

MINUTES

**Regular Board Meeting
Police Accountability Board
March 24, 2022 at 6:30 PM
Conducted Over Zoom**

Attendees

Board Members: Wilson, Tucker, Nikoloff, Harvey, Harrison, Brown, Setel
Staff: Dwyer Reynolds, Pacheco-Walker

Item	Details	Vote	Time
Start of Meeting	<u>Welcome & Introductions:</u> Chair Wilson called the meeting to order. Pacheco-Walker completed Roll Call.	N/A	6:32PM
Approval of Prior Minutes	<u>Minutes:</u> Member Setel moved to approve the minutes of March 3, 2022. Second by Member Tucker. Motion passed unanimously with no corrections.	7-0	6:33PM
Meeting Discussion	<p><u>Staff Report:</u> Dwyer Reynolds began by noting that Board Members may wish to discuss some items of the Staff Report either in Committees or at another time as there has been a lot of activity and the agenda is very full tonight.</p> <p>Regarding the Office move-in, Dwyer Reynolds explained that the City will be signing the sub-lease either tomorrow or early next week to formally allow the PAB to move in. Noted that the space is needed for several reasons; it is move-in ready, comes fully furnished, is large enough for staff, very secure, and includes space for community engagement events so that members of the public and RPD may come in and work with us in a safe, confidential and discrete way. Once contract is signed, Staff will begin moving in piece-by-piece. Once the move-in is complete a Meet-and-Greet/Welcoming event will be held. Dwyer Reynolds to circulate details on that when he receives them.</p> <p>Regarding the RPD Chief selection process, Mayor Evans has invited 3 Board Members to participate in a focus group with the consulting firm that is leading the search. Dwyer Reynolds noted that Member Setel has further details on what participation will entail.</p> <p>Member Setel began by noting that she was very impressed with the consultant leading the search and explained that there are two matters in particular that the PAB should address; the first being that after listening sessions are held with stake-</p>	N/A	6:33PM

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	<p>holders the next step will be to form a search committee. Members of the PAB should be involved in that committee. Stated that she wishes to get that message to that Mayor and to the Community.</p> <p>Setel explained that he second matter to be addressed is because the City Charter does not permit anyone to be paid more than the Mayor, so getting the kind of candidate that they are looking for will be difficult in a competitive market. There are other areas offering significantly more than the City is able to and the Committee will have to explore the effect that will have on the search. Setel noted that the public should be aware of these issues, and that she is happy to write up a report on further details and send to Board Members.</p> <p>Regarding the revised staffing model, Dwyer Reynolds explained that PAB had submitted a budget last Spring with a tentative vision for staffing which included about 55 positions across its divisions. Since then, PAB leadership has been working with Human Resources and outside consultants to refine the vision. At the last meeting with H.R. in February there was a consensus that PAB needed to have a final model as just over half of the staff has been retained. Leadership has taken input from H.R., Council and our Consultants to revise the model, which has averaged out to having the same amount of positions but with three major changes from the initial model. In the previous model none of the employees were considered as non-managerial positions, in the revised model approximately half of the staff has been re-classified as non-managerial, entry or line level positions. This change will allow candidates with less experience to come into PAB at an entry level and encourages promotion from within. Secondly, the new staffing model simplifies the organization's structure dramatically by creating pathways to promotion and reducing the number of job titles. Finally, the revised model will remove barriers to entry while still maintaining high standards. A common complaint about many City positions is that they require college degrees, often in specific areas of study. Under the new model PAB will accept relevant work experience in lieu of education. Dwyer Reynolds further noted that he would be happy to review the revised model in detail with the Budget and Finance Committees.</p> <p>Regarding City Council's Liaison to PAB, Councilmember Kimberly Smith has communicated that the Council as a whole</p>		
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	<p>would like to have a work session with the PAB in April to hear updates since the previous meeting that was held in October. Smith proposed a number of dates and Staff will be circulating an email to the Board to determine availability. Dwyer Reynolds stated that the Board may want to discuss and strategize as to how they will approach the meeting. Relevant to this is a memorandum that was circulated to Board Members from City Council President Miguel Melendez regarding the need for a better line of communication between PAB and the Mayor's administration. Rules will affect how the Board interacts with City Government and it is important that the Board provide their input on the discussion.</p> <p>With regard to the complaint and investigation process, in January, PAB submitted to the City's Law Department a draft set of rules to govern our investigations into police misconduct. Law Department sent back final comments on that document two weeks ago. Dwyer Reynolds stated that he was very happy to receive those comments and found a number of areas where the Law Department and PAB leadership are in agreement i.e. Law Department handling FOIL requests and tweaks to the rules to ensure that certain Civil Service requirements are followed. There are some areas where there are significant disagreements, with the most important being the PAB's ability to investigate officer involved shootings and deaths. Currently, when there is an officer involved shooting or death, police isolate the area, members of RPD's PSS and Law Department are called on scene. Standard procedures are followed including allowing these members 'under the tape' for a walk-through of the scene. The purpose of the walk-through is to allow other entities to view evidence and record notes on-scene as the basis of their investigation. PAB is requesting the ability to send one of our representative to the scene to participate in the walk-through as well as it is a standard practice amongst other PAB's across the country. The City's Law Department suggested that there are many legal barriers to allowing PAB on-scene at these incidents, and that it would be inappropriate to have PAB there. Dwyer Reynolds explained that PAB's internal legal team has looked into the matter and believes that the law does suggest that PAB would be within it's rights to have a representative on-scene. Furthermore, it is necessary as not being on-scene will affect our ability to effectively investigate shootings. Dwyer Reynolds explained that pursuant to the advice of PAB's consultants, should it be determined that PAB cannot participate in the on-scene walk-</p>		
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	<p>through, that the agency may not want to investigate Officer involved shootings. Without access to the scene, the best information will not be available, therefore making it easy for PAB's investigations to be dismissed. The conclusions drawn by the City's Law Department and PSS will be stronger than PAB's due to them having been on-scene. Dwyer Reynolds stated that legal authority is not the question here, but that the question is whether or not the Board wants Staff to have a discussion with the Law Department around this specific issue. Currently, it is the Law Department's stance that there is no discussion to be had about the matter and that the City will not allow PAB to do these walk-throughs and have on-scene access. Dwyer Reynolds noted that he wishes to work with RPD and Law to remedy the issue and ensure that PAB's presence does not interfere with the criminal investigation. Noted again that other PAB's across the country engage in this practice.</p> <p>Setel stated that she has concerns that the Law Department was answering for RPD in this circumstance and believes that there needs to be a larger conversation about the role that the Law Department should have in any decisions related to PAB given that there is a conflict of interest as the Law Department also represents RPD in legal matters. Noted that they are not the right people to be making those decisions and the Board must discuss that.</p> <p>Wilson agreed and stated that she is also concern about the conflict of interest and that there should be discussion with the Law Department about it. Wilson asked what the specific issues that the Law Department had with PAB's on-scene investigations.</p> <p>Dwyer Reynolds replied that it will take some time to review all of the issues. Wilson asked what the number one, most concerning issue is. Dwyer Reynolds answered that the most concerning issue is the belief that having PAB investigators on-scene will compromise the integrity of investigations. Noted that belief is not a legal argument, but a policy argument. Further explained that there is a general concern that having civilians on-scene who are not with the Law Department will compromise the integrity of investigations, but the reality is that PAB is asking to do the same thing that the Law Department's lawyers do.</p>		
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	<p>Harrison asked if there was a recent matter where a City employee was killed and the Person of Interest was an RPD Officer who committed suicide. Noted that is specifically the kind of situation where PAB would need on-scene access.</p> <p>Wilson added that when it comes to accessing the data, this became best practice because of time lapses in information access. Added that information access is an issue that the Board has been working on with RPD for 2 years. Emphasized that PAB must be able to access the same data that RPD has.</p> <p>Harvey stated that he believes it would be a great thing for PAB to be able to be on-scene, but that the Board must keep in mind that they are not the police and asked if the Board was crossing the line between holding police accountable and policing.</p> <p>Brown replied that a possible way that PAB could be present without necessarily policing would be to have a PAB lawyer or someone from the Law Department present, along with representatives from RPD and the Mayor's office so that all the branches have a representative on scene able to observe first hand. Further explained that the Board has had issues with RPD before in trying to get information needed and many of the things that the PAB could have done were delayed due to the refusal to release information. Brown also noted that if PAB's lawyer observed something differently than one of the other entities, there is now a discussion to be had that wouldn't be had if no one was there on PAB's behalf. Noted that she feels that the Board would not be serving the community to the best of its ability if they do not have eyes at the scene as opposed to taking information secondhand, if it comes.</p> <p>Dwyer Reynolds clarified that the only people who would be on-scene would be investigators that are specifically trained to do this work in a way that will not interfere.</p> <p>Dwyer Reynolds noted that a question that leadership has been hearing a lot is "What is the PAB doing in the present while they are not investigating?" Dwyer Reynolds explained that the Deputy Chief of Case Management and some Case Managers will be coming on board. Also explained that there is an informal information process in place for people who wish to file a complaint once PAB has opened its doors. There is currently a hotline, voicemail and email address setup to collect</p>		
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	<p>information so that Case Managers and Investigators may follow up. Dwyer Reynolds stressed that this system is not complaint intake, but a chance for people who wish to contact PAB to get in touch and leave some basic information for follow up. Also explained the recordkeeping process for the intake system.</p> <p>With regard to the proposed Rules of Order and the revised Committee Structure, Dwyer Reynolds explained that the Board’s work is about to change significantly in the next two months as they begin reviewing cases. Further explained the role of PAB’s staff in the completion of investigations. PAB Board members will sit in panels of 3 to review the investigations and findings and will then vote to approve the findings, refer them back for further investigation, or decline the findings. Should the findings be declined it is the choice of the Board to either re-investigate or release the results to the public. Along with this the Board will still need to supervise the staff and complete many other tasks, so this transitional period serves as an opportunity to re-structure things like information sharing, board meetings, and committees in order to take on the work in a sustainable way. Dwyer Reynolds stated that the Staff had compiled Rules of Order which will guide how discussions are held, how Board meetings are run, and other logistical things such as scheduling and agenda creation. Staff also provided some outlines on different Board structures. Both documents have been circulated for Board Member review.</p> <p><u>Committee Report:</u></p> <p>Jobs Committee: Committee Chair Harvey asked if Wilson could submit the report to the board on his behalf. Wilson agreed.</p> <p>Finance Committee: Committee Chair Harrison explained that the Finance Committee met and requested budget materials from the Staff. Noted that the Committee will re-convene when the materials have been reviewed.</p> <p><u>Old Business:</u></p> <p><u>New Business:</u> Wilson stated that there is a proposal to approve to send the Staff created Rules of Order for Board Meetings to the Rules Committee for review.</p>	<p>N/A</p> <p>N/A</p>	<p>7:05PM</p> <p>7:07PM</p>
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	<p>Setel Stated that in light of the fact that the Board must pass the Rules prior to Board training, she would like the motion to include that there is an understanding that amendments to the Rules may be made as necessary. Setel noted that she would like to move to approve the Rules with that understanding.</p> <p>Harrison stated that the Rules Committee was already involved in similar business and that a vote seems trivial. Asked why we wouldn't stick with the procedure of having the Committee review prior to approval.</p> <p>Setel responded that Board training starts very soon and that the Board may not begin training until the Rules are approved. Noted that she is asking for an expedited process because of that.</p> <p>Harrison asked why the Board cannot start its training without Rules in place. Setel answered that she had been informed that they cannot as the training will be focused on the Rules established.</p> <p>Wilson second to Setel's motion.</p> <p>Nickoloff stated to clarify, that it sounds like the Board wants to pass the rules tonight and if there are things that they wish to change in the future it can be sent to the Rules Committee.</p> <p>Harrison noted that it is based in Robert's Rules of Order, which the Board already follows.</p> <p>Setel replied that she isn't talking about the procedural rules, but the Investigative Rules. Wilson agreed that is what she was referring to as well. Asked if those were the Rules to which Harrison was referring to and if he wanted further discussion on the matter. Harrison replied that he did not.</p> <p>Wilson noted the Motion on the floor by Setel, with a second from herself, to adopt the Rules of Order with the understanding that they can be amended in the future by the Rules Committee. Motion carries 5-2 with vote of 'nay' from Harrison and Tucker.</p> <p>Wilson explained that the next item on the agenda is a proposal to direct the Executive director to receive input on a new Committee and meeting structure from stakeholders,</p>	<p align="center">5-2</p>	<p align="center">7:13PM</p>
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	<p>revise, and send to the Rules Committee for review and approval.</p> <p>Tucker asked who the stakeholders in the proposal are. Dwyer Reynolds replied that the Board are the stakeholders and that because one of the features of the new structure would be the involvement of the PABA, they are stakeholders as well.</p> <p>Setel noted that she is concerned that there is not more of a participatory stakeholder process in this and also that she is interested in knowing how other accountability boards structure themselves prior to making any commitments.</p> <p>Tucker asked if Setel's feelings on the matter could be reflected in the vote. Wilson added that she would like to see talks with the PABA happen before the Board agrees on a format.</p> <p>Brown asked if the proposal on the floor could be restated. Wilson replied that the proposal is to direct the Executive Director to receive input on a new Committee and meeting structure from stakeholders, to revise the proposal, and then submit to the Rules Committee for review and approval. Tucker included that stakeholders include the Board themselves and the PABA.</p> <p>Harrison stated that a lot of this is based on the prediction that the Board will be overwhelmed with cases in a few months. Noted that it might be reasonable to determine the impact that case review will have on the Board's time by having Staff put together a mock report and let the Board play with it.</p> <p>Harvey commented that he was initially in favor of Setel's comments to hear from other boards but after hearing the proposal repeated that he feels comfortable in going to a vote.</p> <p>Tucker noted for clarity that the Board is currently discussing agenda item 6, bullet 2.</p> <p>Dwyer Reynolds explained that the proposal is to direct him and staff to research and collaborate to determine next steps and that what he has heard from Board members sounds like the kind of research that he would like to do before coming back to the Board.</p>		
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	<p>Nickoloff agreed with Harrison’s comments regarding having staff come up with a mock investigation so that the Board may get a sense of the time commitments and the practice.</p> <p>Harrison stated that most Boards function quite effectively with a straightforward Committee structure and some kind of Executive Committee and explained that he is concerned that they are anticipating problems and responding to them when they have not done the simple, straightforward thing first.</p> <p>Wilson noted that the most important thing that the Board must do right now is tackle Board structure. Agreed with Setel and Harrison that structure must be determined with regard to Committee work at this time.</p> <p>Setel asked if what was being voted on was a process to develop something, not on the model that was given. Dwyer Reynolds confirmed.</p> <p>Harrison asked if they were voting to send the proposal to the Rules Committee. Wilson answered that the vote is to develop a process and then submit once it has been properly researched.</p> <p>Harrison asked who would do the developing. Dwyer Reynolds replied that the intention is to have a process by which the Board, staff, and maybe PABA members can work on this, possibly through work sessions, but the process must be started.</p> <p>Motion by Wilson to direct the Executive Director to receive input on a new Committee and meeting structure from stakeholders, to revise proposal, and then submit to the Rules Committee for review and approval. All Members in favor, motion carried unanimously.</p> <p>Wilson presented next item; a proposal to submit recommended legislation to City Council regarding the hiring of PAB staff with law enforcement ties. Wilson further noted that this issue is continuously coming up, and that the Jobs Committee may attest to that.</p> <p>Harrison stated that the Board currently has a plea, and examples given of why this is an inconvenient rule, but they have not adequately heard why the rule exists in the first place.</p>	<p>7-0</p>	<p>7:26PM</p>
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	<p>Added that Ted Forsyth was involved in writing the rule and he has not heard his opinion on why it was included.</p> <p>Wilson responded that she had spoken with Ted Forsyth and Barbara Lacker-Ware and that they would be willing to speak to the Board about it.</p> <p>Motion by Harrison to table the proposal for further discussion. Second by Tucker.</p> <p>Setel asked if Ted Forsyth and Barbara Lacker-Ware opposed the change to the legislation. Wilson answered that they did not. Setel stated that if they do not oppose then she felt no need to further consult with them.</p> <p>Tucker and Harrison disagreed with Setel noting that they would like to understand Ted and Barbara’s rationale as to why they do not mind the change.</p> <p>Wilson summarized that Ted and Barbara meant it to apply to the Board itself.</p> <p>Tucker stated that she wishes to have them articulate exactly their rationale. Wilson replied that she can reach out.</p> <p>Brown also stated that she believes that there must have been a reason for the rule originally and that she would like to hear from them as well.</p> <p>Wilson reiterated the Motion by Harrison to table the proposal for further discussion, with a second by Tucker. Motion carried unanimously.</p> <p>Wilson presented next agenda item; a proposal to have the Executive Director meet with Corporation Counsel to discuss on-scene access to officer involved shootings; a continuing discussion from the staff report.</p> <p>Harrison noted that he does not want the access to be limited to shootings, would like access to scenes where other forms of violence might occur. Would prefer to refer to it as “officer involved malfeasance”.</p> <p>Dwyer Reynolds explained that one of the issues is that when there is an officer involved incident that some people believe</p>	<p align="center">7-0</p>	<p align="center">7:33PM</p>
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	<p>that PAB does not need to be there because there isn't necessarily evidence of wrongdoing. Therefore, the term used must be broader than malfeasance.</p> <p>Setel asked if the conversation was about PAB being at the scene or if it is about the role of Corporation Counsel making determination about the PAB given their conflict of interest. Asked if PAB would continue having to have conversations with Corporation Counsel due to this underlying structural problem. Also noted confusion as the language of PAB's legislation states that PAB has certain access to information from RPD and why Corporation Counsel is involved.</p> <p>Dwyer Reynolds replied that staff asked for the Law Department's input, not their approval, and noted that their input has been helpful because it has served to identify some areas for improvement. Further explained that the Board is responsible for adopting the rules and doing our work. Dwyer Reynolds noted that the issue here is that Corporation Counsel is also the legal advisor to RPD, which is a conflict of interest, and that RPD will not do anything unless instructed by the Law Department. PAB could file lawsuits, but it has been established that the Board does not want to take that adversarial approach and would prefer to have conversations about the matter. Dwyer Reynolds explained that when staff spoke with the Law Department, they explained the sequence they wished to take regarding the rules; bringing them to the Board first, then to the Law Department for their input, then to RPD and that this sequence was agreed upon in winter of last year.</p> <p>With regards to Harrison's point on the language and use of 'shooting', Brown asked Dwyer Reynolds what he suggests the terminology be. Dwyer Reynolds responded that the Rules get into this a little bit with the idea of 'Incidents' as a term to be used as it can cover many different things. Dwyer Reynolds presented the City Charter Section 18 and explained that "based on information and belief that an investigation is warranted, the Board shall have the power to conduct an investigation even in the absence of a civilian complaint." Which means that PAB may launch investigations any situation where it is deemed appropriate.</p> <p>Brown asked if a vote was needed on the substitution of the language. Dwyer Reynolds responded no. Brown explained her</p>		
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	<p>intention to re-read all of the Charter and PAB materials to ensure that she understands these things. Dwyer Reynolds added that there is so much more knowledge that the Board must have in order to operate and that training will alleviate that, and also noted that any information that the Board feels it needs, he can get for them.</p> <p>With regard to the term ‘incident’ Wilson stated that in medicine the term would be ‘otherwise specified’, which is a special designation used in situations where they haven’t reached a proper diagnosis. Noted that she likes the term as it encompasses gray areas, since PAB will not know what the scene is like until they are there.</p> <p>Wilson restated the proposal; to direct the Executive Director to meet with Corporation Counsel to discuss on-scene access to Officer involved incidents. Second by Tucker. Motion carried unanimously.</p> <p>Wilson presented the next item; a proposal to hire consultants. Wilson explained that she had put forth a consultant that the Board may adjourn to Executive Session to discuss further. Also noted that Harrison has requested that research be done on potential consultants and she believes that should be considered.</p> <p>Setel proposed a motion that instead of going into Executive Session that the Board clearly determine what they want trainers to do and then have a specific period of time that the Board can ask for candidates to submit proposals with their resumes. Second by Tucker.</p> <p>Harrison stated that he did a bit of research last week when this came up again and found that Saint John Fischer (SJF) and the University of Rochester (U of R) both have programs to provide the kinds of services that were being discussed. Added that he knows James Norman, former head of Actions for A Better Community (ABC), is associated with both programs. Suggested that the Board ask Norman to present to the Board on the different programs.</p> <p>Wilson agreed that she would be willing to hear a presentation by Norman, also that she would like to make sure that the Board understands or talks about what they want to accomplish with whomever they decide to bring on. Noted that</p>	<p>7-0</p>	<p>7:47PM</p>
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	<p>she has spoken with Setel regarding a consultant that Setel wanted to submit who has experience working with governmental boards. Also noted that there are community members who would like to serve on this board who have no knowledge of how governmental boards work, so the information must be made easily accessible. A person should not need a degree in order to serve on the PAB. Stated that there must be training and development around Board members.</p> <p>Wilson asked for Setel’s proposal to be restated. Tucker explained that her Setel’s proposal is similar to the original that was proposed. Wilson disagreed noting that Setel has requested to amend it and asked if the original proposal needed to be voted on to proceed. Harrison replied that they did not.</p> <p>Motion by Setel to determine the Boards needs from trainers and host a time period for candidates to submit resumes and proposals. Second by Tucker. Motion carried unanimously.</p> <p>Wilson explained the final proposal which is to conduct additional research and noted that she does not feel it needs to be voted on.</p> <p>Motion by Harrison to invite James Norman to speak to the Board about the training programs available in Rochester. Second by Wilson.</p> <p>Setel stated that she was not clear on what Norman’s expertise is and asked if it was in working with governmental boards. Harrison responded that he is not reaching out to Norman for his specific expertise but to find out about the programs that he is associated with at SJF and U of R.</p> <p>Setel asked what the programs were. Harrison answered that one is the CCE and the other is at the Warner School at the U of R. Noted that Norman was the head of ABC for 20+ years.</p> <p>Motion by Harrison to invite James Norman to speak to the Board about the training programs available in Rochester. Second by Wilson. Motion carried 6-0-1 with abstention by Setel.</p>	<p>7-0</p> <p>6-0-1</p>	<p>7:53PM</p> <p>7:57PM</p>
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	<p>Wilson mentioned that there are likely more people that Board members would like to hear from and encouraged members to submit names so that they can be scheduled.</p> <p>Wilson announced that Board members Perez and McIntosh have resigned. Thanked them both for their service and contributions to the Board. Explained that there are now 2 openings on the Board as they begin to hear cases and urged members of the public to apply. (Please contact the Police Accountability Board Alliance (PABA) if interested.)</p>		
<p>End of meeting</p>	<p>Chair Wilson moved to adjourn meeting. All members in favor. Meeting adjourned.</p>	<p>7-0</p>	<p>8:00PM</p>