

**MINUTES
CITY OF FORT MYERS
CITIZENS POLICE REVIEW BOARD
JANUARY 12, 2021**

The Citizens Police Review Board of the City of Fort Myers, Florida, met in regular session at Oscar M. Corbin, Jr. City Hall, 2200 Second Street, its regular meeting place in Fort Myers, Florida, on Tuesday, January 12, 2021, at 4:30 p.m. Present were Danielle L. O'Halloran, Chair, presiding; Erma Boyd-Dorsey; Forrest H. Banks; Robert W. Votaw, Jr.; Amanda L. Dennis; and Nzingha Gaines, Board Members. Also present were Grant W. Alley, City Attorney, Gwen Carlisle, City Clerk and Lily Baker, Recording Specialist. Absent: Shawn T. Walker, Vice Chair, and Michele Parker, Board Member

PLEDGE OF ALLEGIANCE

Chair O'Halloran led the Pledge of Allegiance to the Flag of the United States of America.

OATH OF OFFICE

1. Erma Boyd-Dorsey, Ward 2 reappointment (Gwen Carlisle, City Clerk)

The Oath of Office for Erma Boyd-Dorsey will be administered at the February 9, 2021 meeting.

2. Steven Brown-Cestero, Ward 6 Appointment (Gwen Carlisle, City Clerk)

Gwen Carlisle, City Clerk, administered the Oath of Office for Steven Brown-Cestero, Ward 6 appointment to the Citizens Police Review Board.

ROLL CALL

Roll call was taken by Lily Baker, Recording Specialist.

PUBLIC INPUT – None

OLD BUSINESS

3. Dates for Firearms Training Simulator

Donald Oswald, Inspector General (IG) stated that the ride-a-long program has been suspended and the Training Center is requesting to postpone scheduling the Firearms Training due to the proximity that is required. The dates for training will be provided when the COVID crisis subsides.

NEW BUSINESS/PRESENTATIONS

4. Law Enforcement Officer Bill of Rights, Internal Affairs (IA) Policies and Procedures, and Sunshine Law training

IG Oswald provided Law Enforcement Officers' (LEO) Bill of Rights training. He presented PowerPoint slides that outlined: when the Bill of Rights is applicable; the interrogations process; the proposed disciplinary action; limitation period; tolling of 180-day period; what the LEO Bill of Rights requires; investigative outcomes, and violations of LEO Bill of Rights. He noted a Florida Supreme Court Case, D'Agastino v. City of Miami (FL 2017); in where Subpoena Power (compelled interrogation of police officers) by a Civilian Investigative Panel

(e.g., Civilian Review Board) in Investigations that could lead to discipline is unconstitutional because it is preempted by the Police Officer Bill of Rights.

In closing, IG Oswald summarized that based on the laws and the statutes: Boards cannot subpoena or interrogate Police Officers; Boards cannot discipline Police Officers; Boards cannot publicly discuss active complaints as Boards are subject to Sunshine Law; Boards must forward any complaints received to the Law Enforcement Agency within five business days for investigation by that Agency; and Boards can review closed complaints investigations and make recommendations. He noted that due to the 180-day rule, these recommendations may only be recommendations for future type cases, as the discipline cannot be changed.

Board Member Banks inquired if there is any proposed legislation to modify the Bill of Rights. IG Oswald explained that the Florida Police Chiefs Association (FPCA) and the Florida Sheriffs' Association have committees in direct contact with the legislators. Through the Police Chiefs' involvement, bulletins are received periodically from the FPCA after legislation has been adopted or requesting comments for proposed legislation.

Board Member Votaw mentioned that in 2017 external local forces lobbied to have this Board obtain investigative subpoena power. It was then shortly dropped, likely due to the Florida Supreme Court that was mentioned. City Attorney Alley stated that the Mayor and Council assembled a Citizens Police Oversight Study Committee and took their recommendations on what the Citizens Police Review Board should encompass. That feedback was incorporated in drafting the Ordinance that pertains to the Citizens Police Review Board. When it was being reviewed there was heavy discussion on training, subpoena power, and what the process would be. The Committees recommendation included that the Citizens Police Review Board is not to hold subpoena power. At that time, it was not bound by law, as it is now. The recommendation was determined based on efficacy reasons to improve and enhance the communication between the Law Enforcement Agency and review board.

Major William Newhouse provided an overview of the Internal Affairs Investigative Process. He presented a PowerPoint and discussed: The Fort Myers Police Departments' Organizational Chart, complaint process derived from any source, how they are reviewed and assigned, and the investigative categories: Preliminary Assessment, Administrative Investigation, and Internal Affairs Investigation. He noted that only the Internal Affairs Commander or Chief of police (or designee) may initiate an Administrative investigation for incidents that include non-criminal conduct; discourtesy/rudeness; minor procedural violations of departmental General orders that, if sustained, do not require reporting to Criminal Justice Standards & Training Commission (CJSTC); and other incidents as deemed necessary by the Internal Affairs Commander. Major Newhouse stated that only the Chief of Police can authorize an Internal Affairs Investigation that include: commission of a crime; whether on or off duty; immoral conduct; acceptance of bribe or other illegal compensation-corruption; malfeasance in office; excessive use of force under color of authority; release of confidential information without authority; death of a person in custody; intoxication on duty; In closing, he discussed the investigative process, the investigator's role, and final disposition.

Board Member Dennis inquired how complaints against the Police Chief are handled. City Attorney Alley stated that assistance from the Attorney General's Office would have to comply with the Officer Bill of Rights.

Board Member Gaines requested a copy of the PowerPoint slides as a resource. She requested clarification on reassignment or transfers and how that is conducted. Major Newhouse stated that if the proposed discipline is to reassign or transfer, the officer is entitled to a pre-disciplinary hearing with the Chief of Police. He noted that if the Police Chief moves forward with that course of action, as a basis of discipline, the officer would be transferred to another department, for example from a detective position to a patrol unit.

Board Member Boyd-Dorsey inquired what the purpose of the Citizens Police Review Board is, as they only review cases that are closed, and their recommendations would not be considered due to the 180-day rule. City Attorney Alley stated that state statutes provide for the discipline process for a police officer. He conveyed that there is a strong public purpose for a review board. Major Newhouse echoed City Attorney Alley's comments and added that the review board provides transparency by reviewing cases in a public forum and the public discussion is valuable. IG Oswald added the Board also can notice a trend of inappropriate disciplines or not being disciplined when the officer should, the Board has the ability to bring it to the attention of the City Manager, Mayor and Council.

City Attorney Alley stated that he will provide Sunshine Law training on a one-on-one basis as needed and/or as requested.

5. Minutes of Citizens Police Review Board held on December 8, 2020

MOTION: It was moved by Board Member Boyd-Dorsey and seconded by Board Member Votaw to approve the minutes of the meeting held on December 8, 2020.

A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; O'Halloran – Aye; Votaw – Aye; Dennis – Aye; Gaines – Aye. Brown – Aye. Motion was unanimously carried.

CONSENT AGENDA

6. **Case No.:** Prelim 2020-059
Policy Related to Complaint: Alleged Complaint: Bias Based Policing / Conduct Towards the Public
Complainant: Mishti Thomas
Officer: Officer Jimmy Hernandez
Chief of Police Disposition: No Policy Violation
Discipline: None
Investigator: Sergeant Daniel Morency
7. **Case No.:** Prelim 2020-060
Policy Related to Complaint: Alleged Complaint: Performance of Duty
Complainant: Chance Smith
Officer: Officer Jonathan King
Chief of Police Disposition: No Policy Violation
Discipline: None
Investigator: Sergeant Daniel Morency
8. **Case No.:** Prelim 2020-067
Policy Related to Complaint: Alleged Complaint: Unlawful Arrest / Harassment
Complainant: Devontae Hogan
Officer: None

Chief of Police Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

9. **Case No.:** Prelim 2020-069

Policy Related to Complaint: Alleged Complaint: Bias Based Policing

Complainant: Vadis Parson

Officer: Officer Joseph Way

Chief of Police Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

10. **Case No.:** Prelim 2020-071

Policy Related to Complaint: Alleged Complaint: Bias Based Policing / Knowledge of Laws and Rules

Complainant: Nathan Dimoff

Officers: Officer Jimmy Hernandez and Officer Yanny Morales

Chief of Police Disposition: No Policy Violation

Discipline: None

Investigator: Lieutenant Brian O'Reilly

Chair O'Halloran asked if any Board Member would like to remove an item from the Consent Agenda to place it on the Regular Agenda for discussion.

MOTION: Board Member Dennis moved to remove Item 6, Case No. Prelim 2020-059 from the consent agenda; seconded by Chair O'Halloran. Motion carried unanimously.

A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; O'Halloran – Aye; Votaw – Aye; Dennis – Aye; Gaines - Aye. Brown – Aye. Motion was unanimously carried.

MOTION: It was moved by Board Member Banks and seconded by Board Member Dennis to approve the remainder of the Consent Agenda with the removal of Item 6., Case No. Prelim 2020-059.

A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; O'Halloran – Aye; Votaw – Aye; Dennis – Aye; Gaines - Aye. Brown – Aye. Motion was unanimously carried.

PULLED FROM CONSENT

5. **Case No.:** Prelim 2020-059

Policy Related to Complaint: Alleged Complaint: Bias Based Policing / Conduct Towards the Public

Complainant: Mishti Thomas

Officer: Officer Jimmy Hernandez

Chief of Police Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Daniel Morency

Sergeant Daniel Morency stated this was a complaint from Mishti Thomas, where she alleged her son was racially profiled and the Officers were unprofessional.

Board Member Dennis stated that in reading between the lines on the complaint, part of Mrs. Thomas' concern was how the Officers approach individuals who are not neuro typical. She inquired how the Police Officers handle situations where they approach someone with mental health issues. Sergeant Morency stated the officers undergo training for those situations, however, cannot speak to that being the situation for this case specifically. He added that he was unsuccessful in speaking to Mr. Felton and could not determine if he has any mental incapacities. Major Newhouse echoed that there is extensive Crisis Intervention Training (CIT) provided to the Officers and it is always evolving. He noted that this is a preliminary assessment and if the Board chooses to, they can request a full review to examine the video footage.

Board Member Boyd-Dorsey stated that she is concerned with the number of complaints that are reported on Officer Jimmy Hernandez. Major Newhouse stated that within the Internal Affairs tracking system, a certain number of complaints triggers an alert to their supervisor to review those cases and have a one-on-one to determine if the Officer requires additional training.

Chair O'Halloran stated that she is concerned with a judicial review mark that does not include additional oversight by Internal Affairs. Board Member Brown stated that he believes Internal Affairs tried to reach the mother on two occasions and reached out to the defendant on two occasions with no response. Sergeant Morency stated he left the case open for a month to allow time for Mrs. Thomas or Mr. Felton to respond. Chair O'Halloran conveyed her comment is more to when there is a matter that is put into the criminal system the mark that has a judicial review on it. Major Newhouse responded that Internal Affairs does provide oversight and during the preliminary assessment it is determined whether an Internal Affairs Investigation or Administrative Investigation is opened. IG Oswald added that the standard of proof is different from what an officer needs to make an arrest and what the State Attorney's Office uses to determine whether they want to file charges.

MOTION: Chair O'Halloran moved for a full review of Case No. Prelim 2020-059. Seconded by Board Member Dennis.

A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; O'Halloran – Aye; Votaw – Nay; Dennis – Aye; Gaines - Aye. Brown – Nay. Motion carried 5-2. Board Members Brown and Votaw opposed.

MANDATORY REVIEW BY BOARD (NONE)

(Indicates a full review is required or voted on under the City Ordinance Rules and Procedures for the Citizens Police Review Board)*

NON-MANDATORY REVIEW BY BOARD

11. **Case No.:** Admin 2020-017

Investigator: Sergeant Daniel Morency

Complainant: Michelle Upshaw

Officer: Officer Rosemary Urena

Policy Related to Complaint: General Order 9.1 General Rules of Conduct Section II (A) (8) Performance of Duty

Chief of Police Disposition: Unfounded

Discipline: None

Sergeant Morency stated that the complainant alleges that Officer Urena did not complete a Traffic crash report.

MOTION: It was moved by Board Member Banks and seconded by Board Member Brown to accept the findings of the police department for Case No. Admin 2020-17.

A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; O’Halloran – Aye; Votaw – Aye; Dennis – Aye; Gaines - Aye. Brown – Aye. Motion was unanimously carried.

12. **Case No.:** Admin 2020-018

Investigator: Sergeant Daniel Morency

Complainant: Harrison Samson

(a) **Officer:** Officer Bryan Koski

1. **Policy Related to Complaint:** General Order 9.1 General Rules of Conduct Section II (A) (1) Knowledge of laws, rules, ordinances, and general orders

Chief of Police Disposition: Other Finding

Discipline: Retraining

2. **Policy Related to Complaint:** General Order 24.2 Unbiased Policing Section II (A) (1) Fair and Impartial Treatment

Chief of Police Disposition: Unfounded

Discipline: None

(b) **Officer:** Officer Jerry Moore

1. **Policy Related to Complaint:** General Order 9.1 General Rules of Conduct Section II (A) (1) Knowledge of laws, rules, ordinances, and general orders

Chief of Police Disposition: Other Finding

Discipline: Retraining

2. **Policy Related to Complaint:** General Order 24.2 Unbiased Policing Section II (A) (1) Fair and Impartial Treatment

Chief of Police Disposition: Unfounded

Discipline: None

Sergeant Morency stated that the first complaint alleged the officers lacked job knowledge because the complainant was informed that firearms are required to be registered in Florida. The second part of the complaint alleged that he was treated differently because of his race.

MOTION: It was moved by Board Member Boyd-Dorsey and seconded by Board Member Votaw to accept the findings of the police department for Case No. Admin 2020-18.

A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; O’Halloran – Aye; Votaw – Aye; Dennis – Aye; Gaines - Aye. Brown – Aye. Motion was unanimously carried.

OTHER BUSINESS

Chair O'Halloran requested that the Board collectively meet to discuss the presentation and/or recommendations that will be submitted to City Council regarding the Citizens Police Review Board Annual Report, as well as discuss recommendations or revisions to policy and procedures to the Fort Myers Police Department. The consensus of the Board was to commence the February 9, 2021 meeting at 4:30 p.m. to discuss the presentation and recommendations.

City Attorney Alley and City Clerk Carlisle will provide a recommendation regarding the Board Report and written dissenting opinions as outlined by Ordinance 3507 at the February 9, 2021 meeting.

NEXT MEETING ANNOUNCEMENT

Chair O'Halloran stated that the next meeting will be held on February 9, 2021 at 4:30 p.m., unless otherwise directed by the City Clerk's Office.

ADJOURNMENT

There being no further business, the meeting was adjourned at 6:09 p.m.