



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Det. M. Poon</i> 4 Sept 2019		GENERAL MANAGER ACTION REQ'D:		
DATE: 7/15/2019		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Mag Tatum Dept: District Secretary <i>Mag Tatum</i> Signature/Date: 8-30-19	General Counsel <i>MB</i> 9/3/19	Controller/Treasurer <i>J. White</i> 9/3/19 []	District Secretary <i>J. Williams</i> 8-30-19 []	BARC <i>R. Williams</i> 9/3/19 []
Status: Routed		Date Created: 7/15/2019		

BART Police Citizen Review Board (BPCRB) Bylaws

PURPOSE:

To request Board approval of the BART Police Citizen Review Board Bylaws.

BACKGROUND:

The BART Police Citizen Review Board (BPCRB) was established by the BART Board of Directors (Board) to increase visibility for the public into the delivery of BART police services, to provide community participation in the review and establishment of BART Police Department (BPD) policies, procedures, practices and initiatives, and to receive citizen complaints and allegations of misconduct by BPD employees.

DISCUSSION:

BPCRB Bylaws are to provide effective functions as defined in the Citizen Oversight Model (no provisions in these Bylaws are intended to conflict with the Oversight Model). The BPCRB members independently promulgated and adopted Bylaws on November 14, 2011. The BPCRB subsequently amended the Bylaws on January 9, 2012; March 19, 2012; June 10, 2013; July 8, 2013; March 10, 2014; September 14, 2015; and February 12, 2018 at regular BPCRB meetings. The most current iteration of the Bylaws is attached (Attachment No. 1). The Bylaws have never been approved by the Board. In general, as the authorizing body, the Board approves the official BPCRB Bylaws.

In order to ensure that BART Police Citizen Review Board Bylaws are transparent, it is prudent to convey and confer all BPCRB Bylaws to the full Board for approval and adoption.

Staff has recommended revision of Article XII, Amendments of Bylaws, to be consistent with the scope of authority granted to other subordinate legislative bodies (Transit Security Advisory Committee, and BART Accessibility Task Force). The BPCRB accepted this revision at its August 12, 2019, meeting.

After the first official adoption of BPCRB Bylaws, the Bylaws may be amended or repealed at any time by a majority vote of the BART Board after consultation with, or by recommendation of, the BPCRB.

BPCRB Bylaws Article Amendments are as follows:

BPCRB Meeting Dates							
Meeting	1/9/12	3/19/12	6/10/13	7/8/13	3/10/14	9/14/15	2/12/18
Dates							
Bylaw Article Amendments and Sections							
Bylaw Article Amendments	Article III	Article IV	Article V	Article IV	Article V	Article XI	Article XI
	Section 1	Section 1b	Section 4	Section 1	Section 1	Section 1	Section(s) 1,2,3

(Details of each amendment are shown on Attachment No. 2, Redlines)

FISCAL IMPACT:

None.

ALTERNATIVES:

To further amend the Bylaws or to not adopt the Bylaws as presented.

RECOMMENDATION:

On the behalf of BART Police Citizen Review Board, it is recommended that the Board adopt the following motion.

MOTION:

The Board of Directors approve the attached BART Police Citizen Review Board Bylaws.

BART CITIZEN REVIEW BOARD

BYLAWS – FINAL DRAFT

Definitions

Capitalized terms in these Bylaws are defined as follows:

1. *Oversight Model* – The *BART CITIZEN OVERSIGHT MODEL* adopted by the BART Board of Directors as of January 13, 2011.
2. CRB - The Citizens Board defined and described in Chapter 2 of the Oversight Model.
3. Brown Act – The Ralph M. Brown Act of 1953, California Govt. Code §§ 54950-54960.5
4. Independent Auditor – The Independent Auditor defined and described in Chapter 1 of the Oversight Model.
5. Appointed Member – All duly appointed members of the CRB, regardless of whether they participate in a vote
6. Voting Member – The Appointed Members who cast an affirmative or negative vote (not an abstention) on a particular issue or election.

Introduction

The CRB will carry out its functions as defined in the *Oversight Model* and these Bylaws. No provisions in these Bylaws are intended to be in conflict with the *Oversight Model* or Brown Act. In the event of conflicts between these Bylaws and the *Oversight Model*, the Oversight Model or Brown Act shall take precedence.

Article I. Purposes

1. To increase visibility for the public into the delivery of BART police services.
2. To provide community participation in the development and review of BART Police Department policies, procedures, practices and initiatives.
3. To receive citizen complaints or allegations regarding BART Police personnel.
4. To review and report on the results of the Independent Auditor's investigations into allegations of misconduct by BART Police and recommendations for corrective actions, including discipline.

BART Citizen Review Board Bylaws. Originally adopted: 11/14/11. Amended: 1/9/12; 3/19/12; 6/10/13; 7/8/13; 3/10/14; 9/14/15; 2-12-18. **Proposed 9/12/19 Board of Directors meeting.**

Article II. Functions

As defined in the *Oversight Model*, the functions of the CRB are:

1. To receive citizen complaints or allegations concerning BART Police personnel.
2. To review recommendations by the Independent Auditor for corrective actions.
3. To develop and review recommendations for BART Police Department procedures, practices, and training.
4. To meet periodically with the BART Police Managers Association (BPMA) and BART Police Officers Association (BPOA).
5. To develop and maintain a program of community outreach.
6. To file quarterly reports with the Office of the District Secretary.
7. To review and comment on drafts of the annual report prepared by the Independent Auditor.
8. To monitor the implementation of recommendations made in periodic studies of the BART Police Department.

Article III. Members

1. Appointment of Members

CRB Members are appointed by the procedures as outlined in the *Oversight Model*, Chapters 2-02 and 2-03.

2. Vacancies

Within ten (10) days of a vacancy occurring on the CRB, the Chairperson shall notify the BART Board of Directors and request a new appointment be made as soon as possible.

3. Recommendation for Removal of a Member

a. A recommendation can be made to the BART Board of Directors to remove a Member of the CRB pursuant to Chapter 2-04 of the *Oversight Model*. This recommendation shall be made by motion and approved by two thirds of the Appointed Members at a regular meeting for which the proposed recommendation is an item on the agenda published before such meeting.

b. The Chair (or the Vice Chair, if the member to be removed is the Chair) shall promptly convey that recommendation, and the reasons therefore, to the Secretary of BART and the President of the BART Board of Directors.

Article IV. Officers

1. Election of officers

a. A chair and vice chair shall be elected as described below for a term ending on the election of their successors. After serving for one year, an officer shall serve in an interim capacity until they are reelected or their successor is elected. No person shall serve in the same office for more than two consecutive elected terms, or for more than one elected term immediately after assuming (by succession or special election) a predecessor's office as a result of a vacancy in the office .

b. The annual election of CRB officers shall occur during the regular meeting in the month of July. At that meeting of election, if no candidate for an office receives a majority of the Voting Members' votes on the first ballot, the candidate(s) with the fewest votes shall be eliminated and another vote taken. This process will continue until a candidate receives the support of a majority of Voting Members. The results of each round of balloting shall be publicly announced and the vote recorded in the minutes.

2. Duties of Officers

The chairperson, or in her/his absence, the vice chairperson, or in the absence of both, a Chair *pro tem* elected by a plurality of the Voting Members at each meeting, performs the following duties:

- a. Presides at all meetings of the CRB and ensures that the work of the committee is accomplished.
- b. Appoints committee members.
- c. Approves the agenda prior to distribution.
- d. Signs correspondence on behalf of the CRB.
- e. Represents the CRB before the BART Board of Directors.
- f. Approves and signs CRB reports to the BART Board of Directors.
- g. Schedule periodic meetings with BPMA & BPOA
- h. Performs other duties necessary or customary to the office.

3. Removal and Replacement of Officers

a. Two thirds of the Appointed Members may remove a Chair or Vice- Chair from office by a motion at a regular meeting for which the proposed removal is an item on the agenda published before such meeting. Such an action, and the reasons therefore, shall be promptly conveyed to the Secretary of BART and the President of the BART Board of Directors.

b. A vacancy in the office of Chair shall be filled by the Vice Chair for the remainder of the Chair's original term. A vacancy in the office of Vice Chair shall be filled by an election in the manner described above at the next regular meeting of the CRB, with the newly elected Vice Chair to serve the remainder of the previous Vice Chair's term.

Article V. Meetings

1. The CRB shall meet at the BART Board of Directors Room at the Kaiser Center on the second Monday of each month at 4:00 p.m. or at such other places, dates, or times designated by the Chair. Such meetings shall be designated regular monthly meetings. Other meetings called by the Chairperson or the Vice Chairperson and meetings scheduled for a time or place other than the regular meetings shall be designated special meetings.
2. Meetings shall terminate two hours after the scheduled starting time. The time can be extended for separate periods of up to 30 minutes by a vote of the majority of the Appointed Members.
3. The Chair, or the Vice Chair, in the absence of the chair, (a) may, at his or her discretion, and (b) shall, at the request of a majority of the Appointed Members, call a special meeting. Such meetings shall be subject to the Brown Act's rules regarding notice and quorum.
4. Any Member of the CRB can send the Chair, or the Vice Chair in the absence of the Chair, a request to include an item on the agenda for the next regular meeting. The Chair, or the Vice Chair in the absence of the Chair, shall include all such items that are submitted no less than 14 days prior to the day of the next regular meeting.

Article VI. Parliamentary Authority

The rules contained in Alice Sturgis' *Standard Rules of Parliamentary Procedure*, 4th edition, shall govern the CRB in all cases to which they are applicable and in which they are not inconsistent with these Bylaws, any special rules of order, the Brown Act, the *Oversight Model*, or other BART policies or procedures. Proxy voting is not allowed.

BART Citizen Review Board Bylaws. Originally adopted: 11/14/11. Amended: 1/9/12; 3/19/12; 6/10/13; 7/8/13; 3/10/14; 9/14/15; 2-12-18. **Proposed 9/12/19 Board of Directors meeting.**

Article VII. Reports and Recommendations

1. A quarterly report will be presented to the BART Board of Directors and the public.
2. The CRB may make reports, findings and recommendations to the Independent Auditor, the Chief of Police, the General Manager or the BART Board of Directors as appropriate.
 - a. Findings and recommendations regarding discipline, corrective action or dismissal, shall only be made to the Chief of Police and the General Manager
3. When evaluating reports and investigation findings regarding allegations of misconduct CRB members shall make their decisions using the standard of clear and convincing evidence. The following are possible dispositions for allegations of misconduct:
 - a. Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code section 832.5 (c).
 - b. Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.
 - c. Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.
 - d. Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available.
4. After determining that the allegation(s) of misconduct are sustained and when making recommendations for discipline, corrective action or dismissal, the CRB should consider the seriousness of the misconduct and any mitigating or aggravating circumstances such as the employee's years of service, past performance and disciplinary history.

Article VIII. Administrative Staff

The CRB shall utilize staff supplied as necessary by the Independent Auditor to carry out its functions as defined in the *Oversight Model*, Chapter 2-07 (D, I, and J).

Article IX. Committees

1. Standing and special committees may be established by the Chair or by a majority of Voting Members at a meeting.
2. The Chairperson shall appoint the members of each committee, and the members of each committee may elect a chair.

Article X. Media Contacts

1. When responding to media or other public inquiries, members of the CRB shall comply with all state and federal laws requiring confidentiality of law enforcement records, information and confidential personnel records and respect the privacy of all individuals involved. (BART Citizen Oversight Model Chapter 2-08)
2. Unless they are speaking in support of a recommendation or position that has been approved by a majority of the CRB, members should make it clear in any public statements that they are speaking as individuals and not as representatives of the entire board.
3. Whether a CRB member does or does not choose to respond to a media inquiry, the member should also consider referring the inquiry to the Chair/Vice-Chair, the Independent Auditor and the BART Public Affairs Office.

Article XI. Attendance at NACOLE Conference

The BART Board of Directors has budgeted/allocated funds for members of the Citizen Review Board to attend the National Association for Citizen Oversight of Law Enforcement (NACOLE) annual conference. Full and/or partial reimbursement for CRB member expenses will be based on BART standard administrative procedures and the following guidelines.

1. As soon as practical after the conference registration has been announced, the CRB chairperson will then poll the members to determine which members would like to attend. The chairperson shall determine the equal distribution of available funds (\$3,500 for FY 15/16) for any and all members who express interest and register for the conference.
2. The budgeted/allocated funds shall be used for reimbursement costs associated with conference attendance (including conference fees, transportation from the Bay Area to the conference, accommodations at the conference's designated hotel, or other similar hotel, and customary per diem

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for meals).

Article XII. Amendments of Bylaws

1. A proposal to amend these Bylaws shall be submitted in writing by any Member in time to be included in the agenda package for the next regular meeting of the CRB.
2. A motion to accept the amendment can be made by any Member at that meeting and shall be adopted if approved by two thirds of the Appointed Members **shall be forwarded to the BART Board of Directors for adoption.**

BART Police Citizen Review Board (BPCRB) Bylaw Amendments

(REDLINES FOR 2012,2013, 2014,2015, AND 2018)

Amendments from the BPCRB Meeting on June 9, 2012:

Article III. Members, Section 2:

Within ten (10) days of a vacancy occurring on the CRB, the Chairperson shall notify the BART Board of Directors and request a new appointment be made as soon as possible. ~~A newly appointed Member shall serve for the remainder of the term of the member whose position was vacant.~~

Amendments from the BPCRB Meeting on March 19, 2012:

Article IV. Officers, Section 1b:

The annual election of CRB officers shall occur during the regular meeting in the month of ~~March~~ July. At that meeting of election, if no candidate for an office receives a majority of the Voting Members' votes on the first ballot, the candidate(s) with the fewest votes shall be eliminated and another vote taken. This process will continue until a candidate receives the support of a majority of Voting Members. The results of each round of balloting shall be publicly announced and the vote recorded in the minutes.

Amendments from the BPCRB Meeting on June 10, 2013:

Article V. Meetings, New Section 4:

Any Member of the CRB can send the Chair, or the Vice Chair in the absence of the Chair, a request to include an item on the agenda for the next regular meeting. The Chair, or the Vice Chair in the absence of the Chair, shall include all such items that are submitted no less than 14 days prior to the day of the next regular meeting.

Amendments from the BPCRB Meeting on July 8, 2013:

Article IV. Officers, Section 1:

A chair and vice chair shall be elected as described below for a term ending on the election of their successors. After serving for one year, an officer shall serve in an interim capacity until they are reelected or their successor is elected. No person shall serve ~~as an officer in the same office~~ for more than two consecutive elected terms, or for more than one elected term immediately after assuming (by succession or special election) a predecessor's office as a result of a vacancy in the office.

Amendments from the BPCRB Meeting on March 10, 2014:

Article V. Meeting, Section 1

The CRB shall meet at the BART Board of Directors Room at the Kaiser Center on the second Monday of each month at ~~4:00 p.m. 9:00 a.m. (odd months) and 4:00 p.m. (even months)~~, or at such other places, dates, or times designated by the Chair. Such meetings shall be designated regular monthly meetings. Other meetings called by the Chairperson or the Vice Chairperson and meetings scheduled for a time or place other than the regular meetings shall be designated special meetings.

Amendments from the BPCRB Meeting on September 14, 2015:

Article XI. Attendance at NACOLE Conference, Section 1

The BART Board of Directors has budgeted/allocated funds for members of the Citizen Review Board to attend the National Association for Citizen ~~Oversite~~ Oversight of Law Enforcement (NACOLE) annual conference. Full and/or partial reimbursement for CRB member expenses will be based on BART standard administrative procedures and the following guidelines.

As soon as practical after the conference registration has been announced, the CRB chairperson shall make a good faith estimate of the total reimbursable costs (including conference fees, transportation from the Bay Area to the conference, accommodations at the conference's designated hotel, or other similar hotel, and customary per diem for meals) for one member to attend the conference and then, based on the available funds (\$3,500 for FY 15/16), determine the number of members who could attend with full reimbursement and how much would be left for one member to attend with partial reimbursement.

Amendments from the BPCRB Meeting on February 12, 2018:

Article XI. Attendance at NACOLE Conference, Section 1, 2, and 3

1. As soon as practical after the conference registration has been announced, the CRB chairperson ~~shall make a good faith estimate of the total reimbursable costs (including conference fees, transportation from the Bay Area to the conference, accommodations at the conference's designated hotel, or other similar hotel, and customary per diem for meals) for one member to attend the conference and then, based on the available funds (\$3,500 for FY 15/16), determine the number of members who could attend with full reimbursement and how much would be left for one member to attend with partial reimbursement.~~ will then poll the members to determine which members would like to attend. The chairperson shall determine the equal distribution of available funds (\$3,500 for FY 15/16) for any and all members who express interest and register for the conference.
2. ~~The chairperson shall inform the members of the number who could attend and the level of reimbursement. The chairperson will then poll the members to determine which members would like to attend. The budgeted/allocated funds shall be used for reimbursement costs associated with conference attendance (including conference fees, transportation from the Bay Area to the conference, accommodations at the conference's designated hotel, or other similar hotel, and customary per diem for meals).~~
3. ~~If there is insufficient funding for all interested members, attendance will be determined as follows:~~
 - a. ~~Those who have never attended with district cost reimbursement will be given first category priority.~~
 - b. ~~Those who have previously attended one time with partial district cost reimbursement will be given second category priority.~~

- ~~c. Those who have previously attended one time with full district cost reimbursement will be given third category priority.~~
- ~~d. Those who have attended more than one time with district cost reimbursement will be placed in subsequent category priority groups based on the number of times they have attended with similar cost reimbursement.~~
- ~~e. If there is insufficient funding for all interested members within a category to attend, the chairperson shall draw names by lots from each category and in priority order until the available full and partially funded attendees have been selected.~~
- ~~f. Members who are not selected using this process may attend the conference at their own expense.~~