

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD REGULAR MEETING

Wednesday, September 8, 2021
7:00 P.M.

Board Members:

ISMAIL RAMSEY, CHAIR
MICHAEL CHANG, VICE-CHAIR
KITTY CALAVITA

REGINA HARRIS
JULIE LEFTWICH
DEBORAH LEVINE

NATHAN MIZELL
JOHN MOORE III
CHERYL OWENS

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting of the City of Berkeley Police Accountability Board will be conducted exclusively through teleconference and Zoom videoconference and there will not be a physical meeting location available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82237902987>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial 1 669 900 6833 and enter Meeting ID 822 3790 2987. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

1. CALL TO ORDER & ROLL CALL (5 minutes)
2. APPROVAL OF AGENDA (5 minutes)
3. PUBLIC COMMENT (TBD)

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

4. **APPROVAL OF MINUTES** (2 minutes)
Special meeting of August 4, 2021.
5. **CHAIR'S REPORT** (5 minutes)
Update from Board member Mizell on Reimagining Public Safety Task Force
6. **DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT** (10 minutes)
Introduction of alternate Board member; status of complaints; NACOLE Conference; other items.
7. **CHIEF OF POLICE'S REPORT** (10 minutes)
Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.
8. **SUBCOMMITTEE REPORTS (discussion and action)**
 - a. Fair & Impartial Policing Implementation – appointment of public member/s. (10 minutes)
 - b. Director Search – update. (5 minutes)
9. **OLD BUSINESS (discussion and action)**
 - a. i.) Reaffirm Board's August 4, 2021 action to send Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department to the City Council for approval, subject modification or withdrawal based on City Attorney's analysis. (From Regulations Subcommittee)
 - ii.) Hear and consider analysis from City Attorney's Office regarding lawful changes to hearing process to correct imbalances, and revise Interim Regulations and accompanying report to Council as necessary.
(30 minutes)
 - b. Consider forming subcommittee for outreach activities. (5 minutes)
10. **NEW BUSINESS (discussion and action)**
 - a. Presentations from representatives of the Human Resources Department and City Attorney's Office regarding the meet-and-confer process with labor unions. (20 minutes)
From: Interim Director
 - b. Training: Police Department organization; roles and responsibilities of Divisions and staff; chain of command. (1 hour)
 - c. Discuss and adopt permanent Standing Rules for the Board's conduct of business. (30 minutes)
From: Interim Director

11. PUBLIC COMMENT (TBD)

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter:

12. CONSIDER REVISED RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2487 (20 minutes)

End of Closed Session

13. ANNOUNCEMENT OF CLOSED SESSION ACTION

14. ADJOURNMENT

Communications Disclaimer

Communications to the Police Accountability Board, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the Board Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the Board Secretary for further information.

 Communication Access Information (A.R. 1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

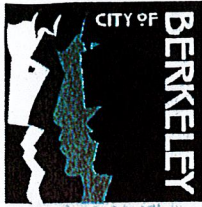
SB 343 Disclaimer

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

Contact the Director of Police Accountability (Board Secretary) at dpa@cityofberkeley.info

**POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
SEPTEMBER 8, 2021**

<u>MINUTES</u>	
August 4, 2021 Special Meeting Draft Minutes, attaching Interim Regulations approved by the PAB.	Page 7
<u>AGENDA-RELATED</u>	
Item 8. PAB Subcommittees List updated 8-23-21.	Page 33
Item 8. PAB Temporary Standing Rules (Adopted July 7, 2021).	Page 35
Item 10.c. – PRC Standing Rules Annotated for PAB to consider in adopting its Standing Rules.	Page 37
<u>COMMUNICATIONS</u>	
Police Accountability Board Regular Meeting Schedule, September – December 2021.	Page 43
8-19-21 Memo from the Chair to the Mayor and Council Members re Requiring vaccinations for Police Department employees.	Page 45
8-11-21 Article from Berkeleyside: Berkeley moves toward COVID-19 vaccine mandate for city workers.	Page 47
Nixle – August 4, 2021 Community message regarding the recent fatal collision on Ashby Avenue from BPD.	Page 49
Announcement forwarded by the Office of the Director of Police Accountability re Statewide Meeting on Racial and Identity Profiling on Sept. 1, 2021.	Page 51
8-24-21 Article from www.nytimes.com re “Presumed Guilty, How the Supreme Court Empowered the Police and Subverted Civil Rights.”	Page 57



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING
MINUTES
(draft)

Wednesday, August 4, 2021
6:30 P.M.

No physical location; meeting held exclusively through videoconference and teleconference.

1. CALL TO ORDER & ROLL CALL BY TEMPORARY CHAIR ISMAIL RAMSEY AT 6:32 P.M.

Present: Board Member Ismail Ramsey (Temporary Chair)
Board Member Kitty Calavita
Board Member Michael Chang
Board Member Regina Harris
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Nathan Mizell
Board Member John Moore
Board Member Cheryl Owens

Absent: None

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability; Byron Norris, DPA Investigator

BPD Staff: Lt. Rob Rittenhouse, Lt. Dan Montgomery

2. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Calavita/Leftwich) Motion Carried by general consent

3. PUBLIC COMMENT

There were 10 speakers (including two later speakers).

4. APPROVAL OF MINUTES

Motion to approve Special Meeting Minutes of July 7, 2021

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Website: www.cityofberkeley.info/dpa Email: dpa@cityofberkeley.info

Moved/Second (Leftwich/Calavita) **Motion Carried by general consent**

Motion to suspend the rules to allow Ms. Law to make public comment.

Moved/Second (Calavita/Moore) **Motion Carried by general consent**

Motion to suspend the rules to allow Ms. Kaplan to make public comment.

Moved/Second (Calavita/Moore) **Motion Carried by general consent**

5. CHAIR'S REPORT

Temporary Chair Ramsey reported:

-- The Mayor's Working Group on Fair & Impartial Policing continues to meet with the City Manager and Police Chief re implementation of recommendations the City adopted. Upcoming meeting to discuss evidence-based policing.

-- Board Member Mizell reported on the Reimagining Public Safety Task Force: Last meeting July 29; two main items presented 1) survey and focus group results; 2) draft of alternative response report from NICJR. Next meeting September 9. Moving towards hearing from Task Force members and community groups.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

-- Alternate Board member unavailable tonight and will be introduced at a later date.

-- Four new complaints filed since the last Board meeting. A Caloca appeal was filed in the last Board of Inquiry heard by the Police Review Commission.

-- Board member Owens and I went out for National Night Out last night. Several events we tried going to were canceled or concluded, but managed to do a little bit of outreach.

-- Reminder to Board members if they want to attend any of the NACOLE virtual conference sessions, notify staff by tomorrow and we will register and pay for you. After that, you may still attend but must register yourself and seek reimbursement.

-- Forms were sent to Board members to be eligible for stipends. Will be processed quarterly unless you inform me you desire more frequent payments.

-- Temporary Standing Rules are in this packet. Will agendize permanent Standing Rules for your next meeting.

-- This month is a good time to schedule a ride-along or sit-along in dispatch, as tonight is the only meeting in August and Board members need to start on their 40 hours of training. Contact person is Lt. Dan Montgomery.

-- I'll be on vacation all of next week and Byron Norris will be in charge.

7. CHIEF OF POLICE'S REPORT

Lt. Montgomery reported on behalf of Interim Chief Louis:

-- Dept. has started work on the hate crimes response referral.

-- Dept. put out a public message with more information on the collision on Ashby & Newbury. Investigation continuing and more information forthcoming.

-- Sent out officers to 45 National Night Out events last night.

-- Tomorrow is the Alameda Co. law enforcement memorial honoring fallen officers. Two from Berkeley have lost their lives in the line of duty: Sgt. Jimmie Rutledge (1970) and Ofc. Ronald Tsukamoto (1973).

Lt. Montgomery answered questions from Board members.

8. OLD BUSINESS (discussion and action)

- a. Establish regular meeting schedule for the remainder of 2021.

Motion to adopt the meeting schedule proposed by the Interim Director, with a 7:00 p.m. start time.

Moved/Second (Calavita/Chang) Motion Carried by general consent.

- b. Consider forming subcommittee for outreach activities.

Discussed; continued to the next meeting.

9. ELECTION OF BOARD CHAIRPERSON AND VICE-CHAIRPERSON (discussion and action)

Motion to elect Izzy Ramsey as Chairperson

Moved/Second (Chang/Calavita) Motion Carried by acclamation.

Motion to elect Michael Chang as Vice-Chairperson

Moved/Second (Leftwich/Harris) Motion Carried by acclamation.

10. NEW BUSINESS (discussion and action)

- a. Review scope of work for recruiting team conducting search for permanent Director of Police Accountability, including presentation from Human Resources Director LaTanya Bellow.

By general consent, Board members Moore, Mizell, Levine were appointed to a subcommittee to assist in the Director search position

Motion to suspend the rules to take up Item #10.e. next.

Moved/Second (Ramsey/Leftwich) Motion Carried by general consent

- b. Training: Quasi-judicial duties and obligations of the Board.

Postponed to the next meeting

- c. i.) Approve Interim Regulations for handling complaints against sworn members of the Police Department; and ii) Approve proposed memo to City Attorney for advice on revising complaint procedures to correct imbalances.

i.) Motion to approve the Interim Regulations proposed by the Regulations Subcommittee, as modified tonight [attached to these minutes as Attachment 1], to be sent to the City Council for approval; and if, based on the City Attorney's analysis, the Interim Regulations have to be modified or withdrawn, to take action at the Board's September 8, 2021 meeting.

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: None

ii.) *No action taken on proposed memo, as City Attorney has already begun analyzing.*

- d. Consider forming subcommittee to monitor the Police Department's implementation of recommendations related to fair and impartial policing.

By general consent, the Board formed a subcommittee to monitor the Police Department's implementation of recommendations related to fair and impartial policing.

Chair Ramsey appointed Board members Calavita, Owens, and Ramsey to the subcommittee.

Appointment of public members of the subcommittee was postponed to the next meeting.

- e. Status of COVID-19 vaccinations and related policies for Police Department employees, and possible recommendation that the Department follow state guidelines.

(Heard following Item # 10.a.)

Motion to recommend to the City Council that the same guidelines of the Governor's mandate for vaccinations be applied to all employees of the Police Department, not just those in high-risk congregate settings

Moved/Second (Ramsey/Chang) **Motion Carried**

Ayes: Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: None

11. PUBLIC COMMENT

There were 6 speakers.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter:

12. CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2487

Motion to postpone this item until the next meeting to determine when the criminal case was adjudicated and whether it affects the 120-day deadline.

Moved/Second (Chang/Moore) **Motion Carried**

Ayes: Calavita, Chang, Harris, Leftwich, Levine, Moore, Owens, Ramsey
Noes: Mizell Abstain: None Absent: None

End of Closed Session

13. ANNOUNCEMENT OF CLOSED SESSION ACTION

The above vote was announced.

14. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Leftwich/Moore) **By general consent, the meeting was adjourned at 10:40 p.m.**

Police Accountability Board Office of the Director of Police Accountability

Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II)

Preamble

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

I. GENERAL PROVISIONS

A. Definitions

The following definitions shall apply in these interim regulations:

1. Administrative Closure: Closure of a complaint before a confidential personnel hearing is held.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.

Section I.A.

4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: ~~An aggrieved party~~ A member of the public who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODPA.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

B. Confidentiality

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley Police Department personnel. ODPA staff will likewise have access to

Section I.B.

such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

Section II.A.

II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

A. Initiating a complaint

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. ~~Only an "aggrieved party"ies, as well as eyewitnesses to alleged police misconduct, may file a complaint, except that if no complainant is available to initiate a complaint, and in any case involving a death, 5 Board members may vote to authorize an investigation or take other such action they deem appropriate. Complaints may also be initiated by the Board upon a vote of five Board members to authorize an investigation.~~ (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within ~~180~~ **18090** days of the alleged misconduct, except that the ~~180~~ **18090** days shall be tolled if:
 - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
 - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.
 (PRC Reg. Sec. II.A.2.)
- ~~4. Late filed complaints. Complaints filed between 91 and 180 days of the alleged misconduct must be reviewed by the Police Accountability Board in a closed session meeting. Six Board members must find good cause for the late filing, by clear and convincing evidence, to accept the complaint. A complaint filed after 180 days after the alleged misconduct will not be accepted. (PRC Reg. Sec. II.A.2.a)~~
- ~~5.4.~~ Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be

Section II.A.

submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

6-5. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPa is notified that a complainant or subject officer is represented, then the ODPa shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

B. Mediation

1. Election

- a. ODPa staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPa staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPa staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

C. Complaint investigation

Section II.C.

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:
 - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPa shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPa shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).
 - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPa shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPa staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
 - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)

Section II.C.

- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
 - I. The original Communications Center tapes relevant to the complaint.
 - II. All police reports, records, and documentation, including body-worn camera video.
 - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act¹ ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

D. Pre-hearing complaint disposition.

1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. Request for closure by complainant.

¹ Government Code Sec. 3300 et seq.

Section II.D.1.

- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODPa staff to timely complete its investigation, as set forth in Section II.C.1.

b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a regularly scheduled meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

E. Initial submission and consideration of investigative findings and recommendations.

1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a confidential personnel hearing if the Board requests it. (Art. XVIII, Sec.

Section II.E.

125(18)(i.) This deadline may be extended as provided under Section II.O.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
 - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.”
 - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
 - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
 - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”(PRC Regs., Sec. VIII.B.)
4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
 - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.OM.2.
 - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.(Art. XVIII, Sec. 125(18)(i).)

F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPA has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)

Section II.F.

2. Scheduling hearing. ODPA staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPA staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPA must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPA shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)

Section II.G.

G. Board member impartiality; recusals; challenges

1. Conduct.

- a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
- b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
- c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)

3. Challenges to Hearing Panel member

- a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:
 - i. a familial relationship or close friendship with the complainant or subject officer;
 - ii. witnessing events material to the inquiry;
 - iii. a financial interest in the outcome of the inquiry;
 - iv. a bias for or against the complainant or subject officer.

Section II.G.

b. Procedure

- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
 - ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
 - iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
 - iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
 - v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.
- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.

(PRC Reg. Sec. VI.C., modified.)

H. **Continuance requests; other pre-hearing motions**

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODP staff no later than 14 days before the scheduled hearing date, with an explanation as to why the evidence or

Section II.H.

witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation, expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

I. Hearing procedures

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)
5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)

Section II.I.

~~6. Presentation of findings and recommendations. The Director shall, outside of the presence of the complainant, complainant's representative, and witnesses, present the investigative findings and a recommendation of discipline, if any; and the level of discipline in appropriate cases. (Derived from Art. XVIII, Sec. 125(18)(i).)~~

7.6. Taking testimony at the hearing.

- a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officers and their representatives may be present during their testimony. The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) The complainant or the complainant's representative may ask questions; b) Board members may ask questions; ~~bc)~~ the subject officer or his or her representative may ask questions; ~~ed)~~ Board members may ask follow-up questions. After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7., modified)
- b. ~~The complainant and their representative, and civilian witnesses will each be excused from the hearing room after their testimony or representation is completed. (PRC Reg. Sec. VII.D.8.)~~
- c. The subject officers and any witness officers will be called into the hearing room to testify separately. The complainant and their representative may be present during their testimony. Subject officer representatives may be present for all testimony. Each subject officer may make a statement or choose to rely on the interview statements. Questioning will then proceed as follows: 1. Subject officers' representatives may ask questions. 2. Board members may ask questions. The officer may then be questioned by 2 Board members unless the officer waives this requirement. 3. Complainant or their representatives may ask questions. 4. Board members may ask follow up questions. Each subject officer will be questioned by their representative first, after which the officer may be questioned by 2 Board members, unless the officer waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.
- d. ~~The subject officers and witness officers will each be excused from the hearing room after their testimony is completed. (PRC Reg. Sec. VII.D.9.) All except Board members and staff will then be excused from the hearing room.~~

8.7. Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)

Section II.I.

9-8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)

[Formatting issue. Unable to delete section break without causing additional formatting problems.]

Section II.J.

J. Evidence

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
 - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
 - b. Oral evidence shall be taken only under oath.
 - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
 - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
 - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPa staff will answer Board members' questions on the evidence, points of law, and procedure.
 - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression.
 - g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
 - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

Section II.K.

K. Deliberation and Findings

1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPa staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.OM.2. (Art. XVIII, Sec. 125(18)(m).)
4. Content of findings.
 - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
 - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
 - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation. (NEW)

L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.GE.5.a. above, or from the Hearing Panel under Section II.MK.3.b. above, the Chief of Police shall take one of the following actions
 - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
 - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.

Section II.L.

3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.OM.2. (Art. XVIII, Sec. 125(18)(m).)

M. Time limits; extensions.

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec.(125)(18)(d).)
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days. (Art. XVIII, Sec.125(18)(m).)

III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.

A. Application

1. This Section III applies to complaints that a member of the public files with the Police Department only.

B. Procedure

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)

Section III.B.

3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
 - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
 - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.

(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)

4. If the Director decides that the Board will conduct a review, ODPa staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
 - a. At the meeting, only Review Panel members and ODPa staff will be present. A Duty Command Officer may be present.
 - b. The Review Panel shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
 - c. All action of the Review Panel must be by majority vote.

(NEW. Details not in Charter and no counterpart in PRC procedures.)

5. The Review Panel must, within 45 days of the date the Director accepts an objection:
 - a. Dismiss the complainant's objection; or
 - b. Issue a report agreeing with the Chief's determination; or
 - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)

6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)
7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief,

Section III.B.

and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)

8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).)

IV. INFORMAL COMPLAINTS

- A. An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B. ODPa staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C. Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).
- D. The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

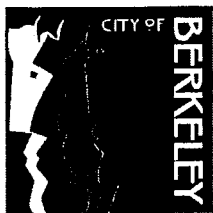
V. AVAILABILITY AND AMENDMENT OF REGULATIONS

- A. These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPa staff shall furnish them to any person requesting a copy.
- B. Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
8-23-21**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21	Calavita Leftwich Owens Chang <u>Public:</u> Kitt Saginor	Chang	Lt. Dan Montgomery
Director Search Formed 8-4-21	Levine Mizell Moore		
Fair & Impartial Policing Implementation Formed 8-4-21	Calavita Moore Owens Ramsey		



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

Police Accountability Board Temporary Standing Rules

(Adopted July 7, 2021)

A. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Board, except that the Board may not adopt rules that conflict with the enabling Charter amendment (Measure II) or the Commissioners' Manual.

B. AGENDA ITEMS – REGULAR MEETINGS

Individual Board members shall submit agenda items to the Board secretary by 12:00 noon one week before the meeting date

C. COMMUNICATIONS

Individual Board members shall submit communications to be included in the agenda packet to the Board secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed via email and/or hard copy at the meeting. If communications are received after 3:00 p.m. on the meeting day, the Board secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

D. MEETING PROCEDURES

1. Items shall be introduced by the Board member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing Board members in rotation to ensure that each Board member has the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of two minutes to speak each time they are given the floor.
2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize Board members in rotation, giving each Board member the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the maker of the motion an additional minute to speak before putting the matter to a vote.
3. A pending motion may be modified by a "friendly amendment"; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.

5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert's Rules of Order.

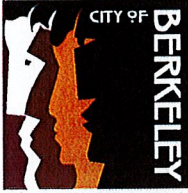
E. PUBLIC COMMENT

1. The Chair, subject to the consent of the Board, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

F. ELECTIONS

1. The election of the Chair will precede the election of the Vice-Chair, and the following nomination and election process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated.
 - c) The nomination is seconded (the nomination fails if there is no second)
 - d) The presiding Chair declares the nomination process closed, when there are no further nominations.
 - e) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - f) Board members pose questions to each candidate.
 - g) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
 - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.
 - iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign "heads" and "tails."
2. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
3. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

###



Annotated for PAB to consider in adopting its Standing Rules

Police Review Commission

Standing Rules

(As of March 11, 2021)

A. PURPOSE

These Standing Rules are established by the Police Review Commission to ensure transparency and efficiency of our operations.

B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Police Review Commission, except that the Commission may not adopt rules that conflict with the enabling Ordinance, Commissioners' Manual, or Regulations for Handling Complaints Against Members of the Police Department.

C. AGENDA ITEMS – REGULAR MEETINGS

1. Individual commissioners shall submit agenda items to the commission secretary by 12:00 noon one week before the meeting date. (This will almost always be a Wednesday.)
2. A commissioner may place only one item on the agenda per meeting, and may not add items to the agenda unless prior agenda items from that commissioner have been cleared. "Cleared" means that the Commission has either completed its consideration of the item, or agreed to move forward with the item by, for instance, forming a subcommittee or considering the issue as a whole commission, in which case the item belongs to the Commission, not the individual commissioner.

D. COMMUNICATIONS

Individual commissioners shall submit communications to be included in the agenda packet to the commission secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed in hard copy at the meeting, and may also be distributed to commissioners via email. If communications are received after 3:00 p.m. on the meeting day, the commission secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

E. MEETING PROCEDURES

1. items shall be introduced by the commission member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing commissioners in rotation to ensure that each commissioner has the opportunity to speak before a commissioner is allowed to speak again.

Commissioners are allowed a maximum of two minutes to speak each time they are given the floor.

2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize commissioners in rotation, giving each commissioner the opportunity to speak before a commissioner is allowed to speak again. Commissioners are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the maker of the motion an additional minute to speak before putting the matter to a vote.
3. A pending motion may be modified by a "friendly amendment"; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall ask the commission secretary to repeat the motion before the action.
5. Guest speakers who are not on the agenda may address the commission only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert's Rules of Order.

F. PUBLIC COMMENT

1. The Chair, subject to the consent of the commission, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

G. POLICY COMPLAINTS AND REVIEWS

1. An inquiry into a policy, when initiated by a civilian filing a policy complaint form, is a "policy complaint."
 - a) The procedures for handling a policy complaint are set forth in Section II.A.4.b. of the Regulations for Handling Complaints Against Members of the Police Department.
 - b) Additionally, a public comment period shall be agendaized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Commissioners may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the commission.
2. A commission-initiated policy review may commence upon a majority vote of the commissioners.

- a) Commissioners shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as whole commission, assigning a commissioner to research the issue, asking staff to investigate or research, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full commission.
- b) The full commission may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action.

H. REGULAR MEETINGS

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The commission shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at the South Berkeley Senior Center and other locations as may be determined by the commission.

I. ELECTIONS

1. Annual elections for PRC Chair and Vice-Chair will be agendized for the second regular meeting in January and, whenever possible, this item will be agendized as the final item under New Business.
2. The election of the Chair will precede the election of the Vice-Chair, and the following nomination and election process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A commissioner nominates another commissioner or him/herself. A commissioner must be present in order to be nominated.
 - c) The nomination is seconded (the nomination fails if there is no second)
 - d) The presiding Chair declares the nomination process closed, when there are no further nominations.
 - e) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - f) Commissioners pose questions to each candidate.
 - g) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
 - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.

- iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The PRC Secretary will assign "heads" and "tails."
3. The PRC Secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the PRC Ordinance, the Chair may appoint members of the public to subcommittees in which they have expressed an interest, subject to approval of the commission. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; and b) present themselves at a commission meeting before or at the time of the appointment and speak on the public record on intent to serve and what they will bring to the subcommittee work and deliberations.
2. Members of the public appointed to subcommittees ~~shall enjoy the same voting rights and privileges on the subcommittee, as that of PRC commissioners appointed to the subcommittee, except that public members~~ may not be selected to be the subcommittee Chair. ~~[Charter amendment Sec. 13(d)says public members are non-voting members.]~~
3. Commission members must constitute a majority of the membership of any subcommittee, but a subcommittee may convene and conduct business even if commissioners are not a majority of subcommittee members present
4. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the commission.
5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the commission, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a commission meeting.

K. MUTUAL AID AGREEMENTS

The commission shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the pacts between the BPD and other law enforcement entities.

L. SUBCOMMITTEE NOTES

Each PRC subcommittee must produce written notes of what occurred at each subcommittee meeting. These notes must be forwarded to the PRC Officer, who will post the notes to the PRC's website

M. ANNUAL REPORT [Charter amendment Sec.16 (b) contains annual reporting requirement]

The commission secretary shall endeavor to present the annual report for the commission's approval no later than June 1 of each year. The Foreword shall be written by the commissioner who served as Chair in the year of the report.

N. FAMILIARITY WITH BERKELEY POLICE DEPARTMENT [Charter Amendment sec. 12 contains extensive training requirements.]

Within the first 6 months of their appointment, newly-appointed commissioners shall endeavor to:

- 1) complete a ride-along with a sworn police officer, and
- 2) meet with Chief of Police and his/her command staff.

O. KNOWLEDGE OF APPLICABLE LAWS AND RULES [See above re training]

Commissioners should be generally knowledgeable of the Police Review Commission's enabling Ordinance (Ordinance No. 4644-N.S.; B.M.C. Chapter 3.32), the Regulations for Handling Complaints Against Members of the Police Department, and these Standing Rules. They should also bring copies of these documents to all commission meetings.

P. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL

1. The PRC regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the PRC desires to bestow additional recognition upon those BPD personnel, or when a commissioner on his or her own initiative wants the PRC to recognize BPD personnel.
2. The PRC may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.
3. The commission secretary shall agendize commendations the PRC receives from the BPD periodically, as received. A commissioner wishing to initiate a commendation or other honor from the PRC shall submit the proposal to the

commission secretary for placement on the PRC agenda in accordance with Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.

4. For the PRC to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
 - a) Exceptional valor, bravery, or heroism;
 - b) Superior handling of a difficult situation;
 - c) An action or performance that is above and beyond typical duties;
 - d) Extraordinary compassion, empathy, or kindness.
5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of commissioners present at the meeting to pass.
6. Following the meeting, the commission secretary shall communicate the PRC's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

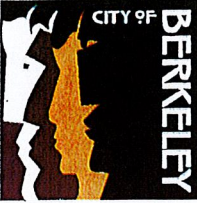
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**Police Accountability Board
Regular Meeting Schedule
September – December 2021**

July							August							September													
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa							
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October							November							December													
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa							
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31																											

	PAB Regular		PAB Special		City Holiday		Council Meetings		VTO
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OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

August 19, 2021

To: Honorable Mayor and Members of the City Council
From: Izzy Ramsey, Chairperson, Police Accountability Board
Re: Requiring vaccinations for Police Department employees

The recent surge of the Delta variant of the COVID-19 virus has raised further concern in the members of the Police Accountability Board about the vaccination rate of police personnel and the attendant safety of police personnel and the public they serve.

In late July, Governor Newsom announced that all state workers and workers in health-care and high-risk congregate settings would be required to either show proof of full vaccination or be tested at least once per week. We understand from the Police Department that preparations to implement that mandate for personnel in the City's jail, a high-risk congregate setting, have begun. Although the department has not collected specific data, we understand that many, but not all, department employees have been vaccinated.

As of the Board's last meeting, August 4, 2021, neither the City Manager nor the Police Chief had mandated vaccinations for police personnel. At the meeting, Human Resources Director LaTanya Bellow reported that City management would be reaching out to the various labor groups to discuss a potential mandatory employee vaccination policy in line with new guidelines issued by the governor or perhaps beyond. News reports since then indicate that the meet-and-confer process over the impacts of such a policy has begun.

Because the health and safety of our Police Department employees and those they interact with is of the utmost importance, at its August 4, 2021 meeting, the Board *unanimously* passed the following motion:

To recommend to the City Council that the same guidelines of the Governor's mandate for vaccinations be applied to all employees of the Police Department, not just those in high-risk congregate settings.

Moved/Second (Ramsey/Chang): Ayes – Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey; Noes – None; Abstentions – None; Absent – None.

cc: Dee Williams-Ridley, City Manager
Jennifer Louis, Interim Chief of Police
LaTanya Bellow, Human Resources Director

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

Berkeleyside

By Nico Savidge, Aug. 11, 2021, 7:07 p.m.

CITY

Berkeley moves toward COVID-19 vaccine mandate for city workers

Berkeley is moving to become the latest Bay Area city with a mandate that its workers get vaccinated against COVID-19.

City Manager Dee Williams-Ridley wrote in a message to employees Wednesday afternoon that the city is meeting with labor groups to discuss a policy that would require all workers to be fully vaccinated by Oct. 15.

Officials contacted the unions representing city workers last week to start “meet and confer” discussions about the mandate, Williams-Ridley wrote, and “to ensure that we proactively address employee concerns regarding a vaccination policy.”

“All of us at the City of Berkeley will be safer in the workplace if we are vaccinated,” she wrote.

Our Health Officer recommends that employers use all the tools they have available to increase [#COVID19](#) vaccinations in the workplace — something we're planning to model as a City by mandating vaccination of all City employees.

— City of Berkeley (@CityofBerkeley) August 11, 2021

The requirement would come with limited exemptions for workers with certain medical conditions or religious beliefs, city spokesman Matthai Chakko said.

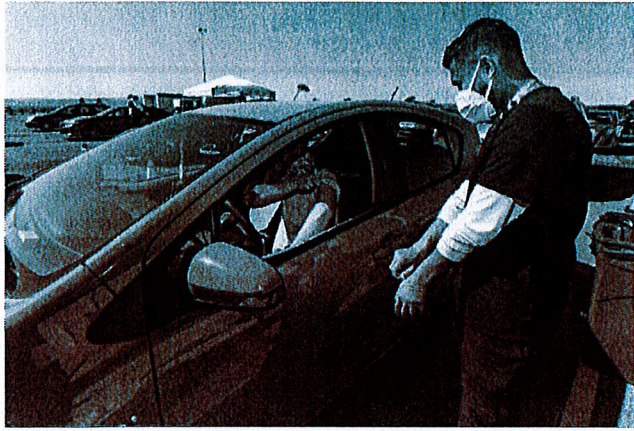
That represents a stricter policy than [the one Mayor Jesse Arreguin called for last week](#), which would have allowed unvaccinated city employees to receive regular COVID-19 testing instead. [San Jose](#) and

[Walnut Creek](#) have followed that track, announcing requirements that allow employees to get tested in lieu of vaccination, and Gov. Gavin Newsom has announced similar policies for [state employees](#) and [teachers throughout California](#). [San Francisco](#) has instituted a mandate that all of its city employees be vaccinated within 10 weeks of one of the vaccines [receiving full federal approval](#), although workers in certain high-risk settings must get their shots sooner.

In her message to workers, Williams-Ridley encouraged those who are still unvaccinated to begin planning now for which shot regimen they will take so they will be fully protected by the proposed Oct. 15 deadline.

Workers will have until early September to receive their first dose of the Pfizer or Moderna COVID vaccines, which take five and six weeks, respectively, to reach full effectiveness. The single-dose Johnson and Johnson vaccine takes full effect two weeks after receiving a shot.

The city is hosting a vaccination clinic in the parking lot behind City Hall on Thursday, between 8:30 a.m. and 4 p.m. You can [book an appointment at the site through Carbon Health](#), or walk up to receive a shot.



Golden Gate Fields vaccination site. Photo: Kelly Sullivan

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Full Notification

Berkeley Police Department

Wednesday August 4th, 2021 :: 01:58 p.m. PDT

[English](#)

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Community

Community message regarding the recent fatal collision on Ashby Avenue Message Expired

We recognize there has been significant community concern surrounding the recent fatal traffic collision on Ashby Avenue at Newbury Street, where a woman lost her life, and another was injured. Because of these concerns and the seriousness of this collision, the Berkeley Police Department would like to take a moment to provide our community with additional information about the investigation.

This remains an active investigation and therefore there are some details we are unable to share at this time. However, our hope is this information will provide our community with a better understanding of the usual investigative procedures around fatal traffic collisions as well as specific actions that occurred that evening.

On the night of July 26th, emergency personnel were responding to an unrelated collision that occurred in the area of Telegraph Avenue and Ashby Avenue. While on their way to the collision, the Berkeley Police Department began to receive multiple calls about the collision on Ashby Avenue at Newbury Street. In response, some officers were diverted to this second more serious Ashby Avenue and Newbury Street collision. Additional emergency personnel were also summoned to assist.

Because of the severity of the collision on Ashby Avenue and Newbury Street, the Department requested (called-in from home) members of the [Department's Fatal Accident Investigation Team \(FAIT\)](#). The FAIT team is comprised of personnel with additional/advanced training in traffic collisions, investigations, and evidence collection.

While investigating the series of events surrounding the collision, investigators contacted the people involved in the incident as well as witnesses in the area. Investigators also searched the area for any video surveillance cameras that may have captured the incident. These investigative steps are standard in an incident of this type.

As has been previously reported, the driver involved in the collision drove to a location where they felt safe and called 911 to report the incident. Officers contacted and spoke with the driver, who cooperated with their investigation. The driver was evaluated for drug and alcohol impairment— which included administration of Field Sobriety Tests (FSTs) and a Preliminary Alcohol Screening (PAS) test. As a result of the evaluation, officers did not observe any objective symptoms of impairment. The driver's vehicle was also towed and securely stored for further investigation, which is also standard procedure during this type of investigation.

Since that time, investigators have consulted with the [California Highway Patrol](#) (to examine the vehicle), the Coroner's Office (to determine the cause of death), the [District Attorney's Office](#) (for investigative guidance) and members of the City's [Vision Zero Task Force](#) (to ascertain if there are some intersection design

More Messages

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recommendations that may reduce the potential for collisions in the future).

The Department understands the need for answers about this tragic incident and we are committed to seeking those answers. As is standard with all law enforcement agencies, the Berkeley Police Department must rely on the evidence we collect during the course of an investigation to determine the cause of a collision and/or what crimes were committed during an incident. It is important for us to conduct a thorough and deliberate investigation, which ensures all investigate steps are completed and all evidence has been recovered.

We would like to thank you for your continued patience and support as we conduct our investigation. We intend to provide updated information about this incident as soon as it becomes available.

Case 2021-00033409

Address/Location
[Berkeley Police Department](#)
2100 Martin Luther King Jr Way
Berkeley, CA 94704

Contact
Emergency: 9-1-1
Non-emergencies: 510-981-5900

Message and data rates may apply. Message frequency varies. [Terms](#) and [privacy](#).

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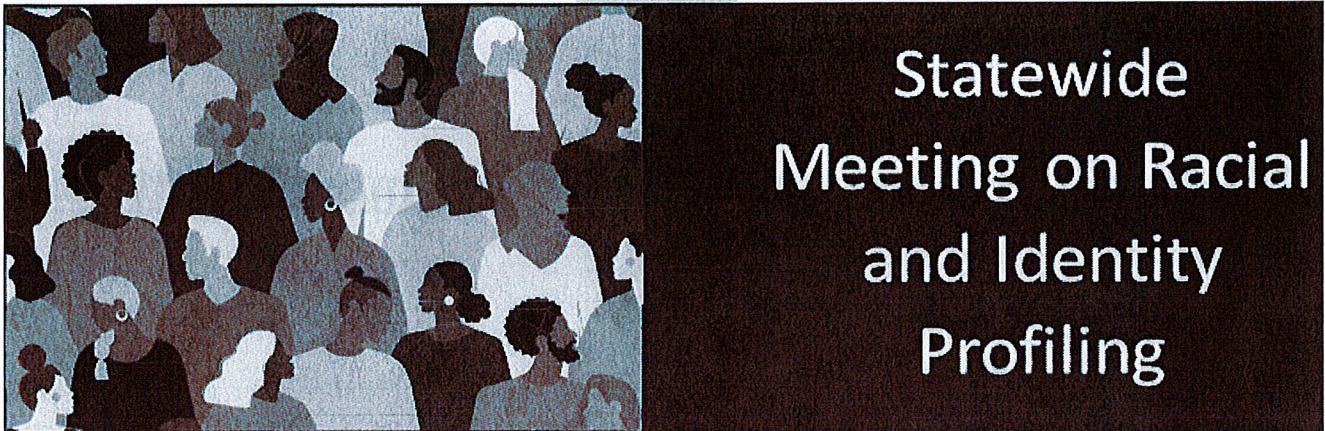
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Lee, Katherine

From: Office of the Director of Police Accountability
Sent: Tuesday, August 31, 2021 3:24 PM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: Statewide Meeting on Racial and Identity Profiling

From: AB953 <AB953@doj.ca.gov>
Sent: Tuesday, August 31, 2021 3:19 PM
To: AB953 <AB953@doj.ca.gov>
Subject: Statewide Meeting on Racial and Identity Profiling

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.



[a continuación este mensaje se repite en español]

September 1, 2021

**Eliminating racial and identity profiling in law
enforcement
requires everyone's participation!**

RIPA Board Meeting: 3:00 p.m. – 5:15 p.m.

**DOJ Public Hearing about Proposed Amendments to
the RIPA Regulations:**

6:00 p.m. – 8:00 p.m.

These meetings will be hosted by videoconference via Blue Jeans. You can join the meetings by clicking on these links:

RIPA Board Meeting:

[Join Meeting](#)

(Join from computer or phone)

Or call:

(408) 317-9254

PIN 440 300 327

DOJ Public Hearing about Proposed Amendments to the RIPA Regulations:

[Join Meeting](#)

(Join from computer or phone)

Or call:

(408) 317-9254

PIN 564 571 798

The Racial and Identity Profiling Advisory Board

Will discuss:

- **Proposed Amendments to the RIPA Stop Data Regulations**

- **Board Recommendations to the DOJ Regarding Regulations**

Documents for discussion at the meeting can be found here:

<https://oag.ca.gov/system/files/media/ripa-meeting-materials-090121.pdf>

<https://oag.ca.gov/ab953/regulations#hearings>

To subscribe to the AB 953/RIPA Board Mailing List, please visit

<https://oag.ca.gov/subscribe>



Reunión Estatal sobre Perfiles Raciales y de Identidad

1 de septiembre de 2021

¡Se requiere la participación de todes para eliminar los perfiles raciales y de identidad en las fuerzas policiales!

Reunión del Gabinete RIPA: 3:00 p.m. – 5:15 p.m.

**Audiencia Pública del Departamento de Justicia sobre Enmiendas Propuestas a los Reglamentos de RIPA:
6:00 p.m. – 8:00 p.m.**

Estas reuniones se llevarán a cabo por videoconferencia por Blue Jeans. Puede unirse a las reuniones a través de los siguientes enlaces:

Reunión del Gabinete RIPA:

Unirse a Reunión

(por computadora o celular)

o llamar:

(408) 317-9254

Número de Reunión 440 300 327

Audiencia Pública del Departamento de Justicia sobre Enmiendas Propuestas a los Reglamentos de RIPA:

Unirse a Reunión

(por computadora o celular)

o llamar:

(408) 317-9254

Número de Reunión: 564 571 798

El Gabinete de Asesores sobre Perfiles Raciales y de Identidad

Discutirá acerca de:

- **Propuestas de Enmiendas a los Reglamentos de Datos sobre Detenciones de RIPA**
- **Recomendaciones del Gabinete al Departamento de Justicia sobre los Reglamentos**

En los siguientes enlaces se podrán encontrar los documentos que serán revisados durante la reunión:

<https://oag.ca.gov/system/files/media/ripa-meeting-materials-090121.pdf>

<https://oag.ca.gov/ab953/regulations#hearings>

Para subscribirse a la lista de correos del Gabinete (AB 953), favor de visitar <https://oag.ca.gov/subscribe>

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<https://www.nytimes.com/2021/08/24/books/review/erwin-chemerinsky-presumed-guilty.html?smid=em-share>

By Melvin I. Urofsky

- Aug. 24, 2021

PRESUMED GUILTY

How the Supreme Court Empowered the Police and Subverted Civil Rights

By Erwin Chemerinsky

In the mid-1980s, several scholars — including myself — published analyses of the Supreme Court under Chief Justice Warren Burger, comparing it with the preceding Earl Warren era, and nearly all of us concluded that there had not been much of a jurisprudential change. The consensus was summed up in the subtitle of one book, “The Counter-Revolution That Wasn’t.” After reading “Presumed Guilty,” Erwin Chemerinsky’s stunning indictment of the Burger court, and of the Rehnquist and Roberts courts that followed, all of us would have to make major revisions if there were ever to be new editions.

As anyone teaching constitutional law or history can tell you, very few cases came before the Supreme Court prior to 1953 involving the Fourth, Fifth and Sixth Amendments to the Constitution, the ones that provide protections for people accused of crimes. In 1833, the Supreme Court had held that the Bill of Rights did not apply to the states, but starting in the 1920s, the court interpreted the due process clause of the 14th Amendment to “incorporate” the protections of the Bill of Rights and apply them to the states as well as the federal government. The criminal clauses were among the last to be adopted, and nearly all the major cases came during the years that Earl Warren presided over the court (1953-69).

The Warren court is clearly the hero of Chemerinsky’s tale, in that for the first and only time in our judicial history a majority of the justices cared about the rights of the accused. The court, among other things, adopted the exclusionary rule banning evidence seized without a proper warrant, required states to provide lawyers for defendants who could not afford one and — perhaps most famously — required police to give the “Miranda” warning to those whom they detained.

These decisions caused an uproar among conservatives, and Richard Nixon promised that if elected he would appoint justices who favored law and order and the police rather than the criminals. Nixon got to name four men to the court — Burger, William Rehnquist, Harry Blackmun and Lewis Powell — who, together with Byron White, a Kennedy appointee who was conservative on everything except racial discrimination, formed the majority that, while it never overturned any of the Warren court’s major decisions, began hollowing them out. With the appointments of Reagan, the Bushes and Trump, that process has continued unabated.

Following the death of George Floyd in May 2020, a great public outcry arose against police brutality, especially involving people of color, and demands that police cease using chokeholds, stopping Black men for no seeming reason and shooting dozens of people of color each year. While well known within the Black community, the extent of

this type of behavior shocked many white people, leading them to join protests around the country.

What most people do not know is the extent to which this behavior has been condoned by the judicial system, and here Chemerinsky presents a damning indictment of the Supreme Court. In case after case, the nation's highest tribunal has found that police actions, even when clearly in violation of constitutional prohibitions, are acceptable. The decisions have not only prevented citizens from getting injunctions against future use of such practices as chokeholds, they have also made it almost impossible for those who have been the victims of police brutality to win civil suits seeking compensation. As Chemerinsky declares, the court's record "from 1986 through the present and likely for years to come, can easily be summarized: 'The police almost always win.'"

Although Chemerinsky builds his argument case by case, this is not a dusty accounting where first the court did this, then it did that. Aside from the fact that he writes well, Chemerinsky, the dean of the law school at the University of California, Berkeley, is also an experienced advocate, having appeared before the court on many occasions, and also having served as a consultant to those police forces who either by choice or necessity have tried to overhaul their practices. He bolsters his argument with examples from his own experiences, and his telling of the cases always starts with the people involved. Some have been stopped, beaten up and hauled into jail for no other reason than that they were Black and in the wrong place at the wrong time.

Chemerinsky is doubtful that with the current makeup of the court any meaningful reform of police practices will result from judicial action. But while the justices, who willfully ignore the racial implications of their cases, rule that police forces can get away with almost anything, their decisions are not binding should Congress or state legislatures, or even municipal governments, enact rules governing police misbehavior. A chokehold or a warrantless search may not, in the eyes of conservative justices, violate the Constitution, but they have never ruled that the Constitution *requires* such practices. Chemerinsky details a number of ways state and local governments can and should reform police procedures without having to go to court.

Whether the furor unleashed by Black Lives Matter will lead to state and city governments reforming their police departments is yet to be seen, but all lawmakers, in fact all concerned citizens, need to read this book. It is an eloquent and damning indictment not only of horrific police practices, but also of the justices who condoned them and continue to do so.

Melvin I. Urofsky is the author of "Dissent and the Supreme Court" (2015) and, most recently, "The Affirmative Action Puzzle" (2020).

PRESUMED GUILTY

How the Supreme Court Empowered the Police and Subverted Civil Rights

by Erwin Chemerinsky

384 pp. Liveright. \$27.95.