

## KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

### BOARD OF DIRECTORS MEETING MINUTES

April 25, 2019

President Eileen Nottoli opened the public comment period for the closed session at 6:17. Directors Deppe, Hacaj, and Sherris-Watt were present. There were no public comment and the Board adjourned to closed session. Director Modavi joined during the closed session.

President Eileen Nottoli opened the regular meeting at 7:30. Directors Deppe, Hacaj, Modavi, and Sherris-Watt were present. President Nottoli stated that there was nothing to report out from closed session.

#### Public Comments

Reverend Nate Klug welcomed all to the Arlington Church. Emily Olman and her son noted that there is a leash law at Kensington Park but there are many dogs at the park that are off leash. She asked that the law be enforced and Director Sherris-Watt asked that it be put on a future agenda. Andy Gutierrez asked that the Board keep residents to time limits.

#### Policy and Procedure Manual Section 3000

Genevieve Ng, the District's attorney with Sloan Sakai, introduced Section 3000. The current manual did not address key provisions of state and federal employment law, some provisions pertained to sworn staff and some to non-sworn staff, and it was unclear which provisions were adopted by the Board. She reviewed the current policies and adapted them with current legal requirements and she also adopted some templates to Kensington. She categorized the policies into the following areas: (1) legal requirements such as anti-discrimination, anti-sexual harassment, and required sick leave; (2) summaries of law for the convenience of employees such as time off to vote or access to personnel records; (3) best practices which are not required by law but are considered a shared understanding of expectations such as telephone use and drug policy, and (4) basic, fundamental employment practices such as hours of work, overtime leave, and holidays.

Vice-President Hacaj noted some apparent indenting issue with Section 3150.1 on page 11; Ms. Ng explained that the paragraphs beginning "If you..." are part of an entire section that would be given to employees as a handout. Vice-President Hacaj noted that "require" in section 3180.3 on page 19 should be "requires". She also requested clarification on cannabis in Section 3220.4.1 insofar as it is legal in California; Ms. Ng noted that cannabis was still illegal under federal law. Director Sherris-Watt noted that there are different rules for sworn and non-sworn employees. Vice-President Hacaj suggested that the text of Section 3210.7 on page 29 should not be in bold face. Director Modavi noted that Section 3180.7 on searches was quite broad and did not make reference to reasonable suspicion. He asked for clarification of the reference to management in Section 3000.1 on page 1 and was concerned about whether the Board would lose any rights under Section 3160.3 to abolish or amend staff positions in 3170.1 whereas the General Manager would be allowed to create and delete positions. Director Sherris-Watt explained that the word "amend" would allow the Board to create and eliminate positions. Director Modavi was concerned that the sick leave policy, at will status, and limits on providing a reference for departing employees would be a hindrance to finding employees. He noted that Section 3120.4.3 on page 5 allows for the General Manager to have access to personnel files and wanted to know if that would include police files. President Nottoli answered that Section 3000.1 states that these policies are limited to non-sworn employees. General Counsel Ann Danforth answered that random people would not be allowed access to attorney-client privileged documents in response to Director Modavi's question. General Manager responded that the draft policies were prepared as part of the agreement with Bob Dies' firm. As to

whether Rickey Hull would be subject to these policies, Ms. Ng replied that he would in his position of Chief of Police but would be subject to police policies upon his return as Master Sergeant.

Linda Lipscomb said she noted a number of grammatical mistakes. She also thought that references to clients and customers were inappropriate to a government agency. Ann Danforth noted that there has been a growing tendency for government agencies to use such terms. Ms. Lipscomb said she had a lot more questions and suggested that a citizens committee work on the draft.

Dave Spath asked why the District would have employees, excluding the General Manager and Chief of Police, as at will employees instead of as civil servants. Ms. Ng responded that the current policies designated employees as at will.

#### General Manager and Board Comments

Tony Constantouros noted that there will be a Finance Committee meeting on May 2 to discuss the 2018/19 financial audit and another on May 21 to discuss the draft budget in advance of our Board meeting on May 23.

Director Modavi noted that Government Code section 53060.7 provides that there are only five special districts with authority to provide police services.

Interim Chief of Police Rickey Hull reported that there was a vehicle hit and run and the police found the responsible party. He also reported that there was one potential candidate in background and he anticipated that it would be completed in a matter of weeks.

#### Collection of Park Assessment

General Manager Constantouros introduced the annual process to collect assessments for the park and that three resolutions must be passed with an address correction on Resolution 2019-04 because the Board is now meeting at Arlington Church instead of the Community Center. There were no public or Board comments on the resolutions.

*Adoption of Resolution 2019-02.* President Nottoli moved to adopt Resolution 2019-02: A Resolution of the Board of Directors of the Kensington Police Protection and Community Services District Initiating Proceedings for the Levy and Collection of Assessments for the Kensington Park Assessment District for Fiscal Year 2019/20. Vice-President Hacaj seconded. Directors Deppe, Hacaj, Modavi, Nottoli, and Sherris-Watt voted in favor of the resolution. The vote was 5-0.

*Adoption of Resolution 2019-03.* President Nottoli moved to adopt Resolution 2019-03: A Resolution of the Board of Directors of the Kensington Police Protection and Community Services District Approving the Annual Report for the Kensington Park Assessment District for Fiscal Year 2019/20. Director Modavi seconded. Directors Deppe, Hacaj, Modavi, Nottoli, and Sherris-Watt voted in favor of the resolution. The vote was 5-0.

*Adoption of Resolution 2019-42.* President Nottoli moved to adopt Resolution 2019-04: A Resolution of the Board of Directors of the Kensington Police Protection and Community Services District Declaring its Intention to Levy and Collect Assessments for the Kensington Park Assessment District for Fiscal Year 2019/20. Vice-President Hacaj seconded. Directors Deppe, Hacaj, Modavi, Nottoli, and Sherris-Watt voted in favor of the resolution. The vote was 5-0.

### Evaluation of Alternatives for Delivering Police Services

General Manager Constantouros noted that the study of policing services began in 2009 and continued with the Ad Hoc Committee in 2016. In 2017, the Board awarded a contract to Matrix Consulting to conduct a study. He noted the May 24, 2018 community meeting to report the Phase 1 findings and October 4, 2018 meeting to report the Phase 2 findings as well as prior community meetings and outreach. There are currently three alternatives: Alternative I would continue our in-house operation with recommended changes, Alternative II would request a proposal to contract for specific services, and Alternative III would be a full contract.

Regardless of which Alternative would be chosen, he announced his plan to recruit and hire an experienced chief of police as an Interim COP as of July 1, 2019 who would assist in implementing the recommendations. He noted that our low pay scale and history of the department posed challenges in hiring a retired officer. He announced that our current Interim Chief of Police would be made a Captain.

Matrix had several specific recommendations for Alternate I including hiring a permanent Chief of Police. This Chief would then work with the General Manager to develop a Kensington Policing Strategic Plan and Financial Plan with public input. Once these plans were in place, a performance management plan would be developed to measure performance and improve training and to determine which best practices would be applicable. The Chief would also review the dispatch queue time, cost-saving strategies, and options to increase revenue. He noted that at present, we do not have supervision at all times which is an officer safety issue.

Mr. Constantouros summarized Alternate II which would involve contracting for some services such as night shift patrol, crime scene investigation, records management, executive management, and recruitment while keeping our current department.

For Alternative III, the District would ask several nearby law enforcement agencies including the county to respond to a request to provide police services. He anticipated that agencies might take 120-150 days to respond because they would need to go through their own internal process. He further noted there were some complex financial considerations that the agencies would need to go through. He noted that the Kensington Property Owners Association suggested contacting the agencies again to determine interest but noted that interest can change at any time. He said that issuing the RFP would not obligate the District to enter into a contract.

Barbara Peterson said she has received excellent service over the years from the police and feels a depth of gratitude to the officers. Barbara Hendrickson asked that taxes not be increased and was concerned that housing prices would be lowered if we did not retain our police. In her experience as a real estate agent, buyers were interested in Kensington because of the police. Celia Concus responded that in her experience as a real estate agent that buyers had not asked about the police but rather asked about the views and schools. Paul Dorroh asked that any RFP refer to his ordinance. Khoi Dang said that he bought his house because of the police. Karl Kruger favored having a police department. Linda Lipscomb urged that the District staff up and end instability within the police department. Gail Feldman noted that many problems were inherent to a small department, and the Kensington Property Owners Association (KPOA) supported more training and community policing. She said that Kensington has always pegged salaries with other smaller jurisdictions and suggested lower benefits in exchange for higher salaries and did not recommend an additional tax to support the police. Greg Collis asked that the District spend more on police instead of funding Matrix to prepare an RFP. Mark Fell said he wanted to keep the police. Ryan Anderson said he appreciated the participants at the meeting and looking at options was not undermining safety. He also supported efforts to gather data to make a more informed decision. He

further noted that many of his peers could not attend meetings because of work and family commitments so there may be a bias in the view of the community if only the view of those attending meetings was taken into account. Andrew Gutierrez supported getting an RFP because of the dysfunctional police department and success with the fire contract. Deanna Collis said that splitting the Chief of Police and General Manager position was good and more time was needed to show improvements. She thought the Kensington police were friendly and did not think the El Cerrito police were very friendly. John Gaccione said that there is not a majority to keep the police and supported the RFP. David Bergen supported the RFP and that the cost was not excessive. Maria McCauley said that after the effort for years that it makes sense to complete the process and has had positive experiences with the police. Jim Watt wondered about the purpose of hiring another Interim COP especially one who would be restricted to 960 hours. He also wondered why this was not on the agenda and Mr. Constantouros replied that hiring was within his authority and the experienced COP would assist in advising on the process. Kevin Fitzsimmons cautioned about vaguely worded RFPs. Vida Dorroh said that the Board had hired a competent General Manager and thought he should again contact Albany and El Cerrito prior to approving an RFP.

Director Modavi complained that the recent Matrix invoice had not been paid and questioned the large legal bills and thought that the way the information was presented could be misleading. He cautioned that the experience with the Fire District contract indicated escalating costs. He presented his evaluation of six years of data; he also went on a ride with police and had concerns about the mobile computers used by the police. Director Deppe noted that the issue of whether to contract had been lingering for years and that it was time to get real data from the agencies to make a decision. He noted that jurisdictions that contract for police services often have lower costs than those with their own department. Director Sherris-Watt thanked Mr. Constantouros for his thorough report and appreciated the comments made by Gail Feldman on behalf of the Property Owners Association supported moving on the RFP. Vice-President Hacaj noted that some problems are a result of trying to manage a small department. She asked Richard Brady if it would be problematic to have an open ended RFP. He replied that in his experience, an agency could respond to an open ended RFP and it was frequently done. Vice-President Hacaj noted that she would not risk public safety by considering contracting and that decision on whether to contract would not be a fast process so there would be time for evaluation. Mr. Brady said that there could be control over future costs by identifying in the contract the acceptable escalators. He also said that both sides have negotiating power because the larger entity can lower their administrative costs and the smaller entity can get needed services that it could not otherwise get.

*Motion to Extend Time.* At 9:45, President Nottoli moved that to extend the meeting to 10:30 and Vice-President Hacaj seconded the motion. Directors Deppe, Modavi, Hacaj, Nottoli and Sherris-Watt voted in favor and the motion passed 5-0.

President Nottoli asked if the RFP could be updated in the future at minimal cost should we not get any responses. Mr. Brady said that the cost includes their evaluating any responses. President Nottoli noted the value of reconnecting with agencies prior to initiating an RFP but that the agencies could respond differently over any given time period. She said that it was important to obtain costs on contracting for services and noted that Kensington had been contracting for dispatch for years.

*Alternates II and III.* President Nottoli moved that the Board authorize Matrix at a cost not to exceed \$12,000 to prepare a Request for Proposal for Specific Police Functions Alternate II and Full Contract Alternate III and Vice President Hacaj seconded the motion. Director Sherris-Watt amended the motion to appoint the General Manager, Chief of Police and Vice-President Hacaj and Director Deppe to work with Matrix; President Nottoli seconded

the amendment. Directors Deppe, Hacaj, Nottoli and Sherris-Watt voted in favor of the motion and Director Modavi voted against the motion. The motion passed 4-1.

*Alternate I.* Directors Sherris-Watt moved that the Board authorize the General Manager to consider implementing options to increase staff, reserve officers, and training. Vice-President Hacaj seconded the motion. Directors Deppe, Modavi, Hacaj, Nottoli and Sherris-Watt voted in favor. The motion passed by a vote of 5-0.

#### Policies 4000

Mr. Constantouros noted some changes in the new draft policy manual compared to the current manual. For example, the current policy manual has three standing committees (Finance, Solid Waste, and Emergency Preparedness) whereas the new manual has just the Finance Committee. He noted changes to put items on the agenda and going to action minutes. Ann Danforth clarified that the agenda calls out two sections, 4000 and 4010, but 4010 is included within 4000. She also noted that in the drafting and redrafting that some cross references were not updated and these will be corrected. In addition, because the draft is based on the CSDA model, there are some numbering differences compared to the current manual. The proposed new Sections 3000 and 4000 will not completely replace the entire current manual, there are some temporary changes that are needed. Thus, existing section 3000 has some provisions which will need to be incorporated into the new manual. To avoid confusion as new Section 3000 is adopted, current Section 3000 will be renumbered as new Section 5000 on a temporary basis.

Celia Concus read a statement by Mabry Benson who objected to action minutes because it was important to have arguments for and against an item and it was difficult to find statements in the audio. Celia Concus asked if the manual would govern or be advisory. President Nottoli replied that it depends on the language in the provision; if the provision says must or shall, it is mandatory; if it says may, it is permissible. David Spath was concerned about dropping the Emergency Preparedness Committee as a standing committee. He noted that the Fire District will be setting up such a committee and thought that there should be coordination with the Fire District. He did not see express reference to at will employment in the current manual and asked about the difference between Temporary and Optional Committees. Director Sherris-Watt explained that the current policy had committees which had not been active in years past and it was better to limit five coordinators to areas without the District's jurisdiction. There is a proposed emergency services coordinator who would be working with the community relations and the special district coordinators. She further explained that Optional Committees would not have a time limit whereas Temporary Committees would have a time limit. Ann Danforth clarified that California law assumes at will employment absent express civil service or contract provisions, neither of which have applied to the two staff positions. Large agencies have civil service positions but that is not the norm with small agencies. Director Sherris-Watt noted that Section 4140.1.3 on page 11 should say 60 months instead of 36 months and "Summary of staff reports" in 4140.1.5 should be deleted as the original staff report should be relied upon and not the summary. Vice-President Hacaj suggested that the Board President should be allowed to appoint other coordinators. She also said that Emergency Services was the heart and soul of the General Manager and Chief of Police responsibilities. She further noted that emergency preparedness is a staff function and that the Board has oversight responsibility. President Nottoli suggested that the coordinators be set as examples except for the Solid Waste Coordinator because of the MOU with the County. Vice-President Hacaj suggested that the manual keep as mandatory coordinators the Solid Waste, Special District, and Park and Recreation Coordinators and provide that the President appoint as

appropriate other coordinators. Vice-President Hacaj was concerned about the President setting the frequency of Finance Committee meetings in the event that the Board President was not a member of that committee. President Nottoli suggested that the manual be changed to provide that the Chair of the Finance Committee set the meeting frequency. Director Modavi was concerned that Section 4170.3.5 could be a slippery slope to secret meeting if minutes were not required for workshops. Director Sherris-Watt replied that the workshop would be subject to the notice requirements of the Brown Act and that if any action was taken or direction given to staff that minutes would be required. Mr. Constantouros said that it is common practice for agencies to have workshops. President Nottoli noted that the draft language had come from CSDA. Vice-President Hacaj noted that Section 4120.4.2 on page 9 states that members of the public should address the Board and does not allow the public to address staff. Ms. Danforth said that it was intentional because it is appropriate for the Board to decide whether to address staff.

*Motion to Extend Meeting to 10:45.* At 10:20, Vice-President Hacaj voted to extend the time to 10:45 and Director Sherris-Watt seconded. Directors Deppe, Modavi, Hacaj, Nottoli and Sherris-Watt voted in favor so the motion passed by a vote of 5-0.

Director Sherris-Watt suggested that the Board direct staff to prepare a draft for a second reading with the noted changes. Director Modavi suggested that a second reading was needed. Ms. Danforth explained that the suggested changes were minor and did not require a second reading. Had there been significant changes, it would require a second reading. President Nottoli asked District General Counsel to prepare a resolution adopting Sections 3000 and 4000, rescinding the current Sections 4000 and 5000, and renumber current Section 3000 as new 5000.

*Motion to Adjourn.* Vice-President Hacaj voted to adjourn the meeting and Director Sherris-Watt seconded. Directors Deppe, Modavi, Hacaj, Nottoli and Sherris-Watt voted in favor. The motion passed by a vote of 5-0 and the meeting ended at 1);44.

Prepared by: Eileen Nottoli

Date approved by the Board: May 23, 2019

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Tony Constantouros, General Manager

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Eileen Nottoli, Board President