

Meeting Minutes - Local Control Advisory Board Meeting - Wednesday, 12/15/21

Members in Attendance:

Dana Moore, Ray Kelly, Jim Shea, Mark Washington, Ashiah Parker, Caylin Young, Tyler Adamson, Robert Cherry, Del. Stephanie Smith, Lydia Walther Rodriguez, Michael Huber (Mayor's Designee), Nikki Thompson (Council President's Designee), Tre Murphy, Andy Smullian (Police Commissioner's Designee), Tyler Salley, Shantay Jackson

Staff: Natasha Mehu, Lisa Walden, Stefanie Mavronis, Adam Abadir

Members Absent:

Lisa Robinson, Senator Cory McCray

Meeting Started: 5:33PM

I. Welcome and Introductions

- Board Members introduced themselves.
- Dana Moore shares information about upcoming sessions:
 - Presentation from Ken Thompson - Jan 5, 5:30PM
 - Presentation from Bob Cename - Financial Presentations
- Ashiah Parker: Will go to the audience Q&A today at the end of the meeting. Will also have a public session in the future to acknowledge needs and wants of the public.

II. Motion to Approve Last Meeting's Minutes

- Robert Cherry moved. Seconded by Ray Kelly.
- Vote to Approve Minutes: Unanimous.

III. Presentation from the Law Department: City Solicitor Jim Shea on Legal Implications of Bringing Local Control to Baltimore

- People have historically worried because of the Doctrine of Sovereign Immunity.
 - In State Court, under the Local Tort Claims Act, we will not have the Doctrine of Sovereign Immunity to protect the City itself.
 - In Federal Court, Sovereign Immunity is embodied in the 11th Amendment.
- The State and Local Government Tort Claims Acts are all capped. Any individual

- suit can collect no more than \$400,000.
- In Federal Court, the cases are not capped and are unlimited. Exposure there can be very high.
 - If the Sovereign Immunity Doctrine in State Court is lost when BPD becomes a City agency, that's a problem.
 - Short answer to that worry: It is already as bad as it can be under the current situation with the City nominally a State agency.
 - Why? While Sovereign Immunity and the 11th Amendment protect the State and Arms of the State, it does not protect against an individual suit against an individual officer.
 - What Happens Now: Instead of suing the City, the plaintiff simply sues the officer. Under State and Federal Law, the City has to pay for those suits. Plaintiffs can get all the relief they are entitled to. It doesn't matter that the agency isn't named as a defendant.
 - Changing from a City to State agency will not change that a bit from a liability point of view.
 - Another set of reasons that are simply duplicative. There is not much of a change:
 - Even without Sovereign Immunity, statute itself provides for local government immunity. Not quite as broad, but still broad.
 - Also, there is Immunity for Municipal Officials. Not as broad as Sovereign Immunity, but it still covers tort claims and provides protection.
 - The big money is in the Federal Constitutional Claims, where damages are not capped. Here, the 11th Amendment is what would provide the defense. However, the City is not entitled to 11th Amendment protection here because BPD is not an Arm of the State.
 - Again, no different moving from State to City agency.
 - The obligation to pay for suits against individual officers in Federal Court arises from the collective bargaining agreement.
 - For those who say just amend collective bargaining agreement: The Police Union is very good. If it gives up one economic benefit, such as protection or indemnity against lawsuit, it's going to get an equal economic benefit somewhere else.
 - Solicitor Shea shares slide. "Takeaway: Reduce civil liability by improving BPD." This is something Commissioner Harrison, aided by BPD, including under the consent decree, is committed to in order to make this a better police department

with respect to constitutional policing.

- If it is a City agency with more control vested in the City, we will be able to control our own destiny in that regard more readily than we are today.
- Chair Dana Moore asks what are the benefits of taking over the police department.
 - Solicitor Shea: That is what we make of it.
- Chair Moore asks about analysis of State v. Federal court. Do we have a breakdown of the percentage of cases in each?
 - Solicitor Shea: The numbers of cases won't tell the story. Where the overwhelming amount of liability is in Federal Court. Recently had a \$15 million Federal suit. That doesn't include interest or other fees.
- Chair opens the floor to questions from the Advisory Board.
 - Bob Cherry: The agreement will end on June 30, 2024. A 3-year MOU that the Mayor and FOP signed. If it were going to be changed, it wouldn't be possible for three years.
 - Bob Cherry: Where was the difference between Solicitor's testimony and the Department of General Services analysis, which suggested higher damage awards if the City had local control?
 - a) Solicitor Shea: Familiar with that opinion. It was issued some years ago, when this bill came up when Judge Davis was Solicitor. At that time, Judge Davis disagreed with it. They did not delve into individual officers' indemnification. We are working from the very same numbers, in terms of cases and verdicts resulting from those cases.
 - Tyler Salley: How much have we paid out for these kinds of cases?
 - a) Solicitor Shea: That question is often asked in consent decree hearings. We are well into the 8-figures. We are probably getting pretty close to 9-figures. There is a lot of money that's been spent, which is a very good reason why the police department and FOP are working so hard, with the Judge's urging with consent decree, to get BPD on the right footing.
- Chair Moore: Discussing changes to the FOP bargaining agreement is not within the scope of this Committee.
- Ray Kelly: Important to lift up the fact that we're in the midst of a reform process. The way we decrease liability is by getting BPD right. This has been the back and forth argument for 10 years.

IV. Upcoming Meetings and Important Dates

- Wednesday, January 5 - 5:30pm. Session with Ken Thompson on Importance of Consent Decree, Work That It's Accomplished, and History.
 - Questions can be submitted in advance to Dana Moore and Ashiah Parker
- Moving forward, Fridays at 10AM: January 14, January 28, February 11, February 25
 - January 14 - 10AM. Bob Cenname will discuss the financial impact of local control.
 - Tentatively: January 28 - 10AM. Presentation from St. Louis, who has been through the local control process.
 - Subsequent topics to be determined.
- Chair is inviting Membership to share their recommendations for jurisdictions we should talk to about their experience, including benefits, burdens, challenges, and early warning signs for us.
- By February 11, the plan is to break into committees, as we are getting close to deadlines.
 - We want Members to identify the work they are interested in working on.
- Lydia Walther Rodriguez: Suggestion to issue another report to start public engagement sooner.
 - Chair Moore: Documents and minutes are posted online. Public engagement will start in February.

Meeting Adjourned: 6:15PM