

OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

## POLICE ACCOUNTABILITY BOARD REGULAR MEETING

**Tuesday, October 25, 2022  
7:00 P.M.**

### Board Members:

JOHN MOORE III. CHAIR  
NATHAN MIZELL, VICE-CHAIR  
KITTY CALAVITA

REGINA HARRIS  
JULIE LEFTWICH  
DEBORAH LEVINE

CHERYL OWENS  
ISMAL 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 (2 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, 5<sup>th</sup> Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955  
Website: [www.cityofberkeley.info/dpa/](http://www.cityofberkeley.info/dpa/) Email: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

**4. APPROVAL OF MINUTES (5 minutes)**

Regular meeting of October 12, 2022

**5. ODPa STAFF REPORT (5 minutes)**

Status of complaints and Policy Reviews; other items.

**6. CHAIR AND BOARD MEMBERS' REPORTS (5 minutes)**

**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) (5 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. Regulations Subcommittee – see Item #9. a. below. (Look at 9-14-22 PAB packet, pp 13-35.)

1. Discussion regarding the possibility of adding another PAB member to the Regulations subcommittee and referring the regulations back the subcommittee.

b. Controlled Equipment Subcommittee. (Welcome more Board members to join.)

c. Police Chief Process (ad hoc) Subcommittee

**9. OLD BUSINESS (discussion and action)**

a. Finalize review of draft proposed permanent Regulations for Handling Investigations and Complaints. (1 hour)

**10. PUBLIC COMMENT REGARDING AGENDA ITEM 11.A.**

*(A public comment period shall be agendized 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.)*

a. Public Comment for item 11.a.

**11. NEW BUSINESS (discussion and action)**

a. Discussion on Policy Complaint #31 regarding BMC 2.99 and BPD Policy 1106 – Special Order 2020-0006

b. Discussion regarding PAB member stipends (Cheryl Owens)

c. Discussion regarding the policy priorities of the Board

- d. Discussion on a proposed closed session discussion regarding the City Attorney's analysis of PAB Authority

**12. 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 Board will recess into closed session to discuss and take action on the following matter(s):

- 13. PRESENTATION OF ADMINISTRATIVE CLOSURE OF COMPLAINT #23 (10 MIN)**
- 14. PRESENTATION OF ADMINISTRATIVE CLOSURE OF COMPLAINT #24 (10 MIN)**
- 15. DISCUSSION REGARDING COMPLAINT #19 (10 MIN)**

**END OF CLOSED SESSION**

- 16. ANNOUNCEMENT OF CLOSED SESSION ACTION**
- 17. 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**

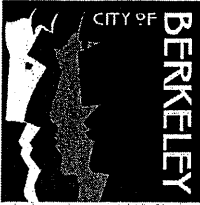
Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA.

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

**POLICE ACCOUNTABILITY BOARD (PAB)  
REGULAR MEETING ATTACHMENTS  
OCTOBER 25, 2022**

|   |         |
|---|---------|
| <b><u>MINUTES</u></b>   |         |
| October 12, 2022 Regular Meeting Draft Minutes                  | Page 7  |
| <b><u>AGENDA-RELATED</u></b>                                    |         |
| Item 5. – Police Accountability Board’s Policy Reviews.         | Page 11 |
| Item 5. – BPD / Lexipol Policies.                               | Page 15 |
| Item 8. – 10-3-2022 PAB Subcommittee List.                      | Page 37 |
| Item 11.a. – DPA Policy Complaint #31 and relevant information. | Page 39 |
| Item 11.b. – Stipend discussion.                                | Page 71 |
| <b><u>COMMUNICATIONS</u></b>                                    |         |
| None.   |         |





OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

**DRAFT**

**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING  
MINUTES  
(draft)**

**Wednesday, October 12, 2022, 7:00 P.M.**

**1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR MIZELL AT 7:03 P.M.**

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

**Absent:** Board Member John Moore (Chair)

**ODPA Staff:** Hansel Aguilar, Director (Newly Appointed)  
Beneba Thomas, DPA Investigator  
Jose Murillo, Associate Management Analyst

**BPD Staff:** Captain Durbin  
Lieutenant Reece

**C.A Staff:** Laura Mattes, Deputy City Attorney

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda with amendment to item 9.a.**  
Moved/Second (Mizell/Leftwich) **Motion Carried by General Consent.**  
Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Owens, and Ramsey.  
Noes: None                      Abstain: None                      Absent: None

### 3. PUBLIC COMMENT

4 speakers.

### 4. APPROVAL OF MINUTES

Regular meeting of September 28, 2022 & Special meeting of September 30, 2022

**Motion to approve Regular Meeting Minutes of September 28, 2022 and Special Meeting Minutes of September 30, 2022**

Moved/Second (Calavita/Harris) **Motion Carried by General Consent.**

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

Noes: None

Abstain: None

Absent: None

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***Newly appointed Director of Police Accountability, Hansel Aguilar, introduces himself to the community and PAB.***

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### 5. ODPa STAFF MEMBERS' REPORT

- Investigator Thomas states 41 new Lexipol policies have been issued in 2022. Board member Ramsey poses questions on the processing of the new Lexipol policies and previous procedures as to their review before implementation. Captain Durbin addresses the questions regarding collaboration of PAB and BPD re policy implementation. Captain Durbin will follow-up regarding potentially providing red-lined versions of policies to allow PAB the opportunity to provide feedback. Board members Leftwich and Levine ask clarifying questions regarding procedure.
- Investigator Beneba Thomas provides an overview of the status of complaints and answers board member questions. There are 3 cases which are told; 3 cases on hold pending CA advice; 1 case on hold until officer returns to work/ CA opinion; 2 cases where complaint was incomplete but will be refiled; 1 case where investigation is complete; two cases ready for admin closure (complainant requested); 1 case withdrawn because issue not related to BPD; 1 case in August proceeding regularly; 1 case where everything is ready but will require an extension from BPD.
- Board Member Leftwich request that PAB receives copies of new complaints when they come in as permitted by the charter. Board member Levine refers to City Charter Section 125 subsection 18.g.
- Board Member Calavita and Ramsey request that staff look into ways to link the PRC website and its contents to the PAB website and the Annual Statistical Reports for previous years.



## 6. BOARD MEMBERS' REPORTS

- Vice Chair Mizell reports a follow up to the City Attorney's office on the timeline for the memo on the PAB's investigation procedure.
  - o Deputy City Attorney Mattes provides an update on the status of the memo and states that some answers to ODPa staff question may be answered within that memo.
  - o Brief discussion as to whether the memo can be reviewed under a closed session before the memo is made public. Board member Owens proposes that discussion on the memo should be put on the agenda for the next meeting; Board member Leftwich echoes that request. DCA Mattes will confer with team on whether it is appropriate for a closed session to be held to review the document. PAB request that they be provided with some notice before the release of the memo. The memo is to be released by 10/14/2022.
- Board Member Owens would like to discuss various policy questions at the next PAB regular meeting. ODPa Management Analyst, Jose Murillo, will brief the board the following meeting.

## 7. CHIEF OF POLICE'S REPORT

Captain Durbin reported:

- Homicide incident on Saturday that left one dead and 3 others injured. Investigation in process and BPD is communicating with BFD in terms of response to mass casualty events. BPD will be increasing presence in that area, particularly on weekends, and coordinating efforts with UCPD.
- There has been a constant increase in catalytic converter thefts. Investigators are working to address this issue.
- No new changes in staffing since the last PAB regular meeting on September 28, 2022. Welcomes efforts on behalf of the PAB and community to help with recruitment effort outreach.

## 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. Dissolve or renew Director Search Subcommittee. (Tabled until new Director is hired.).

### **Motion to dissolve Director Search Subcommittee**

Moved/Second (Mizell/Calavita) **Motion Carried / Failed**

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

Noes: None

Abstain: None

Absent: None

- b. Regulations Subcommittee – see Item #9.a. below. (Look at 9-14-22 PAB packet, pp 13-35.).

No report.

- c. Controlled Equipment Subcommittee. (Welcome more Board members to join.)

No developments since last report on September 28, 2022.

- d. Police Chief Process (ad hoc) Subcommittee

Subcommittee attended interviews on October 6, 2022. Three candidates were interviewed. Concerns remains about the PAB's role in the process but overall positive experience. Subcommittee was able to articulate their thoughts. City Manager to interview the candidates for a final interview, decision will rest on the City Manager but showed intent to consider PAB's suggestions.

## **9. OLD BUSINESS (discussion and action)**

- a. Finalize review of draft proposed permanent Regulations for Handling Investigations and Complaints.

Tabled pending additional information.

## **10. NEW BUSINESS (discussion and action)**

- a. PAB Social Event. (Julie Leftwich) – Board member Leftwich proposes a social event to better develop working relationships. This event will not discuss any business. Further details to come.

## **11. PUBLIC COMMENT**

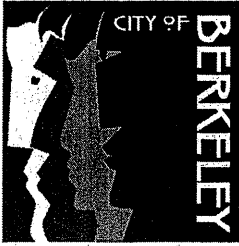
2 speakers.

## **12. ADJOURNMENT**

**Motion to adjourn the meeting.**

Moved/Second (Mizell, Leftwich)

**By general consent, the meeting was adjourned at 9:13 p.m.**



Office of the Director of Police Accountability

**Date:** 10/19/2022  
**To:** Police Accountability Board  
**From:** Jose Murillo, ODPa Associate Management Analyst  
**Re:** Police Accountability Board's Policy Reviews

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Honorable Board Members:

On October 12<sup>th</sup>, 2022, the Board requested a report on behalf of staff detailing the status of any and all pending policy reviews. In response to that request, ODPa staff has reviewed previous PAB meeting minutes and has updated a report originally written by former ODPa Director, Katherine Lee. Upon review of these materials, ODPa has staff identified and updated the following policy topics and their status:

**1. Fair & Impartial Policing Implementation, Status: Ongoing**

In February of 2021, the City Council referred recommendations from the Mayor's Fair & Impartial Policing Task Force for the Police Department to implement. The Council also charged the Police Review Commission/Police Accountability Board with monitoring the Department's progress in carrying out the recommendations. The Board established the Fair & Impartial Policing Implementation Subcommittee for this purpose. Among items reviewed this past year were the revised consent search form, the Early Warning System policy, and the new traffic enforcement model.

**2. Referral on Hate Crimes Reporting and Response, Status: Ongoing**

In November 2020, the Council referred an extensive package of recommendations to the City Manager, the Police and other City Departments, and a number of commissions to bolster the City's response to hate crimes and their reporting.

One of the referrals to the Police Review Commission, and taken up by the Police Accountability Board, was to review Police Department Policy 319, Hate Crimes. A Board subcommittee submitted its recommendation for minor revisions of the policy to the Board, which approved them in April 2022.

Remaining items will require further coordination with the Police Department, which is the lead for the package of referrals.

### **3. *Controlled Equipment Impact Statements & Use Policies, Status: 1 of 2 Components Completed***

In 2022 the Police Department prepared Police Equipment Impact Statements, Use Policies, and an Annual Use Report for the first time, as mandated by the Police Equipment & Community Safety Ordinance (B.M.C. Ch. 2.100). Additionally, Assembly Bill 481 required local law enforcement agencies to develop a Military Equipment Use Policy this year, also for the first time, with many similar requirements to the local law. The local ordinance requires Board review of the BPD's Impact Statements and Use Policies before proceeding to City Council approval and, while the Board's assessment of the Military Equipment Policy is not required, the Board decided to review it as well.

The BPD documents that the Board evaluated cover numerous types of equipment employed by our police; the Impact Statements were voluminous and portions were very technical. Some provisions of the ordinance regarding the process for, and timing of, the BPD's submissions and Board review are not clear. These factors resulted in a hugely challenging undertaking for the Board, both in substance and magnitude.

A Board subcommittee was formed to review the Police Department submittals, and the Board, over several meetings, approved the Subcommittee's recommendations with minor modifications. The Board's evaluation of the Equipment Impact Statements, Use Policies, and the Military Equipment Policy were forwarded to the Council, which gave its final approvals in July. The Board identified a number of items that were either missing in the Use Report or could use clarification and/or greater specificity in a memo to the Mayor and Members of the City Council. The matter has not yet been addressed by the City Council.

In the course of reviewing these materials, the Board determined that it wished to further study whether the use of OC (pepper spray) canisters should be treated similarly to tear gas canisters. This will be put on the agenda in the coming months.

### **4. *Body-Worn Camera Policy – Update, Status: In Progress***

The Police Department's Body-Worn Camera policy (Policy 425) has not yet been updated to reflect the transition from the PRC to the Board and ODPA, and the new entities' broader access to BWC video. As a matter of practice, the BPD has cooperated with ODPA staff in providing unredacted BWC video requested in connection with complaint investigations. However, the policy should be revised to

reflect actual practice, and any outstanding questions about access resolved, and memorialized in the policy.

**5. Inquiry into involuntary injections of Detainees, Status: In progress**

At the request of staff, the Board opened a policy review inspired by an officer allegedly authorizing a paramedic to give an involuntary injection, possibly a sedative, to a detainee who had refused medical care after a scuffle with officers. Staff became aware of the incident while reviewing body camera footage as part of a complaint investigation. Although this injection was not mentioned in said complaint, staff found it necessary to look further into the matter. Staff at the time were unsuccessful in identifying BPD policy that explicitly authorized or prohibited the alleged action. BPD staff present at the 1/26/2022 regular meeting stated that directing paramedics to provide medical care was not within the scope of their services. The policy review had not been started due to other board priorities and staffing issues on behalf of ODPa which have now been alleviated.

ODPA staff has begun their research and an initial review has identified BPD Policy 431.5 "Persons Refusing EMS Care" as a policy of interest. Staff has also looked into similar incidents across different cities and will be researching any policy changes as a result of the respective events.

**6. Mental Health Response, Status: Subcommittee Formed**

At the request of a member of the public (complainant), the Board opened a policy review into its response to persons in mental health crisis. This examination was prompted by an incident in which the BPD refused to enter the apartment of the complainant's brother, who was eventually found deceased. The Board formed a Mental Health Response Subcommittee, but it has not met due to other Board Priorities.

**7. Policy 351, Fixed Surveillance Cameras, Status: Subcommittee Formed**

In late January 2022, the City Manager proposed Policy 351, Public Safety Fixed Surveillance Cameras, in response to a request of the Council. As the Board had not been consulted regarding this policy, it voted to conduct a review and formed a subcommittee. Due to other priorities, review of the policy has not yet commenced.

**8. Lexipol Policies – Continued review of General Orders converted to Lexipol format, Status: Not Begun**

In 2019 the Police Department began converting its General Orders, Training & Information Bulletins and other policies into the Lexipol format. The PRC started reviewing the conversion of the policies to ensure that Berkeley-specific language was maintained, or to understand the BPD's rationale for changing the language. Since its inception, the Police Accountability Board has desired to continue this

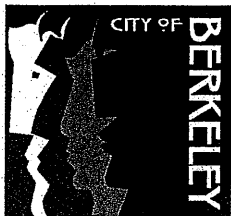
review, but has not had time to start this very detail-oriented and time-consuming task. A subcommittee has not yet been formed under the PAB.

**9. Review of Berkeley Police Department policy on the release of inebriated individuals, Status: Not Begun**

Late one night in January 2022 a homeless, inebriated man was arrested, brought to the police station, and released due to medical reasons. The man was found early the next morning outside the police station, taken to Alta Bates Hospital, and died shortly thereafter. The Board voted to initiate an investigation into this incident. After the City Attorney's Office raised a question in July 2022 as to whether the Board could initiate complaints, the Board initiated a policy review into the BPD's policies regarding the release of inebriated individuals from police custody.

ODPA staff has begun its initial policy review and Policy 900.21 "Sober Release," has been identified as a potential policy of interest.

**END OF REPORT**



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

**To:** Police Accountability Board  
**From:** Beneba Thomas, Investigator  
**Date:** October 18, 2022  
**Re:** BPD / Lexipol Policies

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Pursuant to your request at the October 12, 2022, Police Accountability Board meeting, I have attached a screen shot of the list of BPD/Lexipol policies issued between September 5, 2018 and October 18, 2022.





## Knowledge Management System

## User Acknowledgements

Manual: 

|  |                  |
|--|------------------|
| 1302 Surveillance Use Policy- Automated License Plate Reader | Tue, Oct 04 2022 |
| 351 Public Safety Fixed Video Surveillance Cameras           | Wed, Sep 21 2022 |
| 306 Firearms   | Wed, Aug 24 2022 |
| 349 Tactical Rifle Operator Program                          | Wed, Aug 24 2022 |
| 504 Impaired Driving   | Wed, Aug 24 2022 |
| 311 Search and Seizure                                       | Tue, Aug 02 2022 |
| 709 Military Equipment                                       | Tue, Aug 02 2022 |
| 303 Control Devices and Techniques                           | Wed, Jun 29 2022 |
| 804 Records Maintenance and Release                          | Tue, Jun 21 2022 |
| 806 Computers and Digital Evidence                           | Tue, Jun 21 2022 |
| 801 The Communications Center                                | Tue, Jun 21 2022 |
| 803 Records Management                                       | Tue, Jun 21 2022 |
| 1003 Grievance Procedure                                     | Tue, Jun 21 2022 |
| 421 Contacts and Temporary Detentions                        | Mon, Jun 13 2022 |
| 427 Medical Marijuana  | Mon, Jun 13 2022 |
| 500 Traffic Function and Responsibility                      | Mon, Jun 13 2022 |
| 410 Mental Illness Commitments                               | Mon, Jun 13 2022 |
| 1021 Occupational Disease and Work-Related Injury Reporting  | Mon, Jun 13 2022 |
| 502 Vehicle Towing and Release                               | Mon, Jun 13 2022 |
| 1041 EARLY WARNING SYSTEM                                    | Wed, Jun 01 2022 |
| 428 First Amendment Assemblies                               | Wed, May 25 2022 |

## Daily Training Bulletins ( DTBs )

Manual: 

No Content Actions



Knowledge Management System

**User Acknowledgements**

Manual:

All

**Daily Training Bulletins ( DTBs )**

Manual:

All

|   |                  |
|---|------------------|
| 409 Crisis Intervention                           | Wed, May 25 2022 |
| 301 Officer Involved Shooting/Injury Review Board | Wed, May 25 2022 |
| 202 Emergency Operations Plan                     | Wed, May 25 2022 |
| 324 Media Relations                               | Wed, May 25 2022 |
| 354 Precision Rifle Operator Program              | Tue, Mar 15 2022 |
| 1601 CAPTAIN'S INSTRUCTION 2022-001               | Mon, Mar 14 2022 |
| 353 FLASH/SOUND DIVERSIONARY DEVICES              | Thu, Feb 24 2022 |
| 811 Mobile Command Vehicle (MCV)                  | Thu, Feb 24 2022 |
| 708 Robot Cameras                                 | Thu, Feb 24 2022 |
| 1004 Anti-Retaliation                             | Mon, Jan 03 2022 |
| 1005 Reporting of Employee Convictions            | Mon, Jan 03 2022 |
| 604 Eyewitness Identification                     | Mon, Jan 03 2022 |
| 411 Cite and Release Policy                       | Mon, Jan 03 2022 |
| 319 Hate Crimes                                   | Mon, Jan 03 2022 |
| 313 Senior and Disability Victimization           | Mon, Jan 03 2022 |
| 315 Child Abuse                                   | Mon, Jan 03 2022 |
| 310 Domestic Violence                             | Mon, Jan 03 2022 |
| 203 Training                                      | Mon, Jan 03 2022 |
| 1503 2022 Legislative Update                      | Sun, Dec 26 2021 |
| 1600 CAPTAIN'S INSTRUCTION 2021-001               | Tue, Nov 09 2021 |
| 1203 Smoking Ordinance                            | Mon, Aug 16 2021 |

No Content Actions



Knowledge Management System

**User Acknowledgements**

Manual:

All

**Daily Training Bulletins ( DTBs )**

Manual:

All

|   |                  |
|---|------------------|
| 1034 Complaint Review Board   | Mon, Aug 16 2021 |
| 1035 Traffic Collision Review Board                                     | Mon, Aug 16 2021 |
| 1200 Social Host Ordinance  | Mon, Aug 16 2021 |
| 1201 Taxicab Enforcement  | Mon, Aug 16 2021 |
| 1032 The Critical Incident Stress Management (CISM) and Peer Support... | Mon, Aug 16 2021 |
| 1013 Personnel Records  | Tue, Aug 03 2021 |
| 1015 Fitness for Duty   | Mon, Aug 02 2021 |
| 1026 Department Badges  | Mon, Aug 02 2021 |
| 1023 Uniform Regulations  | Mon, Aug 02 2021 |
| 1031 Line-of-Duty Deaths  | Mon, Aug 02 2021 |
| 1500 2019 Legislative Update  | Thu, Jul 29 2021 |
| 700 Department Owned and Personal Property                              | Mon, Jul 19 2021 |
| 701 Personal Communication Devices                                      | Mon, Jul 19 2021 |
| 805 Protected Information   | Mon, Jul 19 2021 |
| 607 Operations Planning and Deconfliction                               | Mon, Jul 19 2021 |
| 608 Detective Bureau  | Mon, Jul 19 2021 |
| 606 Warrant Service   | Fri, Jul 16 2021 |
| 603 Informants  | Thu, Jul 15 2021 |
| 609 Stolen Vehicle Investigations                                       | Thu, Jul 15 2021 |
| 600 Investigation and Prosecution                                       | Thu, Jul 15 2021 |
| 434 Animal Control  | Thu, Jul 15 2021 |

No Content Actions



Knowledge Management System

**User Acknowledgements**

Manual:

All

**Daily Training Bulletins ( DTBs )**

Manual:

All

|  |                  |
|--|------------------|
| <b>321 Standards of Conduct</b>                            | Wed, Jul 07 2021 |
| <b>316 Missing Persons</b>                                 | Wed, Jul 07 2021 |
| <b>413 Rapid Response and Deployment</b>                   | Wed, Jul 07 2021 |
| <b>403 Crime and Disaster Scene Integrity</b>              | Wed, Jul 07 2021 |
| <b>337 Biological Samples</b>                              | Wed, Jul 07 2021 |
| <b>426 Public Recording of Law Enforcement Activity</b>    | Wed, Jul 07 2021 |
| <b>431 Medical Aid and Response</b>                        | Mon, Jun 28 2021 |
| <b>802 Property and Evidence</b>                           | Mon, Jun 28 2021 |
| <b>901 Custodial Searches</b>                              | Mon, Jun 28 2021 |
| <b>1202 Second Response</b>                                | Mon, Jun 28 2021 |
| <b>1030 The Safety Committee</b>                           | Mon, Jun 28 2021 |
| <b>433 Situational Awareness Group</b>                     | Tue, May 11 2021 |
| <b>424 Mobile Data Terminal Use</b>                        | Tue, May 11 2021 |
| <b>420 Foot Pursuits</b>                                   | Tue, May 11 2021 |
| <b>503 Tow Hearings</b>                                    | Tue, May 11 2021 |
| <b>419 Field Training Officer Program</b>                  | Tue, May 04 2021 |
| <b>350 Public Appearances</b>                              | Tue, May 04 2021 |
| <b>347 Firearms and Tactics Unit</b>                       | Tue, May 04 2021 |
| <b>408 Response to Bomb Calls</b>                          | Tue, May 04 2021 |
| <b>412 Foreign Diplomatic and Consular Representatives</b> | Tue, May 04 2021 |
| <b>344 Off-Duty Law Enforcement Actions</b>                | Wed, Apr 28 2021 |

No Content Actions





## Knowledge Management System

**User Acknowledgements**

Manual:

All

**Daily Training Bulletins ( DTBs )**

Manual:

All

|   |                  |
|---|------------------|
| <b>341 Volunteer Program</b>                              | Wed, Apr 28 2021 |
| <b>342 Service Animals</b>                                | Wed, Apr 28 2021 |
| <b>325 Subpoenas and Court Appearances</b>                | Wed, Apr 28 2021 |
| <b>329 Major Incident Notification</b>                    | Wed, Apr 28 2021 |
| <b>312 Temporary Custody of Juveniles</b>                 | Tue, Mar 16 2021 |
| <b>300 Use of Force</b>                                   | Tue, Mar 09 2021 |
| <b>1110 Special Order 2021-0002</b>                       | Thu, Feb 25 2021 |
| <b>1300 Surveillance Use Policy - Body Worn Cameras</b>   | Thu, Feb 25 2021 |
| <b>1301 Surveillance Use Policy- GPS Tracking Devices</b> | Thu, Feb 25 2021 |
| <b>900 Temporary Custody of Adults</b>                    | Mon, Feb 08 2021 |
| <b>1502 2021 Legislative Update</b>                       | Sun, Jan 31 2021 |
| <b>1109 Special Order 2021-0001</b>                       | Thu, Jan 28 2021 |
| <b>707 Long Range Acoustical Device (LRAD)</b>            | Thu, Oct 29 2020 |
| <b>401 Fair and Impartial Policing</b>                    | Thu, Sep 17 2020 |
| <b>1000 Recruitment and Selection</b>                     | Wed, Sep 16 2020 |
| <b>314 Discriminatory Harassment</b>                      | Tue, Aug 18 2020 |
| <b>1107 Special Order 2020-0007</b>                       | Fri, Aug 07 2020 |
| <b>1105 Special Order 2020-0005</b>                       | Tue, Jul 21 2020 |
| <b>1106 Special Order 2020-0006</b>                       | Tue, Jul 21 2020 |
| <b>1103 Special Order 2020-0003</b>                       | Fri, Apr 17 2020 |
| <b>1104 Special Order 2020-0004</b>                       | Thu, Apr 16 2020 |

No Content Actions



## Knowledge Management System

## User Acknowledgements

Manual: 

## Daily Training Bulletins ( DTBs )

Manual: 

|   |                  |
|---|------------------|
| 207 License to Carry a Firearm                    | Tue, Mar 10 2020 |
| 336 Mandatory Employer Notification               | Thu, Mar 05 2020 |
| 1102 Special Order 2020-0002                      | Thu, Mar 05 2020 |
| 328 Registered Offender Information               | Mon, Feb 24 2020 |
| 318 Victim and Witness Assistance                 | Mon, Feb 24 2020 |
| 1402 REFERENCE LINKS                              | Thu, Feb 13 2020 |
| 1022 Personal Appearance Standards                | Tue, Feb 04 2020 |
| 1401 2019 - LAW ENFORCEMENT MUTUAL AID PLAN       | Tue, Feb 04 2020 |
| 1101 Special Order 2020-0001                      | Fri, Jan 03 2020 |
| 1501 2020 Legislative Update                      | Mon, Dec 16 2019 |
| 302 Handcuffing and Restraints                    | Mon, Nov 04 2019 |
| 333 Private Persons Arrests                       | Wed, Aug 14 2019 |
| 322 Information Technology Use                    | Wed, Aug 07 2019 |
| 206 Retiree Concealed Firearms                    | Thu, Jul 11 2019 |
| 308 Canines                                       | Thu, Jul 11 2019 |
| 332 Communications with Persons with Disabilities | Wed, Jul 10 2019 |
| 703 Vehicle Use                                   | Wed, Jul 10 2019 |
| 505 Traffic Citations                             | Wed, Jul 10 2019 |
| 602 Asset Forfeiture                              | Wed, Jul 10 2019 |
| 507 72-Hour Parking Violations                    | Wed, Jul 10 2019 |
| 1019 Overtime Compensation Requests               | Wed, Jul 10 2019 |

No Content Actions



## Knowledge Management System

**User Acknowledgements**

Manual:

All

**Daily Training Bulletins ( DTBs )**

Manual:

All

|  |                  |
|--|------------------|
| 1033 Employee Absences                                     | Wed, Jul 03 2019 |
| 1028 Conference, Meeting and Training Attendance           | Wed, Jul 03 2019 |
| 317 Public Alerts  | Wed, Jul 03 2019 |
| 208 Departmental Forms                                     | Thu, Jun 20 2019 |
| 402 Briefing Training                                      | Thu, Jun 20 2019 |
| 400 Patrol Function  | Thu, Jun 20 2019 |
| 1020 Outside Employment                                    | Wed, Jun 05 2019 |
| 415 Immigration Law  | Fri, May 24 2019 |
| 506 Disabled Vehicles                                      | Wed, May 22 2019 |
| 418 Obtaining Air Support                                  | Thu, May 16 2019 |
| 330 Death Investigation                                    | Wed, Apr 10 2019 |
| 343 Gun Violence Restraining Orders                        | Fri, Mar 15 2019 |
| 416 Emergency Utility Service                              | Wed, Feb 27 2019 |
| 704 Cash Handling, Security and Management                 | Wed, Feb 27 2019 |
| 405 Ride-Along Program                                     | Wed, Feb 27 2019 |
| 1011 Seat Belts  | Thu, Jan 31 2019 |
| 425 Body Worn Cameras                                      | Thu, Jan 31 2019 |
| 902 Prison Rape Elimination                                | Wed, Dec 26 2018 |
| 348 Youth Services Detail                                  | Thu, Oct 25 2018 |
| 1100 Special Order 2018-0001                               | Mon, Oct 22 2018 |
| 429 Intelligence Procedures for First Amendment Activities | Mon, Oct 22 2018 |

No Content Actions



Knowledge Management System

**User Acknowledgements**

Manual:

All

**Daily Training Bulletins ( DTBs )**

Manual:

All

|  |                  |
|--|------------------|
| 1025 Nepotism and Conflicting Relationships            | Fri, Oct 12 2018 |
| 1018 Payroll Record Procedures                         | Fri, Oct 12 2018 |
| 326 Reserve Officers                                   | Fri, Oct 12 2018 |
| 903 Detainee Transportation                            | Fri, Oct 12 2018 |
| 430 Civil Disputes                                     | Fri, Oct 12 2018 |
| 335 Limited English Proficiency Services               | Fri, Oct 12 2018 |
| 423 Watch Commanders                                   | Fri, Oct 12 2018 |
| 705 Personal Protective Equipment                      | Thu, Oct 04 2018 |
| 1029 Employee Speech, Expression and Social Networking | Thu, Oct 04 2018 |
| 204 Electronic Communication                           | Thu, Oct 04 2018 |
| 1014 Commendations                                     | Thu, Sep 27 2018 |
| 1027 Temporary Modified-Duty Assignments               | Thu, Sep 27 2018 |
| 1024 Police Aide Program                               | Thu, Sep 27 2018 |
| 1017 Lactation Break Policy                            | Thu, Sep 27 2018 |
| 1016 Meal Periods and Breaks                           | Thu, Sep 27 2018 |
| 406 Hazardous Material Response                        | Thu, Sep 27 2018 |
| 501 Motor Vehicle Collision Investigations             | Thu, Sep 27 2018 |
| 1012 Body Armor  | Wed, Sep 26 2018 |
| 800 Crime Analysis                                     | Mon, Sep 24 2018 |
| 702 Vehicle Maintenance                                | Mon, Sep 24 2018 |
| 605 Brady Material Disclosure                          | Mon, Sep 24 2018 |

No Content Actions





Knowledge Management System

User Acknowledgements

Manual: All

Daily Training Bulletins ( DTBs )

Manual: All

|  |                  |
|--|------------------|
| 345 Native American Graves Protection and Repatriation                   | Fri, Sep 21 2018 |
| 331 Identity Theft   | Fri, Sep 21 2018 |
| 100 Law Enforcement Authority  | Fri, Sep 14 2018 |
| 309 Officer Response to Calls  | Fri, Sep 14 2018 |
| 339 Community Relations  | Fri, Sep 14 2018 |
| 340 Child and Dependent Adult Safety                                     | Fri, Sep 14 2018 |
| 1002 Special, Temporary Duty or Specialized Duty Assignments - Applic... | Fri, Sep 14 2018 |
| 1009 Smoking and Tobacco Use   | Fri, Sep 14 2018 |
| 414 Use of Narcan (Naloxone)   | Fri, Sep 07 2018 |
| 338 Chaplaincy Program   | Fri, Sep 07 2018 |
| 807 Computer Voice Stress Examinations                                   | Fri, Sep 07 2018 |
| 808 Emergency Burial Permits   | Fri, Sep 07 2018 |
| 417 Aircraft Accidents   | Fri, Sep 07 2018 |
| 706 Emergency Response Vehicle   | Wed, Sep 05 2018 |
| 610 Conduct of Licensed Alcohol Establishments                           | Wed, Sep 05 2018 |
| 508 Adult Crossing Guard   | Wed, Sep 05 2018 |
| 334 Anti-Reproductive Rights Crimes Reporting                            | Wed, Sep 05 2018 |
| 346 Honor Guard  | Wed, Sep 05 2018 |
| 205 Administrative Communications  | Wed, Sep 05 2018 |
| 102 Oath of Office   | Wed, Sep 05 2018 |
| 103 Policy Manual  | Wed, Sep 05 2018 |

No Content Actions



Knowledge Management System

User Acknowledgements

Manual: All

Daily Training Bulletins ( DTBs )

Manual: All

|  |                  |
|--|------------------|
| 331 Identity Theft   | Fri, Sep 21 2018 |
| 100 Law Enforcement Authority  | Fri, Sep 14 2018 |
| 309 Officer Response to Calls  | Fri, Sep 14 2018 |
| 339 Community Relations  | Fri, Sep 14 2018 |
| 340 Child and Dependent Adult Safety                                     | Fri, Sep 14 2018 |
| 1002 Special, Temporary Duty or Specialized Duty Assignments - Applic... | Fri, Sep 14 2018 |
| 1009 Smoking and Tobacco Use   | Fri, Sep 14 2018 |
| 414 Use of Narcan (Naloxone)   | Fri, Sep 07 2018 |
| 338 Chaplaincy Program   | Fri, Sep 07 2018 |
| 807 Computer Voice Stress Examinations                                   | Fri, Sep 07 2018 |
| 808 Emergency Burial Permits   | Fri, Sep 07 2018 |
| 417 Aircraft Accidents   | Fri, Sep 07 2018 |
| 706 Emergency Response Vehicle   | Wed, Sep 05 2018 |
| 610 Conduct of Licensed Alcohol Establishments                           | Wed, Sep 05 2018 |
| 508 Adult Crossing Guard   | Wed, Sep 05 2018 |
| 334 Anti-Reproductive Rights Crimes Reporting                            | Wed, Sep 05 2018 |
| 346 Honor Guard  | Wed, Sep 05 2018 |
| 205 Administrative Communications  | Wed, Sep 05 2018 |
| 102 Oath of Office   | Wed, Sep 05 2018 |
| 103 Policy Manual  | Wed, Sep 05 2018 |
| 101 Chief Executive Officer  | Wed, Sep 05 2018 |

No Content Actions

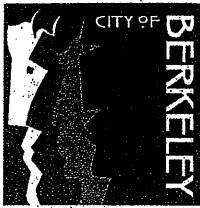


**POLICE ACCOUNTABILITY BOARD  
SUBCOMMITTEES LIST**

**10-3-2022**

| <b>Subcommittee</b>   | <b>Board Members</b>   | <b>Chair</b>                        | <b>BPD Reps</b>                   |
|---|--|-------------------------------------|-----------------------------------|
| <b>Regulations</b><br>Formed 7-7-21<br>Renewed 6-22-22                                  | Calavita<br>Leftwich<br>Owens<br><br><u>Public:</u><br>Kitt Saginor                            |                                     | Lt. Dan Montgomery                |
| <b>Director Search</b><br>Formed 8-4-21   | Levine<br>Mizell<br>Moore<br><br><u>Public:</u><br>Rivka Polatnick<br>Marc Staton              | <u>Co-chairs</u><br>Levine<br>Moore |                                   |
| <b>Fair &amp; Impartial Policing Implementation</b><br>Formed 8-4-21<br>Renewed 9-14-22 | Calavita<br>Moore<br>Owens<br>Ramsey<br><br><u>Public:</u><br>George Lippman<br>Elliot Halpern | <b>Calavita</b>                     | Sgt. Peter Lee                    |
| <b>Mental Health Response</b><br>Formed 11-10-21<br>Scope expanded 3-9-22               | Harris<br>Levine<br><br><u>Public:</u><br>Elena Auerbach                                       |                                     | Sgt. Joe LeDoux                   |
| <b>Fixed Surveillance Cameras (Policy 351)</b><br>Formed 2-9-22                         | Mizell<br>Ramsey   |                                     |                                   |
| <b>Controlled Equipment Use &amp; Reporting</b><br>Formed 5-11-22                       | Moore<br>Ramsey  | <b>Moore</b>                        | Sgt. Peter Lee<br>Sgt. Joe LeDoux |
| <b>Chief of Police Process</b><br>Formed 9-30-22  | Leftwich<br>Levine<br>Mizell<br>Moore  |                                     |                                   |





OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

October 19, 2022

James Massar  
[REDACTED]  
[REDACTED]

Re: DPA Policy Complaint #31  
Filed October 13, 2022

Dear Mr. Massar,

This is to inform you that the Police Accountability Board will consider your policy complaint at its next regularly scheduled meeting on **Tuesday, October 25, 2022, 7:00 p.m., via Zoom**. You are encouraged to join the meeting and address the Board regarding the issues raised in your complaint.

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.


Under our procedures, the Board must decide whether to accept your complaint for review of a Police Department policy, practice, or procedure. If the Board accepts your complaint, it may initiate a formal investigation, create a subcommittee, or take other action as appropriate. Upon completion of the policy review, the Board may make policy recommendations to the Police Chief, City Manager, and/or the City Council. If the Board does not accept your policy review complaint, your case will be closed.





Should you have any questions or concerns, please call the DPA office at (510) 981-4950 or email [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info).

Sincerely,



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José Murillo  
Associate Management Analyst

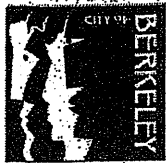
cc: File



Received by DPA

OCT 13 2022

Date Received:



# POLICY COMPLAINT FORM

Office of the Director of Police Accountability (DPA)

1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704

Web: [www.cityofberkeley.info/dpa](http://www.cityofberkeley.info/dpa)

E-mail: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

DPA Case # 31

1

Name of Complainant: \_\_\_\_\_  
Last First Middle

Mailing Address: \_\_\_\_\_  
Street City State Zip

Primary Phone: \_\_\_\_\_ Alt Phone: ( ) \_\_\_\_\_

E-mail address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Gender: M Age: 66

Ethnicity:  Asian  Black/African-American  Caucasian  
 Latino/Hispanic  Multiethnic: \_\_\_\_\_  Other: \_\_\_\_\_

2

Identify the Berkeley Police Department (BPD) policy or practice you would like the Police Accountability Board to review.

REQUESTING SHERIFF DRONES TO SURVEILL  
SOLANO STROLL IN VIOLATION OF SURVEILLANCE  
ORDINANCE. SEE DETAILED EXPLANATION AT:  
OAKLANDPRIVACY.ORG/DRONES-FLEW-OVER-SOLANO-STROLL OR  
TINYURL.COM/BD3KTEE9 OR  
JUST GO TO OAKLANDPRIVACY.ORG AND SCROLL DOWN OR ATTACHED <sup>SEE</sup>

3

Location of Incident (if applicable) SOLANO AVE

Date & Time of Incident (if applicable) SEPT 10, 10-3 PM (2022)

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

BPD REQUESTED SHERIFF DRONES, THEY CLAIM 'EXIGENT CIRCUMSTANCES'  
WHICH IS NONSENCE. THEY REPORTED THIS USE TO CITY COUNCIL  
AS REQUIRED, THAT REPORT IS LINKED TO IN THE CITED  
ARTICLE ABOVE.



4

What changes to BPD policy, practice, or procedure do you propose?

CLARIFY THAT 'EXIGENT CIRCUMSTANCES' MEANS AN EMERGENCY AND THAT DRONES MAY NOT BE USED TO SURVEILL CROWDS, STREET FAIRS, PROTESTS, GATHERINGS, ETC EXCEPT IN AN EMERGENCY

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Police Accountability Board in evaluating your complaint.)

SEE ATTACHED  
SEE BERKELEY, MUNICIPAL CODES / BMG / 2.99

6

CERTIFICATION

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

James P. Masser  
Signature of Complainant

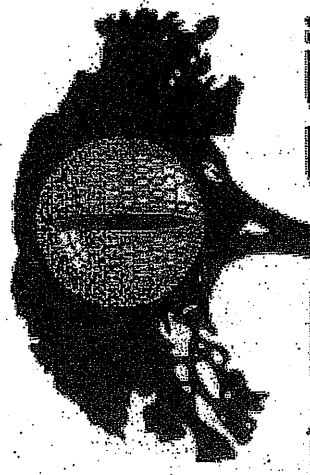
10/7/22  
Date

7

How did you hear about the Director of Police Accountability or Police Accountability Board?

- Internet
- Berkeley Police Dept.
- Newspaper: \_\_\_\_\_
- Referred by: \_\_\_\_\_
- Other: ALWAYS KNOW





# OAKLAND PRIVACY

... I'VE BEEN WATCHING YOU WATCHING ME

DRONES

## Drones Flew Over The Solano Stroll

by Tracy Rosenberg • October 5, 2022



In September, the next door cities of Berkeley and Albany hold a street fair called the Solano Stroll, along the avenue that crosses both cities. The event attracts thousands of people. A report filed with the Berkeley City Council due to the requirements of Berkeley's surveillance ordinance framework revealed the **Alameda County Sheriff's Office flew drones "unobtrusively" over the event, focusing on the perimeter of the rooftops.** The use of the sheriff's department drones would not have been known to the public without the 2018 surveillance ordinance, which requires reports to the City Council after the temporary use of unpermitted technologies for exigent circumstances.

The city of Berkeley passed a sweeping moratorium on police use of drones in 2015, which has since expired. The Council has allowed the use of drones for fire rescue purposes, but no other use has been allowed. The Berkeley Police Department declared the temporary use of the sheriff's department drones at the street fair to be an "exigent circumstance", meaning there was an imminent threat to life and property. However, **the report submitted on Friday September 30 via email described the exigent circumstance as "recent attacks on similar events" with no further details.** This is possibly a reference to a mass shooting in Highland Park, IL at a 4th of July parade.





The notification of use suggests that future street fairs, festivals, parades and community gatherings in the City of Berkeley may be subjected to “unobtrusive” drone use in the future by the Alameda Sheriff’s Department at the invitation of the Berkeley Police Department despite the lack of a specific imminent threat directed at that event, unless clear instructions are provided by the City Council regarding any future use.

The video footage taken by the drones, per the Alameda Drone policy, should have been destroyed after the mission since it did not contain evidence of criminal activity. However, no verification has been received that this has occurred. The list of authorized missions for departmental drone use does not include monitoring street fairs.

According to Police 1: the Alameda County Sheriff’s Department has more than 50 drones in their arsenal, some outfitted with zoom cameras and thermal imaging. Long time sheriff Greg Ahearn was not re-elected in June of 2022 and will soon be replaced by incoming sheriff Yesenia Sanchez.

In 2013, then Berkeley council member, now Berkeley Mayor Jesse Arreguin told Oakland North: “We advise the sheriff not to buy a drone,” Arreguin said. “Although we do not have control over our airspace, we have made it clear that we do not want drones flying over Berkeley.”

[\(edit\)](#)

[← Oakland Privacy Rights Fellowship 2022-2023 – Applications](#)  
Open



## Special Order 2020-0006

### **1106.1 BMC CHAPTER 2.99--PRIOR APPROVAL REQUIRED FOR TEMPORARY ACQUISITION AND USE OF NEW SURVEILLANCE EQUIPMENT; EXIGENT CIRCUMSTANCES EXCEPTION**

The purpose of this Special Order is to (1) ensure BPD personnel are aware of department-owned surveillance technologies and policies; and (2) to provide a procedure to request the temporary acquisition and use of surveillance technology not already owned by the Berkeley Police Department, under the exigent circumstances exception to BMC 2.99, Acquisition and Use of Surveillance Technology.

On March 27, 2018, the Berkeley City Council enacted Berkeley Municipal Code (BMC) Chapter 2.99, Acquisition and Use of Surveillance Technologies. This ordinance governs the use and acquisition of certain surveillance technologies by the Berkeley Police Department.

The Department currently owns and utilizes the following three Surveillance Technologies: Body Worn Cameras, Automated License Plate Readers, and Global Positioning System Tracking Devices. Use of these technologies is governed by existing policies.

BMC Chapter 2.99.030(1) prohibits BPD from seeking, acquiring, sharing or using any new Surveillance Technology without obtaining authorization from the City Council, except in exigent circumstances, and as approved by the City Manager.

Surveillance Technology is defined in Section 2.99.020(1) as follows:

“Surveillance Technology” means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associate with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers, body worn cameras, gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 1(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

Exigent Circumstance is defined in Section 2.99.020(5) as follows:

... a good faith belief that an emergency involving imminent danger of death or serious bodily injury to any person, or imminent danger or significant property damage, requires the use of Surveillance Technology or the information it provides.

The Exigent Circumstance exception for using new Surveillance Technology without prior City Council approval is set forth in Section 2.99.040 as follows:

... the City Manager may borrow, acquire, and/or temporarily use Surveillance Technology in Exigent Circumstances. In such cases, the City Manager must: (1) Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such

**Berkeley Police Department**  
Law Enforcement Services Manual

*Special Order 2020-0006*

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exigency; (2) if the use of the technology is anticipated to continue beyond the exigency, the Department must submit an Acquisition Report and Use Policy to Council; and (3) include the surveillance technology in the next City Manager's Annual Surveillance Technology Report.

Effective immediately, any Department member wishing to use any new Surveillance Technology (not already in use at BPD) due to an Exigent Circumstance must, in writing, formally request permission to use the technology. This request shall describe the exigency, the new technology to be used, and how the new technology is anticipated to be successful. This request shall be made through the employee's chain of command, to the Chief of Police, who will convey the request to the City Manager for consideration and approval. If approved, the Chief will provide written authorization for the use of the new technology.

Should use be approved, the use shall be reported publicly to the Council within 30 days of the commencement of the exigency, and again in the following year's Annual Surveillance Technology Report.

This order is meant to highlight legal requirements pertaining to use of Surveillance Technology by Berkeley Police personnel in light of the recent changes to Berkeley Municipal Code. 2.99, and will be in effect until it is rescinded or issued in the form of a self-standing policy.

Andrew R. Greenwood

Chief of Police

Issued: July 21, 2020

## Chapter 2.99

### ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

Sections:

- 2.99.010 Purposes.**
- 2.99.020 Definitions.**
- 2.99.030 City Council Approval Requirement.**
- 2.99.040 Temporary Acquisition and Use of Surveillance Equipment.**
- 2.99.050 Compliance for Existing Surveillance Technology.**
- 2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns.**
- 2.99.070 Oversight Following City Council Approval.**
- 2.99.080 Public Access to Surveillance Technology Contracts.**
- 2.99.090 Enforcement.**
- 2.99.100 Whistleblower Protections.**
- 2.99.110 Severability.**

#### **2.99.010 Purposes.**

- A. Through the enactment of this Chapter, the City seeks to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City's interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.
- B. Transparency is essential when the City is considering procurement and use of Surveillance Technology.
- C. Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk.
- D. Decisions relating to Surveillance Technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.
- E. Surveillance Technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any Surveillance Technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.
- F. Decisions regarding whether and how Surveillance Technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.



G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures, are important in the protection of civil rights and civil liberties.

H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed. (Ord. 7592-NS § 2 (part), 2018)

## **2.99.020 Definitions.**

The following definitions apply to this Chapter:

1. "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 1(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in Section 1 (above):

- a. Routine office hardware, such as televisions, computers and printers, that is in widespread public use and will not be used for any surveillance functions;
- b. Handheld Parking Citation Devices, that do not automatically read license plates;
- c. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;
- d. Devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;
- e. Manually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and city-issued cell phones;
- f. Municipal agency databases;
- g. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;





- h. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity;
  - i. Stationary security cameras affixed to City property or facilities.
  - j. Personal communication device, which means a cellular telephone, a personal digital assistant, a wireless capable tablet or similar wireless two-way communications and/or portable Internet accessing device, that has not been modified beyond stock manufacturer capabilities, whether procured or subsidized by a City entity or personally owned, that is used in the regular course of conducting City business.
2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:
- a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing;
  - b. Geographic Deployment: Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically;
  - c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;
  - d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;
  - e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;
  - f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;
  - g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.
3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:
- a. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;
  - b. Purpose: Information on the proposed purpose(s) for the Surveillance Technology;



- c. Location: The general location(s) it may be deployed and reasons for deployment;
  - d. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;
  - e. Mitigation: Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in subsection (d);
  - f. Data Types and Sources: A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;
  - g. Data Security: Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;
  - h. Fiscal Cost: The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;
  - i. Third Party Dependence and Access: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;
  - j. Alternatives: A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology; and
  - k. Experience of Other Entities: To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.
4. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:
- a. Purpose: The specific purpose(s) that the Surveillance Technology is intended to advance;
  - b. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;
  - c. Data Collection: Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including "open source" data;
  - d. Data Access: A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the information, and a description of any and all of the vendor's rights to access and use, sell or otherwise share information for any purpose;



- e. **Data Protection:** A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;
  - f. **Civil Liberties and Rights Protection:** A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;
  - g. **Data Retention:** The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;
  - h. **Public Access:** How collected information may be accessed or used by members of the public;
  - i. **Third Party Data Sharing:** If and how other City or non-City Entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;
  - j. **Training:** Training required for any employee authorized to use the Surveillance Technology or to access information collected;
  - k. **Auditing and Oversight:** Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and
  - l. **Maintenance:** The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.
5. "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.
6. "Face Recognition Technology" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face. (Ord. 7676-NS § 1, 2019; Ord. 7592-NS § 2 (part), 2018)

### **2.99.030 City Council Approval Requirement.**

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:
  - a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;



- b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;
  - c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or
  - d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.
2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology. No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police Review Commission to act, shall prohibit the City Manager from proceeding with its own review and potential adoption.
  3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsections (1) (a)-(d).
  4. Evidence received relating to the investigation of a specific crime that may have been generated from Face Recognition Technology but was not intentionally solicited shall not be a violation of this ordinance.
  5. Notwithstanding any other provision of this Chapter, it shall be a violation of this ordinance for the City Manager or any person acting on the City Manager's behalf to obtain, retain, request, access, or use: i) any Face Recognition Technology; or ii) any information obtained from Face Recognition Technology, except for personal communication devices as defined by Section 2.99.020 or section 2.99.030(4). The inadvertent or unintentional receipt, access to, or use of any information obtained from Face Recognition Technology shall not be a violation of this subsection provided that the City Manager or any person acting on the City Manager's behalf does not request or solicit the receipt, access to, or use of such information, and all copies of the information are promptly destroyed upon discovery of the information, and the information is not used for any purpose.

The City Manager shall log the receipt, access to, or use of any such information in its Annual Surveillance Technology Report. The Surveillance Technology Report shall identify measures taken by the City to prevent the further transmission or use of any information inadvertently or unintentionally obtained through the use of Face Recognition Technology; provided, however, that nothing in this Chapter shall limit the ability to use such information in connection with a criminal investigation. (Ord. 7676-NS § 2, 2019; Ord. 7592-NS § 2 (part), 2018)

### **2.99.040 Temporary Acquisition and Use of Surveillance Equipment.**

Notwithstanding the provisions of this Chapter, the City Manager may borrow, acquire and/or temporarily use Surveillance Technology in Exigent Circumstances without following the requirements in Sections 2.99.030 and





2.99.040. However, if the City Manager borrows, acquires or temporarily uses Surveillance Technology in Exigent Circumstances they must take all of the following actions:

1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged;
2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Surveillance Acquisition Report and Surveillance Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Sections 2.99.030 and 2.99.040; and
3. Include the Surveillance Technology in the City Manager's next annual Surveillance Technology Report. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.050 Compliance for Existing Surveillance Technology.**

The City Manager shall submit to the Action Calendar for the first City Council meeting in November of 2018 a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each Surveillance Technology possessed or used prior to the effective date of the ordinance codified in this Chapter. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns.**

The City Council shall only approve any action described in Section 2.99.030, 2.99.040, or Section 2.99.050 of this Chapter after making a determination that the benefits to the community of the Surveillance Technology, used according to its Surveillance Use Policy, outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights to the maximum extent possible while serving its intended purposes; and that, in the City Council's judgment, no feasible alternative with similar utility and a lesser impact on civil rights or civil liberties could be implemented. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.070 Oversight Following City Council Approval.**

The City Manager must submit to the Council Action Calendar a written Surveillance Technology Report, covering all of the City's Surveillance Technologies, annually at the first regular Council meeting in November. After review of the Surveillance Technology Report, Council may make modifications to Surveillance Use Policies. (Ord. 7592-NS § 2 (part), 2018)



### **2.99.080 Public Access to Surveillance Technology Contracts.**

To the extent permitted by law, the City shall continue to make available to the public all of its surveillance-related contracts, including related non-disclosure agreements, if any. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.090 Enforcement.**

This Chapter does not confer any rights upon any person or entity other than the City Council to cancel or suspend a contract for a Surveillance Technology. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.100 Whistleblower Protections.**

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016 and including any updates or replacements thereto, shall apply. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.110 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance, is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional. (Ord. 7592-NS § 2 (part), 2018)



**The Berkeley Municipal Code is current through Ordinance 7830-NS, passed July 26, 2022.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: [www.berkeleyca.gov](http://www.berkeleyca.gov)

Code Publishing Company



## **Martinez, Maritza**

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**From:** Salwan, Neetu  
**Sent:** Wednesday, October 19, 2022 11:46 AM  
**To:** Martinez, Maritza  
**Cc:** Murillo, Jose; Commission  
**Subject:** RE: 2022 Commissioner Stipend

Internal

Hi Maritza,

Thanks for checking. ~~The cap is not increased, and the \$300 cap is in effect per City Charter Article XVIII, 125-11.a)~~

Sincerely,

Neetu Salwan  
Assistant City Clerk  
Berkeley City Clerk Department  
[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)  
510.981.6908

---

**From:** Martinez, Maritza  
**Sent:** Tuesday, October 18, 2022 11:51 AM  
**To:** Salwan, Neetu <NSalwan@cityofberkeley.info>  
**Cc:** Murillo, Jose <JMurillo@cityofberkeley.info>; Martinez, Maritza <MMartinez@cityofberkeley.info>  
**Subject:** 2022 Commissioner Stipend

Internal

Hi Neetu,

Although I know about the stipend increase for Regular/Special meetings have been increased to \$107 each (from \$100), was wondering if the cap has increased as well. If so, to what amount? As you may notice, the attached City Charter Article XVIII states that the total stipend paid may not exceed \$300 per month per Board member.

Thank you,

*Maritza G. Martinez*  
Office of the Director of Police Accountability  
1947 Center St. – 5<sup>th</sup> floor  
Berkeley, CA 94704  
(510) 981-4950  
[mmartinez@cityofberkeley.info](mailto:mmartinez@cityofberkeley.info)

*\*The Police Accountability Board and the Director of Police Accountability*

replaced the Police Review Commission as of July 1, 2021.

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**From:** Salwan, Neetu  
**Sent:** Thursday, August 25, 2022 10:29 AM  
**To:** Martinez, Maritza <MMartinez@cityofberkeley.info>  
**Subject:** RE: 2022 Commissioner Stipend

Internal

Hi Maritza,

The Jul-Aug-Sep payments are part of the quarterly submission in October and will reflect the increase.

Thanks for checking.

Neetu

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**From:** Martinez, Maritza  
**Sent:** Thursday, August 25, 2022 8:27 AM  
**To:** Salwan, Neetu <NSalwan@cityofberkeley.info>  
**Subject:** 2022 Commissioner Stipend

Internal

Mr. Salwan,

Just want to make sure I understand. The Commissioner Stipend for next quarter (Jul-Aug-Sept), should reflect the increase or is it effective starting Oct. 10?

Thank you,

Maritza Martinez  
Office of the Director of Police Accountability

Dear Commission Secretaries and Admins,

The 2022 Commissioner Stipend has increased from \$100 to \$107 and will be available effective the quarterly submission due October 10.

Please share this memo with the person in your department/division responsible for submitting the stipend payments in ERMA and let us know if you have any questions.

Sincerely,

Neetu Salwan  
Assistant City Clerk  
Berkeley City Clerk Department  
Commission@cityofberkeley.info  
510.981.6908



## Thomas, Beneba

---

**From:** Commission  
**Sent:** Friday, August 12, 2022 3:08 PM  
**To:** Brozyna, Andrew; Burns, Anne M; Gard, Alisha; Riemer, Allison; Garvey, Brian; Lopes, Bernadette; Romain, Billi; Thomas, Beneba; Mariscal, Cecelia; Ellison, Donald; Franklin, Eve; Hollander, Eleanor; Crane, Fatema; Javandel, Farid; Bryant, Ginsi; Campos, Guillermo; Amnah, Hilary; Obermeit, Heidi; Enke, Joe; Jacobs, Joshua; jlovvoron@cityofberkeley.info; Oehler, Joshua; Works-Wright, Jamie; Cabrera, Katherine M.; Chin, Khin; Hernandez-Gonzalez, Karen; May, Keith; Slaughter, Kieron; Bellow, LaTanya; Jacob, Melinda; Katz, Mary-Claire; Martinez, Maritza; Uberti, Mike; Vance-Dozier, Okeya; Castrillon, Richard; Massimino, Rosanne; Milliken, Rebecca; Terrones, Roberto; Cynn, Sarah; Harvey, Samuel; Allen, Shallon L.; Cole, Shamika S.; Updegrave, Samantha; Alnas-Benson, Tiana; Alnas-Benson, Tiana; Mayer, Tess; Covello, Zoe; Taleporos, Zoe  
**Cc:** Numainville, Mark L.; Chaney, Lolisha; Rodriguez, Gabriel; Bunting, Sarah K.; Thomsen, Rose  
**Subject:** 2022 Commissioner Stipend  
**Attachments:** 2022 Commissioner Stipend Memo.pdf

Internal

Dear Commission Secretaries and Admins,

The 2022 Commissioner Stipend has increased from \$100 to \$107 and will be available effective the quarterly submission due October 10.

Please share this memo with the person in your department/division responsible for submitting the stipend payments in ERMA and let us know if you have any questions.

Sincerely,

Neetu Salwan  
Assistant City Clerk  
Berkeley City Clerk Department  
[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)  
510.981.6908



## Thomas, Beneba

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**From:** Thomas, Beneba  
**Sent:** Friday, August 12, 2022 3:20 PM  
**To:** Martinez, Maritza  
**Subject:** FW: 2022 Commissioner Stipend  
**Attachments:** 2022 Commissioner Stipend Memo.pdf

Internal

FYI

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**From:** Commission  
**Sent:** Friday, August 12, 2022 3:08 PM  
**To:** Brozyna, Andrew <ABrozyna@cityofberkeley.info>; Burns, Anne M <ABurns@cityofberkeley.info>; Gard, Alisha <AGard@cityofberkeley.info>; Riemer, Allison <ARiemer@cityofberkeley.info>; Garvey, Brian <BGarvey@cityofberkeley.info>; Lopes, Bernadette <Blopes@cityofberkeley.info>; Romain, Billi <BRomain@cityofberkeley.info>; Thomas, Beneba <BThomas@cityofberkeley.info>; Mariscal, Cecelia <CMariscal@cityofberkeley.info>; Ellison, Donald <DEllison@cityofberkeley.info>; Franklin, Eve <EFranklin@cityofberkeley.info>; Hollander, Eleanor <EHollander@cityofberkeley.info>; Crane, Fatema <FCrane@cityofberkeley.info>; Javandel, Farid <FJavandel@cityofberkeley.info>; Bryant, Ginsi <GBryant@cityofberkeley.info>; Campos, Guillermo <GCampos@cityofberkeley.info>; Amnah, Hilary <HAMnah@cityofberkeley.info>; Obermeit, Heidi <hobermeit@cityofberkeley.info>; Enke, Joe <jenke@cityofberkeley.info>; Jacobs, Joshua <JJacobs@cityofberkeley.info>; jlovvoron@cityofberkeley.info; Oehler, Joshua <JOehler@cityofberkeley.info>; Works-Wright, Jamie <JWorks-Wright@cityofberkeley.info>; Cabrera, Katherine M. <kcabrera@cityofberkeley.info>; Chin, Khin <KChin@cityofberkeley.info>; Hernandez-Gonzalez, Karen <KHernandez-Gonzalez@cityofberkeley.info>; May, Keith <KMay@cityofberkeley.info>; Slaughter, Kieron <kslaughter@cityofberkeley.info>; Bellow, LaTanya <LBellow@cityofberkeley.info>; Jacob, Melinda <MJacob@cityofberkeley.info>; Katz, Mary-Claire <MKatz@cityofberkeley.info>; Martinez, Maritza <MMartinez@cityofberkeley.info>; Uberti, Mike <MUberti@cityofberkeley.info>; Vance-Dozier, Okeya <OVance-Dozier@cityofberkeley.info>; Castrillon, Richard <rcastrillon@cityofberkeley.info>; Massimino, Rosanne <RMassimino@cityofberkeley.info>; Milliken, Rebecca <RMilliken@cityofberkeley.info>; Terrones, Roberto <RTerrones@cityofberkeley.info>; Cynn, Sarah <SCynn@cityofberkeley.info>; Harvey, Samuel <SHarvey@cityofberkeley.info>; Allen, Shallon L. <SLAllen@cityofberkeley.info>; Cole, Shamika S. <SSCole@cityofberkeley.info>; Updegrave, Samantha <SUpdegrave@cityofberkeley.info>; Alnas-Benson, Tiana <TAlnas-Benson@cityofberkeley.info>; Alnas-Benson, Tiana <TAlnas-Benson@cityofberkeley.info>; Mayer, Tess <tmayer@cityofberkeley.info>; Covello, Zoe <ZCovello@cityofberkeley.info>; Taleporos, Zoe <ZTaleporos@cityofberkeley.info>  
**Cc:** Numainville, Mark L. <MNumainville@cityofberkeley.info>; Chaney, Lolisha <LChaney@cityofberkeley.info>; Rodriguez, Gabriel <GaRodriguez@cityofberkeley.info>; Bunting, Sarah K. <sbunting@cityofberkeley.info>; Thomsen, Rose <rthomsen@cityofberkeley.info>  
**Subject:** 2022 Commissioner Stipend

Internal

Dear Commission Secretaries and Admins,

The 2022 Commissioner Stipend has increased from \$100 to \$107 and will be available effective the quarterly submission due October 10.

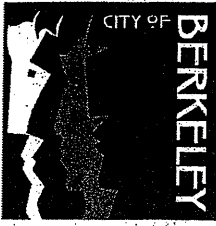


Please share this memo with the person in your department/division responsible for submitting the stipend payments in ERMA and let us know if you have any questions.

Sincerely,

Neetu Salwan  
Assistant City Clerk  
Berkeley City Clerk Department  
[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)  
510.981.6908





City Clerk Department

August 10, 2022

To: Commission Secretaries  
From: Mark Numainville, City Clerk  
Subject: Commission Low-Income Stipend Update

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On March 9, 2021, the City Council adopted Resolution No. 69,739-N.S., stating that eligible members are authorized to receive \$100 for each official meeting attended, not to exceed four meetings each month, and reimbursement of actual eligible expenses incurred. The new stipend rate went into effect on July 1, 2021.

Resolution No. 69,739-N.S also stated that the Bay Area Consumer Price Index should adjust the \$100 stipend amount annually. According to the 2022 Bay Area Consumer Price Index (CPI) chart, the 2022 stipend will increase from \$100 to \$107.

Please share this memo with the person in your department/division responsible for submitting the stipend payments in ERMA.

If you have any questions, please e-mail the Commission Inbox, [commission@cityofberkeley.info](mailto:commission@cityofberkeley.info).

Attachments:

1. A.R. 3.20





# CITY OF BERKELEY

## ADMINISTRATIVE REGULATIONS

**SUBJECT: Stipend and Reimbursement in Lieu of Expenses for Members of Certain Boards, Commissions, Committees, Task Forces, and Joint Subcommittees**

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### **PURPOSE**

The purpose of this Administrative Regulation is to establish procedures for reimbursing expenses to certain board, commission, committee, task force, and joint subcommittee members (including temporary appointees) who might otherwise incur an economic hardship.

### **POLICY**

The City Council, by Resolution No. 69,739-N.S. (known as the Stipend Resolution March 9, 2021), authorizes payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain household income criteria in order to remove economic hardship barriers from citizen participation. Subcommittees of commissions, which are designated by the advisory body and not by Council appointment, are not eligible for reimbursement.

An eligible member is authorized to receive:

- a) \$100 for each official meeting attended, not to exceed four (4) meetings each month;
- b) reimbursement for actual child care expenses incurred while he/she attends meetings;
- c) reimbursement for actual expenses paid to an attendant to provide care for a dependent elderly person while he/she attends meetings; and
- d) reimbursement for actual expenses incurred for disabled support services in order to participate fully in board, commission, or committee meetings.

The \$100 stipend amount shall be annually adjusted by the Bay Area Consumer Price Index.

### **DEFINITIONS AND REGULATIONS**

An "official meeting" is defined as a duly noticed, properly agenzized, regular meeting or special meeting of the full board or commission at which a quorum of the full membership must be present in order for the meeting to be held.

For a meeting that is cancelled, claims may only be submitted if it is for an official meeting where the attendees and staff Secretary believed that the meeting would proceed as scheduled, and for which Commissioners and the Secretary actually showed up and waited a reasonable period beyond the meeting start time for the quorum to be met before canceling.



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A receipt or invoice signed by the person providing such child care, elderly dependent care or disabled support services must accompany a request for reimbursement. Invoices must include date, services provided, vendor contact information, and dollar amount.

The Human Welfare and Community Action Commission provides for alternate representatives of the poor to be elected or to be appointed when a vacancy occurs. Alternate representatives of the poor shall be eligible for stipend payments when serving in place of the principal member.

The City Clerk Department is responsible for keeping this Administrative Regulation up-to-date and shall include notification of this policy with each appointment letter mailed.

### **COMMISSIONER'S CRITERIA AND RESPONSIBILITIES**

**1. Eligibility criteria for stipend and reimbursement:**

- a) Persons eligible to receive reimbursement in lieu of expenses are those board, commission, committee, task force or joint subcommittee members whose household gross income as filed jointly for federal income tax purposes is below the Alameda County 50% AMI 3-person household (\$58,750 as of July 2021) per year.
  - b) Commissioners who are minors (under 18 years old) must have eligibility declaration forms co-signed by a parent or legal guardian attesting that the combined 3-person household income is under the Alameda County 50% AMI (\$58,750 as of July 2021) per year.
  - c) If a commissioner is paid \$600 or more in stipend payments in one calendar year, an IRS Form 1099 will be generated by the Finance Department for the commissioner's tax filing purposes.
2. To establish eligibility, Commissioners must file the Annual Declaration Form (attached) with the secretary of their board, commission, committee, task force or joint subcommittee. Commissioners must file a new declaration form annually prior to May 31st in order to maintain eligibility.
  3. In order to pay a Commissioner's attendant directly, a completed IRS Form W-9 must be on file in the Finance Department's Accounts Payable Division. If an attendant, support service, or child care provider is paid \$600 or more in one calendar year, a Form 1099 will be generated by Finance. In order to be reimbursed for payments made to an attendant, support service, or child care provider, a Commissioner must be set up as a vendor by Finance - General Services.
  4. Eligible members who are disabled and are seeking reimbursement for support services must also complete the support services statement portion on the Annual Declaration Form. If the member's needs change, he/she must immediately notify the secretary. Otherwise, the statement certifying the need for support services will continue to be in effect for the duration of the member's term of appointment.
  5. Pursuant to Berkeley Municipal Code Section 3.66.040, low-income status for members of the Commission on Disability is not a prerequisite for reimbursement of attendant care expenses.



- 6. Additionally, eligible recipients requesting reimbursement for child care expenses, paid attendant services for elderly care, and support services as a disabled member for meeting participation are subject to AB 1234. State law AB 1234 requires completion of an online ethics training course within one year of the first day of service, and every two years thereafter. The ethics course is available online at no cost. Upon completion of the course, a printed and signed certificate of participation must be on file with the secretary in order to be eligible for reimbursement.

**RESPONSIBILITIES OF SECRETARY**

- 1. It is the responsibility of the secretary of each board, commission, committee, task force or joint subcommittee to submit quarterly payment forms to the Finance Department, by the 10th of each month (January, April, July, and October). Payment forms for stipends paid for attendance at meetings held pursuant to the Mental Health Services Act are filed monthly. Every submission must include the following:
  - a) A.R. 3.2 Payment Form
  - b) Invoices for support services, dependent care, and/or child care, if applicable.
  - c) Verification that each meeting for which reimbursement or stipend is claimed actually occurred.
  - d) A copy of the Annual Declaration Form
  - e) A spreadsheet showing the year-to-date payments for each commissioner.
- 2. The completed forms must be attached to the request for check entry in ERMA and released for review to the Finance Department by the 10th of each specific month so payment can be made. A separate request for check and supporting documentation must be submitted individually for each member.
- 3. The secretary shall keep copies of all Annual Declaration Forms on file and attach a copy each time a request for check is submitted to the Finance Department, and when submitting quarterly statements.
- 4. Each secretary will advise the board, commission, committee, task force and joint subcommittee members of this policy and respond promptly to commissioner inquiries regarding payment status. Commissioners should not contact the Finance Department or City Clerk Department for payment status.

|  |  |
|--|--|
| <p><b>RESPONSIBLE DEPARTMENT:</b><br/>City Clerk</p> <p><b>TO BE REVISED:</b><br/>Every 1 year</p> | <p>Approved by:</p> <p><i>Mont Spruill</i><br/>_____<br/>Department Director</p> <p><i>D. Williams Bell</i><br/>_____<br/>City Manager</p> |
|--|--|



**ANNUAL DECLARATION FORM RESPECTING ELIGIBILITY FOR REIMBURSEMENT OF EXPENSES AS A MEMBER OF THE**

(Board/Commission/Committee/Task Force/Joint Subcommittee)

Inasmuch as it is in the public interest to remove barriers, particularly those creating economic hardships for citizens participating on boards, commissions, committees, task forces, and joint subcommittees the City Council has determined that it is in the public interest to alleviate this hardship by authorizing payments in lieu of expenses for certain meetings and under certain conditions as indicated in Stipend Resolution No. 69,739-N.S.

I, \_\_\_\_\_ certify to the following:

- 1) That my adjusted gross income reported individually, or as part of a household joint Federal Income Tax Return, was less than the Alameda County 50% AMI 3-person household (\$58,750 as of July 2021) per year.
- 2) I will file this declaration form every year no later than May 31st with the Secretary who will forward copies to the Finance Department; and
- 3) I will notify the Secretary as soon as I am aware that my household current year income exceeds the Alameda County 50% AMI 3-person household (\$58,750 as of July 2021) per year and request that my eligibility be canceled:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature of Parent or Legal Guardian if Member is a Minor Date

\_\_\_\_\_  
Signature of Secretary Date

\* \* \*

**SUPPORT SERVICES STATEMENT**

I, \_\_\_\_\_, certify I am disabled and require the following support services in order to participate fully in commission meetings:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature Date





**A.R. 3.2 PAYMENT FORM**

Name of Commission: \_\_\_\_\_

Name of Commissioner: \_\_\_\_\_

Address of Commissioner: \_\_\_\_\_

Name of Secretary: \_\_\_\_\_ Phone: \_\_\_\_\_

Quarter Covered: Year \_\_\_\_\_  Jan - Mar  April - June  July - Sept  Oct - Dec

| Date of Meeting            | Payment Type* | Amount Due |
|----------------------------|---------------|------------|
|                            |               | \$         |
|                            |               | \$         |
|                            |               | \$         |
|                            |               | \$         |
|                            |               | \$         |
|                            |               | \$         |
| <b>Total (this qtr.)**</b> |               | \$         |

\* Stipend, Support Services, Dependent Care, or Child Care

\*\*Attach Year-to-Date Spreadsheet to this Form

Please hold check for pick up: \_\_\_\_\_  
(Commissioner's Signature)

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Preparer's Signature)

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Commission Secretary Signature)

**CERTIFICATION AND AUTHORIZATION FOR PAYMENT:** I hereby certify that the payments for all persons whose names appear herein have been properly authorized; and that the amounts indicated as due said persons are actually due and payable. Payment is approved against the appropriation indicated under delegated authority of the City Manager.

Authorized by: \_\_\_\_\_ Date \_\_\_\_\_  
Authorized Department Signature (must be on file with AP)



### COMMISSIONER STIPEND CHECKLIST

This checklist is provided to expedite the processing of commissioner stipends. The Finance Department requires that all forms are completed and information is accurately prepared and submitted before stipends can be paid. Review the checklist prior to submitting stipend requests.

For Initial Payment to a Commissioner or Service Provider:

- Set up the Commissioner as a vendor with Finance - General Services
  - \* Use a W-9 form to set up the Commissioner as a vendor (available on Groupware)
- Set up the Vendor (support services, dependent care, or child care) as a vendor with Finance - General Services
  - \* Use a W-9 form to set up the service provider as a vendor

Required Documentation for Every Payment Submission (compile submission in this order):

- Request for Check
  - \* In both description areas of the Request for Check screen, list the type of stipend being paid and the period covered (quarterly or monthly)
  - \* Provide the full account code and/or project string (consult your department budget analyst)
  - \* Verify in ERMA that adequate funds are available in the account to pay the voucher
  - \* Clearly document the payment amount
  - \* Obtain all required signatures
- A.R. 3.2 Payment Form
  - \* Complete all fields
  - \* Obtain all required signatures
- Invoices for Support Service, Dependent Care, and/or Child Care Providers
  - \* Must include date, services provided, vendor contact information, and dollar amount
- Attendance Verification
  - \* A copy of the meeting minutes
  - \* Requests for reimbursement for cancelled meetings require written representation from the Commission Secretary
- Annual Declaration Form
  - \* The form is completed and signed and dated yearly by the commissioner and the Commission Secretary
  - \* A copy of the form is submitted with each reimbursement voucher
- Year-to-Date Summary Spreadsheet
  - \* Documents the fiscal year (year to date) expenditures of the individual commissioner
  - \* Remember that payments of \$600 or more result in the issuance of a Form 1099 from the Finance Department and may have tax implications



## Thomas, Beneba

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**From:** Thomas, Beneba  
**Sent:** Wednesday, August 24, 2022 12:51 PM  
**To:** Commission  
**Subject:** RE: Stipends

Internal

Thank you so much!

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**From:** Commission  
**Sent:** Wednesday, August 24, 2022 12:50 PM  
**To:** Thomas, Beneba <BThomas@cityofberkeley.info>  
**Cc:** Commission <Commission@cityofberkeley.info>  
**Subject:** RE: Stipends

Internal

Hi Beneba,

There two different stipend:

1. **PAB members stipends – Article XVIII. Section 125 (11)**

**(11) Board member stipends.**

**(11) (a) Each Board member is entitled to receive a stipend of \$100.00 for each regular and special Board meeting attended, and \$20.00 per hour for each hour of training attended as provided in Section 12 and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300.00 per month per Board member.**

**(b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.**

2. **Low-income stipend** applies to all commissioners, including PAB members (memo attached). The low-income stipend will be an addition to the stipend that PAB members already received per Article XVIII. If PAB commissioners earn less than \$58,750 for a three-person household, they will be eligible for a low-income stipend.

I hope this helps. Please let me know if you have any questions.

Sincerely,

Neetu Salwan



Assistant City Clerk  
Berkeley City Clerk Department  
[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)  
510.981.6908

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**From:** Thomas, Beneba  
**Sent:** Tuesday, August 23, 2022 3:29 PM  
**To:** Commission <[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)>  
**Subject:** RE: Stipends

Internal

Hi Neetu,

Thank you for your response. However, I am still a bit unclear. Are you saying that PAB commissioners do not qualify for stipends if they earn over \$58,750 per year?

Thank you,  
**Beneba Thomas**  
Investigator  
Office of Director of Police Accountability  
(510) 981-4952

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**From:** Commission  
**Sent:** Tuesday, August 23, 2022 3:03 PM  
**To:** Thomas, Beneba <[BThomas@cityofberkeley.info](mailto:BThomas@cityofberkeley.info)>  
**Cc:** Commission <[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)>  
**Subject:** RE: Stipends

Internal

Dear Beneba,

Thank you for checking. The memo is specific to the low-income stipend only, of which PAB commissioners are eligible if they meet the requirements to qualify.

Best,

Sincerely,

Neetu Salwan  
Assistant City Clerk  
Berkeley City Clerk Department  
[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)  
510.981.6908

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**From:** Thomas, Beneba  
**Sent:** Tuesday, August 16, 2022 9:54 PM





To: Commission <[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)>

Subject: Stipends

Internal

Hello,

I am the acting secretary for the Police Accountability Board and I have a couple of questions about the August 10, 2022 memo re Commission Low-Income Stipend Update.

The Charter of the City of Berkeley, Article XVIII Police Accountability Board and Director of Police Accountability, Section 125. (11) states:

- (a) Each Board member is entitled to received a stipend of \$100.00 for each regular and special Board meeting attended, and \$20 per hour for each hour of training attended as provided in Section 12. and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300 per month per Board member.
- (b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.

After reading your announcement about the stipend increase, in conjunction with the paragraphs cited above, is it correct to conclude that stipend payments for PAB members have increased to \$107 per meeting? And, are the PAB members only allowed to request stipend payments when their income is less than \$58,750 per year, when the low-income stipend requirement is not mentioned in the PAB Charter Amendment?

Thank you for your assistance,

**Beneba Thomas**

Investigator

Office of Director of Police Accountability

(510) 981-4952

