



CHARLOTTESVILLE POLICE OVERSIGHT BOARD MEETING

MINUTES

Date: July 11, 2022

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

Board Members Attending: Bellamy Brown, Nancy Carpenter, Dashad Cooper, Jeffrey Fracher, Chair William “Bill” Mendez, Vice-Chair James Watson

Board Members Not Attending: Deirdre Gilmore

Staff: Caroline Rice

Guests: Hearing Examiner Cecil Creasey, Chief Latroy Durette, Sgt. Wade, Jeffrey Fogel, Cynthia Hudson, Pamela O’Berry

Call to Order: Chair Mendez called the meeting to order at 6:32 p.m.

Introduction of Parties, Counsel, and Hearing Examiner

Chair Mendez announced he would not be the presiding individual on the advice of counsel and requested the hearing examiner (H.E.) Cecil Creasey takes on the role. The board members introduced themselves, followed by the parties, and finally legal counsel to the Board. Members Carpenter and Cooper recused themselves from participation in the case at hand because of personal views on the criminalization of unhoused individuals and unfamiliarity with the Board processes and procedures (respectively).

Governing Authorities

Chair Mendez reviewed three documents – the 2021 Ordinance, Interim Hearing Procedures, and the Standard Operating Procedures – that would govern the hearing. Chair Mendez stated all parties should have access to the documents, otherwise to let him know and he would ensure they got access. Ms. Hudson made a point of clarification to the Chair that the police operating procedures would be included as evidentiary in nature as opposed to controlling procedurally.

Hearing Procedures

Chair Mendez quickly went through what the board had planned as the order of the hearing: first the call to order, then the approval of the agenda, and finally the board convening the review hearing to be presided over by H.E. Creasey. For the hearing, Chair Mendez stated it would start with motions and requests by the parties that could be accepted, rejected, or tabled by the board. Next would be the statements by the complainant and the complainant’s witnesses, then by the

*Executive Director Hansel Aguilar was not present for the meeting; however, someone had signed in on Zoom under his name.

police department representatives and its witnesses. Chair Mendez stated that the only thing required by the complainant by law is to clearly state what the basis for their review request was, and then the board may ask questions and the other parties may submit written questions which the hearing examiner would decide whether to pose. Following would be closing arguments, and then the board would begin deliberations.

Chair Mendez stated that deliberations would be done with the hearing examiner soliciting comments from each board member to ensure that all opinions would be represented. Chair Mendez said the hearing examiner would vote on what the board's findings should be, and that there were three possible findings the board could have: agree with the findings of the internal affairs investigation, find that the conclusion of the investigation is not consistent with the facts reasonably available to the Charlottesville Police Department, or the board may find the investigation to be incomplete or defective.

Chair Mendez stated the prescribed standard of judgment would be a preponderance of evidence or more likely than not. Chair Mendez further stated that board members could abstain if they could not decide, but otherwise the votes would be recorded and made public. Chair Mendez followed by stating the hearing examiner would summarize his findings of the board, and then the drafter of the board's review report would discuss what they intended to put in the report and what the format would be. Chair Mendez continued that if there were any dissenting voters, the drafter would include a minority report. Chair Mendez stated that after this, the hearing would be adjourned and then the board meeting would be adjourned. Chair Mendez opened the floor for questions related to the procedures. A question was raised on whether the board would be looking at both allegations or just on the unfounded, and Chair Mendez responded the board would look at both.

A question was raised over time limits, and after H.E. Creasey requested suggestions, Chair Mendez recommended twenty to thirty minutes for the presentation of evidence. A clarification was made on opening statements versus presentation of evidence to which Chair Mendez posed five minutes each for opening statements and twenty to thirty minutes for presentations to the parties. A question was raised regarding the order of presentation and Chair Mendez proposed the police department go first. Chair Mendez asked for any objections. None were given. H.E. Creasey asked if the order motion had been made. Chair Mendez asked for any objections from the parties to not do it this way. No one objects.

Video Issue

Complainant Fogel raised an issue over access to a particular video, however, the board members were unsure of its existence. Ms. Hudson stated that the board needed to decide on the video with respect to Complainant Fogel's request. Motions were made to release the video before the hearing and on anticipation of its existence. Chair Mendez asked for any objections. None were given. Chair Mendez stated the board would send the complainant the video if it existed. Member Fracher asked if the board agreed by consensus, and Chair Mendez affirmed.

Complaint Filing Issue

The complainant remarked he never formally filed a complaint with the police department and that he believed Chair Mendez was operating from a video complaint and closing letter which did not address the major issue. Chair Mendez remarked that the only thing the board could do was evaluate the allegations in the complaint file. Ms. Hudson stated the police department investigated it as a complaint but that the board understands that Complainant Fogel did not file a complaint. Chair Mendez suggested Complainant Fogel ask these questions during the hearing so that he could get a public answer. Ms. Hudson added that this could also be a part of the board's disposition and that it seemed as though Complainant Fogel had issues with the completeness of the investigation which the board did have the ability to speak on as an evidentiary issue and factual matter for the board to decide. Chair Mendez stated that if the board found the allegations did not fit the acts of the police officer, then they could say that and disagree with the investigation being complete.

Complainant's motion for Recusals

Complainant Fogel requested recusals from board members Jeffrey Fracher and Bellamy Brown and asked if that would be honored. Chair Mendez stated that on the advice of counsel, that was the decision of the individuals involved to recuse themselves. Ms. Hudson stated Complainant Fogel may keep his request of recusals on record and that H.E. Creasey could decide if any more information needed to be a part of the record in respect to the issues. Chair Mendez asked Complainant Fogel if the basis for his grounds of recusal was fully contained in the emails he sent to the board. Complainant Fogel said it was not. Chair Mendez asked Complainant Fogel if he wished to add anything else to the record. Complainant Fogel responded that he did not. Chair Mendez thanked him. The Board members opted not to recuse themselves.

Action Items

Chair Mendez stated the action items were to provide H.E. Creasey with the agenda and notice, for H.E. Creasey to amend the agenda to his liking, and to ascertain whether the video mentioned by the complainant exists – and if it did – to provide it to him. Chair Mendez asked if there was anything else to be added to the action items, and H.E. Creasey asked to also be sent the letter of findings and the document serving as the complaint. A question was raised on what all the hearing examiner could have access to. After deliberations, H.E. Creasey stated he did not want to go deeper than was appropriate, so if there was a document that sketched out what the public hearing entailed to then send it to him, otherwise do not send any other documents to him. There were no objections.

Chair Mendez asked if H.E. Creasey had any other points to raise. H.E. Creasey stated that in looking at the hearing examiner's role, one point that was mentioned was exploring the possibility of some type of informal resolution of the issue short of the public hearing. H.E. Creasey continued that he had a lot of experience with this if possible, so he wanted to mention it. Chair Mendez stated an informal write up could be proposed up until the board had its findings.

Adjournment

H.E. Creasey asked if there were any more points to be made. There were none. H.E. Creasy adjourned the hearing.

The pre-hearing was adjourned at 8:08 p.m. unanimously.

Next Meeting: July 14, 2022 6:30 p.m. (hearing)



CHARLOTTESVILLE POLICE OVERSIGHT BOARD MEETING

MINUTES

Date: July 14, 2022

Scheduled Time: 6:30 p.m.

Location: Hybrid Meeting – Virtual and City Space

Board Members Attending: Bellamy Brown, Deirdre Gilmore, Dashad Cooper, Jeffrey Fracher, Chair William “Bill” Mendez, Vice-Chair James Watson

Board Members Not Attending: Nancy Carpenter

Staff: Hansel Aguilar (E.D.), Ms. Rice

Guests: Cynthia Hudson, Pamela O’Berry

Call to Order: Chair Mendez called the meeting to order at 6:40 p.m.

Announcements

Chair Mendez announced that there would not be a hearing conducted at the meeting because the police department and the complainant decided to engage in informal resolution (i.e. alternate dispute resolution- ADR). Chair Mendez also announced that there would be public commentary at the end of the meeting.

Amendment of Agenda

Chair Mendez stated the first order of business was to amend the agenda, since the posted one called for a review hearing as item three. Chair Mendez suggested amending the agenda so that item three announced the ADR; item four announced a board resolution to continue the hearing; item five would be for hearing public comments; and item six for adjournment. Chair Mendez asked for objections. None were given. Chair Mendez asked for movement to the amendment. Vice-Chair Watson made a motion which was seconded by Member Brown.

Reading of Memo

E.D. Aguilar read the memo he sent Chair Mendez. Chair Mendez added that the passage of the Police Civilian Oversight Board (PCOB) enabling legislation by the City Council created this opportunity. Chair Mendez announced that the PCOB still had jurisdiction over the review request if it was not settled by agreement of both parties. Chair Mendez concluded that the parties could go back to the board who would then continue the hearing of unresolved issues. Chair Mendez asked for questions or comments from the board. Member Fracher asked the chair whether this ADR was binding, the chair responded “no”.

Resolution to Continue Hearing

Chair Mendez read a resolution to postpone the hearing. There was a motion to adopt. A vote was taken, and the resolution passed.

Public Comments

No comments from the public were made.

Adjournment

There was a motion to adjourn. A vote was taken, and the motion was unanimous.

The meeting was adjourned at 6:54 p.m. unanimously.