

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD REGULAR MEETING

Wednesday, March 23, 2022
7:00 P.M.

Board Members:

MICHAEL CHANG, CHAIR
NATHAN MIZELL, VICE-CHAIR
KITTY CALAVITA

REGINA HARRIS
JULIE LEFTWICH
DEBORAH LEVINE

JOHN MOORE III
CHERYL OWENS
ISMAIL RAMSEY

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be 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** (3 minutes)
 - a. Regular meeting of March 9, 2022.
5. **CHAIR AND BOARD MEMBERS' REPORTS** (5 minutes)

Update from Board member Calavita on Police Chief Search
Update from Board member Mizell on Reimagining Public Safety Task Force.
6. **DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT** (5 minutes)

Status of complaints; 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)** (15 minutes)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

 - a. Fair & Impartial Policing Implementation – met March 16.
 - b. Director Search.
 - c. Regulations – met March 22.
 - d. Mental Health Issues (Response and Crisis Stabilization).
 - e. Policy 351, Fixed Surveillance Cameras.
 - f. PAB Budget Proposal – met March 15.
9. **OLD BUSINESS (discussion and action)**
 - a. Review Policy 319, Hate Crimes, as requested by City Council. (15 minutes)
(See materials in Feb.23, 2022 agenda packet, p. 13.)
 - b. Consider ways to contribute to the hiring and selection of the permanent Director of Police Accountability and the Police Accountability Investigator.(10 minutes)
10. **NEW BUSINESS (discussion and action)**
 - a. Approve letter to City Council regarding Police Accountability Board budget. (10 minutes)
(To be delivered.)
From: PAB Budget Proposal Subcommittee
 - b. Training: Constitutional and case law regarding searches, detentions, and arrests. (1 hour)
Presented by: Lt. Dave Lindenau

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.)

12. ADJOURNMENT (1 minute)

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.

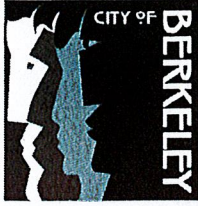
SB 343 Disclaimer

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
MARCH 23, 2022**

| | |
|--|---------|
| <u>MINUTES</u> | |
| March 9, 2022 Regular Meeting Draft Minutes. | Page 7 |
| <u>AGENDA-RELATED</u> | |
| Item 8. – Subcommittee List updated 3-17-2022. | Page 13 |
| <u>COMMUNICATIONS</u> | |
| March 2022 emails between Chief Louis and Katrina Kilian re incident at Berkeley Drop-In Center. | Page 15 |
| 3-10-2022 email from Charles Clarke re BPD is Worth Having, Not Halving. | Page 21 |
| 3-13-2022 Berkeleyside article: Police misconduct hearing put off after cop union said Berkeley broke the law. | Page 31 |
| Police Accountability Board Standing Rules, Ratified by City Council 3-8-2022. | n/a |



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, March 9, 2022, 7:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY CHAIR CHANG AT 7:01 P.M.

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

Absent: None

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability

BPD Staff: Lt. Rob Rittenhouse

2. APPROVAL OF AGENDA

Motion to approve the agenda as modified to postpone Item #10. a. i) and to hear Item #10.c. before Item #10.b.

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

3. PUBLIC COMMENT

7 Speakers.

4. APPROVAL OF MINUTES

a. Special meeting of February 23, 2022.

Motion to approve Special Meeting Minutes.

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

b. Regular meeting of February 23, 2022.

Motion to approve Regular Meeting Minutes.

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

5. CHAIR AND BOARD MEMBERS' REPORTS

Chair Chang. no report.

Board member Calavita reported on Police Chief Search: no report.

Board member Mizell reported on Reimagining Public Safety Task Force: Tomorrow at 6:00 p.m. having special meeting City Council to consider NICJR report and Task Force response. After that, task force is defunct but he will continue to informally monitor progress.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

-- No new complaints filed since the last meeting. Closed one complaint following a mediation.

-- Four solid applicants for temporary investigator forwarded from HR for interviews, being conducted this week.

-- Training for new website happening this week.

-- City Auditor's report on use of police overtime will present to the Budget Committee tomorrow and to Council March 22.

-- Council approved [ratified] PAB Standing Rules last night. Director will need to start publicity for public members to apply to be on PAB subcommittees.

-- Council heard report on implementation of Fair & Impartial Policing recommendations. PAB-Director should have formal role in presenting due to

-- Been working on budget proposal.

-- Aware of incident that occurred at the Berkeley Drop-In Center and heard Mayor say he will be meeting with Chief and affected parties.

The Interim Director answered questions from Board members.

7. CHIEF OF POLICE'S REPORT

Lt. Rittenhouse reported on behalf of Interim Chief Louis reported:

-- 3 shootings occurred since last PAB meeting: March 4 – man killed by gunfire; investigation led to arrest of 2 suspects March 8; DA charged them today. Feb. 24 - a teen was shot on 1800 block Oregon Street; suspects still at large. Feb. 25 – near George Brown Park, single gunshot; no injuries or victims.

-- Arrested a suspect in a 2021 shooting at 10th & Addison.

-- Training: CALICO (Child Abuse Listening, Interviewing & Coordination) Center will present briefing to patrol teams on speaking with juvenile victims.

-- Chief made a conditional hire last week. Currently 148 fully solo officers. Also, 3 in Field Training; 3 graduating from academy in May; 2 to be sent to academy.

8. SUBCOMMITTEE REPORTS (discussion and action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Fair & Impartial Policing Implementation – Chair Calavita: met March 2; next meeting March 16. Received BPD’s proposed EIS policy and draft Search Consent form; subcommittee working on revisions for PAB approval. Dismayed we weren’t asked to be present as a panelist during Chief’s report on FIP implementation to Council, as monitoring was assigned to PAB. Would have had comments on limits on probation & parole searches that we worked on.
- b. Director Search – Chair Levine: met several times after speaking to Deputy City Manager LaTanya Bellow, and worked on edits to the recruitment brochure submitted Monday morning.
- c. Regulations – Chair Chang: met Feb.22; next meeting March 10 at 7:00 p.m. Hope to be done within 2 more meetings.
- d. Mental Health Response (Policy Complaint #7) – Board member Levine: should have time to schedule a meeting now.
- e. Policy 351, Fixed Surveillance Cameras – meeting to be scheduled.
- f. PAB Budget Proposal – Chair Owens: met March 1. Office needs not only to be fully staffed with 4 people but recommending adding a position – senior level policy analyst, as well as office space, computer, etc. for that person. Also need consultant for policy and legal support. Will return with draft statement to Council in support of budget.

9. OLD BUSINESS (discussion and action)

- a. Review Policy 319, Hate Crimes, as requested by City Council.
Postponed to the next meeting.

10. NEW BUSINESS (discussion and action)

- a. Consider requests from the Fair & Impartial Policing Implementation Subcommittee.
 - i) Request that the Board seek an opinion from the City Attorney regarding the PAB’s access under the Charter to internal documents necessary for the PAB to fulfill its functions.

Postponed.

- ii) Authorize Chair Chang, FIP Subcommittee Chair Calavita, and FIP Subcommittee member Ramsey to meet with Mayor Arreguin and Councilmember Harrison to discuss difficulties in overseeing implementation.

Motion to authorize Chair Chang, Fair & Impartial Policing Subcommittee Chair Calavita, and FIP Subcommittee member Ramsey to meet with Mayor Arreguin and Councilmember Harrison to discuss difficulties in overseeing implementation.

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

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

Noes: None

Abstain: None

Absent: None

- b. Review Police Equipment & Community Safety Ordinance Impact Statements.
Postponed to a future meeting.

- c. Consider request from Mental Health Commission to collaborate on using local crisis stabilization as an alternative to sending individuals with mental health concerns to Santa Rita or John George.

Motion for the Mental Health subcommittee to expand jurisdiction to include the subject of crisis stabilization.

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

- d. BPD's response to distribution of anti-Semitic hate flyers in Berkeley.
Discussed; no action.
- e. Discuss continuation of meetings held via teleconference and videoconference.
Discussed; no action.

11. PUBLIC COMMENT

0 speakers.

| |
|-----------------------|
| Closed Session |
|-----------------------|

The Board will convene in closed session to meet concerning the following:

12. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9. One potential case.

Motion to announce that the City Attorney has determined that no Brown Act violation occurred.

Moved/Second (Ramsey/Harris)

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

Noes: None

Abstain: None

Absent: None

13. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Designated representatives: Katherine Lee; Interim Director of Police Accountability; Timothy L. Davis, Labor Negotiator

Employee organization: Berkeley Police Association

Discussed; no action.

End of Closed Session

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

Chair Chang announced as to Item #12 that the City Attorney determined there was no Brown Act violation.

15. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Leftwich/Calavita) **By general consent, the meeting was adjourned at 11:06 p.m.**

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
3-17-2022**

| Subcommittee | Board Members | Chair | BPD Reps |
|---|---|---|--------------------|
| Regulations Formed 7-7-21 | Calavita Chang Leftwich Owens <u>Public:</u> Kitt Saginor | Chang | Lt. Dan Montgomery |
| Director Search Formed 8-4-21 | Levine Mizell Moore <u>Public:</u> Rivka Polatnick Marc Staton | <u>Co-chairs</u> Levine Moore | |
| Fair & Impartial Policing Implementation Formed 8-4-21 | Calavita Moore Owens Ramsey <u>Public:</u> George Lippman Elliot Halpern Jamie Crook | Calavita | Sgt. Peter Lee |
| Mental Health Response Formed 11-10-21 Scope expanded 3-9-22 | Harris Levine <u>Public:</u> Elena Auerbach | | Sgt. Joe LeDoux |
| Fixed Surveillance Cameras (Policy 351) Formed 2-9-22 | Mizell Ramsey | | |
| PAB Budget Formed 2-23-22 | Levine Harris Owens | Owens | |

Benado, Tony

From: Louis, Jennifer A.
Sent: Sunday, March 6, 2022 4:54 PM
To: Katrina Killian
Cc: Warhuus, Lisa; Bartlett, Ben; All Council; Janavi Dhyani; Gigi Crowder; Jorge Colon; T. Love; boona cheema; george@igc.org; Rep.Barbara.Lee@mail.house.gov; keith.carson@acgov.org; Berkeley Mayor's Office; Delfin Polk, Dyana; Williams-Ridley, Dee; Buddenhagen, Paul; Bellow, LaTanya
Subject: Re: The Berkeley Drop-In Center Manager Detained at Gunpoint by Berkeley Police while putting up Black History Month Decorations Amidst Berkeley granting Center for non-police crisis response.

Good evening,

Thank you for your message below and being open to connecting. I believe I am available on Wednesday and will confirm that tomorrow.

Jen

On Mar 6, 2022, at 1:31 PM, Katrina Killian <kkillian@acnetmhc.org> wrote:

Hello Jen Louis, interim Chief of Police

Thank you so much for your response and interest to meet. We have a time set for Wednesday March 9, 2022 with the Mayors' Office. We are open to you joining this scheduled meeting. However, if that time does not work for you, please forward dates you are available. We have decided to postpone our scheduled press release on March 7, 2022 as a sign of good faith. We want the opportunity to work together and strengthen our community connections.

Thank you for your time!

Katrina

Katrina Killian, Executive Director
Alameda County Network of Mental Health Clients
 3238 Adeline Street, Berkeley Ca 94703
 PH: 510.652.7451 FX: 510.652.4557

On Fri, Mar 4, 2022 at 9:34 PM Louis, Jennifer A. <JLouis@cityofberkeley.info> wrote:

Thank you for reaching out to us about the incident that Mr. Colon experienced on February 1, 2022. I understand why this was such a challenging and frightening event for Mr. Colon and the Berkeley Drop-In Center staff. Anytime law enforcement is asked to respond to a call such as this one, the stress can be high for all involved. I look forward to further discussion with Mr. Colon, you, and the rest of the Berkeley Drop-In Center staff about what happened that day.

I have looked into the events that led to Mr. Colon being contacted by my staff and wanted to share the information with you. I hope this helps provide understanding around what occurred and why Mr. Colon was contacted that day.

On February 1, 2022 at 10:52 am, a woman stating her name was "Jasmine" called our emergency dispatch center to report a man with a gun inside the Berkeley Drop-In Center. The woman gave detailed information, reporting that she was a drop in center staff member. She said a man named "John", a black male, 37 years old, wearing green army fatigues, was inside the Drop-In Center with a revolver in his left front pants pocket. She said that the man had punched someone with his fist. Due to the report of a battery already having occurred and the potential injury that could result if he used the reported firearm, several of my officers and a supervisor responded. As officers were responding, "Jasmine" updated that the man was now outside and standing in front of the Drop-In Center.

Two officers and a Sergeant arrived on scene by 11:00 am. They saw a man standing in front of the Drop-In Center that matched the description given by the caller and approached him. This person was later identified as Mr. Colon. As it was reported the man was armed with a gun, two of my officers had their handguns drawn. Mr. Colon was told to lie on his stomach in a prone position and he complied. Placing a person in a prone position makes it difficult for them to access or point a weapon and also makes it harder for them to flee a crime scene. This increases the safety of the individual, bystanders and the officers. This occurred at 11:01:53 am. He was handcuffed and informed that someone reported that a person matching his description had a gun. Mr. Colon was brought to a standing position 11:02:26 am. Officers searched Mr. Colon for a weapon but did not find one. Mr. Colon sat in the back of a patrol vehicle with the door open while they investigated and searched for the caller. Several officers responded to assist.

The officers contacted staff and bystanders but were unable to locate a woman named "Jasmine". Several calls to the phone number associated with the original caller were not answered. Based on the fact that Mr. Colon had no weapon and we could not locate the original caller, we documented this case as a PC 148.5- False report of crime and Mr. Colon was listed as the victim. Mr. Colon was taken out of handcuffs at 11:12:58 am and was released from the detention. We understand that incidents with officers arriving with guns drawn are disturbing. Officers spent time explaining to Mr. Colon and drop in center staff what had happened. We have not been able to identify the caller who made the false report.

This would be a very difficult event for anyone to experience. Just one week after this incident, we had a very similar call on the 3200 block of Adeline Street where a caller reported a man waving a gun around "looking to shoot someone". Officers responded, located a man matching the description provided, and found that he was in possession of a loaded "ghost gun" with a high-capacity magazine.

I know that doesn't lessen the effects of the encounter on Mr. Colon, especially in light of the work that he was doing when this occurred. We would be happy to meet with Mr. Colon and any staff to discuss the incident further. We understand how an incident like this can be a setback for community trust and cause a ripple effect. If you are open to it, I would like to explore ways that we can use this as an opportunity to build better relationships and have deeper conversations about the health and wellness of our entire community.

Respectfully,

Jen Louis

Interim Chief of Police

Berkeley Police Department

From: Katrina Killian <kkillian@acnetmhc.org>

Sent: Friday, March 4, 2022 1:28 PM

To: Berkeley Mayor's Office <mayor@cityofberkeley.info>

Cc: Warhuus, Lisa <lwarhuus@cityofberkeley.info>; Bartlett, Ben <BBartlett@cityofberkeley.info>;

Louis, Jennifer A. <JLouis@cityofberkeley.info>; All Council <council@cityofberkeley.info>; Janavi

Dhyani <jdhyani@acnetmhc.org>; Gigi Crowder <Gigi@namicontracosta.org>; Jorge Colon

<jcolon@acnetmhc.org>; T. Love <lvttee.c@gmail.com>; boona cheema <boonache@aol.com>;

george@igc.org; Rep.Barbara.Lee@mail.house.gov; keith.carson@acgov.org

Subject: The Berkeley Drop-In Center Manager Detained at Gunpoint by Berkeley Police while putting up Black History Month Decorations Amidst Berkeley granting Center for non-police crisis response.

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.

Honorable Mayor Jesse Arreguín –

We are writing to you, as we have received no response from the city thus far concerning the traumatic event that took place a month ago, on February 2, 2022. First to our representative, Honorable Ben Barlett, who joined us via Zoom to offer his sympathies. We also contacted Dr. Lisa Warhuus, Director of Health, Housing, and Human Services, who we are currently negotiating the Specialized Care Unit Bridge Services contract (Specification No. 22-11472- C) to provide Peer-Run non-police crisis response.

We request an immediate meeting with you, Mr. Mayor, Madam City Manager, Police Chief Jennifer Louis, and Dr. Lisa Wuurhus. The reason for our request is that on February 2nd, 2022 Jorge, Program Manager of the Berkeley Drop-In Center, a young Black father, was detained at gunpoint by Berkeley police officers. He recounts the incident as, "brutalizing, shaming, traumatizing and completely unnecessary" He says it "felt like they wanted to kill me."

The Berkeley Drop-In Center (BDIC), is the longest-running program of the Alameda County Network of Mental Health Clients (ACNMHC), and the building itself has been a

hub of community service for more than 40 years. ACNMHC is one of the oldest Peer-run agencies in the nation, founded more than 30 years ago, and we are 100% staffed by folx with lived experience with mental health challenges, and experiences with substance use experience, homelessness, incarceration, and the child welfare system. We serve thousands of people each year and are on the ground supporting the folx who have been pushed at the margins, primarily BIMPOC adults.

He was finishing putting up the last of Black History Month decorations when more than four police officers "approached [him] from behind with their guns out, they did not announce they were the police." He was extremely terrified saying "because I had my black phone in my hand and knew if I made one move too quickly – I was just visualizing myself getting shot if I made the wrong move."

"I announced myself as the Berkeley Drop-In Center Program Manager, and they patted me down and it was evident I did not have a gun. By this time the Staff and the community came out saying that I worked here and was not doing anything wrong. Still, more officers continued to arrive and they kept me on the ground, handcuffed, for more than 15 minutes, knowing I had no gun, knowing that I was the Program Manager. I'm so confused that why after knowing I had no gun, they kept me detained, in handcuffs, and on the ground, and why more police officers continued to arrive" Following the incident, the Center had to close for several days to recuperate and ACNMHC had to hire trauma healers to support them moving forward. The Center contacted city officials, with no response.

We are also calling for a Press Conference on Monday, March 7th, 2022 at 4:00 pm PT via Zoom ([link to join](#)) to inform the community and our allies of the continued actions of the Berkeley Police Department in matters of how it treats Black and other Folx of Color in our community.

There have been continued efforts in the community emphasizing the ongoing need to reimagine and reform the Berkeley police department for higher public safety, including ending racial profiling, creating the Berkeley Police Accountability Board, Berkeley Reimagining Task Force for Public Safety and Police. While this work is ongoing and the Berkeley police department is aware of the efforts being made to make it the best police department in the nation, the behaviors of our officers have not changed.

We are very concerned for the safety of the staff members of the organizations who have been and continue to work on these efforts directly tied to community safety. We stand in solidarity with Jorge Colon, his family, and all marginalized people who continue to fear for their lives every day, just while doing their jobs.

We are all committed to The Berkeley Drop-In Center located in South Berkeley and all efforts to make our community safer. Please make the effort to immediately schedule this meeting with us, at which I will be joined by Jorge Colon (Program Manager BDIC), Janavi Dhyani (Director of Operations), boona cheema (Vice-Chair, Reimaging Task Force and ACNMHC Board Member), and Gigi Crowder (Executive Director of NAMI, and ACNMHC Consultant).

In solidarity with you in search of equity and justice,

Katrina Killian

Katrina Killian, Executive Director

Alameda County Network of Mental Health Clients

3238 Adeline Street, Berkeley Ca 94703

PH: 510.652.7451 FX: 510.652.4557

Lee, Katherine

From: Charles Clarke <cfclarke@att.net>
Sent: Thursday, March 10, 2022 4:20 PM
To: Lee, Katherine
Subject: BPD Is Worth Having, Not Halving
Attachments: Clarke Memo BPD Reimagining 03.10.2022.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

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.

Dear City Officials,

A certain dismissiveness of the good performance of the Berkeley Police Department pervades the Reimagining Public Safety reports you will hear tonight (March 10).

I believe this tone of dismissiveness is unwarranted.

A memo (attached) presents some evidence that strongly suggests BPD's existing policy and practice is functioning (mostly) properly, even commendably, but that improvement could and should be directed toward those areas where improvement is most needed.

A chart (below) suggests how much better Berkeley's Police Department performs than some of our neighbors and even in absolute terms in our litigious age.

I urge the City Council to ensure that whatever directions flow from Reimagining Public Safety not endanger the good performance of the sort documented in the attached memo.

In no state of the world is a 50% reduction in BPD's budget warranted by the Police Department we have and the public safety challenges we face. Please legislate wisely in this regard.

Sincerely,

Charles Clarke
Resident, City Council District 6

Excessive Force Payouts Per Police Of

Compared to 3 Similarly Sized Nearby Cities, 2015-2020



Vallejo

Population 126,090



Hayward

\$ 29,134

Population 162,954



Richmond

\$ 9,463

Population 116,448



Berkeley

\$ 1,256 (2009-2021)

\$ 372 (2015-2020)

Population 124,321

Sources: U.S. Census Bureau; KTVU; Berkeley City Attorney; Berkeley City Au
Chart by Charles Clarke, a resident of Berkeley

The Berkeley Police Department Is Worth Having, Not Halving
Memorandum from Charles Clarke, a resident of Berkeley, March 10, 2022,
To the Berkeley City Council

This memorandum advises the City Council to keep the well-performing Berkeley Police Department we already have and to perfect it where genuinely needed.

Background. The George Floyd Community Safety Act¹ of July 14, 2020, created the Reimagining Public Safety process with, among other things, “the goal of reducing the Berkeley Police Department budget by 50% ...”²

Other elements of the George Floyd Act included an “analysis of litigation outcomes...to reduce the impact of settlements on the General Fund,”³ and development of a “new, community-centered safety paradigm” for “the appropriate response to community calls for help including...duties of a well-trained police force.”⁴

The resulting Reimagining Public Safety process has produced reports from three entities for consideration at the March 10, 2022, City Council work session:

- The Reimagining Public Safety Task Force (“Task Force”);⁵
- The National Institute for Criminal Justice Reform (“NICJR”);⁶
- Research Development Associates Consulting (“RDA”);⁷

and a supplemental report from four members of the City Council.⁸

¹ Annotated Agenda, Berkeley City Council Meeting, July 14, 2020, pp. 11-19,
https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-14_Annotated_Agenda_pdf.aspx

² Annotated Agenda, supra n. 1, p. 12.

³ Annotated Agenda, supra n. 1, p. 12.

⁴ Annotated Agenda, supra n. 1, pp. 17, 18.

⁵ Berkeley Task Force, *Response and Recommendations to NICJR’s Report on Reimagining Public Safety*, February 18, 2022, revised March 9, 2022 (150 pages)
[https://www.cityofberkeley.info/Clerk/City_Council/2022/03_Mar/Documents/2022-03-10_\(Special\)_Supp_2_Reports_Item_1_Rev_RPSTF_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2022/03_Mar/Documents/2022-03-10_(Special)_Supp_2_Reports_Item_1_Rev_RPSTF_pdf.aspx)

⁶ National Institute for Criminal Justice Reform, *Reimagining Public Safety in Berkeley: Final Report and Implementation Plan*, revised March 9, 2022 (293 pages)
[https://www.cityofberkeley.info/Clerk/City_Council/2022/03_Mar/Documents/2022-03-10_\(Special\)_Supp_2_Reports_Item_2_Rev_NICJR_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2022/03_Mar/Documents/2022-03-10_(Special)_Supp_2_Reports_Item_2_Rev_NICJR_pdf.aspx)

⁷ Research Development Associates (RDA) Consulting, *City of Berkeley Crisis Response Models Report*, revised March 4, 2022 (212 pages)
https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2022/03_Mar/Documents/2022-03-10%20Item%20%20Report%20part%201.pdf

⁸ Mayor Jesse Arreguin, Vice Mayor Kate Harrison, Councilmembers Ben Bartlett and Sophie Hahn, *Reaffirmation and Further Direction on Reimagining Public Safety Process, NICJR and Task Force Reports*, released March 9, 2022 (70 pages)
[https://www.cityofberkeley.info/Clerk/City_Council/2022/03_Mar/Documents/2022-03-10_\(Special\)_Supp_2_Reports_Item_1_and_Item_2_Sup_Mayor_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2022/03_Mar/Documents/2022-03-10_(Special)_Supp_2_Reports_Item_1_and_Item_2_Sup_Mayor_pdf.aspx)

The sometimes jaundiced tone of the Reimagining Public Safety reports besmirches the actual performance of the Berkeley Police Department (BPD).

For example, the Task Force reports:

“Thankfully, in Berkeley, there have not yet been any instances of police shootings stemming from traffic stops (*likely because of the size of the city, not because of any specific BPD practices...*)”⁹ (italics added)

If the Task Force’s dismissal of BPD practices were well-founded then we could expect to see significant payouts to claimants of police misconduct in use of excessive force, unlawful arrest, unlawful search, etc. The actual experience from 2009 to 2021 indicates that very few, very small payments were made for these reasons.¹⁰

Table 1. Payouts for Police Misconduct Claims & Settlements, 2009-2021

| Nature of Incident | Amount Paid to Claimants | Claims Paid | Number Paid \$0 |
|-------------------------------|--------------------------|-------------|-----------------|
| Alleged Wrongful Death | - | - | 2 |
| Alleged Excessive Force | \$ 202,780.00 | 4 | 9 |
| Alleged Unlawful Arrest | \$ 14,000.00 | 1 | 7 |
| Alleged Unlawful Search | \$ 10,000.00 | 2 | 2 |
| Alleged Unlawful Traffic Stop | - | - | 1 |
| Alleged Improper 5150 | \$ 25,000.00 | 1 | 1 |
| Alleged Extortion | - | - | 1 |
| Alleged Lost Property | \$ 2,641.40 | 3 | - |
| Alleged Damaged Property | \$ 7,504.62 | 10 | 1 |
| Alleged PRA Violation | \$ 19,287.50 | 1 | - |
| Total | \$ 281,213.52 | 22 | 24 |

Source: Berkeley City Attorney. Calculations by author. PRA: Public Records Act. 6 cases or claims are pending: 4 alleged excessive force, 2 alleged improper 5150.

The single largest amount paid in the 12-year sample period was \$125,000.00 to the eight co-plaintiffs and their attorneys in a federal civil rights complaint arising from the Black Lives Matter protest of December 2014.¹¹

⁹ Task Force Report, supra n. 5, p. 112.

¹⁰ Berkeley City Attorney, Police Civil Liability Claims and Lawsuits – 2010 to 2020 (Excluding Claims for Improper Tows and Auto Accidents), February 22, 2022, City of Berkeley Public Record Request 22-99, <https://cityofberkeleyca.nextrequest.com/requests/22-99>

¹¹ *Moni Law et al. v. City of Berkeley et al.*, Civil Action 3:15-cv-5343-JSC, N.D.CA; Minutes, City Council February 14, 2017, https://www.cityofberkeley.info/Clerk/City_Council/2017/02_Feb/Documents/02-14_Special_Closed_Minutes.aspx

The amount *least* connected to behavior of BPD officers was the \$19,287.50 paid to plaintiff media outlet Berkeleyside Inc. seeking release of historical police records under SB 1421 in January 2019, which was soon granted by direction of the City Council.¹² (In the three years since release Berkeleyside has published no findings of the contents of those historical records, thus creating the impression that the lawsuit was a publicity stunt unconnected to police accountability.) Nonetheless the amount paid is included here for completeness.

The City typically settled the lost or damaged property claims for a 12-year total of about \$10,000. In the remaining misconduct cases the City prevailed in court in about two-thirds of the matters and settled the remaining one-third.¹³ *This legal record would be unlikely to emerge from a department that violated good police practice.*

Table 2. Legal Resolution of Police Misconduct Claims, 2009-2021

| Nature of Incident | Total Claims | City Won Trial | City MSJ Granted | Case Dismissed | Settlement | Case/claim Pending |
|-------------------------------|--------------|----------------|------------------|----------------|------------|--------------------|
| Alleged Wrongful Death | 2 | | 1 | | 1 | |
| Alleged Excessive Force | 17 | 2 | 1 | 5 | 5 | 4 |
| Alleged Unlawful Arrest | 8 | | 1 | 6 | 1 | |
| Alleged Unlawful Search | 4 | | 1 | 1 | 2 | |
| Alleged Unlawful Traffic Stop | 1 | 1 | | | | |
| Alleged Improper 5150 | 4 | | | 1 | 1 | 2 |
| Alleged Extortion | 1 | | | 1 | | |
| Alleged Lost Property | 3 | | | | 3 | |
| Alleged Damaged Property | 11 | | | 1 | 10 | |
| Alleged PRA Violation | 1 | | | | 1 | |
| Total | 52 | 3 | 4 | 15 | 24 | 6 |

Source: Berkeley City Attorney. Calculations by author.

PRA: Public Records Act

MSJ: Motion for Summary Judgment

The Task Force’s dismissive comparison of Berkeley to other cities invites an empirical test. The wrongful death and excessive force claims paid¹⁴ by three neighboring cities of

¹² *Berkeleyside Inc. v. City of Berkeley*, Civil Action RG19004749, Alameda County Superior Court; Minutes, City Council January 31, 2019

https://www.cityofberkeley.info/Clerk/City_Council/2019/01_Jan/Documents/01-31_Special_Closed_Public_Minutes_pdf.aspx

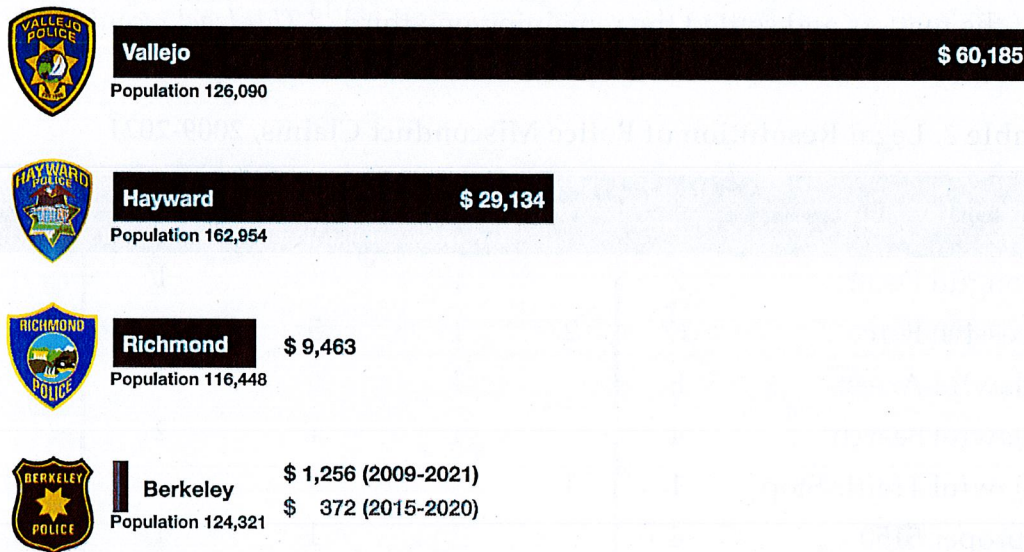
¹³ Police Civil Liability Claims and Settlements, supra n. 10.

¹⁴ Lisa Fernandez, “A look at the most notable police payouts in the Bay Area,” KTVU, December 30, 2020, <https://www.ktvu.com/news/a-look-at-the-most-notable-police-payouts-in-the-bay-area>

similar population¹⁵ – Hayward, Richmond, Vallejo – can be compared to Berkeley, which has paid \$0 in wrongful death claims. This comparison can be made more meaningful by comparing those excessive force claims *per sworn officer*. The figures in Table 1 can be adjusted using the sworn officer headcount given by the City Auditor’s recent BPD overtime report.¹⁶ Figure 1 presents this meaningful comparison.

Figure 1. Comparison of 3 Neighboring Cities to Berkeley Police Department

Excessive Force Payouts Per Police Officer In Berkeley Are Minuscule Compared to 3 Similarly Sized Nearby Cities, 2015-2020



Sources: U.S. Census Bureau; KTVU; Berkeley City Attorney; Berkeley City Auditor

BPD’s commitment to de-escalation drives this result. This commitment is evidenced by the fact that BPD officers have fired a total of 34 bullets at (or in the vicinity of) a person in Berkeley in the past 22 years. Table 3 presents seven known instances since 2000 when BPD officers fired their service weapons at a person in Berkeley.¹⁷ The present

¹⁵ U.S. Census Bureau, Quick Facts: Hayward city; Richmond city, California; Vallejo city, <https://www.census.gov/quickfacts/fact/table/haywardcitycalifornia,vallejocitycalifornia,richmondcitycalifornia/PST045221>

¹⁶ Berkeley City Auditor, *Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities*, March 3, 2022, Figure 9, p. 14, https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Berkeley%20Police%20-%20Improvements%20Needed%20to%20Manage%20Overtime%20and%20Security%20Work%20for%20Outside%20Entities.pdf

¹⁷ City of Berkeley PRA Responses (suspect, PRA response date, pages): Garcia 5/23/2019 p. 20 of 478; Givens 5/23/2019 pp. 112, 348 of 708; Gay 5/3/2019 p. 3 of 1069; Nguyen 5/3/2019 p. 20, 288 of 393; Stewart 5/3/2019 pp. 2-3 of 1062; Owens 8/2/2020 Miller interview pp. 63-65, 68-69 of 108. Berkeley Police Department, “Community Briefing Video,” February 12, 2021, starting about 24:20 <https://www.cityofberkeley.info/PoliceNews.aspx?id=159421>; <https://youtu.be/2TjRx5yl6iQ>

writer is unaware at this writing of any other officer-involved shootings in Berkeley in this sample period.

Table 3. Officer-Involved Shootings by BPD Officers in Berkeley, 2000-2021

| Date | Suspect | Basis for Shooting | Bullets Fired by BPD | Result for Suspect |
|----------------|--------------------|--|----------------------|-----------------------------|
| April 12, 2000 | Christopher Garcia | Loaded gun pointed at officers | 4 | Death |
| July 25, 2003 | Glennel Givens | Loaded gun pointed at officer | 3 | Death |
| Feb. 16, 2008 | Anita Gay | Knife attack | 2 | Death |
| June 28, 2010 | Chuong Nguyen | Loaded gun pointed at officer | 9 | Death |
| April 13, 2012 | Calvester Stewart | Fired gun at officers | 10 + 2 n.d. | Injury |
| July 30, 2020 | Brandon Owens | Stop driver of fleeing vehicle | 3 | No injury; officer released |
| Jan. 2, 2021 | Vincent Bryant | Jack chain attack; less-lethal means ineffective | 1 | Injury |
| Total | | | 34 | |

n.d. negligent discharge, firearm discharged but not at a person

The Berkeley Police Department is not trigger-happy.

An instructive example of BPD doctrine regarding use of lethal force emerged during the deliberations of the Use Of Force subcommittee of the Police Review Commission (PRC) in June 2020. BPD proposed the following language for the relevant portion of the Use Of Force Policy 300 then being discussed:¹⁸

BPD draft language, 300.4.2: Firearms should not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the

¹⁸ Policy 300 working draft for discussion 6-26-2020, p. 14, https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2020/2020-06-26-UOF-3rd-handout-Working%20Draft%20Policy%20300%206-25-2020.pdf

path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

Because this policy may not cover every situation that may arise, a deviation from this policy may be reasonable, depending on the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

BPD Lt. Joe Okies of the Professional Standards Division discussed the basis for this language:

“The reason this prohibition is in place is because at other agencies officers have stepped in front of moving vehicles, creating the exigency that then led to the shooting. What we did with our policy, when we wrote our draft policy, we wanted to write something where it made it very clear that the community safety was paramount in addressing these circumstances, and that we did not want people to create the exigency and we specifically prohibited it and called that out in our policy.

“At the same time, we see the need to have that – the ability for officers under extreme circumstances to have the ability to do that and not be outside of policy. And so, we looked at a lot of different policies and had long conversations about this in order to strike the balance of giving the officers the option of having this critical tool in the very high-risk, low-frequency event that come our way, but also outlining the significant concerns we had, and circumstances where it would not be appropriate to avoid the very problems that the prohibitions that you read about were designed to avoid.”¹⁹

The present writer interprets these written and oral statements to mean that BPD’s doctrine and training already in use (if not in written effect) to be: *A BPD officer should not step in front of a vehicle so as to create the necessity to shoot the driver.*

This doctrine was put into tacit effect in the disposition of the BPD officer who shot at the driver (and hit the tire) of a vehicle fleeing the scene of a shoplifting-robbery.²⁰

In the present writer’s opinion, the officer was released from probationary service²¹ due to her violation of the doctrine exemplified by the draft language and Lt. Okies’ quote above *the month before the shooting*, not due to violation of an explicit prohibition reduced to writing on the day of the shooting (July 30, 2020).

¹⁹ Lt. Joe Okies, at PRC Use Of Force subcommittee, June 26, 2020. Recording available upon request.

²⁰ Berkeley Police Department, “Community Briefing Video,” September 1, 2020, <https://www.cityofberkeley.info/PoliceNews.aspx?id=155674>; https://youtu.be/6BQ_GCNC3aU

²¹ David A. White letter to Cheri Miller, December 4, 2020, City of Berkeley Public Record Request 22-99.

The present writer's opinion – informed by observation of the Berkeley Police Department – is that BPD makes the sanctity of life paramount in the performance of its duties. The dismissal of an officer for violating Department doctrine bears that out.

This opinion seems to be shared by other observers. For example, a federal judge hearing a civil rights complaint observed, after having seen video of a BPD-assisted removal of a homeless encampment, “to a moral certainty if there was ever a namby-pamby police in America, it’s the Berkeley police and they acted extremely carefully on that occasion.”²²

The present writer takes “namby-pamby” as a compliment to the humaneness of Berkeley’s police officers on that occasion, which he also extends to the Police Department.

Because of the power we entrust to the police, BPD’s everyday performance calls for continuous improvement (perfection). For example, a recent incident (still being investigated at this writing) had two BPD officers point their firearms at the director of the Berkeley Drop-In Center (Adeline St. at Harmon St.) in response to a call for service from a third person falsely claiming a man outside the Drop-In Center had a gun.²³ This incident should and will be investigated by the Department internally and likely by the Police Accountability Board. Such investigation should result in improvements to the system of policing in Berkeley.

In this world perfection does not mean *attainment* of the perfect but the *striving toward* the perfect. As Berkeley’s first police chief, August Vollmer, put it 86 years ago:

The citizen expects police officers to have the wisdom of Solomon, the courage of David, the strength of Samson, the patience of Job, the leadership of Moses, the kindness of the Good Samaritan, the strategical thinking of Alexander, the faith of Daniel, the diplomacy of Lincoln, the tolerance of the Carpenter of Nazareth, and, finally, an intimate knowledge of every branch of the natural, biological, and social sciences. If he had all these, he might be a good policeman.²⁴

The ultimate result of the Reimagining Public Safety should be preservation of the good and desirable character of the Berkeley Police Department and the perfection of that which needs improvement. The City Council should direct its efforts toward these twin goals.

²² Clark Sullivan et al. v. City of Berkeley, transcript, May 21, 2019, p. 374.

²³ David Villani, “Drop-In Center manager detained by Berkeley police due to false report,” The Daily Californian, March 7, 2020, <https://www.dailycal.org/2022/03/07/drop-in-center-manager-detained-by-berkeley-police-due-to-false-report/>.

²⁴ August Vollmer, *The Police and Modern Society*, Berkeley: University of California Press, 1936, p. 222.

Berkeleyside

CITY

Police misconduct hearing put off after cop union said Berkeley broke the law

The city did not respond to multiple requests for comment from Berkeleyside.

By Emilie Raguso, March 13, 2022, 4:59 p.m.

The Berkeley police union has challenged the city's new police oversight board, saying it has violated state labor and government transparency laws as well as the city's own charter.

Earlier this month, the Police Accountability Board (PAB) abruptly postponed a hearing to review alleged police misconduct shortly after the union sent a strongly worded letter to demand that the board "Cease and Desist Unlawful Action."

The March 2 letter was the latest attempt by the Berkeley Police Association (BPA) to ask the city to stop committing what the union says are ongoing violations of the law. In letters obtained by Berkeleyside, BPA attorney Rocky Lucia, of Rains Lucia Stern St. Phalle & Silver, PC, told the city he is prepared to "pursue all available legal remedies" to have the alleged violations corrected should the city fail to fix them on its own. He said some of the violations could render any officer misconduct findings void.

"Everyone should be concerned when a formal administrative body ignores the law," Lucia told Berkeleyside in a recent interview. "It's unfortunate that the BPA has to be the one to bring this to light."

PAB Director Katherine Lee directed inquiries about the allegations to the city attorney's office, which did not respond to multiple requests for comment from Berkeleyside.

In November 2020, as a large-scale movement to reimagine policing swept the nation following the murder of George Floyd, Berkeley voters overwhelmingly approved Measure II. The charter amendment dissolved the city's longstanding Police

Review Commission and replaced it with the Police Accountability Board. The goal of the update was to strengthen and modernize Berkeley's approach to police oversight in line with best practices that had developed around the nation.

Under Measure II, voters gave the new board and its director broader powers to investigate allegations of police misconduct and recommend disciplinary measures. The board began meeting in July 2021.

From the start, the police union had concerns about the process. The union began raising issues with the city in July 2021 about what it said was Berkeley's legal requirement to "meet and confer" with the union about the board's new regulations.

"Meet and confer" requirements can be triggered by different circumstances, including changes to working conditions. The union says this never happened despite repeated and ongoing requests.

"The City has refused to engage the BPA in formal meet and confer," Lucia wrote earlier this year. "Moreover, the PAB has operated pursuant to the unilaterally implemented 'interim' regulations, and has taken separate unilateral action outside the scope of its authority."

In part, the PAB regulations govern how police misconduct hearings are handled. During those hearings, according to the BPA letters, the Meyers-Milias-Brown Act and Public Safety Officers' Procedural Bill of Rights Act grant officers certain rights the city has failed to respect.

Prior to the March 3 hearing that was postponed, for example, the union says the PAB denied the officer rights protected by the law, including "access to notes,

reports and complaints” and “the ability to record his interrogation.”

Lucia also wrote that the hearing had been scheduled by the board despite determinations by PAB investigators that the claims were “not sustained” and “unfounded.”

On the day of the planned hearing, Director Lee confirmed to Berkeleyside that she had “decided to postpone it.” She did not provide a reason.

Lucia told Berkeleyside that the union is not trying to obstruct PAB factfinding, only to ensure the process is fair and legal.

“The BPA is not trying to undercut the tenets of police oversight,” he said. “The BPA respects the people who run the city and the constituents. All we’re asking them to do is to sit down with us as the law requires and talk about these issues.”

Lucia said the union is considering legal action before the Public Employment Relations Board and in Alameda County Superior Court but that nothing has been filed to date.

Questions also raised about the Brown Act, due process

In addition to the labor issues, the police union has raised concerns about possible Brown Act violations by board members.

The matter came to light in late January when a Police Accountability Board member brought it up herself during a public meeting in an effort to seek clarity about the law.

During the meeting, Board Member Julie Leftwich said she had been surprised to learn from city staff that she and another board member were not allowed to discuss the merits of a police misconduct case — as she said they had been doing — while they watched police body camera footage together before a misconduct hearing.

Leftwich said they had been “talking a little bit about the merits of the case” when staff said they “probably shouldn’t do that because it could be a Brown Act violation.”

“The Brown Act really shouldn’t apply because these hearings are not open to the public,” Leftwich told her colleagues that night. “The whole rationale of the Brown Act is to shine a light on secret dealings. Well, these are confidential so I didn’t really see why there should be a prohibition on Board members conferring before a hearing.”

In response to the allegations, Leftwich clarified her public remarks and told Berkeleyside that the merits of the case had not actually come up. She and the other board member had been watching the footage remotely, over Zoom, with a staff investigator and “asked questions to develop our factual understanding of the case.”

“The footage was long, and taken by two different officers, and we asked for some of it to be played again for clarification (e.g., to determine who said what and when),” Leftwich told Berkeleyside by email. “We also asked whether the investigator had interviewed another witness who was mentioned by the complainant. We did not, however, engage in deliberations about the merits of the case, nor discuss how we should rule in the matter. Therefore, even though I said we had discussed ‘the merits’ of the case, we really only discussed the facts of the case. So even if the Brown Act applies here — and I still don’t know whether it does or not — we did not violate the law.”

Leftwich said she would defer to the city attorney on Brown Act issues.

California’s Brown Act establishes a number of rules related to how public agencies conduct “open and public” meetings as well as closed session hearings. It requires public notice of meeting topics at least 72 hours in advance (aside from very limited, exigent circumstances); prohibits a majority of any legislative body from communicating about agenda items prior to a meeting; and states that employers “shall” give employees at least 24 hours’ notice before any closed session meeting to consider “complaints,” according to Lucia’s letter.

“Any action taken in violation of the Brown Act is ‘null and void’ and enforceable in the superior court,” Lucia wrote, “with attorneys’ fees awarded to the party enforcing compliance.”

In addition to potential Brown Act violations, city staff had also advised that such discussions could result in due process violations, according to a five-page letter from Lucia dated Feb. 8, because “PAB members ‘should be deliberating in the hearing and not any time outside of that.’”

In his letter, Lucia said these board member discussions amounted to “surreptitious deliberations,” and that any resulting action taken by the board — in this case as well as any others involving the same type of alleged violations — would legally be “null and void.”

City attorney’s office to board: There was no Brown Act violation

Michael Chang, Police Accountability Board chair, told Berkeleyside he was aware of the concerns that had been raised by the union.

On Wednesday night, Chang told Berkeleyside just after publication, the city attorney’s office had told the board it did not believe the Brown Act had been violated by the PAB.

“There are some pretty complex processes that are in motion with the BPA,” Chang told Berkeleyside.

To date, the union has been present at PAB meetings — all of which have taken place on Zoom — but has been largely silent due to the ongoing legal questions.

He too directed inquiries about the legal challenges to the city attorney’s office. But he said he hopes the union does begin to participate actively in the process.

Robust engagement between law enforcement and the board, Chang added, “is absolutely critical to the transparency that underpins faith in law enforcement.”

Editor’s Note: Berkeleyside added a comment from Michael Chang shortly after publication regarding the city attorney’s view that there was no Brown Act violation. Featured photo credit: Kelly Sullivan

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