

**MINUTES
CITY OF FORT MYERS
CITIZENS POLICE REVIEW BOARD
MARCH 9, 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, March 9, 2021, at 5:30 p.m. Present were Danielle L. O'Halloran, Chair, presiding; Erma Boyd-Dorsey; Forrest H. Banks; Robert W. Votaw, Jr.; Steven Brown-Cestero, 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, Board Member

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Roll call was taken by Lily Baker, Recording Specialist. Absent: Shawn T. Walker, Vice Chair, Board Member

PUBLIC INPUT – None

OLD BUSINESS

1. Draft spreadsheet to be used for annual report and quarterly report

Chair O'Halloran stated that at the February 9, 2021 Citizens Police Review Board meeting a motion was made to direct the City Clerk's Office to provide an annual case report for 2019-2020. The spreadsheet was provided to the Board Members and no modifications were requested at this time.

NEW BUSINESS/PRESENTATIONS

2. Resignation of Shawn Walker, Vice-Chair, from the Citizens Police Review Board

Chair O'Halloran stated that Mr. Walker has resigned from the Citizens Police Review Board creating a vacancy for the Ward 3 appointment and for Vice-Chair of the Board.

3. Elect a Vice Chair to fill the unexpired term of Shawn Walker, effective February 9, 2021 through July 13, 2021

Chair O'Halloran noted that with the resignation of Shawn Walker from the Citizens Police Review Board, a vacancy now exists for the Vice-Chair role. She opened the floor for nominations.

Board Member Banks nominated Board Member Erma Boyd-Dorsey.

Chair O'Halloran asked if there were any other nominations; seeing none she closed the nominations.

MOTION: Board Member Banks moved to nominate Board Member Erma Boyd-Dorsey as the Vice-Chair of the Citizens Police Review Board to fill the unexpired term of

Shawn Walker, effective February 9, 2021 through July 13, 2021; seconded by Chair O’Halloran.

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

4. Minutes and Board Report of Citizens Police Review Board held on February 9, 2021

MOTION: It was moved by Vice-Chair Boyd-Dorsey to approve the minutes and board report of the meeting held on February 9, 2021; seconded by Board Member Brown.

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

CONSENT AGENDA

5. **Case No.:** Prelim 2020-070

Investigator: Sergeant Daniel Morency

Complainant: Tarique Wilson

(a) **Officer:** Officer Dan Santibanez

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Chief of Police Disposition: No Policy Violation

Discipline: None

(b) **Officer:** Officer Kenneth McCoy

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Chief of Police Disposition: No Policy Violation

Discipline: None

(c) **Officer:** Officer Stephen Fenner

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Chief of Police Disposition: No Policy Violation

Discipline: None

(d) **Officer:** Officer Christopher Mocchi

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Chief of Police Disposition: No Policy Violation

Discipline: None

(e) **Officer:** Officer Zachary Nolen

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Chief of Police Disposition: No Policy Violation

Discipline: None

6. **Case No.:** Prelim 2020-078
Investigator: Lieutenant Jesus Ramos
Complainant: Renee Sandora-Horn
 - (a) **Officer:** Officer David Cameron
Policy Related to Complaint: Alleged Complaint: Performance of Duty
Chief of Police Disposition: No Policy Violation
Discipline: None
 - (b) **Officer:** Officer Brittany Morris
Policy Related to Complaint: Alleged Complaint: Performance of Duty
Chief of Police Disposition: No Policy Violation
Discipline: None
 - (c) **Officer:** Officer John Kuhl
Policy Related to Complaint: Alleged Complaint: Performance of Duty
Chief of Police Disposition: No Policy Violation
Discipline: None
 - (d) **Officer:** Officer Phillip Derry
Policy Related to Complaint: Alleged Complaint: Performance of Duty
Chief of Police Disposition: No Policy Violation
Discipline: None
 - (e) **Officer:** Sergeant Constant Brown
Policy Related to Complaint: Alleged Complaint: Conduct Toward the Public
Chief of Police Disposition: No Policy Violation
Discipline: None

7. **Case No.:** Prelim 2020-080
Investigator: Sergeant Daniel Morency
Complainant: Tiffany Davis
 - (a) **Officer:** Unknown
Policy Related to Complaint: Alleged Complaint: Harassment
Chief of Police Disposition: Insufficient Evidence to Investigate
Discipline: None

8. **Case No.:** Prelim 2020-083
Investigator: Lieutenant Jesus Ramos
Complainant: Lynette Fields
 - (a) **Officer:** Officer Yvetta Dominique
Policy Related to Complaint: Alleged Complaint: Conduct Toward the Public
Chief of Police Disposition: No Policy Violation
Discipline: None

MOTION: It was moved by Board Member Banks to approve the consent agenda; seconded by Board Member Parker.

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

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)*

9. **Case No.:** Prelim 2020-059 (voted for full review on 1/12/2021)

Investigator: Sergeant Daniel Morency

Complainant: Mishti Thomas

(a) **Officer:** Officer Jimmy Hernandez

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

Chief of Police Disposition: No Policy Violation

Discipline: None

Sergeant Daniel Morency requested any feedback the Board would like to share pertaining to Case No. Prelim 2020-059 or any questions that he could answer after the full review.

Board Member Dennis inquired how the Fort Myers Police Department (FMPD) evaluates biased policing for cases such as these and Sergeant Morency replied that every case is different. Investigators are viewing body cam footage, they are looking for certain words or actions that would be out of the ordinary. He noted that he did not see that transpire on the footage and wanted to speak to Mr. Felton to determine if something occurred that was unseen. He stated that he was unsuccessful at reaching Mr. Felton for further questioning.

Chair O’Halloran expressed her disappointment in the inaccuracy of the arrest report that contradicts the body cam footage. She conveyed that the body cam footage did not fit the loitering and prowling narrative that the officer provided in the arrest report.

Board Member Brown inquired if the officer has the opportunity to review body cam footage to assist when writing his report and Sergeant Morency replied yes. He further inquired why it took five police officers to arrest Mr. Felton.

City Clerk Carlisle swore in Sergeant Morency for the record.

Sergeant Morency stated that without the radio transmission it is unclear how it was transmitted to the other officers. He explained that there could have been something in the officer’s voice that could have caused the five officers to respond. Chair O’Halloran inquired if during the investigation, if the CAD report was pulled, as that would describe what dispatch stated and Sergeant Morency replied yes. He clarified that he was

referencing the radio transmission and stated that codes are no longer used, other than 10-4 by officers and only plain talk is acceptable.

Board Member Dennis stated that on a busy street with multiple cameras surrounding those facilities, that are also likely to be open for business, it seems unusual that it would be probable cause for a stop because he was looking at a vehicle in an open car lot. Chair O'Halloran echoed Board Member Dennis' comments and noted that he was looking into windows of cars that are for sale. She stated that he was not, for example, in a Publix parking lot looking into windows of cars. She does not feel this is "circumstances that warrant a justifiable and reasonable alarm or immediate concern," especially when he stated why he was in the area, what he was doing, and where he was heading.

Board Member Votaw stated that he felt a better outcome would have been for the officer to explain to the young man why he stopped him. Mr. Votaw noted that Mr. Felton stated a few times, "I didn't do anything wrong."

Member Dennis listed possible reasons why most complainants would not want to come in and discuss the case could be: 1. Lawyer stated it was not in their best interest; 2. Seems like a hassle; 3. Can't effectively communicate; 4. Mental health issue or learning disability; 5. Retaliation. Board Member Brown stated that he owned a restaurant where most of his employees are minorities and when he inquired how most of them felt about going forward to the police, almost all his employees' perception was that it would not do any good.

Board Member Gaines stated that she was concerned that if the Board had not looked at the body cam footage, the report would be all they had to go off of. She also noted that she is concerned on the gap that exists and wants to focus on how to build the relationship between the Police Department and the community in a climate with so much distrust.

City Clerk Carlisle swore in Inspector General Donald Oswald for the record.

Inspector General Donald Oswald stated that the last week of June the Police Department has engaged the services of an instructor that teaches at the Federal Bureau of Investigation (FBI) National Academy to present instruction in 4-hour blocks for the entire week regarding building trust between law enforcement and communities of color. He noted that the Police Chief understands the area of importance on building a bridge of trust between the two and making strides to accomplish it. IG Oswald extended the invitation to the Board and stated he will provide a schedule to determine when Board Member can attend.

Chair O'Halloran stated that her biggest concern was the accuracy of the report. She inquired what role the investigators play in the accuracy of the report.

City Clerk Carlisle swore in Major Bill Newhouse for the record.

Major Bill Newhouse reminded the Board that this case involves a preliminary assessment, not an investigation. However, if the Board chooses to, can recommend to the Police Chief to order an investigation into this matter. The investigation would include the questioning of the subject officer. He noted the difficulty at this stage to make a complete assessment or complete judgement based on a preliminary assessment. Board Member Dennis thanked Major Newhouse for the clarification and inquired if the case stopped at the Preliminary Assessment due to Mr. Felton not coming forward. Major Newhouse stated that it was a factor, however, there could be clear and convincing evidence in the body cam footage to indicate a policy violation, even if the complainant chooses not to move forward or come in to complete a statement. He further clarified if the video footage indicated a different policy violation from the complainants alleged complaint, that would change the case from Preliminary to an Admin or IA case. Major Newhouse also pointed out discussion that occurred before the officer reads Miranda to Mr. Felton. He stated that when Mr. Felton explained where he was coming from, he stated that he was “coming from the labor pool and then crossed the street”, Officer Hernandez then states, “no, that’s not true, you crossed the street before you arrived where the labor pool was.” Major Newhouse stated he assumes that heightened the officers’ suspicion of what he was doing in the parking lot of a closed business, coupled with wearing a backpack and looking into vehicles.

Board Member Brown stated that while overall he agreed there was no policy violation, he was left bothered by this case.

Chair O’Halloran stated that while her subjective opinion was that she felt Officer Hernandez wrote a report to fit a loitering and prowling narrative, what is objective, was that the report was not accurate.

Board Member Banks stated that this was sorry policing and is not going to get us anywhere. He noted that it was a bad report and a glorification of facts.

MOTION: Board Member Banks moved for a recommendation for additional information, an additional investigation or a reinvestigation according to Florida Statute 112.532 (6)(b) for Case No. Prelim 2020-059; seconded by Board Member Dennis.

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

NON-MANDATORY REVIEW BY BOARD (NONE)

OTHER BUSINESS

Board Member Gaines gave personal testimony to her recent interaction with Officer Edward Cutie Jr. and Officer Brett Rice, she extended her appreciation for their genuine concern and professionalism.

MOTION: Board Member Brown moved to have the Annual Case Report updated and emailed monthly and printed quarterly for the Board; seconded by Vice-Chair Boyd-Dorsey.

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

NEXT MEETING ANNOUNCEMENT

Chair O’Halloran stated that the next meeting will be held on April 13, 2021 at 5:30 p.m.

ADJOURNMENT

There being no further business, the meeting was adjourned at 6:19 p.m.