



APPROVED

**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
MINUTES**

Wednesday, March 29, 2023, 6:30 P.M.

MEETING LOCATION

Live Oak Community Center
1301 Shattuck Ave,
Berkeley, CA 94709

1. INTRODUCTION TO IN-PERSON MEETINGS

Director Aguilar reminds members of the public that the PAB and ODPa are piloting new technology to provide hybrid meetings. He asks members of the public who are physically present to be mindful of noise levels and reminds PAB members to speak up to be captured by the microphones.

2. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 6:30 P.M.

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

Absent: None.

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Beneba Thomas, ODPa Investigator
Jose Murillo, Policy Analyst

BPD Staff: Captain Durbin (*Via Zoom*)
Lieutenant Reece

CAO Office: Deputy City Attorney Mattes

3. APPROVAL OF AGENDA

Motion to approve the agenda with edits (Item 11.a.ii "Next steps: Letter to Council" is removed)

Moved/Second (Harris/Calavita) **Motion Carried**

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

Noes: None Abstain: None Absent: None

4. PUBLIC COMMENT (3 SPEAKERS)

- Speaker 1 thanks staff for their work in putting together a thorough analysis and recommendation as it relates to Item 11.b.
- Speaker 2 lets staff know that the audio quality for virtual participants is not very good.
- Speaker 3 states that he is the parent of a UC Berkeley student and part of a group of concerned parents. Ask the Board to support the BPD in obtaining the necessary resources to help control crime in Berkeley.

5. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of March 15, 2023, as amended.

Moved/Second (Leftwich/Calavita) **Motion Carried**

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

Noes: None Abstain: None Absent: None

6. ODPa STAFF REPORT

- Director Aguilar provided the following administrative updates:
 - o Staff has updated the Board's training log and will be forwarding it to Board members soon.
 - o Board members were invited to a NACOLE webinar forum for investigators. This webinar was the first webinar and there will be more in the future.
 - o The CACOLE conference will take place on May 29-31 and will have a virtual option available. Board members who are interested in the webinar should inform the office.
 - o Staff continues to work on the PAB's annual report. We appreciate the community's patience and look forward to presenting it.
 - o Staff is preparing some notes for the Board to consider for their review of the Police Equipment and Community Safety Ordinance 2022 Annual Report which will be on the Board's agenda in early April.

- Director Aguilar reported on his recent activities:
 - o On Monday, March 20, 2023, Director Aguilar and Policy Analyst Murillo presented to a group of students at UC Berkeley. Their presentation provided an overview of civilian oversight and the structure in Berkeley.
 - o Director Aguilar reports that the ODPa received one new personnel complaint since the last meeting.
 - o Director Aguilar provided updates on the pending items with the City Attorney's Office.

7. CHAIR AND BOARD MEMBERS' REPORTS

- Chair Moore reported that he met with Interim Chief Louis to discuss the concerns of their stakeholders. He states that the two were able to have a worthwhile discussion and that both of them were able to express their concerns. He hopes to continue working together with the Interim Chief to find solutions to these issues and meet the needs of the various community stakeholders.

8. CHIEF OF POLICE'S REPORT

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

- Captain Durbin, on behalf of the Interim Chief, reported that there were no significant staffing updates, but that the BPD recently hosted a dispatcher open house. States that there were familiar faces among the attendees which is a good sign that there is interest in filling those positions. Furthermore, he notes that there will be police officer testing on the weekend of April 1st. Lastly, he provides a report on cases of interest and notes that the past month was saturated with weather-related calls.
- Captain Durbin informs the Board that the Early Warning System quarterly review is on its way. He notes that the Sergeant leading that review has informed officers that this quarter's audit will include a review of officer BWC footage for the five randomly selected officers.
- Captain Durbin reports to the Board that Policy 1107, also known as "Special Order 2023-0001," was implemented. This policy pertains to the directive issued by the Berkeley City Council on February 23, 2021. The included directives mandate various policy and procedural changes for the Berkeley Police Department, and Policy 1107 serves as a framework to ensure compliance with those recommendations.
- Questions & Answers:
 - o Q: Board member Leftwich asks about the current status of the Board's previous request to the Interim Chief for a liaison who could serve as a point of contact between the Board and the department.

- A: Captain Durbin informs the Board that he and the Interim Chief have not had the chance to discuss the matter, but he intends to follow up with her soon.
 - Q: Board member Levine raises a question regarding the recovered firearm in one of the reported cases. Specifically, she asks whether there is any available data on how officers typically recover weapons and what kind of information typically leads to the discovery of such weapons.
 - A: Captain Durbin notes that there is no data regarding how the item was discovered. Available data only records the kind of stop and whether or not a firearm was recovered. For more specifics as to how the firearm was discovered, the report would have to be reviewed.
 - Q: Board member Calavita asks about the timeline for presenting the Berkeley Police Department's proposed policies on surveillance technology, specifically for Unmanned Aircraft Systems (UAS) and Fixed Camera Surveillance Systems, to the Council. Furthermore, they inquire if the department is still open to receiving additional feedback on the topic, considering it will be discussed again during the current meeting.
 - A: Captain Durbin informs the Board that they have reviewed the material presented by the ODPa in the agenda packet material. That the presentation to Council is anticipated to take place in May and there were still a few weeks before the BPD submitted its report to Council.
 - Director Aguilar clarifies that the material included in the agenda packet was produced out of a request by the Public Safety Policy Committee which will be meeting again in April.
- a. Discussion on drone usage (Chair Moore)
- Questions and Answers:
- Q: Chair Moore asks for clarification on how "exigent circumstances" is defined by the BPD.
 - A: Captain Durbin explains that defining exigent circumstances can be a complex matter. He points out that determining what qualifies as exigent circumstances requires careful consideration of all the relevant facts, as well as an understanding of what is deemed "objectively reasonable" under the surveillance policy (BMC 2.99). He also notes that concerning Unmanned Aircraft Systems (UAS), the criteria for exigent circumstances are closely aligned with those required for a warrant, considering the totality of the facts and what would be considered reasonable in the circumstances.
 - Q: Chair Moore inquires whether field officers use a balancing test or checklist to determine whether a given situation meets the requirements for requesting the use of drones under exigent circumstances.

- A: Captain Durbin states that there is no “checklist.” The determination is based on the totality of the circumstances and the objectively reasonable belief that there is exigency.
- b. Discussion and action- Appointment of board members to the BWC policy subcommittee (Vice Chair Harris)
- Questions and Answers:
 - Q: Vice-Chair Harris inquired about the auditing process for BWC as a component of EWS and whether all officers will be subject to this audit.
 - A: Captain Durbin clarifies that the five randomly chosen officers for the EWS review will have their BWC footage audited as part of that process. However, the audited footage will not include use-of-force incidents since those are already reviewed by supervisors, making it unnecessary to review them again. He further notes that based on the randomizing system used, all officers should eventually be selected as part of the EWS review as the BPD tries to avoid reviewing officers who have already been selected within the two years.
 - Q: Vice-Chair Harris asks about the BPD’s policy as it relates to turning off/muting BWC.
 - A: BWCs are rarely turned off completely but they are occasionally muted. Officers may mute their BWC when planning (i.e. discussing tactics) or confidential information (i.e. medical information).
- Vice Chair Harris, Board Member Leftwich, and Board Member Levine all volunteer for the BWC policy subcommittee.

9. 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)
- Chair Owens reported that the subcommittee continues to gather information and that there are no updates at this time.
 - b. Regulations Subcommittee (Chair: Calavita)
- Chair Calavita reported that the subcommittee was able to meet on Friday, March 24th for a final review of the regulations. The proposed regulations will be presented to the full board at the next regular meeting on April 11th.
 - c. Fair and Impartial Subcommittee (Chair: Calavita)- Appointment of an additional board member to the Fair and Impartial Policing subcommittee.

- Chair Calavita reported that the F&I subcommittee has not been able to meet recently. However, she would like for one more member to join the subcommittee before they meet again. Vice Chair Harris volunteered to join the subcommittee.

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

10. OLD BUSINESS (DISCUSSION)

- a. Report of status on items (records, information, and advice) requested from the PAB to:
 - i. ODPa
 - ii. CAO
 - iii. BPD

The ODPa reported that staff has reviewed a request from January 2022 to December 2022. He informs the Board that there were over twenty requests and that a majority have been answered. However, there are a few requests where the status is unknown or unclear if a satisfactory response was received. Staff will provide a more comprehensive report to the Board for their review and will try to note how much time passed before a response was received.

11. NEW BUSINESS (DISCUSSION AND ACTION)

- a. PAB Retreat
- Chair Moore reported on the PAB's annual retreat. He thanks the Board for their attendance and the staff for putting it together.
 - b. Discussion and action regarding the supplemental information report to the City Council's public safety policy committee regarding surveillance technology:
 - i. Unmanned Aerial Systems (UAS) (Board member Levine)
 - ii. Fixed Video Surveillance Cameras (Board member Calavita)
- Policy Analyst Murillo presents an information report from the ODPa to the PAB regarding surveillance technology policies being discussed by the Public Safety Policy Committee. He mentions that the Council's Committee has requested additional information from the PAB about their past recommendations and the presented documents are ODPa's suggestions to the PAB in formulating their response. He also proposes that the reports could be rephrased for the Council's Committee on behalf of the Board, subject to the Board's approval.
- Board member Calavita provides a summary of the report specifically related to Fixed Video Surveillance Cameras.
- The Board members deliberate on whether to vote on the recommendations during the current meeting. The majority of the Board expresses that they are not prepared to vote and would require more time. The Board instructs staff to contact the Council's Committee to determine when the Committee plans to meet

next and request additional time for the Board to review and provide its feedback, if possible.

Motion to ask staff to inquire about the next Public Safety Policy Committee Meeting and request additional time for the PAB to respond with the requested information.

Moved/Second (Levine/Harris) **Motion Carried.**

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

Noes: None Abstain: None Absent: None

c. Creation and appointment of board members to a subcommittee to explore issues and solutions regarding conflicts of interest with legal counsel (Board member Leftwich)

Motion to create and appoint board members to a subcommittee to explore issues and solutions regarding conflicts of interest with legal counsel.

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

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

Noes: Owens Abstain: None Absent: None

- Chair Moore, Board Member Leftwich, and Board Member Levine are appointed to the subcommittee.

12. PUBLIC COMMENT

1 speaker.

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):

13. CASE UPDATES

- Director Aguilar updated the Board on the status of pending complaints filed with the ODP. No actions were taken on behalf of the Board.

END OF CLOSED SESSION

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

- Chair Moore announces closed session actions. He notifies the public that Director Aguilar updated the Board on the status of pending complaints and that there were no actions taken at this time on behalf of the Board.

15. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens/Harris) **By general consent, the meeting was adjourned at 9:31 p.m.**

Minutes Approved as amended on: APRIL 11, 2023

Hansel Aguilar, Commission Secretary. 