



POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
MINUTES
(draft)

Wednesday, April 26, 2023, 6:30 P.M.

1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 6:34 P.M.

Present: Board Member John Moore (Chair)
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens
Absent: Board Member/s Regina Harris (Vice Chair), Kitty Calavita
ODPA Staff: Hansel Aguilar, Director of Police Accountability
BPD Staff: Captain Durbin
Lt. Reece
BPA Officer: Officer Shivas

2. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Owens/Leftwich) **Motion Carried by general consent.**

Ayes: Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Calavita, Harris

3. PUBLIC COMMENT

No public comments were made.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of April 11, 2023

Moved/Second (Leftwich/Owens) **Motion Carried by unanimous consent.**

Ayes: Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Calavita, Harris

5. ODPa STAFF REPORT

Director Aguilar reported on the following:

- Deputy City Attorney Stephen Hylas has joined the CAO team and will be supporting the Board moving forward.
 - o DCA Stephen Hylas introduces himself to the Board.
- The investigator vacancy has been filled. Jayson Wechter, the new ODPa investigator, will be joining the team starting May 1st.
- The eligibility list for the associate management analyst has been provided to the ODPa. Candidates for the data analyst and policy analyst positions will be drawn from this list.
- Staff forwarded the PAB's Recommendation on the Berkeley Police Department's Police Equipment and Community Safety Ordinance 2022 Annual Report. The BPD has acknowledged receipt of the memo and will provide a copy of the updated report as soon as possible.
- Staff forwarded the PAB's supplemental memorandums regarding fixed camera surveillance systems and unmanned aerial vehicles (UAS) to the Public Safety Policy Subcommittee. Chair Moore, DPA Aguilar, and Policy Analyst Murillo attended this meeting. The items are set to be on Council's agenda next month.
- Staff attended a NACOLE webinar on Tuesday where Joanna Schwartz, a professor at UCLA School of Law and author of the recently published book *Shielded: How the Police Became Untouchable*, presented her work. The webinar delves into why civil rights litigation so rarely leads to justice or prevents future police misconduct.

Q&A:

- Q1 - Board member Leftwich asks about the status of commendations for officers. She asks if any pending commendations need to be reviewed.
- A1 – Director Aguilar states that he is not aware of the particular process but will look into it. Captain Durbin also makes note that he will follow up on the commendation process as well.

- Q2 – Board member Leftwich asks if there is a protocol for subcommittees to directly contact the BPD. She notes that because the staff is so busy, the subcommittees being able to contact the BPD directly may help prevent any bottlenecks in communications.
- A2 – Director Aguilar states that he is open to the idea and emphasizes the importance of establishing a procedure. He states that the office will provide a proposed procedure for communications by the next meeting.

Board member Owens notes that Board member Leftwich's question can loop into item 9.h. which is a request for support for a budget allocation for a communication specialist. She expresses her interest to discuss it as part of that item.

6. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore reported:

- He apologizes for being absent at the April 11th meeting due to unforeseen circumstances. He thanks Vice Chair Harris for her work in running the meeting.
- He attended Council's Public Safety Policy Committee with DPA Aguilar and Policy Analyst Murillo. He states that he felt that there was confusion during the meeting and that expectations were not clear. He states that he and ODPa staff was under the impression that they would be answering questions about their supplemental memo but that was not the case.
 - o Director Aguilar notes that this is also a learning experience for the PAB and ODPa. The office will continue to closely monitor the Committees agendas so that the Board is prepared for future discussions.

7. CHIEF OF POLICE'S REPORT

Captain Durbin reported:

- He reports that the recruiting for additional officers and dispatchers has been making positive progress. A few officers and dispatchers are currently in the background investigation process. The department hopes to get six recruits to join the upcoming police academy in July.
- Hiring lateral officers continues to be a challenging task. A nearby agency is now offering \$75,000 incentives to attract lateral officers. The introduction of these incentives has further increased the competition for recruiting lateral officers.
- He reports on various cases of interest since the last PAB regular meeting.
- He adds to the DPA and Chair's report on the pending policies. He notes the policies will go before the Council on May 23rd. The Controlled Equipment report will be in early June.
- The BPD has updated the Transparency Hub to include new traffic safety features.
- Regarding the officer that recently left the department, Captain Durbin notes that an exit interview was conducted to determine the reason for leaving the profession.

He notes that the officer left the department to support his partner's profession and had a potential interest in pursuing a law degree.

- Regarding the quarterly audit questions previously posed, he reports that an officer can only be audited once a year.
- He states that the department is working on appointing someone to the Body-Worn Camera subcommittee. Captain Okie will be on that subcommittee given his background on the topic.

Q&A

- Q1: Board member Leftwich ask about BPD's relationship with the Apple store on 4th Street. Were these extra-duty employment cutbacks a result of staffing shortages?
- A1: Yes, staffing shortages have played a role. There is also a policy currently in the late stage that would address extra duty employment that will update the contract and application for those interested in contracting the police department.
- Q2: Board member Leftwich reiterates her request for a BPD liaison to the Board to help with communications between the Interim Chief and the Board.
- A2: The Interim Chief is still considering this request.
- Q3: Board member Owens, are officers working mandatory overtime? If so, how long have they been doing that?
- A3: The Department has been able to limit that. Mandatory overtime has been limited to the summer and vacation policies have been tightened up. The department hopes to not have to depend on mandatory overtime this summer.
- Q4: Director Aguilar ask about a large police presence at Berkeley High the previous day and would like to know more context, if possible.
- A4: Lt. Reece informs Director Aguilar that it was a response to an individual with a mental health-related issue who was acting aggressively around the premises of the school.
- Q5: Director Aguilar ask if the BPD has noticed any changes in criminal activity with the recent changes in the beat system.
- A5: It is too early to determine the impacts of the changes. Reducing the beats makes the role of supervisors more manageable and allows the department to use staff more efficiently at the current staffing levels.
- Q6: Director Aguilar who the best contact within the BPD recruitment team would be for any member of the public interested in learning more about working for the BPD.
- A6: Lt. Turner and Sgt. Jung would be able to answer questions from interested candidates.

8. SUBCOMMITTEE REPORTS (DISCUSSION AND ACTION) *

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Policy and Practices Relating to the Downtown Task Force and Bike Unit Allegations

The subcommittee continues to gather information. There are no new updates at this moment.

- b. Body-Worn Camera Policy

Board member Levine notes that the BWC has met and they are working on a future meeting. They have extended an invitation to the BPD so that they can provide insight into the current policies.

- c. Conflict of Interest

The subcommittee has met a few times. Further updates will be provided as part of Item 9.c.

** When used under the subcommittee reports section, "Chair" refers to the Chairperson of the respective subcommittee, not the PAB Chair. **

9. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Discussion on the proposal to maintain the display of the land acknowledgment on PAB meeting materials and recite it in its entirety during the initial Regular PAB Meeting of the month.

Motion to accept the proposal to continue displaying the land acknowledgment on PAB meeting materials but only recite it in its entirety during the initial Regular PAB Meeting of the month.

Moved/Second (Owens/Levine) **Motion Carried by unanimous consent.**

Ayes: Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Calavita, Harris

- b. Recommendation to Cancel July 25th Regular Meeting to avoid conflicting with the City Council's Regular Meeting.

Motion to cancel July 25th regular meeting to avoid a conflicting meeting with the City Council's regular meeting.

This motion was withdrawn by Board member Levine.

Motion to table the item and revisit the topic of canceling the July 25th regular meeting at the July 12th regular meeting.

Moved/Second (Owens/Leftwich) **Motion Carried by unanimous consent.**

Ayes: Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Calavita, Harris

- c. Review of letter requesting documents and other information regarding the determination of a conflict of interest by the city attorney, as proposed by the Conflict of Interest Subcommittee.

Motion to accept the letter drafted by the Conflict of Interest Subcommittee requesting documents and other information regarding the determination of a conflict of interest by the city attorney

Moved/Second (Levine/Moore) **Motion Carried by unanimous consent.**

Ayes: Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Calavita, Harris

- d. Clarification and Discussion on the Communication of Attorney-Client Privileged Documents and Information.
- Board member Owens states that she wants to discuss what information can be shared and what can't be shared concerning CAO guidance. She would like to have more guidance on this topic to be able to increase transparency with the public.
 - Board member Levine states that part of the Conflict of Interest Subcommittee's work is to address these topics. She hopes that the communication will improve and some of these issues are clarified.
 - DCA Hylas states that the CAO is working on a memo. He notes that he does not have enough information at the moment but will pass along the Board's concerns.

e. Notice of Policy Complaint No. 2023-PR-0002.

- Director Aguilar presents the policy complaint to the Board and provides the background leading up to that presentation.
- Director Aguilar provides the opportunity for the complainant to address the Board but they were not present.
- Board members engage in a discussion about whether there is enough information to initiate a policy complaint and whether there are policies related to the expressed concerns within the complaint.
- Chair Moore asks Lt. Reece if there are any protocols regarding the general department email. Lt. Reece informs the Board that although there are policies that speak on email policies for specific officers, he is not aware of the general department email.

Motion to direct staff to conduct further inquiry into the content of the complaint before a decision is made.

Moved/Second (Owens/Leftwich) **Motion Carried by unanimous consent.**

Ayes: Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Calavita, Harris

- f. Discussion concerning the memo from DPA Aguilar to Council titled “Delays in ODPa Work Production due to BPD Non-Adherence to Charter Deadlines.”
- Director Aguilar provides the context behind his memo.
 - o He informs the Board that his memo originated from an information request by Councilmember Harrison before the Council’s special meeting on April 13th where they discussed the appointment of the Fire Chief and Police Chief.
 - o The initial memorandum was subsequently shared with the entire Council.
 - o The Interim Chief raised concerns about the content of the initial memorandum.
 - o Director Aguilar and Interim Chief Louis have since discussed some of these concerns.
 - o A second memo was issued by Director Aguilar to clarify the content of the initial memo and provide guidance on how to interpret it.

- g. Recommendation to establish a subcommittee dedicated to reviewing Charter Section 125.
 - Director Aguilar reported that he regularly attends check-in meetings with the Mayor’s office. During one of these meetings, the concerns and feedback from various stakeholders regarding Section 125 of the City Charter and its practical implications were discussed. That discussion led to the recommendation for the Board to consider establishing a subcommittee to review the charter and flag sections that have caused concerns.
 - Board member Owens expressed support for the idea and emphasized the importance of including all stakeholders in the conversation.
 - Board member Leftwich suggested that it might be more productive if the review starts with the Board before involving other stakeholders.
 - Board member Levine noted that reaching a consensus may be difficult.
 - Chair Moore expressed optimism about being able to accomplish the task.

Motion to establish a subcommittee dedicated to reviewing Charter Section 125.

Moved/Second (Owens/Moore) **Motion Carried by unanimous consent.**

Ayes: Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Calavita, Harris

- h. Recommendation for a budget allocation for additional staff.
 - i. Investigator
 - ii. Communications Specialist
- Director Aguilar provides the context for his request. He states that the requested staffing is to help the Board and ODPa to meet their charter duties such as increased community outreach and the completion of timely investigations.

- Board member Leftwich asks whether these requested positions are aligned with the current needs of the office. She specifically inquires whether the office could potentially benefit more from an additional policy analyst.
- Director Aguilar states that these two additional positions would address the current needs of the office. The Director notes that staff currently take on many different roles within the office due to current staffing levels. With the two requested roles, staff would be able to streamline their work and better support the Board.
- Board member Owens states she is unsure if there is a need for a second investigator but sees the need for someone who can support both the full-time investigator and the policy analyst. Regarding the communication specialist, she believes it is a good idea and would greatly support communication with the community. Director Aguilar states that he is open to the idea of a flexible position.
- Board member Owens states that it is important for the office to be flexible given its small size.

Motion to support the Director’s request for a budget allocation for additional ODPa staff.

Moved/Second (Owens/Moore) **Motion Carried by unanimous consent.**

Ayes: Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Calavita, Harris

10. TRAINING ON GRAHAM V. CONNOR – FLETC-TALKS

Graham v. Connor is a United States Supreme Court case that established the standard for evaluating claims of excessive force by law enforcement officers under the Fourth Amendment’s “unreasonable seizures” clause. You can watch this video to learn more: <https://youtu.be/zhtQovjR2C0>.

- Due to technical difficulties, the video was not played and was postponed to the next meeting. However, Director Aguilar provided a brief overview of FLETC-Talks and *Graham v. Connor*.

11. PUBLIC COMMENT

- 1 speaker.
 - o Speaker 1: States that he is very impressed with the work of the Board and thanks Board members for their commitment.

CLOSED SESSION

Pursuant to the Court's order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):

12. CASE UPDATES

- Director Aguilar updates the Board on the ODPAs current cases.

END OF CLOSED SESSION

13. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

- Chair Moore announces the closed-session actions.

14. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens/Leftwich) **By general consent, the meeting was adjourned at 8:51 p.m.**

Minutes Approved on: _____

Hansel Aguilar, Commission Secretary: _____