



POLICE ACCOUNTABILITY BOARD

REGULAR MEETING AGENDA

Wednesday, May 10, 2023

6:30 P.M

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709

1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 6:35 P.M.

Present: Board Member John Moore (Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens

Absent: Board Member Regina Harris (Vice-Chair)

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Jayson Wechter, ODPA Investigator
Jose Murillo, Associate Management Analyst

BPD Staff: Lt. Montgomery

CAO Staff: James Chang, Deputy City Attorney

2. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Owens/Leftwich) **Motion Carried.**

Ayes: Calavita, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Harris

3. PUBLIC COMMENT

3 speakers.

- In-Person Public Comment (1 Speaker)

- Speaker 1 extends their endorsement to the PAB while expressing gratitude for their diligent efforts. They affirm their backing for the Charter Amendment (Section 125 of the Berkeley City Charter) and emphasize the importance of its observance.
- Virtual Public Comment (2 Speakers)
 - Speaker 2 expresses their satisfaction with the PAB receiving training on Early Intervention Systems (EIS) and appreciates the transparency of making the materials accessible to the public. They urge the Board to advocate for a more prominent involvement in the city's EIS model and express their expectation for the BPD to demonstrate a strong commitment to implementing these systems.
 - Speaker 3 highlights the extensive discussions that took place during the City Council meeting on May 9th, wherein numerous concerns and aspirations were shared regarding the PAB's role. They note that Chief Louis expressed her commitment to working with the PAB. The speaker eagerly anticipates witnessing the fulfillment of that commitment.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of April 26, 2023

Moved/Second (Leftwich/Owens) **Motion Carried.**

Ayes: Calavita, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Harris

5. ODPa STAFF REPORT

ODPA Director reported:

- Face masks and Covid tests remain accessible to those in need. Director Aguilar acknowledges that the tests have expiration dates, but highlights that the FDA has recently issued updated guidelines that extend the expiration date.
- Director Aguilar extends congratulations to Chief Louis on her permanent appointment as the Chief of Police. He acknowledges that there is still a significant amount of work ahead, but assures his commitment to persisting in those efforts and fostering public trust.
- Director Aguilar presents Jayson Wechter, the newly appointed ODPa Investigator, to the Board, who briefly addresses the members with a statement.
- Director Aguilar notifies the Board about an upcoming NACOLE webinar scheduled for May 18th. He requests the Board to relay their interest in attending the webinar to the ODPa.
- Director Aguilar reminds the Board that the NACOLE conference is scheduled to be held in Chicago this year. He encourages the Board members to inform the ODPa if they have an interest in participating in the event.
- Director Aguilar informs the Board that, as requested during their April 26th meeting, the BPD has forwarded multiple commendations regarding BPD officers for their review
- Director Aguilar delivers a presentation regarding the attendance of ODPa staff at the 2023 Institute for Constitutional Policing Annual Conference.

- Policy Analyst Murillo updates the Board on the ODPAs presentation at the HOPE Center. States that the staff was invited to provide a basic “know your rights” workshop and provide an overview of Civilian Oversight in Berkeley.

6. CHAIR AND BOARD MEMBERS’ REPORTS

Chair Moore reported:

- Chair Moore extends his congratulations to Chief Louis and states that he looks forward to the collaboration between the Board and the BPD as they move to promote transparency and accountability.
- Chair Moore takes a few moments to recognize that this meeting will be Board Member Levine’s last meeting. He states that he and the Board are grateful for Board Member Levine’s commitment and contributions to the Board. Board Member Levine addresses the Board and expresses her appreciation to the Board.
- Chair Moore states that it was brought to his attention that Councilmember Humbert used “some interesting language” when referring to the Police Accountability Board. As a result, he would like to make a formal invitation to Councilmember Humbert to attend one of the PAB’s meetings.

Motion to invite Councilmember Humbert to a Police Accountability Board meeting.

Moved/Second (Moore/Calavita) **Motion Carried.**

Ayes: Calavita, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Harris

- Board Member Owens provides a statement to the Board and the members of the public where she expresses her frustrations with civilian oversight in the City of Berkeley. After delivering her statement, she states that she is resigning from the Board effective after the meeting (For her full statement, see minutes 00:35:45 to 00:41:00).

7. CHIEF OF POLICE’S REPORT

Chief Louis reported:

- Chief Louis provides updates on crimes of interest.
 - o She reports on a strong-armed robbery where two suspects pushed a victim into the ground and kicked and stopped the victim. The victim suffered serious injuries and had to be transported for medical care. The two suspects were described as two young girls around the age of 13 or 15 with a getaway driver who appeared to be in their 20s.
 - o She reports on an armed robbery at the Cannabis Buyer’s Club of Berkeley located at 3033 Shattuck Avenue. The report is that a team of individuals wielding firearms seized control of a security guard and used

his vehicle to break a temporary plywood barrier. The suspects fled in three vehicles in opposite directions. One vehicle crashed but the suspects fled and no arrests were made.

- Chief Louis provides updates on staffing.
 - o Chief Louis states that BPD now has access to a location for a physical agility test within the city which will speed up the recruitment process.
 - o An interview and initial offer were made this week for one more officer. Six candidates are set to participate in the BPD's upcoming academy.
- Chief Louis talks about the demand and needs for the PAB and BPD to work together (See minutes 00:45:10 to 00:47:50 of the meeting recording)
 - o She states that she believes one of the biggest challenges at the moment is the lack of permanent regulations and the uncertainty that comes from that.
 - o She states that she is confident that a positive working relationship can be established but that we first need to make it clear what everyone's role and expectations are.
 - o She states she fully supports the importance of accountability and that she cares about what the community feels and says. That she does value the input and collaboration with the Board and hopes to continue building on that relationship.
- Questions & Answers:
 - o Board Member Leftwich has raised a question regarding the policy of the BPD concerning the submission of videos by community members that capture recorded crimes. She mentions that her neighbor frequently submits such footage to the BPD, but recently, he was informed that his videos would no longer be accepted. Is there a specific reason for this change in the BPD's stance on these videos?
 - Answer: Chief Louis stated that she would need more information and would be happy to connect with the individual to discuss it further. However, she does note that it may be better storage and that the BPD may not have the capacity to store videos that are not associated with specific cases. She notes that her neighbor may file a police report and then submit the video evidence.
 - o Board Member Leftwich reiterates her request from previous meetings about a BPD liaison for the Board.
 - Answer: Chief Louis states that she understands why the request is being made. She notes that because a lot of the PAB's work spans all divisions of the department, it is difficult to assign one person when internally people are assigned to specific units. She asks the Board that continue contacting her so that she may direct any request to the appropriate person within the department.

- Board Member Calavita ask Chief Louis what she meant when she references the collaborative relationship between the BPD and PRC (the PAB's predecessor). She asks for what the Chief believes to be the disparity between the collaborative relationship between the BPD and PRC compared to the current relationship between the BPD and PAB.
 - Answer: Chief Louis clarifies that what she meant was that all of the expectations were clear and everyone understood what the authorities of each entity were. She states that the current situation is that there is a new section of the Charter that not everyone is on the same page about regarding how it should be interpreted. She believes that a lot of the current issues could be solved once there are permanent regulations and expectations are made clear for everyone.
- Chair Moore asks Chief Louis about the armed robbery that took place at the cannabis business. He states that he was told that officers arrived on the scene while the robbery was taking place and that officers did not engage. He wants to know if that is true.
 - Answer: Lt. Montgomery clarifies that when officers arrived on the scene, the robbers fled in several different directions and separate vehicles. He notes that there was a short pursuit and a block search.
- Board Member Owens directed a question to Chief Louis regarding her previous statements about desiring a collaborative approach with both the Board and the community. In particular, she asked why such collaboration had not happened before.
 - Answer: Chief Louis states that she is unsure why Board Member Owens feels that collaboration has not happened in the past and that is sorry that she feels that way. Chief Louis states that she has been engaged with the Director, the Chair, and Board members, and has collaborated in certain procedures beyond what the charter mandates. (Due to technical difficulties, the Chief's response was cut off)

Chair Moore called a 5-minute break while staff addressed technical issues.

- Answer (Continued): Chief Louis finishes her remarks. She expresses that there are very successful collaborations between the Board and BPD. That it may not always be apparent to everyone but there are successful collaborations and that progress is being made.
- Board Member Owens acknowledges that BPD staff has been very helpful and she does not have any issues with the police department staff who support the Board and the Office.

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 (Chair Owens)
 - i. Chair Owens Reports: The outside investigator is aware of the 240-day timeline for completing the investigation. To the Board's knowledge, the investigation should conclude sometime in June and a report will be written. Because the outside investigator is reviewing personnel matters, it is unclear if there will be a public facing report on the manner. Chair Owens clarifies that the PAB's work is focused on policies and procedures and not personnel matters. The PAB's work will continue beyond the conclusion of the outside investigations.
- b. Body-Worn Camera Policy
 - i. Board Member Leftwich Reports: The subcommittee met on May 4th with Lt. Okies and Sgt. LeDoux to obtain insight as to how some of the BWC policies work in the day to day. The session was very useful and the subcommittee will meet again on May 18th.
- c. Conflict of Interest
 - i. Chair Leftwich Reports: The subcommittee sent the letter the PAB approved at their last regular meeting to the CAO but was not aware of a response. DCA Chang informs the Board that a response was recently said and notes there were no responsive documents to the PAB's request. He further notes that the CAO is working on a memo that will provide answers to the questions posed regarding the conflict of interest assessment.

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

9. OLD BUSINESS (DISCUSSION AND ACTION)

a. Training on *Graham v. Connor* – FLETC-TALKS

- i. *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, this item will be tabled to a future meeting.

10. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Appointment of members to the Berkeley City Charter Section 125 Review Subcommittee.

Motion to postpone the appointment of members to the Berkeley City Charter Section 125 Review Subcommittee to the June 7th, 2023 Regular Meeting.

Moved/Second (Moore/Calavita) **Motion Carried.**

Ayes: Calavita, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: Harris

- No members were appointed to the subcommittee at this time. Appointments were delayed due to the low number of Board members currently serving on the Board.
 - b. Consideration of ODPa's proposed procedure for internal/external communications between the Board and other parties.
- Director Aguilar provides an overview for proposed procedures for internal/external communications between the Board and other parties (See page 43 of the agenda packet).
- Director Aguilar explains that the intent of this item is to help the Board be more efficient with its communications and not have to depend on the ODPa for minor communications. No action is expected and the agenda item is only intended to start the discussion on what can work best for the Board.
 - c. Discussion regarding the proposed guidelines for PAB Subcommittees.
- Policy Analyst Murillo provides an overview of the intent of the proposed guidelines for PAB subcommittees. He explains that the goal is for subcommittees to be more uniform to help staff with their administrative responsibilities, data recording and provide more autonomy to the Board for the scheduling of subcommittee meetings.
- Board Member Leftwich expresses concern about some of the task that are included within the proposed task for an initial subcommittee meeting. The primary concern being that the task for an initial meeting may be burdensome in practice.
- Policy Analyst Murillo states that these are only guidelines and it would be up to the subcommittee to determine what would be appropriate for their work. There is some task that need to be done for administrative purposes.

11. PUBLIC COMMENT

5 speakers.

- In-Person Public Comment (1 Speaker)
 - o Speaker 1 states that she appreciates the size of the room but notes that the Wi-Fi is not the best. She expresses interest in knowing about some of the advice that the Board receives as it is frustrating to hear about certain memos but not have the context for it. She understands some documents have to be confidential but thinks having more transparency on the topic will allow the public to be better informed on the Board's development.
- Virtual Public Comment (4 Speakers)
 - o Speaker 2 states that she is sad to know this is the last meeting for two board members who have been particularly helpful and productive. She notes that it is a surprise to see Board Member Owens stepping down. That she appreciated Board Member Owens and her willingness to be straight forward and voice her opinions. She hopes that Board Member Owens continues to stay engaged within the city even after departing.
 - o Speaker 3 states that she is also disappointed to hear that the Board will be losing another member. She hopes that the Board will obtain good, new members and that the work of the Board can continue.
 - o Speaker 4 states that she understands why someone would resign from the Board. She states that her groups have been collecting data through public record request. She states that there are many inefficiencies within the police department and that the measures needed to measure effectiveness of our department are lacking.
 - o Speaker 5 states that she is concerned about the politics within the City of Berkeley. She is concerned that the politics within the city has hindered real change and limited the role of bodies like the PAB.

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 provides case updates on the complaints currently being investigated by the ODP.

END OF CLOSED SESSION

13. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

- Chair Moore reports that Director Aguilar provided case updates to the board of the cases currently being investigated by the opda.

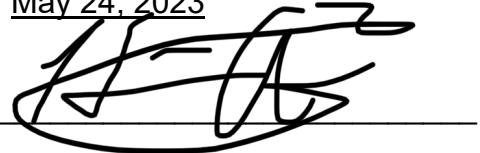
14. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens, Levine) **By general consent, the meeting was adjourned at 9:26 p.m.**

Minutes Approved on: May 24, 2023

Hansel Aguilar, Commission Secretary:

A handwritten signature in black ink, appearing to be 'H. Aguilar', written over a horizontal line.