelated to a law enforcement function is unacceptable;
 - (3) Infiltrating or monitoring a group by law enforcement for political purposes is unacceptable;
 - (4) The gathering, dissemination, and retention of data and information pertaining to members of the public by law enforcement other than for law enforcement purposes or to comply with state or federal law is unacceptable;
 - (5) It is not the responsibility of local law enforcement to enforce federal immigration laws; and
 - (6) Transparency and accountability are essential for fostering and maintaining public trust and confidence in law enforcement. To that end, law enforcement shall be as transparent as public safety concerns permit, and appropriate mechanisms for accountability should be established and maintained.
- (C) The City Manager is hereby directed to have the Charlotte-Mecklenburg Police Department undertake a comprehensive review of its Directives, Standard Operating Procedures, Training, and other policies and practices in light of the principles enumerated in Section (B), and shall repeal, revise, or amend the same as necessary to ensure that these principles are respected.
- (D) Following the review directed in Section (C), the City Manager and City Attorney, in cooperation with the Chief of Police, shall prepare and recommend a proposed Civil Liberties resolution or ordinance for Council's consideration following a Council public hearing.

CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY
Memorandum

TO: Mayor and City Council

FROM: Robert E. Hagemann, City Attorney *REH*

DATE: May 26, 2015

RE: Civil Rights Ordinance/Resolution

You will recall a dinner presentation earlier this year when I discussed the differences between an ordinance and a resolution, and described the attributes and enforcement options of an ordinance. This is to restate the essence of my presentation and to recommend to you that a Council policy that is in response to the proposed "Model Ordinance: Local Civil Rights Restoration Act" be by resolution rather than ordinance.

While Council resolutions and ordinances are articulations of Council policy, unlike a resolution, an ordinance is a municipal law. Ordinances are primarily used to regulate private activity (*e.g.*, zoning ordinance, noise ordinance). Pursuant to G.S. 160A-175, an ordinance may be enforced only by the City. Enforcement may be through:

- misdemeanor prosecution (fine up to \$500, no active time unless at least three prior convictions with a maximum sentence of 20 days)
- civil penalties
- equitable enforcement/injunction (*i.e.*, court order mandating or prohibiting actions)

Significantly, in North Carolina municipalities does not have the authority to create a private cause of action. That is, a citizen cannot sue for a violation of an ordinance.

Given the City's authority to discipline employees coupled with the jurisdiction of the Civil Service and Citizens Review Boards, it does not strike me as appropriate to sanction officers who violate Council's civil rights policy through the means available for enforcing ordinances.

In addition, it is my opinion that enacting Council policy in this context through an ordinance could create false or unrealistic expectations for the public, now and in the future. For that reason, along with the fact that the City Manager is obligated to carry out the policy directives of the City Council regardless of whether those policies are in the form of an ordinance, resolution, or motion, it is my recommendation that the Council's policy on this matter be articulated through a resolution rather than an ordinance.

City's Proposed Civil Liberties Resolution	CMPD Directives/SOPs	Rule of Conduct	Training Practices	Model Civil Rights Ordinance
<p>Sec. 1. Definitions.</p> <p>Sec. 2 Protecting Individual Rights - No Arbitrary Profiling.</p> <p>A. Arrest/Search: Arbitrary profiling shall not be a factor in establishing probable cause.</p> <p>B. Voluntary Contact: Arbitrary profiling shall not be a motivation for establishing a voluntary contact with a subject. Officers shall document contact.</p> <p>C. Consent to Search: Arbitrary Profiling shall not be a motivating factor when asking for consent to search.</p> <p>1. Officers must have a articulable reason before asking for consent to search.</p> <p>2. Request for consent must be voluntary.</p>	<p>CMPD Directive 600-017 Arbitrary Profiling</p> <p>A. 600-017 II A.1,2: Cannot use Arbitrary Profile for a motive in initiating any police activity. (See also IV. D.)</p> <p>B. 600-017 II A.2: Cannot use Arbitrary Profile as a motivation to initiate police activity (See also IV. C.)</p> <p>C. 600-017 II and IV, 500-004 Search Definitions</p> <p>1. 600-017 II.A.1: Cannot use Arbitrary Profile as a factor in the selection of whom to stop and search.</p> <p>2. 500-004 Search Definitions: Before consent search there must be a clear and</p>	<p>Rule of Conduct 41 "Arbitrary Profiling"</p> <p>Rule of Conduct 41 "Arbitrary Profiling"</p> <p>Rule of Conduct 41 "Arbitrary Profiling"</p>	<p>Cultural Diversity Training; Implicit Bias Training, Tactical Communications, De-escalation training. Yearly Legal review of Resolution.</p>	<p>Sec. IV. Profiling According to Race, Religion, National Origin, or Political Point of View.</p>

City's Proposed Civil Liberties Resolution	CMPD Directives/SOPs	Rule of Conduct	Training Practices	Model Civil Rights Ordinance
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<p>3. Officers shall not consent to search without first establishing an Articulable Reason for such request.</p> <p>4. A request for consent to search will always be noted in at least on CMPD retrievable record system.</p> <p>D. Use of Force: Arbitrary Profiling shall not be a motivating factor in deciding when to use force.</p> <p>E. Immigration enforcement: Arbitrary Profiling related to a person’s citizenship or immigration status shall not be a motivating factor in taking any police action.</p> <p>1.2.3 Officers shall not question individuals regarding citizenship or status unless there is reasonable suspicion that the person is involved in criminal street gang or terrorism activities.</p>	<p>voluntary expression of consent issued by subject.</p> <p>3. 600-017 IV.D.2: Officer must have articulable reason before asking for consent.</p> <p>4. 4. 600-017 IV.D: Reason for consent will be documented in Field Interview or narrative of police report.</p> <p>D. CMPD Directives 600-017 - 600-020. All force must be reasonably necessary and based on objective threat. (Force cannot not be motivated by an arbitrary profile)</p> <p>E. 600-017 II. F. CMPD will not undertake immigration related investigations and will not inquire into the immigration status of persons encountered during police operations.</p> <p>1.2.3. CMPD Directive 800-017 Arbitrary Profiling</p>	<p>Rule of Conduct 28 “Use of Force” Rule of Conduct 41 “Arbitrary Profiling”</p> <p>Rule of Conduct 41 “Arbitrary Profiling”</p>	<p>Yearly use of force training. Firearms training Simulator, Yearly Subject Control and Arrest Techniques.</p>	<p>Sec. V. Limits on Local Immigration Enforcement Activities</p>
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City's Proposed Civil Liberties Resolution	CMPD Directives/SOPs	Rule of Conduct	Training Practices	Model Civil Rights Ordinance
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<p>Sec. 3. Protecting Individual Rights – Passive Protests and Peaceful Demonstrations.</p> <p>A. Officers shall not respond to or monitor a Lawful Assembly except for the purpose of facilitating a Legitimate Law Enforcement Objective.</p> <p>B. Officers shall not investigate, prosecute, retaliate, prevent, or hinder any person from lawfully participating in First Amendment Activities.</p> <p>C. Collection and Retention of Data: Officers shall not collect or retain information on persons associated with Lawful Assembly passive or peaceful demonstration based on that person's race gender, ethnicity, religion, age, citizenship, sexual orientation, or other Arbitrary Stereotype, or that individual's support for unpopular causes protected by the First Amendment.</p> <p>D. Questioning Participants: Officers shall not question person regarding their social, political or religious views. Questioning shall be limited</p>	<p>A. 800-016 A.1. Officers shall not respond to or monitor First Amendment Activity except for the purpose of facilitating a Legitimate Law enforcement Objective.</p> <p>B. 800-016 IV A 2. Officers shall not investigate, prosecute, retaliate, prevent, or hinder any person from lawfully participating in First Amendment Activities.</p> <p>C. 800- 016 IV.A. 3: Collection and retention of data. CMPD employees shall not collect, document, or retain information on persons associated with a First Amendment Activity based solely on that individual's</p> <ol style="list-style-type: none"> Ethnicity, national origin, race; or Religious, political or social beliefs or associations; or Sexual orientation; or Support for unpopular causes protected by the First Amendment. <p>D. 800-016 IV D.5. CMPD employees shall not question witnesses, event participants or arrestees regarding their social, political, or</p>	<p>Rule of Conduct 28, "Use of Force."</p> <p>Rule of Conduct 2 "Violation of Rules and Directives."</p> <p>Rule of Conduct 2 "Violation of Rules and Directives."</p> <p>Rule of Conduct 2 "Violations of Rules and Directives."</p>	<p>Operational Plan in place prior to large scale event that addresses 1st Amendment concerns. 1st Amendment training during briefing. Civil Emergency Unit Training.</p> <p>1st Amendment matrix Operational Plan in place prior to large scale event that addresses 1st Amendment concerns. 1st Amendment training during briefing. Civil Emergency Unit Training.</p>	<p>Sec. II A. Safeguards on Surveillance</p> <p>Sec. II. B Intelligence Information Dissemination.</p> <p>III. Limits on Undercover Infiltration and Political Profiling</p>
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City's Proposed Civil Liberties Resolution	CMPD Directives/SOPs	Rule of Conduct	Training Practices	Model Civil Rights Ordinance
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<p>to issues related to criminal conduct or developing information related to a Legitimate Law Enforcement Objective.</p> <p>E. Officers shall not confiscate an electronic recording device because a person is recording police activity.</p> <p>F. Public's right to observe and record: Officers shall not interfere with the public's right to observe and record police activity unless the person's physical presence is interfering with a police function such as an arrest. Officers shall direct the person to the closest location where they can continue to observe and record police activities.</p> <p>G. Establishing Communication: CMPD shall, if possible, establish communication with protest group and seek voluntary compliance of a plan that will ensure the public's safety. CMPD shall develop response options that are fluid and that focus on the prevention of violence against persons and property.</p>	<p>religious views. All questions shall be limited to issues related to criminal conduct or to developing information related to a Legitimate Law Enforcement Objective.</p> <p>E. 800-016 IV.6. Officers shall not seize electronic recording devices simply because a person is recording police activity.</p> <p>F. CMPD 1st Amendment Matrix: The public has the right to record police activity so long as they do not physically interfere with an official duty or function.</p> <p>G. Required under CMPD 1st Amendment Matrix.</p>	<p>Rule of Conduct 2 "Violations of Rules and Directives."</p> <p>Rule of Conduct 2 "Violations of Rules and Directives."</p> <p>Rule of Conduct 2 "Violations of Rules and Directives."</p>	<p>1st Amendment matrix and on line training for directives.</p>	
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City's Proposed Civil Liberties Resolution	CMPD Directives/SOPs	Rule of Conduct	Training Practices	Model Civil Rights Ordinance
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<p>Sec. 4 Electronic Technology.</p> <p>A. Retaining Data: Retention of information shall only be retained if it is relevant to legitimate law enforcement function unless retention required by state or federal law.</p> <p>B. Purging Data: Data will be purged within reasonable time established by written directive. Data purged unless relevant to criminal investigation and/or prosecution of a person suspected of committing a crime, relevant to City's defense of a claim or potential claim, or to comply with state or federal law.</p>	<p>SOP, Real Time Crime Center, SOP Automated License Plate Reader, CMPD Directive 400-005 Digital Mobile Video Recordings, CMPD Directive 400-006 Body Worn Camera .</p> <p>A. All camera data in Real Time Crime Center is retained for 10 days unless it has evidentiary value. Release of data must be through court order. License plate information retained for 6 months unless it has evidentiary value. Digital Mobile Video Recordings held for a period depending on the type of event. (See 400-005 IV 4 for retention schedule) otherwise erased after 90 days. Body Worn Cameras data held for a specific period depending upon the event. (See 400-006 F. 7. for retention schedule)</p> <p>B. Per SOPS and relevant directives mentioned above all digital recording data is erased after specific time period unless it becomes part of a criminal file or potential claim against City.</p>	<p>Rule of Conduct 2 "Violations of Rules and Directives."</p> <p>Rule of Conduct 2 "Violations of Rules and Directives."</p>	<p>On-line training.</p> <p>On-line training.</p>	
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City's Proposed Civil Liberties Resolution	CMPD Directives/SOPs	Rule of Conduct	Training Practices	Model Civil Rights Ordinance
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<p>C. Collect / Disseminate Data / Groups: Officers shall not collect or disseminate information about groups based on their political, religious, or social views unless information is directly related to articulable criminal behavior.</p> <p>D. Individual Privacy/Identity: Officers will not use techniques that identify participant unless identity is relevant to criminal investigation or defending against a claim against the City.</p> <p>E. Linked data: Data will not be lined from different devices or serves without a legitimate function.</p> <p>Sec 5. Tactical Communication, De-escalation, Prevention.</p> <p>A. Officers shall maintain professional composure</p>	<p>C. CMPD Directive 800-016 IV. A. 3. B. CMPD employees shall not collect, document, or retain information on persons associated with a First Amendment activity based solely on that individuals religious, political or social beliefs.</p> <p>D. CMPD Directive 800-016 IV. e: No person's likeness sufficient for identification purposes will be photographed or recorded in any manner unless it is related to a Legitimate Law Enforcement Objective.</p> <p>E. CMPD SOP Real Time Crime Center II: Leverage technology to assist criminal investigations during the initial stages of response.</p> <p>A. CMPD Directive 100-004 Discipline Philosophy: Employees are expected to conduct themselves both in interactions with each other and with the pubic, in a manner that conveys respect, honesty, integrity, and dedication to</p>	<p>Rule of Conduct 2 "Violations of Rules and Directives."</p> <p>Rule of Conduct 2 "Violations of Rules and Directives."</p> <p>Rule of Conduct 2 "Violations of Rules and Directives."</p> <p>Rule of Conduct 2 "Violations of Rules and Directives."</p>	<p>On-line training.</p> <p>De-escalation tactical communications will be taught during yearly in-service.</p>	
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City’s Proposed Civil Liberties Resolution	CMPD Directives/SOPs	Rule of Conduct	Training Practices	Model Civil Rights Ordinance
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<p>B. CMPD shall maintain an early intervention system to monitor, identify and prevent inappropriate police conduct.</p> <p>Sec. 6 Training.</p> <p>CMPD shall provide yearly training to its Officers regarding the provisions of this Resolution.</p> <p>Sec. 7. Implementation and Accountability.</p> <p>A. City Manager shall ensure policies of resolution shall be implemented by the Chief of Police who shall ensure the policies shall be incorporated into CMPD directives and training.</p> <p>B. Appeals of complaints for arbitrary profiling may be filed with the Citizens Review Board as provided by Chapter 16 of the City Charlotte Code.</p>	<p>public service.</p> <p>B. CMPD Directive 800-010 I. C. Early Intervention System: A system that identifies through the use of established thresholds, specific areas of employee performance that need intervention.</p>	<p>Rule of Conduct 2 “Violations of Rules and Directives.”</p>	<p>Training will be provided by Legal during yearly in-service.</p>	<p>Sec. VIII. Transparency and Accountability</p>
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**CITY MANAGER'S OFFICE
M E M O R A N D U M**

May 27, 2015

TO: Mayor and City Council

FROM: Ron Carlee, City Manager
SUBJECT: Protection of Civil Liberties

Pursuant to guidance from the City Council at your meeting on January 12, 2015, the Chief of Police, City Attorney, and I have reviewed the "Model Ordinance: Local Civil Rights Restoration Act," which members of the public submitted to the Mayor and City Council. The review included a detailed analysis of directives and practices in the Charlotte-Mecklenburg Police Department (CMPD). Based on this review, we are submitting to you the following documents for your consideration:

- Proposed Charlotte City Council Civil Liberties Resolution (Resolution).
- Proposed Ordinance Amending Chapter 16 of the Charlotte City Code to expand the authority of the Charlotte Citizen Review Board to hear appeals of complaints alleging a violation of arbitrary profiling as prohibited in the Resolution.
- Memorandum from the City Attorney explaining the recommended form of action.
- Chart from the Chief of Police detailing how the provisions of the Resolution are implemented through CMPD's directives.

Mr. Willie Ratchford has coordinated engagement with members of the community who brought these requests to the City, and we recommend the following process:

- Briefing of the Mayor and City Council on June 1
- City Council public hearing on the recommendations on June 8
- City Council action on the recommendations on either June 8 or such other date that the Council may deem appropriate.

In making these recommendations, we want to reiterate that these efforts are not in response to documented deficiencies or practices within CMPD. To the contrary, many of the provisions contained in the Resolution have been previously incorporated into CMPD's directives and practices.

Professional police departments recognize that protection of the basic rights of life and liberty is integral to their very existence. The challenge is to ensure the protection of civil liberties while not sacrificing the essential need to protect life and property from criminal activity.

The recommended Resolution and Ordinance Amendment are proactive efforts that reinforce the City's commitment, and especially CMPD's commitment, to promoting positive relations between the community and the police. CMPD's multiple efforts to promote a strong partnership with the communities that they serve include, among other community activities, the following:

- Deployment of body worn cameras to all field officers
- Training on "Implicit Bias"
- Training on "Dismantling Institutional Racism"
- "Cultural Competency" training
- Implementation of an Early Warning System to identify developing patterns of inappropriate behavior
- Implementation of fair and consistent disciplinary policies practices

The proposed Resolution would affirm the City Council's policies on the protection of civil liberties, and both empowers and obligates CMPD to implement such policies. The ability for members of the public to appeal complaints alleging violations of the Resolution provides an additional safeguard to ensure that the City Council's policies are being faithfully implemented.

The consequences of a fractured community and police relations have been very visible in a number of cities over the past several months. Charlotte, however, has worked hard to avoid such a fracture, building a partnership that recognizes that communities – especially economically challenged communities – need the police and that the police very much need the community in order to do their jobs effectively. An "us versus them" environment is dangerous for everyone and one that everyone works hard to avoid in Charlotte. The proposed Resolution is an effort to jointly articulate and reinforce policies that are equally important for the Charlotte community and Charlotte's police.

**PROPOSED
CHARLOTTE CITY COUNCIL RESOLUTION
ON THE PROTECTION OF CIVIL LIBERTIES
May 26, 2015**

WHEREAS, the Charlotte City Council recognizes that the community is comprised of a diverse population, which is vital to the City of Charlotte; and

WHEREAS, the Council seeks to foster trust with all members of our community; and

WHEREAS, the Council opposes governmental measures that arbitrarily single out individuals within our diverse population for scrutiny or enforcement activity; and

WHEREAS, the Council opposes law enforcement practices that do not further the Charlotte Mecklenburg Police Department's mission of protecting the health, safety and welfare of all members of the community, and

WHEREAS, the Council wishes to make it clear that the City of Charlotte is committed to protecting the civil liberties of all members of the community; and

WHEREAS, the Council is committed to fostering trust and respect within the community, and to that end the Council affirms its commitment to protecting and preserving the basic rights and civil liberties of all persons to be free from arbitrary governmental interference.

NOW THEREFORE, BE IT RESOLVED that the Charlotte City Council hereby establishes the following policies for the further protection of civil liberties and to promote and support positive and collaborative relations between the Officers of the Charlotte-Mecklenburg Police Department and the communities within which they serve. No provisions of this Resolution are intended to protect criminal activity, but are intended to foster trust between the CMPD and the community.

Section 1. Definitions

A. Arbitrary Profiling: Any Police Activity that is motivated in part by race, gender, ethnicity, religion, age, citizenship, sexual orientation, gender identity, or any Arbitrary Stereotype rather than the behavior of an individual or information that leads to a particular individual that is reasonably suspected to be, or to have been engaged in specific criminal activity.

B. Arbitrary Stereotype: A conventional, oversimplified opinion, conception, or belief regarding a person, group, event, or issue that is thought to typify or conform to an unvarying pattern, lacking any individuality.

C. Articulable Reason: A fact not based on an Arbitrary Stereotype that is capable of being determined and recited.

- D. CMPD: The Charlotte-Mecklenburg Police Department.
- E. Electronic Technology: Technology that records and stores electronic data concerning an individual and/or an individual's property and effects such as traffic and security cameras, license plate readers, digital mobile recorders, and body cameras.
- F. Lawful Assembly/Passive Protests: First Amendment protected activity held on public property such as public parks and sidewalks that is traditionally used for demonstrations. It includes speeches, picketing, spontaneous marches, assemblies and protests.
- G. Legitimate Law Enforcement Objective: The detection and investigation of criminal behavior; the apprehension and prosecution of criminals; the identification of potential acts of civil disobedience designed to unlawfully disrupt legitimate and lawful activities; and the identification of governmental resources necessary to staff a First Amendment Activity sufficient to protect persons and property.
- H. Non-Violent Civil Disobedience: Traditional non-violent activity where some or all participants violate regulatory ordinances or statutes and participate in activities such as sit-ins, blocking traffic, blocking entrances and exits to selected buildings or property.
- I. Officer: A sworn Charlotte-Mecklenburg Police Department law enforcement officer.
- J. Police Activity: Any actions taken by Officers toward an individual that are due to his or her position as an Officer, including but not limited to the following: any act of investigation; a Voluntary Contact or a request for consent to search either a person or property; a detention of a person or vehicle including the issuance of a traffic citation or warning; an arrest of a person or a seizure of property.
- K. Reasonable Suspicion: Knowledge of articulable facts or circumstances that are objectively, and without resort to Arbitrary Profiling, sufficient to induce a reasonable person under the attendant circumstances to suspect that an individual has engaged, is engaging, or is about to engage in criminal activity.
- L. Probable Cause: Knowledge of articulable facts or circumstances that are objectively, and without resort to Arbitrary Profiling, sufficient to induce a reasonable person under the attendant circumstances to believe that an individual has committed or is committing a criminal offense or an infraction.
- M. Tactical Communication: An Officer's use of words and presence designed to de-escalate a tense situation.
- N. Voluntary Contact: A consensual contact between an Officer and a member of the public under circumstances that a reasonable person would feel free to leave and/or terminate the encounter.

Section 2. Protecting Individual Rights During Police Encounters – Arbitrary Profiling Prohibited

CMPD shall reject the use of individual or unique traits or associations within a group that are unrelated to criminal behavior as a reason to employ governmental action which includes but is not limited to police detentions, stop and frisks, arrests, searches, seizures, Voluntary Contacts, and consent searches.

A. Arrests/Searches based on Probable cause: Arbitrary Profiling shall not be used as a factor to establish Probable Cause for either an arrest or search.

B. Voluntary Contacts: Arbitrary Profiling shall not be the motivation for establishing a Voluntary Contact. In a Voluntary Contact, an Officer will not prevent the person from leaving or terminating the contact; Officers shall adhere to the constitutional rights of those individuals contacted; and Officers shall complete a field interview report documenting the contact.

C. Consent to Search:

1. Arbitrary Profiling shall not be a motivating factor asking someone to consent to search their person or property.
2. All consent searches must be voluntary and the person's refusal may not be used as a reason to detain a subject.
3. Officers shall not request consent to search without first establishing an Articulate Reason for such request.
4. A request for consent to search will always be noted in at least one CMPD retrievable record system.

D. Use of Force: Arbitrary Profiling shall not be a motivating factor in the use of force. An Officer shall not use force unless it is reasonably necessary.

E. Immigration enforcement:

1. Arbitrary Profiling related to a person's citizenship or immigration status shall not be a motivating factor for any police activity.
2. Suspicion that a person is undocumented shall not alone be the basis for contact, detention, or arrest.
3. Officers shall not question any person regarding his or her citizenship or immigration status unless there is Reasonable Suspicion, supported by objective and clearly defined evidence, that the person is involved in criminal street gang activity or terrorism related activities.

Section 3. Protecting Individual Rights – Passive Protests and Peaceful Demonstrations

A. Officers shall not respond to or monitor Lawful Assembly/Passive Protests except for the purpose of facilitating a Legitimate Law Enforcement Objective.

B. Officers shall not investigate, prosecute, retaliate, prevent, or hinder any person from lawfully participating in First Amendment Activities.

C. CMPD shall not collect, document or retain information on persons associated with a Lawful Assembly/Passive Protests based on that individual's race, gender, ethnicity, religion, age, citizenship, sexual orientation, gender identity, or other Arbitrary Stereotype, or that individual's support for unpopular causes protected by the First Amendment.

D. Officers shall not question witnesses, event participants, or arrestees regarding their social, political, or religious views. Questions shall be limited to issues related to criminal conduct or to developing information related to a Legitimate Law Enforcement Objective.

E. Officers shall not take, confiscate or seize a participant or spectator's camera, cell phone or other electronic recording device because they are recording Police Activity.

F. Officers shall not interfere with the public's right to observe and record police activities in a public area unless that person's physical presence is interfering with a police function such as an arrest or maintaining the flow of traffic in which case, if feasible, Officers shall direct the person to the closest location where they can continue to observe and record police activities.

G. During Lawful Assembly/Passive Protests, CMPD shall attempt to establish and maintain communication with the event holder(s) and work with organizers and event monitors to gain voluntary compliance to ensure the safety of the public and protection of property while preserving First Amendment rights. Officer's response options shall remain fluid and focus on the prevention of violence against persons or destruction of property. Officers' response options include de-escalation and may include delaying or suspending enforcement actions for regulatory ordinances depending on the circumstances.

Section 4. Electronic Technology

A. Information obtained from Electronic Technology shall only be retained if it is relevant to a legitimate law enforcement function or to the extent retention is required by state or federal law.

B. All data obtained from Electronic Technology shall be purged from any storage system or server within a reasonable time period established by a written directive unless the data is relevant to the investigation and prosecution of a person suspected of committing a crime, is relevant to the City's defense of a claim or potential claim, or to comply with state or federal law.

C. Officers shall not collect, maintain or disseminate information of any individual, association, organization, corporation, business or partnership based their political, religious or social views, associations or activities, unless said information is directly related to articulable criminal behavior.

D. The use of Electronic Technology shall not be conducted in a manner that identifies a person except in circumstances where the person's identity is relevant to the investigation and prosecution of a person suspected of committing a crime or is relevant to the City's defense of a claim or potential claim.

E. The City shall not link data from different devices and or servers unless there is an articulable objective related to legitimate law enforcement or public safety function.

Section 5. Tactical Communication, De-Escalation, Prevention

A. Officers shall treat all persons with respect and fairness even when a person is agitated or distraught. Officers shall maintain a professional composure. CMPD shall incorporate tactical communication and de-escalation tactics into its yearly inservice training.

B. CMPD shall maintain an early intervention system that monitors and assesses Officer conduct to identify inappropriate behavior and patterns of behavior.

Section 6. Training

CMPD shall provide yearly training to its Officers regarding the provisions of this resolution.

Section 7. Implementation and Accountability

A. The City Manager shall ensure that these policies are implemented through the Chief of Police, who shall ensure that the provisions of this resolution are incorporated into the directives of CMPD and its training program.

B. Appeals of complaints related to Arbitrary Profiling may be filed with the Citizens Review Board as provided by Chapter 16 of the Charlotte City Code.

ORDINANCE NUMBER:_____

AMENDING CHAPTER 16

AN ORDINANCE AMENDING CHAPTER 16 OF THE CHARLOTTE CITY CODE ENTITLED “POLICE”

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Sec. 16-58 of the Charlotte City Code is amended as follows:

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: use of force, unbecoming conduct, ~~and~~-arrest, search and seizure, and arbitrary profiling. 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.

Section 2. This ordinance is effective upon adoption and shall apply to all appeals to the Citizens Review Board filed after the effective date.

Approved as to form: _____

City Attorney