

Berkeleyside

CITY

New police oversight board now has broader powers for misconduct inquests

In July, the city's new Police Accountability Board kicked off, replacing the longstanding Police Review Commission, which was formed in 1973.

By Emilie Raguso, Oct. 10, 2021, 4:46 p.m.



The Berkeley City Council on Zoom at its Oct. 5, 2021, meeting. Credit: Berkeleyside

Berkeley officials voted unanimously Tuesday to grant stronger authority to the new board that reviews police misconduct complaints.

In July, the city's new Police Accountability Board kicked off, replacing the longstanding Police Review Commission, which was formed in 1973 and is said to have been the first police oversight board in the nation with investigatory powers.

The creation of the new board — the PAB — was approved by 85% of the voters in November 2020 with Measure II. The new system pledged to provide people with more time to file complaints and grant the PAB more autonomy and authority.

But, although the board began meeting in July, it has been unable to review complaints against Berkeley police officers pending council approval of new interim rules for misconduct hearings. On Tuesday night, the City Council approved those new rules unanimously after a 2.5-hour discussion.

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The PAB currently has 10 complaints against officers pending, staff said, along with at least one policy complaint.

See the full Twitter thread of council highlights

Under the new rules, the PAB has twice as much time to complete investigations and notify officers of discipline, 240 days rather than 120.

The new rules also lower the bar for finding that police misconduct did indeed occur, from the more stringent "clear and convincing" evidentiary standard to one that considers the preponderance of the evidence.

In recent years, under the Police Review Commission, allegations of police misconduct were sustained 9% of the time, according to the latest PRC annual report. There have been just two sustained allegations in the past two years. Both were for discourtesy.

There have been no sustained complaints in recent history regarding more serious violations such as excessive force, discrimination or improper stops and arrests. On average, the PRC received 18 complaints a year. (Each complaint generally includes numerous allegations.)



PAB Director Kathy Lee at a recent PAB meeting on Zoom. Credit: Berkeleyside

On Tuesday night, council members were charged with considering two versions of the new rules, one that was put forward by the PAB itself and another put forward by Interim PAB Director Katherine Lee.

The City Council ultimately adopted a version of the PAB rules — although officials put off the most contentious aspect of the proposal: whether a complainant, or their representative, can question an officer directly and be present for the officer's testimony. Under the old system that will continue, at least for now, the complainant cannot be in the hearing room aside from their own testimony.

Critics of the old rules said they created a one-sided process that put complainants at a disadvantage.

The board said it wants to “place the complainant and subject officers on equal footing with respect to asking questions and being present during the hearing,” adding, “However, the Board understands that the City Attorney's opinion is needed regarding whether the Board's proposal comports with state law and case law.”

On Tuesday night, Mayor Jesse Arreguín said he wanted to make the change but could not do so at this time

because it requires more legal analysis: “We cannot violate state law.”

The city attorney's office has provided a memo to council members and the PAB regarding the legal ramifications of the PAB proposal, but the city declined to release the document, despite a Public Records Act request from Berkeleyside, stating it is protected by confidentiality.

Council did adopt two other proposals from the PAB: extending the deadline to file complaints from 90 to 180 days and, perhaps more significantly, allowing witnesses to file complaints in addition to “aggrieved parties.”

On Tuesday night, council members clarified that language to limit witness complaints specifically to “percipient witnesses,” those with firsthand knowledge of events. During the discussion, Councilmember Susan Wengraf asked board members if they were concerned about the prospect of frivolous complaints flooding the process.

“It's important to keep the gates open here,” PAB Vice-Chair Michael Chang told her. “All people should have access” and be heard, he added.

“I think we need to keep the gates open,” Director Lee also said. “It would be incumbent upon staff to do their due diligence,” and maybe hire another investigator if need be, she said: “I'm willing to see how it will play out and to allow the complaints.”

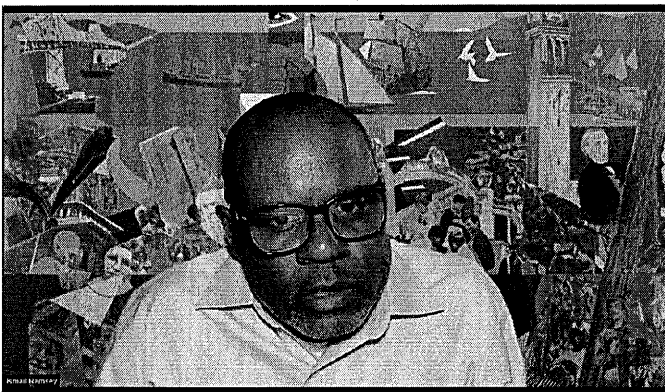
With the adoption of the new rules, the board also gave itself more discretion to initiate investigations into alleged police misconduct — the results of which the board would ultimately also review.



PAB Director Kathy Lee with members of the Police Accountability Board and two Berkeley police officers at a recent meeting. Credit: Berkeleyside

“The Board further expanded their own ability to initiate an investigation, to do so upon a vote of five Board members,” according to Tuesday’s staff report. “Previously the Board could initiate an investigation only in cases involving a death or if no complainant was available to file a complaint.”

But even in those cases where the board itself launches a probe, staff and PAB members said Tuesday, the board is charged with keeping an open mind and considering all the evidence collected by PAB staff and presented in hearings.



Chair Izzy Ramsey at a recent PAB meeting on Zoom. Credit: Berkeleyside

In those instances, the board would have a truth-seeking role, rather than advocating for a particular outcome, PAB Chair Izzy Ramsey told council Tuesday

night: “It would remain in its role as an... objective, independent factfinder.”

“The thought here is to have robust oversight,” he said.

“That’s not to say that we are going to run amok,” Chang said in agreement.

In response to a question from council, Chang said he was not aware of other city-level police oversight agencies with that sort of proactive investigative authority, but said it is common at state and federal levels and supported by “major case law and precedent.”

Ramsey said the PAB had been unanimous in its recommendations and that board members wanted “to establish legitimacy up front and to have a fair process.”

PAB Director Lee told council Tuesday that she was “not opposed to making the process more accessible and less intimidating for complainants” but had parted from the board in terms of process because the city attorney is still analyzing the legality of whether the complainant can remain in the room during misconduct hearings.

Lee said her goal with her version of the proposal was to get new rules on the books as quickly as possible so pending investigations could proceed.

The Berkeley Police Association, the union that represents officers, has not commented on the adoption of the new interim rules but some have said aspects of what the PAB wants to do could trigger a lawsuit.

The piece of the proposal regarding complainant questioning of officers and their presence during officer testimony is now slated to be debated during confidential “meet and confer” discussions between city staff and the police association, as governed by state employment law.

The association has said it cannot comment on these matters at this time on the advice of its attorney.

Berkeley’s Police Accountability Board has a budget of \$1.1 million, according to the current budget book, up from about \$770,000 for the PRC.

On Tuesday night, the City Council also approved a new lease with Motorola to purchase updated radios for

police and firefighters. (See Berkeleyside's Twitter thread for highlights of the radio discussion.)

Berkeley police reform timeline

June 9, 2020	City Council <u>permanently bans tear gas use</u> by BPD
June 30	Council <u> pares \$9 million</u> from police budget
July 14	Council approves ' <u>omnibus motion</u> ' on police reform
July 24	Council requires <u>more use-of-force reporting</u>
Oct. 21	Police launch <u>more robust data collection</u> about traffic stops
Oct. 27	Council votes in favor of <u>Ceasefire violence prevention</u> program
Feb. 10, 2021	Police adopt more <u>stringent rules</u> about searches
Feb. 18	Reimagining Public Safety Task Force <u>starts to meet</u>
Feb. 23	Council votes to <u>limit low-level traffic stops</u>
March 4	Police Chief <u>Andrew Greenwood steps down</u>
March 9	Police adopt <u>new use-of-force policy</u>
April 22	Auditor's office releases <u>calls for service analysis</u>
April 27	Council demands more data on " <u>militaristic</u> " police equipment
May 20	City launches <u>community survey on police reform</u>
June 1	Council <u>approves new Police Accountability Board</u> members
Oct. 5	Council approves interim rules for the PAB
Ongoing	Reimagining Public Safety Task Force and Police Accountability Board meetings; internal discussions about BerkDOT and the Specialized Care Unit

Note: Staff alerted Berkeleyside after publication that the rate of sustained complaints had been misstated during Tuesday's meeting. This story has been corrected with links to the data.

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OPINION

Opinion: Could cameras make Berkeley safer? Can we increase security and maintain privacy?

Adding cameras and license plate readers can offer more security but privacy issues must also be considered.

By Terry Taplin, Oct. 9, 2021, 8 a.m.

Public safety means different things to different people. The city's reimagining public safety process is explicitly designed to steer us through Scylla and Charybdis into a more peaceful future. So when I asked my appointee to the Reimagining Public Safety Task Force, what the task force's conversations around gun violence had been like I was surprised to learn that there hadn't been much considering this year's 36 shootings (up from 26 at this time last year).

A few weeks ago, late on a Saturday morning, there was a shoot-out between people in two cars near George Florence Park, my neighborhood park, which was recently renovated to upgrade the 2-5 and 5-12 play area. Families with young children, who were there to enjoy what is ostensibly a peaceful public space, scrambled to secure their loved ones and dive for cover. With the park fenced in on three sides, the only path to exit the park would have been out into the street, which is often used as a speedway for drivers avoiding San Pablo Avenue.

As I stood with my constituents in the park a few days later, listening to their stories of cowering in the park and hearing their frustration with the city's safety response in recent years, I wondered; "*are the needs and perspectives of the neighborhoods I represent being taken seriously?*" It is hard to answer this question in the affirmative when the response I get to any immediate public safety measures the City Council proposes is that my constituents should simply wait for the world to solve income inequality and that Berkeley should hire even more expensive consultants to continue reimagining.

The reimagining process is the city's multi-year effort to produce a new paradigm for public safety with varied

exchanges between communities, city staff, and consultants. But South and West Berkeley residents cannot be asked to simply wait a few years for our imagination to stop the violence happening now. My constituents frequently ask me what the city can do immediately to reduce gunfire — naturally, they are already familiar with the social determinants of crime and have had plenty of practice imagining life without them. Yet a speeding car or a gun can end those hopes and dreams in an instant. Imagining a better world is still an important task before us, but we also have to assess possibilities that are feasible today. The City Council's mandate as public servants requires immediate action. We have a commitment not just to ensure a better world for future generations, but also for you, right now.

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In 2020, Berkeley saw four lives lost due to traffic violence and more than 400 injuries. That same year saw a 66% increase in vehicle thefts and over 400

catalytic converter thefts. Meanwhile, shootings are up for the fourth year in a row, with a 44% year-over-year increase in gunfire reported since late September. And let's not forget that behind each number is a person's story. This year, the adult children of Latitia Ahmad saw their mother killed right before their eyes when a speeding motorist struck her on Ashby Avenue. Earlier this year, Jackie Erbe's young child saw her struck and almost killed by a vehicle at the same intersection where she had just been advocating for safety improvements. An unidentified man was found dead in a crosswalk on Adeline Street, apparently struck by a hit-and-run driver. The city's long-term efforts to develop and implement holistic reparative justice goals do not conflict with our mandate to hold the perpetrators of violence accountable. Indeed they are both complementary aspects of the same mandate we have as public servants: to do no harm, and uphold justice for all.

Cameras will not be a panacea to end crime, but with the Berkeley Police Department at historically low staffing levels, and automated speeding cameras and civilian traffic enforcement both preempted by state law, the city government's options to fulfill its public safety mandate are limited. With 283 private citizens and businesses voluntarily registering their security cameras with the Berkeley Police Department, it's incumbent upon us to ensure we can provide some of the same safety tools for the general public, in public spaces. Moreover, following a shooting or other violent crime committed in one's neighborhood, some may not feel comfortable sharing private security footage with the BPD out of fear of retaliation for cooperating with law enforcement. Isolation makes our neighborhoods vulnerable; connection makes us resilient.

Nevertheless, I also believe in strong privacy rights. After all, what is privacy if not one of many freedoms that guarantee our safety? The government should not be privy to your grocery shopping, religious worship or political activities. But I also believe that driving a several-ton vehicle is a privilege, not a right, that comes with certain responsibilities to protect public safety, and holding citizens to those commitments is a far cry from Big Brother. As the saying goes, your right to swing your fist ends where it meets my face — and you can bet a truck hurts more than a fist. Moreover, I believe pedestrians and other road users deserve the right to *be protected* from cars that are *already on wanted lists* by the use of automated license plate readers (ALPRs). That's

right — your license plate wouldn't even be matched to a name unless your car was already associated with a list of stolen vehicles or open warrants.

Some criticisms of several council proposals hold that rather than enforcing public safety more effectively with modern technology, we should be focusing instead on root causes of social unrest — systemic racism, poverty, inequality, and disinvestment. While I also work to address these interrelated social ills in my capacity as a councilmember, it's pretty clear focusing exclusively on these long-term visions is not an adequate substitute for recovering stolen vehicles or getting ghost guns and other illegal firearms, meth, and other substances off our streets. We can and must do all of the above. I am strongly in support of developing a community-based Ceasefire program, modeled after successful programs in Oakland and Richmond. I support fully funding Berkeley's Vision Zero Plan so that our streets are engineered to promote slower, safer driving and save lives. I also support greater investments in community intervention programs such as Voices Against Violence, Berkeley Youth Alternatives, and Waterside Workshops. I strongly support developing a Specialized Care Unit and investing in the mental health and crisis intervention services that already exist and that we currently struggle to maintain.

Protecting the safety of road users by holding drivers responsible for the social contract they sign up for when obtaining a license is hardly an intrusion into civil liberties — it is the bare minimum your public servants should be doing to uphold them.

But it's also worth noting that Vallejo, a neighboring city with a growing Black population, including members of my own family who chose to leave Berkeley for elsewhere, saw a 140% increase in the detection of stolen vehicles after introducing automatic license plate readers (ALPRs) while limiting data retention of unmatched scans to 30 days. That's a real material gain for lower-income communities: fewer residents getting their car stolen when they need to get to work on time to pay their bills. It's worth underscoring that both things can be true: Black people are harmed by systemic racial injustice and inequality, and having one's primary mode of transportation stolen is also not a pleasant experience for any person trying to get to work on time.

When Black and Indigenous pedestrians are killed at a higher rate than white pedestrians, and drivers with a suspended or revoked license are 2.2 times more likely to cause a collision, we can immediately see how the lack of enforcement for basic traffic safety laws has a disproportionately negative impact on people of color. As we work to reimagine public safety institutions, we cannot lose sight of the current-day material reality: failure to enforce laws fairly and effectively is *in itself a form of disinvestment* that hurts marginalized communities. The City Council's public safety committee is discussing a measure to authorize the city manager to install automatic license plate readers "at strategic locations including public facilities, entrances to the city and strategic intersections in areas impacted by violent crime, traffic violations, illegal dumping, drug offenses, and other criminal activity." Data retention would be limited.

We do not yet live in a world where the rules establishing a peaceful society are imposed entirely by the gentle hand of positive incentives, voluntary cooperation, or sheer altruism. Unfortunately, we do

live in a city where lawless violence — with cars and guns as the weapons of choice — has a disparate impact on Black and Brown communities and disinvested neighborhoods. If you can empathize with the generational trauma in the Black community, it shouldn't be too hard to also empathize with Black people getting their cars stolen or hit or run over in crosswalks. Believe me, we're not fond of those indignities either.

I'm confident that there's no shortage of vision and imagination in our community when it comes to ideas for a safer city. For many, Berkeley is a symbol of peace and love. It's long past time for us to actually invest in making that symbol a reality for everyone.

Correction: A reference to Vallejo's vehicle theft statistics were originally misstated in the story. That has been fixed.

Terry Taplin is a West Berkeley native, former transportation commission vice-chair, and is the Berkeley City Councilmember representing District 2.