



**POLICE ACCOUNTABILITY BOARD**

REGULAR MEETING PACKET

**Wednesday, April 26, 2023**

**6:30 P.M.**

Board Members:

JOHN MOORE III. (CHAIR)  
KITTY CALAVITA

REGINA HARRIS (VICE-CHAIR)  
JULIE LEFTWICH

CHERYL OWENS  
DEBORAH LEVINE

**MEETING LOCATION**

North Berkeley Senior Center  
1901 Hearst Ave,  
Berkeley, CA 94709

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# **Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023**

The policy below applies to in-person meetings of Berkeley Boards and Commissioners held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

**Issued By:** City Manager's Office

**Date:** February 14, 2023

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## **I. Vaccination Status**

All attendees are encouraged to be fully up to date on their vaccinations, including any boosters for which they are eligible.

## **II. Health Status Precautions**

For members of the public who are feeling sick, including but not limited to cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, it is recommended that they do not attend the meeting in-person as a public health precaution. In these cases, the public may submit comments in writing in lieu of attending in-person.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to wear a well-fitting mask (N95s, KN95s, KF94s are best), test for COVID-19 3-5 days from last exposure, and consider submitting comments in writing in lieu of attending in-person.

Close contact is defined as someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane, etc., for a cumulative total of 15 minutes or more over a 24-hour period within 2 days before symptoms of the infected person appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign-in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

Members of City Commissions are encouraged to take a rapid COVID-19 test on the day of the meeting.

# **Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023**

### **III. Face Coverings/Mask**

Face coverings or masks that cover both the nose and mouth are encouraged for all commissioners, staff, and attendees at an in-person City Commission meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of Commissions, city staff, and the public are encouraged to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium, although masking is encouraged even when speaking.

### **IV. Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. Capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons that need to distance for personal health reasons.

Distancing will be implemented for the dais as space allows.

### **V. Protocols for Teleconference Participation by Commissioners**

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for Commissioners participating remotely due to an approved ADA accommodation. For Commissioners participating remotely, the agenda must be posted at the remote location, the remote location must be accessible to the public, and the public must be able to participate and give public comment from the remote location.

- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

### **VI. Hand Washing/Sanitizing**

Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

### **VII. Air Flow/Circulation/Sanitizing**

Air filtration devices are used at all meeting locations. Window ventilation may be used if weather conditions allow.



## **POLICE ACCOUNTABILITY BOARD**

REGULAR MEETING AGENDA

**Wednesday, April 26, 2023**

**6:30 P.M.**

Board Members:

JOHN MOORE III. (CHAIR)  
KITTY CALAVITA

REGINA HARRIS (VICE-CHAIR)  
JULIE LEFTWICH

CHERYL OWENS  
DEBORAH LEVINE

### **MEETING LOCATION**

North Berkeley Senior Center  
1901 Hearst Ave,  
Berkeley, CA 94709

### **PUBLIC ADVISORY**

The PAB has resumed in-person meetings and encourages community members to attend in person. Community members attending in person should observe the “Health and Safety Protocols for In-person Meetings of Berkeley Boards and Commissions” as outlined by the City of Berkeley.

\*\*\*The PAB acknowledges that physical attendance may not be feasible for all community members. To this end, the Office of the Director of Police Accountability (ODPA) has been exploring the option of allowing for remote participation at the PAB meetings. Please note that the ODPA and PAB are in the early stages of implementing this hybrid meeting format so there is a possibility for technical glitches and errors. Your patience and understanding are greatly appreciated. \*\*\*

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82653396072>. 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 **826 5359 6072**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized.

## LAND ACKNOWLEDGEMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

### 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.)*
4. **APPROVAL OF MINUTES** (5 MINUTES)
  - Regular Meeting Minutes for April 11, 2023
5. **ODPA STAFF REPORT** (10 MINUTES)
  - Announcements, updates, and other items.
    - o Introduction to Deputy City Attorney Stephen Hylas
    - o Staffing Updates
6. **CHAIR AND BOARD MEMBERS' REPORTS** (5 MINUTES)  
Announcements, updates, and other items.
7. **CHIEF OF POLICE'S REPORT** (20 minutes)  
Crime/cases of interest, community engagement/departments events, staffing, training, and other items of interest.

**8. SUBCOMMITTEE REPORTS (discussion and action) (10 min) \***

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. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
- b. Body-Worn Camera Policy (Chair: Harris)
- c. Conflict of Interest (Chair: Leftwich)

*\* When used under the subcommittee reports section, "Chair" refers to the Chairperson of the respective subcommittee, not the PAB Chair. \**

**9. NEW BUSINESS (discussion and action) (60 min)**

- a. Discussion on the proposal to maintain the display of the land acknowledgment on PAB meeting materials and recite it in its entirety during the initial Regular PAB Meeting of the month (Moore, Harris) – (5 min)
- b. Recommendation to Cancel July 25<sup>th</sup> Regular Meeting to avoid conflicting with the City Council's Regular Meeting (DPA Aguilar) – (5 min)
- c. Review of letter requesting documents and other information regarding the determination of a conflict of interest by the city attorney, as proposed by the Conflict of Interest Subcommittee (Leftwich) – (5 min)
- d. Clarification and Discussion on the Communication of Attorney-Client Privileged Documents and Information (Owens) – (5 min)
- e. Notice of Policy Complaint No. 2023-PR-0002 (ODPA Staff) – (15 min)  
*(Per Section G "Policy Complaints and Reviews" of the PAB's standing rules, the policy complainant(s) will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes with the time allotted subject to the discretion of the chair, who will consider the number of persons wishing to speak. Board members may ask policy complainants brief questions. The BPD will be allowed to respond to the Board. The Board may accept the policy complaint upon a majority vote).*
- f. Discussion concerning the memo from DPA Aguilar to Council titled "Delays in ODPA Work Production due to BPD Non-Adherence to Charter Deadlines" (Harris) – (10 min)
- g. Recommendation to establish a subcommittee dedicated to reviewing Charter Section 125 (DPA Aguilar) - (5 min)
- h. Recommendation for a budget allocation for additional staff (DPA Aguilar) – (10 min)
  - i. Investigator
  - ii. Communications Specialist

**10. TRAINING ON GRAHAM V. CONNOR – FLETC-TALKS (15 MIN)**

*Graham v. Connor* is a United States Supreme Court case that established the standard for evaluating claims of excessive force by law enforcement officers under the Fourth Amendment’s “unreasonable seizures” clause. You can watch this video to learn more: <https://youtu.be/zhtQovjR2C0>.

**11. PUBLIC COMMENT (TBD)**

**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 act on the following matter(s):*


**12. Case updates – (10 min)**

**END OF CLOSED SESSION**

**13. ADJOURNMENT (1 minute)**

**Communications Disclaimer**

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

 Communication Access Information (A.R. 1.12)

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

**SB 343 Disclaimer**

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

**Contact the Director of Police Accountability (Board Secretary) at:**

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)





**DRAFT**



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

**Tuesday, April 11, 2023, 6:30 P.M.**

**MEETING LOCATION**

Judge Henry Ramsey Jr. South Berkeley Senior Center  
2939 Ellis Street,  
Berkeley, CA 94703

**1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR HARRIS AT 6:35 P.M.**

Present: Board Member Regina Harris (Vice-Chair)  
Board Member Kitty Calavita  
Board Member Juliet Leftwich  
Board Member Deborah Levine  
Board Member Cheryl Owens  
Absent: Board Member John Moore (Chair)  
ODPA Staff: Hansel Aguilar, Director of Police Accountability  
Beneba Thomas, Investigator  
Jose Murillo, Policy Analyst  
BPD Staff: Lt. Tate  
BPA Rep.: Sgt. LeDoux  
CAO Staff: Deputy City Attorney Mattes (Via Zoom)

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda.**

Moved/Second (Calavita/Leftwich) **Motion Carried by Unanimous Consent.**

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

Noes: None

Abstain: None

Absent: Moore

### 3. PUBLIC COMMENT

- In-Person Public Comment (1 Speaker)
  - o Speaker 1 asked a series of questions to the Board in light of the City Council’s closed session on Thursday, April 13<sup>th</sup> to discuss the appointment of a permanent Police Chief. Those questions were the following:
    - Are the members of this Board satisfied with the selection process of the new police chief?
    - Does the Board think that the top candidate for the police chief position meets the needs of the Berkeley community and is the right candidate for the job?
    - Does the Board know how many candidates were interviewed for the position?
- Virtual Public Comment (1 Speaker)
  - o Speaker 2 advises the Board to avoid blindly recommending EIS practices from other jurisdictions without assessing the specific challenges faced by the Berkeley police department. The speaker also highlights the integration of the Board’s recommendations within BPD’s 2022 Annual Report on Police Equipment and Community Safety Ordinance. He notes that there is a pattern of BPD deploying less-lethal technology and patrol rifles but scarcely having to fire them.

### 4. APPROVAL OF MINUTES

**Motion to approve Special Meeting Minutes of March 25, 2023.**

Moved/Second (Leftwich/Owens) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

**Motion to approve Regular Meeting Minutes of March 29, 2023, with revisions.**

Moved/Second (Leftwich/Owens) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

- The following changes were made:
  - o Under Item 11.b. of the March 29<sup>th</sup> minutes, Board member Owens’ vote was corrected from “No” to “Yes” as it relates to the motion to ask staff to

inquire about the next public safety policy committee meeting and request additional time for the PAB to respond with the requested information.

- Under Item 11.c. of the March 29<sup>th</sup> minutes, Board member Owens' vote was corrected from "Yes" to "No" as it relates to the motion to create and appoint board members to a subcommittee to explore issues and solutions regarding conflicts of interest with legal counsel.
- Under Item 11.c. the text "Chair Moore, Board member Leftwich, and Board member Levine are appointed to the subcommittee" was added

## 5. ODPa STAFF REPORT

- Director Aguilar reported on the following:
  - **Staff Activity:**
    - ODPa staff attended the AXON conference on March 31st. Staff got to learn about different technologies available for law enforcement agencies and their capabilities--including features that promote transparency and oversight. Staff got to learn about different drone capabilities and reporting features, developments in stun gun ("taser") equipment, and more.
    - Staff continues to work on the ODPa-PAB annual report. The report must be sent to the CAO for review before it can be made public. We appreciate everyone's patience.
  - **Announcements and Reminders:**
    - This is a reminder that there is a NACOLE webinar on April 25th. If you are interested in listening to this webinar, please let us know. The presentation is titled "Shielded: How the Police Became Untouchable" and is presented by Joanna Schwartz, professor of Law at UCLA.
    - This is a reminder that if you are interested in the CACOLE webinar, please let staff know ASAP so that we may enroll you. Scheduled to take place from May 29th to May 31st.

## 6. CHAIR AND BOARD MEMBERS' REPORTS

- No report from the Chair and vice-Chair
- Board member Calavita reports on what the role of the Board was in the selection of the Police Chief process.

### **Motion to allow members of the public to ask questions as it relates to Board member Calavita's report.**

Moved/Second (Levine/Owens) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

## 7. CHIEF OF POLICE'S REPORT

- Lt. Tate, on behalf of Interim Chief Louis, reports the following:
  - One Officer resigned since the last PAB regular meeting, leaving the profession completely.
  - The BPD hired Epic Recruiting to help updated recruiting materials. Services include updating brochures, video content, and more.
  - The recruitment team attended 21 recruiting events in March which yielded over 150+ potential officer applicants and 70+ potential dispatcher applicants.
  - Members of the Department's Community Services Bureau and Strategic Analysis team supported a Community Crime Meeting on March 28<sup>th</sup>. Over 200 attendees tuned in to the meeting where BPD staff were able to provide information on crime trends and public safety.
  - A report on cases of interest is provided.
- Q & A:
  - Vice-Chair Harris commends the BPD for their swift work in the reported cases of interest.
  - Board member Leftwich follows up on her request for a BPD liaison for the PAB.
    - Answer: Lt. Tate has heard of the request but does not have an update. She will make a note for the Chief.
  - Director Aguilar ask if an exit interview was conducted with the officer who resigned to help identify any potential retention patterns.
    - Answer: Lt. Tate states that she does not have any information on that.
  - Vice-Chair Harris asks to be reminded of the current staffing levels of the BPD.
    - Answer: The information was not available at that moment.
  - Board member Calavita follows up on Director Aguilar's question by asking if exit interviews are generally conducted.
    - Answer: Yes, exit interviews are generally requested but whether they are conducted depends on whether or not the departing officer opts to do so.

**8. TRAINING ON EARLY WARNING SYSTEMS BY CAPTAIN CHRIS BOLTON (RETIRED).**

- Captain Chris Bolton (retired) conducted a presentation on Early Intervention Systems. See pages 18 to 47 of the agenda packet for the presentation.

**9. 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. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
- Board member Owens states that the subcommittee continues to gather information and that there are no additional updates at this time.

**Motion to request that the Chair compose a letter directed to the City Council, articulating concerns about the actions being taken in the police chief appointment process, considering that the potential appointment was supposed to take place after the conclusion of the pending investigations.**

Moved/Second (Levine/Owens) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

- b. Regulations Subcommittee (Chair: Calavita)
- Board member Calavita reports that the subcommittee has finalized the proposed draft of the permanent regulations. The draft will be voted on later in the meeting.
- c. Conflict of Interest (Chair: Leftwich)
- Board member Leftwich reports that the subcommittee has met for its first meeting. The subcommittee will be recommending that the Board ask the CAO for their conflict of interest determination procedures. The subcommittee will meet again on Thursday (April 13) to draft this letter.

*\* When used under the subcommittee reports section, "Chair" refers to the Chairperson of the respective subcommittee, not the PAB Chair. \**

**10. OLD BUSINESS (DISCUSSION AND ACTION)**

- a. PAB's response to the Public Safety Policy Committee's questions regarding...
  - i. Unmanned Aerial Systems

**Motion to approve the proposed memorandum with the requested edits and send it to the Public Safety Policy Committee.**

Moved/Second (Owens/Levine) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

- A revision was made in the final sentence of the second paragraph on page 2, which now indicates the need to comply with the existing definition of "exigent circumstances" through appropriate mechanisms.
- A revision was made in the first paragraph of page 3, the first sentence was to indicate the need to comply with the existing definition of "exigent circumstances" through appropriate mechanisms.

ii. Fixed Camera Surveillance Systems

**Motion to approve the proposed memorandum with the requested edits and send it to the Public Safety Policy Committee.**

Moved/Second (Owens/Levine) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

- A revision was made in section two of the second page. The response to the question noted in section two now starts with "Although these cameras could be a helpful investigative tool."
- A work cited section was added to the end of the memorandum.

**11. NEW BUSINESS (DISCUSSION AND ACTION)**

a. Review of the PAB's proposed permanent regulations.

**Motion to approve the proposed permanent regulations with edits and move them to the next stage.**

Moved/Second (Owens/Calavita) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

- Edits were typographical. No revisions to the content were made. DPA Aguilar provides information regarding the next steps in the process.

b. Review of the BPD's 2022 Annual Report on Police Equipment and Community Safety Ordinance.

**Motion to approve the BPD's 2022 Annual Report on Police Equipment and Community Safety Ordinance with edits.**

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

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

Noes: None

Abstain: None

Absent: Moore.

- It was necessary to modify the wording in the final paragraph of page 4 of the memo to enhance its clarity.

**12. PUBLIC COMMENT**

- In-Person Public Comment (2 Speakers)
  - o Speaker 1 expresses gratitude to the Board for their proposal to draft a letter to the Council, which would articulate their apprehensions regarding moving forward with the appointment of a police chief given the pending investigations. In addition to expressing appreciation for the Board’s motion, Speaker 1 also encourages them to take further action on the matter at hand.
  - o Speaker 2 notes that the acoustics in the room are not very good which made it difficult for her to hear. In addition, she notes that there are a few sections in the regulations that do not appear complete and should be revisited. Noting that what might seem obvious to some may not be for others and should therefore be spelled out.
- Virtual Public Comment (1 Speaker)
  - o Speaker 3 states that he found the presentation by Captain Bolton very interesting. He expresses concerns that although the intention is to support officers, the implementation of such a program may be seen as punitive. He further states that he does not believe the Board has the power to veto an appointment and that any concerns the Board may have about the Chief should be put in writing.

**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 act on the following matter(s):*

**13. PRESENTATION OF RECOMMENDATION TO ADMINISTRATIVELY CLOSE CASE NO. 27**

**Motion to administratively close case no.27**

Moved/Second (Owens/Harris) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.



**14. PRESENTATION OF RECOMMENDATION TO ADMINISTRATIVELY CLOSE CASE NO. 28**

**Motion to administratively close case no.28**

Moved/Second (Owens/Harris) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

**15. PRESENTATION OF RECOMMENDATION TO ADMINISTRATIVELY CLOSE CASE NO. 30**

**Motion to administratively close case no.30**

Moved/Second (Owens/Leftwich) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: Moore.

**END OF CLOSED SESSION**

**16. ANNOUNCEMENT OF CLOSED SESSION ACTIONS**

- Case numbers 27, 28, and 30 were administratively closed.

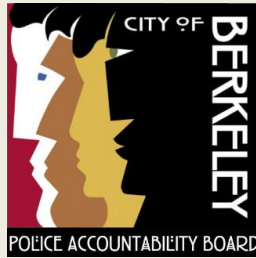
**17. ADJOURNMENT**

**Motion to adjourn the meeting.**

Moved/Second (Owens/Calavita) **By general consent, the meeting was adjourned at 9:52 p.m.**

Minutes Approved on: \_\_\_\_\_

Hansel Aguilar, Commission Secretary: \_\_\_\_\_



**SUBCOMMITTEES LIST**  
04-19-2023

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

<b>Drone Use Policy</b> Formed 11-9-22	Moore Levine		
<b>Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations</b> Formed 11-15-22	Calavita Moore Owens	Owens	
<b>Body-Worn Camera Policy</b> Formed 03-15-23	Harris Leftwich Levine	Harris	
<b>Conflict of Interest</b> Formed 03-29-23	Moore Leftwich Levine	Leftwich	

## Council Consent Items

18. **Referral to the Transportation and Infrastructure Commission and City Manager to Consider and Make Recommendations Regarding the Policy of Deploying Rectangular Rapid Flashing Beacons and Other Treatments at Dangerous or High-Collision Pedestrian and Bicycle Intersections**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Referral to the Transportation and Infrastructure Commission and City Manager to consider and make recommendations regarding the policy of deploying Rectangular Rapid Flashing Beacon (RRFB) and other treatments at dangerous or high-collision pedestrian and bicycle intersections.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140  
**Action:** Councilmember Taplin added as a co-sponsor. Approved recommendation.
19. **Land Acknowledgement Recognizing Berkeley as the Ancestral, Unceded Home of the Ohlone people**  
**From: Councilmember Hahn (Author), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:**
1. Adopt the Land Acknowledgement Statement Resolution recognizing that Berkeley is the ancestral, unceded home of the Ohlone people.
  2. Display the Land Acknowledgement in writing at all in-person or online Regular meetings of the City Council and read the Acknowledgement at the first Regular meeting of each month in which Regular City Council meetings are held.
  3. Recommend to all Berkeley Commissions, Committees, Boards, and other elected and appointed City entities to consider inclusion of the Land Acknowledgement in meeting practices and direct the City Manager to convey a copy of this Item and Resolution to all such entities for reference.
  4. Direct the City Manager to post the Land Acknowledgement or a prominent link to the Acknowledgement on the home page of the City's website and to create a webpage dedicated to Ohlone history and culture.
  5. Now and in the future, consider additional more substantive reparative and restorative actions, including but not limited to those described under the heading "Actions/Alternatives Considered."
- Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150  
**Action:** Councilmembers Taplin and Robinson added as co-sponsors. Adopted Resolution No. 70,564–N.S. and approved recommendation.



**Police Accountability Board 2023 Regular Meeting Schedule**

2nd & 4th Wednesday of the Month Starting at 6:30 pm\*

Approved by the PAB on 12-07-2022

JANUARY						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

MARCH						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

APRIL						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

MAY						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

JUNE						
S	M	T	W	T	F	S
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

JULY						
S	M	T	W	T	F	S
						1
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

AUGUST						
S	M	T	W	T	F	S
		1	2	3	4	5
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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

SEPTEMBER						
S	M	T	W	T	F	S
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24	25	26	27	28	29	30

OCTOBER						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

NOVEMBER						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

DECEMBER						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

**FEDERAL HOLIDAY**

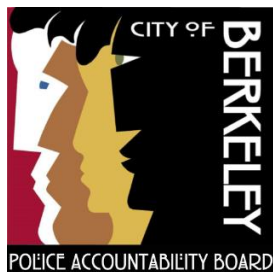
**RELIGIOUS HOLIDAY**

**REGULAR MEETING**

Notes:

\* Pursuant to Resolution No. 70,066-N.S., it is the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on religious holidays that incorporate significant work restrictions.





**DRAFT**

April 26, 2023

Farimah Brown  
City Attorney  
City of Berkeley  
2180 Milvia St., 4<sup>th</sup> Floor  
Berkeley, CA 94704

**Re: Request for Documents and Other Information Regarding Conflicts of Interest**

Dear Ms. Brown,

As you know, Section 125(15) of Article XVIII of the Charter of the City of Berkeley states that the Police Accountability Board (PAB) and Director of Police Accountability shall use the services of City Attorney's Office for legal advice and, when the City Attorney has determined that a conflict of interest exists, the Director may engage outside counsel for advice regarding a specific case or matter.

Please provide the PAB with all documents that set forth the guidelines/protocols of the Office of the City Attorney for detecting and resolving potential conflicts of interest, together with the date that such documents were created. If no such documents exist, please provide a summary of the unwritten guidelines/protocols in this area, together with a description of how they are communicated and implemented in the Office.

In accordance with Section 125(20) of Article XVIII, the PAB asks that your response to this request be provided to the Director of Police Accountability within 10 business days, unless additional time is needed to locate or review records or information. If additional time is needed to comply, please specify how much time up to 30 additional business days is needed and the reasons for the delay.

Thank you very much for your prompt attention to this matter.

Best regards,

John "Chip" Moore  
Chair, Police Accountability Board


Cc: James Chang, Deputy City Attorney  
Iris Mattes, Deputy City Attorney  
Jesse Arreguin, Mayor  
Kate Harrison, Vice Mayor







## MEMORANDUM

**Date:** April 21, 2022  
**To:** Honorable Members of the Police Accountability Board   
**From:** Hansel A. Aguilar, Director of Police Accountability  
Jose Murillo, Policy Analyst  
**Subject:** Notice of Policy Complaint No. 2023-PR-0002

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On April 11, 2023, the Office of the Director of Police Accountability (ODPA) received a completed policy complaint form along with additional attachments via email at [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info). Policy Analyst Murillo reviewed the complaint and its attachments and brought the matter to the attention of Director Aguilar. Upon further review, it was determined that additional information was needed from the complainant before the complaint was brought before the Board.

On April 14, 2023, Policy Analyst Murillo contacted the complainant to schedule an intake interview to obtain the additional information and orient the complainant on the differences between the policy and misconduct related complaint process. On April 21, 2023, Director Aguilar and Policy Analyst Murillo contacted the complainant via phone and obtained the required additional information.

During the phone conversation, the complainant confirmed that his concerns were related to policy and not misconduct of a specific officer, and that the issues he highlighted in the attachments had already been addressed to some extent. However, the complainant stated that the purpose of his policy complaint was to bring attention to the lack of response from the Berkeley Police Department regarding the attached emails and prior communications.

The complainant was informed that his policy complaint would be presented before the Board, as required by Section G of the PAB's Standing Rules, and that he would have the opportunity to address the Board before a vote was taken to accept or reject the complaint. He stated that he was indeed interested in addressing the Board and would be participating remotely via Zoom.



Received by DPA

APR 11 2023

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 # 2023-PR-0002

1

Name of Complainant: [Redacted] Last [Redacted] First [Redacted] Middle [Redacted]

Mailing Address: [Redacted] Street [Redacted] City [Redacted] State [Redacted] Zip [Redacted]

Primary Phone: [Redacted] Alt Phone: [Redacted]

E-mail address: [Redacted]

Occupation: [Redacted] Gender: Male Age: 63

Ethnicity: Other: Visigoth

2

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

**BPD does not respond to email sent to [police@cityofberkeley.info](mailto:police@cityofberkeley.info)**

3

Location of Incident (if applicable) Police Headquarters

Date & Time of Incident (if applicable) March 22, 2023 to Date

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 has not responded to emails I sent on March 22 and March 24 of 2023.  
The subject lines were "Was a Tenant Activist Murdered?" and  
"Property Manager Engages in Assault and Battery."**

4

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

**BPD should open and respond to email sent to police@cityofberkeley.info**

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.)

**Copies of the emails I sent to BPD on March 22 and March 24 are attached in PDF format.**

6

**CERTIFICATION**

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



\_\_\_\_\_  
Signature of Complainant

04/11/2023

Date

7

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

X Internet

Berkeley Police Dept.

Newspaper: \_\_\_\_\_

Referred by: \_\_\_\_\_

Other: \_\_\_\_\_



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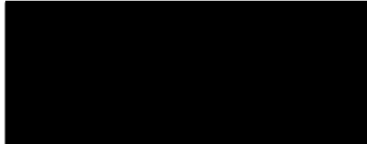
**Property Manager Engages in Assault and Battery**

1 message



Fri, Mar 24, 2023 at 12:16 PM

To: police@cityofberkeley.info



March 24, 2023

Berkeley Police Department  
2100 Martin Luther King, Jr. Way  
Berkeley, CA 94704  
510-981-5900  
police@cityofberkeley.info

**Via Email**

**Subject: Property Manager Engages in Assault and Battery**

Dear Berkeley Police Department:

On March 23 the property manager of [REDACTED] physically attacked one of the tenants of the building. The tenant reported the incident to the Berkeley Police Department. The tenant's name is [REDACTED] She lives in apartment [REDACTED]

Best regards,





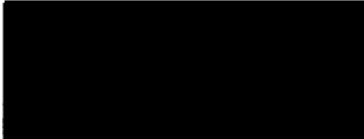
**Was a Tenant Activist Murdered?**

1 message



Wed, Mar 22, 2023 at 10:49 AM

To: police@cityofberkeley.info



March 22, 2023

Berkeley Police Department  
2100 Martin Luther King, Jr. Way  
Berkeley, CA 94704  
510-981-5900  
police@cityofberkeley.info

**Via Email**

**Subject: Was a Tenant Activist Murdered?**

Dear Berkeley Police Department:

Thank you for being on the job during these difficult times.

What are your thoughts on the following statement?

A tenant of [REDACTED] who was a tenant activist recently died under unusual circumstances. His name was [REDACTED] and he lived in [REDACTED]. During the final months of his life, [REDACTED] repeatedly expressed the fear of being murdered by property management. [REDACTED] died of a heart attack. [REDACTED] was young and physically fit. [REDACTED] frequently engaged in cardio workouts. It seems questionable that [REDACTED] heart attack was due to natural causes. Perhaps [REDACTED] heart attack was caused by his being poisoned with digoxin. While [REDACTED] was alive he stated that he once came home to his apartment and found that some of his food had been tampered with. [REDACTED] threw the food away, because he believed that it had been poisoned.

Berkeley Housing Code Enforcement has levied \$6,320.00 in fines against [REDACTED] for refusing to correct housing code violations. [REDACTED] and I are the two tenants who are most responsible for the fines that have been levied against [REDACTED]

I fear for my life.

Best regards,





April 12, 2023

**TO:** Council Member Harrison

**FROM:** Hansel Aguilar, Director of Police Accountability

A handwritten signature in black ink, appearing to be 'HA', enclosed within a hand-drawn circle.

**CC:** Kitty Calivita, Board Member

**Subject:** Delays in ODPa Work Production due to BPD Non-Adherence to Charter Deadlines

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The purpose of this memorandum is to outline issues related to cooperation with the BPD. As you know, the work of civilian oversight agencies such as the Office of the Director of Police Accountability (ODPA) and the Police Accountability Board (PAB) requires cooperation from the law enforcement agencies they oversee. Unfortunately, the ODPA has experienced significant delays in its work production due to the Berkeley Police Department's (BPD) lack of adherence to Charter deadlines.

Section 125(20)(a) of the Charter requires all departments, officers, and employees of the City to cooperate with the ODPA and the PAB. However, the lack of cooperation from the BPD has resulted in the inability of the ODPA and the PAB to complete their duties as envisioned by the Charter.

While some areas may require legal interpretation, most areas of data and records access are clearly articulated in the Charter. The BPD's failure to comply with these clear mandates has significantly impeded the ODPA's ability to conduct its oversight responsibilities.

We have identified several areas where the ODPA has experienced delays in work production due to the BPD's non-adherence to Charter deadlines. These areas include but are not limited to:

1. Delayed or denied access to records and data related to police activities, which is essential for the ODPA to conduct its investigations effectively.



2. Lack of timely response to requests for information from the BPD, which has resulted in missed deadlines for the completion of ODPAs reports and investigations.

To compliment this memo, I am attaching an Excel file which outlines specific instances that have resulted in delayed work product. The file includes issues with access to records in: 1) investigations; 2) policy reviews; and 3) annual report production. The ODPAs and PAB's ability to access information and data in a timely manner is critical to their ability to investigate and report on police activities, and we need the BPD's cooperation to fulfill this mandate.

Case # Complainant	FILE DATE	INCIDENT DATE	RECORDS REQUESTED	REASON FOR REQUESTS/ CHARTER AUTHORITY	DATE OF REQUEST	10 DAY* DEADLINE 125(20)(a)(3)	30 DAY* DEADLINE 125(20)(a)(3)	COMPLIANCE STATUS	COMMENTS FROM BPD	CASE IMPACT	CAO INTERPRETATION (3/28/23)
21	05/06/22	04/30/22	IAB File	Ongoing investigation; per 125(20)(1)(2)(3)	01/13/23	01/23/23	02/12/23	DID NOT COMPLY	Waiting on CAO guidance; different interpretation of the Charter	Could not fulfill the request to review Chief Determination	DPA and PAB may lawfully request to review IAB files when exercising their powers and duties regarding complaints filed by members of the public under Charter Article XVIII Section 125, Subsections 18 (complaints filed with DPA/PAB) and 19 (complaints filed with BPD).
25	07/07/22	06/17/22	All relevant records	Ongoing investigation; per 125(20)(1)(2)(3)	01/27/23	02/06/23	02/26/23	PARTIALLY COMPLIED	Waiting on CAO guidance; different interpretation of the Charter	Minimal impact - could not determine if there is a pattern to officer's alleged behavior	DPA and PAB may lawfully request to review IAB files when exercising their powers and duties regarding complaints filed by members of the public under Charter Article XVIII Section 125, Subsections 18 (complaints filed with DPA/PAB) and 19 (complaints filed with BPD).
26	07/16/22	07/14/22	IAB Investigation	Ongoing investigation; per 125(20)(1)(2)(3)	01/27/23	02/06/23	02/26/23	PARTIALLY COMPLIED	Waiting on CAO guidance; different interpretation of the Charter	Minimal impact - could not determine if there is a pattern to officer's alleged behavior	DPA and PAB may lawfully request to review IAB files when exercising their powers and duties regarding complaints filed by members of the public under Charter Article XVIII Section 125, Subsections 18 (complaints filed with DPA/PAB) and 19 (complaints filed with BPD).
27	08/03/22	02/04/22	IAB Investigation	Ongoing investigation; per 125(20)(1)(2)(3)	01/09/23	01/19/23	02/08/23	DID NOT COMPLY	Waiting on CAO guidance; different interpretation of the Charter	Did not receive BWC; could not determine the sufficiency of the complaint	DPA and PAB may lawfully request to review IAB files when exercising their powers and duties regarding complaints filed by members of the public under Charter Article XVIII Section 125, Subsections 18 (complaints filed with DPA/PAB) and 19 (complaints filed with BPD).
28	08/03/22	02/04/22	IAB Investigation	Ongoing investigation; per 125(20)(1)(2)(3)	01/09/23	01/19/23	02/08/23	DID NOT COMPLY	Waiting on CAO guidance; different interpretation of the Charter	Did not receive BWC; could not determine the sufficiency of the complaint	DPA and PAB may lawfully request to review IAB files when exercising their powers and duties regarding complaints filed by members of the public under Charter Article XVIII Section 125, Subsections 18 (complaints filed with DPA/PAB) and 19 (complaints filed with BPD).
29	06/29/22	06/03/22	IAB Investigation	Ongoing investigation; per 125(20)(1)(2)(3)	01/10/23	02/06/23	02/26/23	DID NOT COMPLY	Waiting on CAO guidance; different interpretation of the Charter	Did not get IAB file or all memos relating to agreements with other law enforcement agencies. Could not accurately determine the conduct of the officers and appropriate discipline.	DPA and PAB may lawfully request to review IAB files when exercising their powers and duties regarding complaints filed by members of the public under Charter Article XVIII Section 125, Subsections 18 (complaints filed with DPA/PAB) and 19 (complaints filed with BPD).
30	10/21/22	07/03/22	All relevant records	Ongoing investigation; per 125(20)(1)(2)(3)	01/27/23	02/06/23	02/26/23	DID NOT COMPLY	Waiting on CAO guidance; different interpretation of the Charter	Has caused delays in investigating incident and appropriate disciplinary recommendations	DPA and PAB may lawfully request to review IAB files when exercising their powers and duties regarding complaints filed by members of the public under Charter Article XVIII Section 125, Subsections 18 (complaints filed with DPA/PAB) and 19 (complaints filed with BPD).
33	12/15/22	12/07/22	All relevant records	Ongoing investigation; per 125(20)(1)(2)(3)	01/27/23	02/06/23	02/26/23	DID NOT COMPLY	Waiting on CAO guidance; different interpretation of the Charter	Has caused delays in investigating incident and appropriate disciplinary recommendations	DPA and PAB may lawfully request to review IAB files when exercising their powers and duties regarding complaints filed by members of the public under Charter Article XVIII Section 125, Subsections 18 (complaints filed with DPA/PAB) and 19 (complaints filed with BPD).




Internal

RECORDS REQUESTED	REASON FOR REQUESTS/ CHARTER AUTHORITY	DATE OF REQUEST	10 DAY* DEADLINE 125(20)(6)(3)	30 DAY* DEADLINE	COMPLIANCE STATUS	ODPA IMPACT
CV 2022 summary of the number, type, and disposition of complaints filed with the Department by members of the public.	(25)(1)(6)(1)(9)	12/1/22	01/02/23	02/02/23	2023 NOT COMPLY	Caused delay in producing annual report
The Department's processes and procedures for reviewing complaints and the manner in which the Department's policies are enforced, including the use of discipline, for sustained findings of misconduct.	(25)(1)(9)(2)	12/1/22	01/02/23	02/02/23	2023 NOT COMPLY	Caused delay in producing annual report
Training and education, and any early warning system.	(25)(1)(9)(3)	12/1/22	01/02/23	02/02/23	2023 NOT COMPLY	Caused delay in producing annual report
Training and/or policy issues that arise during the review of complaints by the Department.	(25)(1)(9)(4)	12/1/22	01/02/23	02/02/23	2023 NOT COMPLY	Caused delay in producing annual report
CV 2022 summary of complaints by the Department regarding the use of force and officer-involved shootings for 2022. Data shall include the demographics of the complainant, the date, time, location, and circumstances of the incident, and location of stop, if compliance with policies, practices, and procedures of the City and Police Department, and the Police Department Complaints Unit and Internal Affairs.	(25)(1)(9)(6)	12/1/22	01/02/23	02/02/23	2023 NOT COMPLY	Caused delay in producing annual report
Demographic data on the use of force and officer-involved shootings for 2022. a. Involved officer's race/ethnicity vs. complainant's race/ethnicity b. Involved officer's gender vs. complainant's gender c. Involved officer's years of service d. Involved officer's gender vs. complainant's race/ethnicity e. Involved officer's level of education	(25)(1)(9)(6)	12/1/22	01/02/23	02/02/23	2023 NOT COMPLY	Caused delay in producing annual report
Records for our most recent annual report, CV 2022, regarding 125(1)(6)(b).	125(1)(6)(b)	12/1/22	01/02/23	02/02/23	2023 NOT COMPLY	Caused delay in producing annual report





April 21, 2023

**TO:** Police Accountability Board  
**FROM:** Hansel Aguilar, Director of Police Accountability   
**CC:** Honorable Mayor and Members of the City Council  
Dee Williams-Ridley, City Manager  
Farimah Brown, City Attorney  
Jennifer Louis, Interim Chief of Police

**Subject:** Clarifications on the previous memo\_re: Delays in ODPa Work Production due to BPD Non-Adherence to Charter Deadlines

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## BACKGROUND

The purpose of this memorandum is to provide a follow-up to my April 12, 2023 memo titled, *ODPA Work Production due to BPD Non-Adherence to Charter Deadlines*. Since the distribution of that original memo, I have received some concerns from Interim Chief Louis about its accuracy and lack of communication about areas where the ODPa and BPD have been working together successfully.

Through this memo, I want to clarify that the April 12, 2023 document was a limited-scope memorandum addressed to Councilmember Harrison and was focused on areas where the ODPa work product has been impacted by the lack of access to relevant records. However, I do acknowledge that there are also areas where the named departments have worked successfully, and these will be highlighted more fully in the annual report that is currently in the last stage of internal review before it goes to the City Attorney's Office as required by the Charter.

Notwithstanding, I would like to emphasize that none of the information in the Excel document that accompanied the original memo had any willful misrepresentation of facts, but after receiving the feedback from Interim Chief Louis, I do acknowledge that if it is read without full context and explanations, some areas could be unclear to the reader. This memorandum will address specific categories included in the Excel document and how they can be further understood.

## READING THE LOG

The Excel document titled "Charter compliance log" contains 3 separate tabs for various ODPa activities of importance:

- INCIDENT INVESTIGATIONS
- BIKE TASK FORCE
- ANNUAL REPORT

*Color scheme key*

The tables in the Excel file are color-coded to immediately identify areas where compliance was met, not met or partially met. The color scheme I used (which is not included in the document) is:

- Red- noncompliance with Charter provisions
- Yellow- partial compliance
- Green- full compliance

*Compliance status*

The “Compliance Status” column (I) indicates whether the compliance was met. That column in and of itself does not specify which specific Charter provision was not complied with (i.e. timeliness, access to record, etc.), however, the “Records Requested” column (D) specifies which document was requested and to date, the ODPA has not received any IAB file requested for the misconduct investigations. In part, Section 125(20)(a) of the Charter unambiguously states:

...

*Unless otherwise required by state and federal law, the records and information include without redaction or limitation:*

*(1) Records relevant to Police Department policies, practices, or procedures;*

*(2) Personnel and disciplinary records of sworn employees of the Police Department; and*

*(3) Police Department investigative records.*

...

For those reasons, the response to the records requests associated with those cases in the INCIDENT INVESTIGATIONS tab were deemed to be non-compliant.

In the BIKE TASK FORCE tab, the Department has been, for the most part, “partially compliant”. The reason why full compliance was not credited in the log is because of the lack of specification on when the records will be produced. In the same section of the Charter stated above, there is a process by which responding departments should notify the requestor (i.e. ODPA/PAB) of additional time needed,

*“ Responding departments or employees of the City shall maintain the confidentiality of any records and information provided consistent with state or federal law governing such records or information and comply promptly, but in no event later than ten (10) business days from the date of request, unless additional time is needed to locate or review records. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for delay in producing the necessary records and information.”*

While the BPD has communicated back to the ODPa in instances where they believe that additional time may be required to produce a record because of volume and or the need for legal advice, the adherence to the specification of “how much time up to thirty (30) additional business days is needed and explanation for the reasons for delay in producing the necessary records and information” provision has not always been met. In contrast, a separate responding City department provided the following response to the ODPa for a similar records request:

*“Pursuant to Sections 125(3)(a)(5) and 125(20)1 of the City Charter, I am requesting up to an additional thirty (30) business days (no later than April 4, 2023) to complete the research into the information you request in your inter-office memo (attached). This time is needed to conduct a trace of the devices and/or records, and associated information”*

For this reason, I deemed those records request responses to be partially compliant.

As it relates to the last tab, ANNUAL REPORT, the reason why non-compliance was the appropriate coding, in my assessment, is not because the BPD failed to provide the data requested, but rather that the Department did not adhere to the time specification provisions noted above. The ODPa does acknowledge that the BPD did inform the ODPa that various elements of the requested documents would take additional time, but no clear timeline for when the final product would be provided.

#### *Comments from BPD*

An additional important clarifying point to note is regarding the “Comments From BPD” columns found in both the INCIDENT INVESTIGATIONS tab and BIKE TASK FORCE tab. Those columns were intended to document the response that BPD provided to the ODPa regarding the need for additional time to produce or deny a records request. In all of those cells, it indicates that the BPD was seeking City Attorney’s Office (CAO) guidance on some matters. The column, however, is not



intended to be used to make an assessment as to whether the BPD's non-compliance was attributed to any part of the CAO. Considering that in most situations (with the exception of a few scenarios where joint advice is given) the ODPa does not receive information about the privileged and confidential advice given to the BPD, I am not in a place to determine what advice if any was given to the BPD that resulted in non-compliance.

### *Errors*

Lastly, as it relates to the columns related to due dates, "10-Day Deadline" (D) and "30-Day Deadline" (E), I acknowledge that I erroneously included calendar days as opposed to business days as articulated in the Charter. The error occurred because in the Charter there is a reference to "business days" while the Interim Regulations mention "calendar days" for other timelines. Notwithstanding, this clerical error does not impact the assessment of charter compliance.

### **CONCLUSION**

In conclusion, this follow-up memorandum serves to clarify certain aspects of the previous memo titled "Delays in ODPa Work Production due to BPD Non-Adherence to Charter Deadlines." While the original memo focused on areas where the ODPa work product had been impacted by the lack of access to relevant records, this memo acknowledges that there are also areas where the ODPa and BPD have worked together successfully, which will be highlighted more fully in the upcoming annual report. The Excel document that accompanied the original memo did not have any willful misrepresentation of facts, but some areas could be unclear if read without full context and explanations. The color scheme key and compliance status columns in the Excel document were explained, and specific categories were addressed, such as Incident Investigations, Bike Task Force, and the Annual Report. The due date columns in the Excel document contained an error, as they included calendar days instead of business days as articulated in the Charter. Any references to the CAO should not be used to draw conclusions about that office's role in ensuring adherence to records requests made to BPD. Overall, this follow-up memorandum seeks to provide a more comprehensive understanding of the original memo's contents and to clarify any misunderstandings that may have arisen.



PRESENTED TO THE BOARD ON:

April 26, 2023

To: Police Accountability Board

From: Hansel A. Aguilar, Director of Police Accountability

Subject: Recommendation to hire additional ODPA Staff

### RECOMMENDATION

Adopt a resolution recommending that the City Council approve funding for the Director of Police Accountability (DPA) to hire additional Office of the Director of Police Accountability (ODPA) staff. Specifically, one additional investigator (FTE) and one communications specialist (FTE).

### FISCAL IMPACTS OF RECOMMENDATION

Under the City's current classification system, the projected salary range for the proposed positions are:

- Investigator: \$104,291.20 - \$125,673.60 Annually salary + benefits (approx. \$56,806.47)
- Communications Specialist: \$101,400.00 - \$120,286.40 Annually + benefits (approx. \$56,806.47)

### CURRENT SITUATION AND ITS EFFECTS

In this organizational developmental stage, the ODPA and the PAB have undertaken various duties to meet the responsibilities under the Charter. Some areas of the ODPA's and PAB's work have been negatively impacted or delayed by limited permanent staffing and Board member vacancies. These additional permanent staffing requests will ensure parity with the IAB (for investigations) and allow the ODPA and PAB to have a sustainable outreach and communications program.

### BACKGROUND

Due to the transformation from the Police Review Commission (PRC) to the Police Accountability Board (PAB) & Office of the Director of Police Accountability (ODPA) oversight model through the passing of Measure II, the ODPA has been in the process of hiring various permanent staff to meet the needs of the enhanced oversight system. On April 27, 2022, the then Police Accountability Board Chair, Michael Chang, sent a letter to the Honorable Mayor and Members of the City Council requesting funding from the City Council for a data analyst (which is currently being selected) and a second investigator. Through further deliberation and reconsideration, the second investigator position was

instead converted into a policy analyst role (currently being temporarily staffed while the permanent selection process is being completed).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

### RATIONALE FOR RECOMMENDATION

As presented by Interim Director Lee in her March 13, 2022 memo to City Manager Dee Williams-Ridley, an overview of the department's workload, includes the various ongoing tasks:

- Board member training (Charter)
- Monitor implementation of fair and impartial policing recommendations (ongoing) (Council)
- Review Impact Statements under the Police Equipment & Community Review Ordinance (Ordinance)
- Outreach activities (Charter)
- Commendation program (Charter)
- Review of policies converted to the Lexipol format (Board and BPD)

Additionally, the Board currently has the following subcommittees in place:

- Regulations
- Fair & Impartial Policing Implementation
- Mental Health Response
- Fixed Surveillance Cameras (Policy 351)
- Controlled Equipment Use & Reporting
- Chief of Police Process
- Drone Use Policy
- Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations
- Body-Worn Camera Policy
- Conflict of Interest

### Ratio of sworn officers to investigators

In their 2021 Report, NACOLE has a discussion regarding the ratio of sworn officers to investigators:

*Some jurisdictions with investigation-focused civilian oversight have adopted a personnel-based approach to resource allocation. These cities have established requirements that the oversight agency employ one investigator per fixed number of sworn officers in the overseen law enforcement agency. This practice rests on the assumption that such fixed*

*ratios will ensure agencies can maintain staffing levels sufficient to handle caseloads and that investigations are completed in a timely manner.*

*This practice was first established for San Francisco's Office of Citizen Complaints (OCC, now the Department of Police Accountability, or DPA) in 1996. According to the city charter, the DPA is required to employ one investigator for every 150 sworn officers employed by the San Francisco Police Department.*

*In 2016, voters in Oakland approved charter amendment Measure LL, which established a civilian police commission and instituted a similar requirement for the city's investigation-focused Community Police Review Agency (CPRA). Measure LL mandates that the CPRA hire one investigator for every 100 sworn officers in the Oakland Police Department. (pg. 50)*

*Vitoroulis, M., McElhiney, C., & Perez, L. (2021). Civilian Oversight of Law Enforcement:: Report on the State of the Field and Effective Oversight Practices. US Department of Justice, Office of Community Oriented Policing Services.*

Without adopting any particular formula or ratio, at the very least, it is important that the ODPa/PAB have parity with the BPD's IAB which currently staffs two investigators.

### Outreach and Communications

The City's current classification for a communications specialist (Class Code 9011) can assist with the various functions of the ODPa/PAB work. Specifically, the specialist can:

- Develop, implement and coordinate outreach programs for community engagement;
- Assist in the formation of social media outreach;
- Proactively address issues and misinformation through communication;
- Develop and utilize communication strategies to inform and promote ODPa/PAB activities, both internally and externally, through written and visual communications with distribution through a variety of channels, including digital platforms such as the web and social media, and print;
- Create and write daily content regarding ODPa/PAB news and events;

### ALTERNATIVE ACTIONS CONSIDERED

- Provide additional funding for part-time employees to fill this role.
- Provide additional funding for a reserve for the DPA to use for temporary staffing.

- Provide additional funding for a robust internship program to augment the work of the ODPa/PAB.

Attachments

1. Resolution: TO MAKE A RECOMMENDATION TO CITY COUNCIL TO APPROVE THE HIRING OF ADDITIONAL STAFF FOR THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY
2. Communications Specialist Classification



# Communications Specialist

Class Code:  
9011

Bargaining Unit: Unrepresented Classifications

CITY OF BERKELEY  
Established Date: Sep 14, 2021  
Revision Date: Aug 9, 2022

## SALARY RANGE

\$48.75 - \$57.83 Hourly  
\$3,900.00 - \$4,626.40 Biweekly  
\$8,450.00 - \$10,023.87 Monthly  
\$101,400.00 - \$120,286.40 Annually

## DESCRIPTION:

### DEFINITION

Under general supervision, performs professional public communication duties to facilitate Citywide initiatives that include the coordination and dissemination of information to the public and media; develops methods and techniques for accomplishing improved communication between the general community, special targeted audiences, the media and the City; and provides professional level support to the Communications Director/Assistant to the City Manager.

### CLASS CHARACTERISTICS

This is the journey level class, fully competent to perform responsible and difficult communications duties in support of various departments. Incumbents are expected to exercise independent judgment in the development and implementation of communications strategies.

## EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Coordinates and performs professional public service communication duties involving the coordination and dissemination of information to the public and media; develops methods and techniques for accomplishing improved communication between the City and general community;
2. Collaborates with City staff to develop a comprehensive communication plan; outlines the City's communication objectives, identifies tools and activities to implement those objectives; improves public access to timely, accurate, helpful

information about the City and its services; provides the public with a variety of easy and accessible ways to engage with the City;

3. Develops and utilizes communication strategies to inform and promote City activities, both internally and externally, through written and visual communications with distribution through a variety of channels, including digital platforms such as the web and social media, and print; creates and writes daily content regarding City news and events;

4. Serves as back up to the Communications Director in crisis communications efforts in emergency situations; under the Incident Command System, would serve as lead PIO;

5. Develops, implements and coordinates outreach programs for community engagement; strengthens social media outreach; proactively addresses issues and misinformation through communication;

6. Analyzes the effectiveness of communications and outreach efforts via digital analytics and quantitative and qualitative data;

7. Coordinates the creation and dissemination of assets and resources designed to serve the public through information; writes and creates news and informational content via print, digital and multimedia platforms;

8. Responds to public, radio, television, print media and other electronic media and forums with information about programs and services as well as unusual circumstances/situations of immediate public interest; will act as a City media representative and spokesperson;

9. Coordinates with departments to ensure information to the community is clear, accurate and comprehensive; works with staff to plan, organize and launch programs; writes copy for materials of public interest;

10. Develops positive relationships with media by proactively reaching out to them with City news and information and preparing news releases; researches and organizes information and material and writes copy; be available to the media to ensure information is being provided in an effective and efficient manner;

11. Provides technical assistance to City management and staff on digital communications software, how to effectively talk with the news media, and social media best practices;

12. Builds and maintains positive working relationships with co-workers, other employees and the public using principles of good customer service;

13. Performs related duties as assigned.

## **KNOWLEDGE AND ABILITIES:**

Note: The level and scope of the knowledges and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles, best practices and modern techniques of public information, dissemination, communication program development, media relations, crisis

communication, and content-marketing;

2. Techniques of effective interviewing, writing, layout, editing, and multimedia production;

3. Methods and procedures to utilize computer applications and technology related to the work, including but not limited to, web design and maintenance, photography, video production, presentation software, and image editing software;

4. Information dissemination techniques and method;

5. Methods and techniques of clear, concise and accurate oral and written communications.

Ability to:

1. Develop and manage complex communication projects in support of City operations;

2. Effectively prepare and deliver oral presentations and compose clear and organized correspondence, reports, press releases, proclamations, speeches, articles and other written materials;

3. Effectively represent the City with governmental agencies, news media, community groups, employee groups, and various business and professional organizations;

4. Communicate technical information including complex rules, regulations, legislation, and laws in a manner that is appropriate for the intended audience;

5. Use sound judgment in recognizing scope of authority;

6. Operate and use modern office equipment including computers and applicable software;

7. Establish and maintain effective working relationships with those contacted in the course of work;

8. Communicate clearly and concisely, both orally and in writing;

9. Work nights and weekends.

## **MINIMUM QUALIFICATIONS:**

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to a Bachelor's degree from an accredited college or university with major coursework in journalism, communications, public relations, or a related field and four years of responsible professional public communications, media relations, public relations or content-development experience including the development and implementation of communication programs.

**OTHER REQUIREMENTS:**

Must be able to travel to various locations within and outside the City of Berkeley to meet program needs and to fulfill the job responsibilities. When driving on City business, the



incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

**CLASSIFICATION HISTORY:**

Established: 09/21



RESOLUTION NO. 2023-0001

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD TO MAKE A RECOMMENDATION TO CITY COUNCIL TO APPROVE THE HIRING OF ADDITIONAL STAFF FOR THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY**

**WHEREAS**, the Office of the Director of Police Accountability (ODPA) is responsible for investigating complaints against sworn employees of the Berkeley Police Department and provides support to the Police Accountability Board in carrying out its duties; and

**WHEREAS**, the ODPA and PAB has experienced an overall increase in workload, resulting in understaffing and potential delays in the handling of cases and PAB requests; and

**WHEREAS**, the ODPA has previously requested a budget allocation for additional investigative staff to address the workload and ensure timely and effective investigations of complaints; and

**WHEREAS**, the ODPA and the PAB have roles in engaging the public and various stakeholders through outreach activities and meetings; and

**WHEREAS**, the ODPA and the PAB currently do not have any assigned staff for these specific duties; and

**WHEREAS**, the proposed budget allocation for additional staff will cost approximately \$ 359,572.94 annually;

**NOW, THEREFORE, BE IT HEREBY RESOLVED**, that the Police Accountability Board of the City of Berkeley expresses its full support for the Office of the Director of Police Accountability’s request for a budget allocation for additional staff, as it will improve the ODPa’s ability to investigate complaints of police misconduct in a timely and effective manner, enhance the ODPa’s and PAB’s ability to engage in meaning community engagement and ultimately enhance the accountability and transparency of the Berkeley Police Department.

Adopted on April 26, 2023

**RESOLUTION VOTING RESULTS**

<b><u>Board member</u></b>	<b><u>Aye</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>
Calavita			
Harris			
Leftwich			
Levine			
Moore			
Owens			
<b>Total</b>			

**CERTIFICATION**

I, John “Chip” Moore III, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

\_\_\_\_\_  
Date

\_\_\_\_\_  
John “Chip” Moore III,  
Chair of the Police Accountability Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hansel A. Aguilar,  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board