



**POLICE ACCOUNTABILITY BOARD**  
**REGULAR MEETING AGENDA**  
**Wednesday, October 11, 2023**  
**6:30 P.M.**

Board Members

John Moore III. (Chair)	Regina Harris (Vice-Chair)	Kitty Calavita
Julie Leftwich	Leah Wilson	Brent Blackaby

**MEETING LOCATION**

North Berkeley Senior Center  
 1901 Hearst Avenue  
 Berkeley, CA 94709  
[\(Click here for Directions\)](#)

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**HEALTH AND SAFETY PROTOCOLS  
FOR IN-PERSON MEETINGS OF  
BERKELEY BOARDS AND  
COMMISSIONS**

# **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**

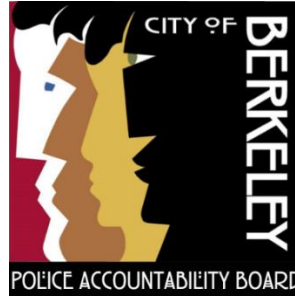
Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

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

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



**OCTOBER 11, 2023  
REGULAR MEETING AGENDA**



**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING AGENDA  
Wednesday, October 11, 2023  
6:30 P.M.**

	<u>Board Members</u>	
John Moore III. (Chair)	Regina Harris (Vice-Chair)	Kitty Calavita
Julie Leftwich	Leah Wilson	Brent Blackaby

**MEETING LOCATION**

North Berkeley Senior Center  
1901 Hearst Avenue  
Berkeley, CA 94709  
([Click here for Directions](#))

**PUBLIC NOTICE**

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 5339 6072**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized.

## **LAND ACKNOWLEDGMENT**

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 AND ROLL CALL (2 MINUTES)**
- 2. APPROVAL OF AGENDA (2 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. ADMINISTERING OATH OF OFFICE & CONFIDENTIALITY TO NEWLY APPOINTED BOARD MEMBER (3 MINUTES)**

a. District 7 – Joshua Cayetano (Appointed by Councilmember Rigel Robinson)

- 5. APPROVAL OF MINUTES (5 MINUTES)**

- a. Minutes for the Special Meeting of September 14, 2023
- b. Minutes for the Regular Meeting of September 27, 2023
- c. Minutes for the Special Meeting of September 27, 2023

- 6. ODPa STAFF REPORT (10 MINUTES)**

Announcements, updates, and other items.

- Introduction to Dawud Brewer, Employee Relations Manager
- Celebration of 50 Years of Civilian Oversight in Berkeley (Tentative Dates & Location)

- Video introduction to Michelle Verger, ODPa Policy Analyst

**7. CHAIR AND BOARD MEMBERS' REPORTS (10 MINUTES)**

Announcements, updates, and other items.

**8. CHIEF OF POLICE'S REPORT (10 MINUTES)**

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

**9. SUBCOMMITTEE REPORTS (10 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. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Calavita)
  - i. Status Updates
  - ii. Next Steps
- b. Fair and Impartial Policing (Chair: Calavita)
  - i. Status Updates
  - ii. Next Steps

**10. OLD BUSINESS**

- a. Presentation of New Policy Complaint Number 2023-PR-0005

**11. NEW BUSINESS**

- a. Presentation of New Policy Complaints (30 MINUTES)
  - i. Policy Complaint Number 2023-PR-0006
  - ii. Policy Complaint Number 2023-PR-0007
  - iii. Policy Complaint Number 2023-PR-0008
- b. Discussion and Action Regarding the Creation of a New Subcommittee for the Review of Off-Duty Conduct Policy

**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 any matter within the Board's jurisdiction at this time.

**13. CLOSED SESSION**

**CLOSED SESSION ITEMS**

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):

Case Updates Regarding Complaints Received by the ODPa:

- a. 2023-CI-0001
- b. 2023-CI-0002
- c. 2023-CI-0003
- d. 2023-CI-0004
- e. 2023-CI-0006
- f. 2023-CI-0008
- g. 2023-CI-0009
- h. 2023-CI-0010
- i. 2023-CI-0011
- j. 2023-CI-0012
- k. 2023-CI-0013
- l. 2023-CI- 0014

**END OF CLOSED SESSION**

**14. ANNOUNCEMENT OF CLOSED SESSION ACTIONS (1 MINUTE)**

**15. 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.

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#### **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)

# MINUTES FOR APPROVAL



**POLICE ACCOUNTABILITY BOARD  
SPECIAL MEETING AGENDA**

**Thursday, September 14, 2023  
6:30 P.M.**

Board Members:

JOHN MOORE III. (CHAIR)  
KITTY CALAVITA

JULIE LEFTWICH

REGINA HARRIS (VICE-CHAIR)  
LEAH WILSON

**MEETING LOCATION**

North Berkeley Senior Center  
1901 Hearst Avenue  
Berkeley, CA 94709

[\(Click here for Directions\)](#)

**MINUTES**

**1. CALL TO ORDER & ROLL CALL at 6:30 P.M.**

**Present:** Board Member John Moore (Chair)  
Board Member Regina Harris (Vice-Chair)  
Board Member Juliet Leftwich  
Board Member Brent Blackaby  
Board Member Leah Wilson

**Absent:** Board Member Kitty Calavita

**ODPA Staff:** Hansel Aguilar, Director of Police Accountability  
Jose Murillo, Policy Analyst  
Jayson Wechter, Investigator

**BPD Staff:** No staff present.

**CAO Staff:** James Chang, Deputy City Attorney

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda.**

Moved/Second (Wilson/Harris). Motion carried by unanimous consent.

Ayes: Blackaby, Harris, Leftwich, Wilson, and Moore. Noes: None. Absent: Calavita.



**3. PUBLIC COMMENT**

- 1 Physically present speakers.
- 0 Virtual speakers.

**4. ADMINISTERING OATH OF OFFICE & CONFIDENTIALITY TO NEWLY APPOINTED BOARD MEMBER**

- a. District 8 - Brent Blackaby (Nominated by Councilmember Humbert)

Board member Blackaby is administered the Oath of Office and Confidentiality.

**CLOSED SESSION**

The Police Accountability Board convened in closed session to meet concerning the following:

**5. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6**

- Negotiator: Tim Davis, Burke, Williams & Sorensen, LLP
- Employee Organization: Berkeley Police Association

**END OF CLOSED SESSION**

**6. ANNOUNCEMENT OF CLOSED SESSION ACTION**

Chair Moore announced the closed session actions.

**7. PUBLIC COMMENT (TBD)**

- 0 Physically present speakers.
- 0 Virtual speakers.

**8. ADJOURNMENT**

**Motion to adjourn.**

Moved/Second (Harris/Leftwich) Motion carried by unanimous consent. The meeting was adjourned at 9:18 P.M.

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

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



**POLICE ACCOUNTABILITY BOARD  
 REGULAR MEETING AGENDA  
 Wednesday, September 27, 2023  
 6:30 P.M.**

	<u>Board Members</u>	
John Moore III. (Chair)	Regina Harris (Vice-Chair)	Kitty Calavita
Julie Leftwich	Leah Wilson	Brent Blackaby

**MEETING LOCATION**

North Berkeley Senior Center  
 1901 Hearst Avenue  
 Berkeley, CA 94709  
[\(Click here for Directions\)](#)

**Minutes**

**1. CALL TO ORDER AND ROLL CALL AT 6:30 PM**

**Present:** Board Member John Moore (Chair)  
 Board Member Regina Harris (Vice-Chair)  
 Board Member Juliet Leftwich  
 Board Member Brent Blackaby

**Absent:** Board Member Leah Wilson  
 Board Member Kitty Calavita

**ODPA Staff:** Hansel Aguilar, Director of Police Accountability

**BPD Staff:** Captain Durbin  
 Lieutenant Reece

**CAO Staff:** James Chang, Deputy City Attorney

**CMO Staff:** Carianna Arredondo, Assistant to the City Manager

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda with edits.**  
 Moved/Second (Harris/Leftwich) Approved by unanimous consent.  
 Ayes: Blackaby, Harris, Leftwich, and Moore. Noes: None. Absent: Wilson, Calavita.

Requested Edit: Table item 9.a.ii.

**3. PUBLIC COMMENT**

5 Physically Present

1 Virtually Present

**4. APPROVAL OF MINUTES**

a. Minutes for the Regular Meeting of July 12, 2023

b. Minutes for the Special Meeting of July 24, 2023

**Motion to approve the minutes for the Regular Meeting of July 12, 2023 and for the Special Meeting of July 24, 2023.**

Moved/Second (Leftwich/Harris) Approved by unanimous consent.

Ayes: Blackaby, Harris, Leftwich, and Moore. Noes: None. Absent: Wilson, Calavita.

**5. ODPa STAFF REPORT**

Director Aguilar delivers staffing updates to the Board, updates on the PAB's Annual Report, discusses operational projects, and outlines training opportunities for the Board.

Carianna Arredondo, in her role as the Reimaging Public Safety Project Coordinator and Assistant to the City Manager, introduces herself to both the PAB and the community.

**6. CHAIR AND BOARD MEMBERS' REPORTS**

Chair Moore requests that the ODPa reach out to the council to inquire about the status of new appointments. Board member Leftwich requests an agenda item at the next PAB meeting to consider creating a subcommittee to review policies related to off-duty conduct.

**7. CHIEF OF POLICE'S REPORT**

Captain Durbin reports on crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

**8. SUBCOMMITTEE REPORTS**

a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Calavita)  
Report tabled for next meeting.

b. Fair and Impartial Policing (Chair: Calavita)  
Report tabled for next meeting.

**9. NEW BUSINESS**

- a. Presentation of new policy complaints
  - i. Policy Complaint Number 2023-PR-0004

The policy complaint is presented to the Board per Section G of the PAB’s standing rules.

**Motion to refer the policy complaint to the PAB’s subcommittee on the Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations.**

Moved/Second (Blackaby/Harris) Motion passed by unanimous consent.

Ayes: Blackaby, Harris, Leftwich, and Moore. Noes: None. Absent: Wilson, Calavita.

- ii. Policy Complaint Number 2023-PR-0005

Item tabled to next meeting.

**10. PUBLIC COMMENT (TBD)**

0 Physically present speakers.

2 Virtually present speakers.

**11. CLOSED SESSION at 8:00 PM**

**CLOSED SESSION ITEMS**

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):

- a. Case Update for ODPa Case # 33; 2023-CI-0004; 2023-CI-0010  
Director Aguilar provides case updates for Case # 33; 2023-CI-0004; 2023-CI-0010.
- b. Presentation of findings for ODPa Case #: 2023-CI-0004; 2023-CI-0005; 2023-CI-0007  
Director Aguilar presents findings for Case #: 2023-CI-0004; 2023-CI-0005; 2023-CI-0007
- c. Conference with labor negotiators; Government Code Section 54957.6  
Negotiator: Tim Tavis, Burke, Williams & Sorensen, LLP  
Employee Organization: Berkeley Police Association  
The PAB meets with labor negotiators.

**END OF CLOSED SESSION**

**12. ANNOUNCEMENT OF CLOSED SESSION ACTIONS**

Chair Moore announces closed session actions.

**13. ADJOURNMENT**

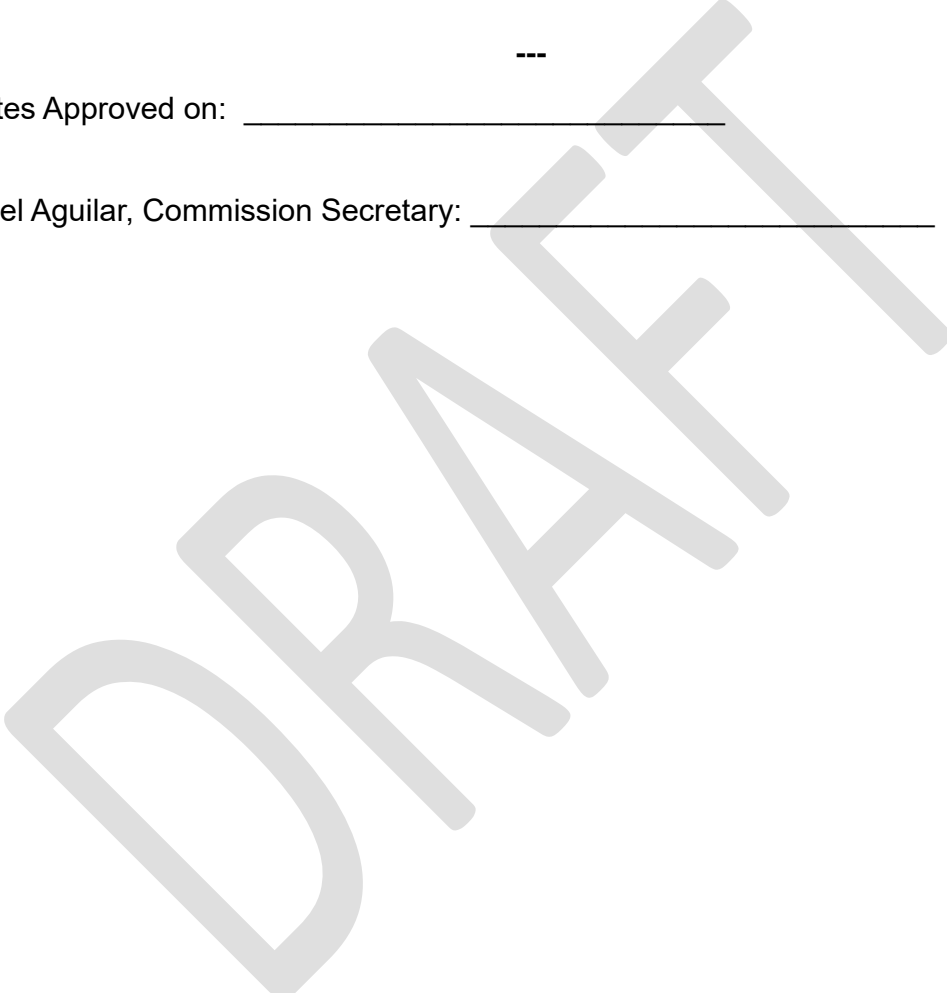
**Motion to adjourn.**

Moved/Second (Blackaby/Harris) The meeting was adjourned at 9:45 P.M by unanimous consent.

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

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





**POLICE ACCOUNTABILITY BOARD  
SPECIAL MEETING AGENDA  
Wednesday, September 27, 2023  
8:30 P.M.<sup>1</sup>**

**Board Members**  
John Moore III. (Chair)      Regina Harris (Vice-Chair)      Kitty Calavita  
Julie Leftwich              Leah Wilson                              Brent Blackaby

**MEETING LOCATION**

North Berkeley Senior Center  
1901 Hearst Avenue  
Berkeley, CA 94709  
([Click here for Directions](#))

**AGENDA**

**1. CALL TO ORDER AND ROLL CALL at 9:50 PM**

**Present:** Board Member John Moore (Chair)  
Board Member Regina Harris (Vice-Chair)  
Board Member Juliet Leftwich  
Board Member Brent Blackaby

**Absent:** Board Member Leah Wilson  
Board Member Kitty Calavita

**ODPA Staff:** Hansel Aguilar, Director of Police Accountability

**BPD Staff:** No staff present.

**CAO Staff:** No staff present.

**2. APPROVAL OF AGENDA (2 MINUTES)**

**Motion to approve the agenda.**

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<sup>1</sup> This special meeting followed the regularly scheduled meeting. The start time was delayed due to the regular meeting going past the anticipated end time.

Moved/Second (Harris/Leftwich). Motion carried by unanimous consent.  
Ayes: Blackaby, Harris, Leftwich, and Moore. Noes: None. Absent: Wilson, Calavita.

**3. PUBLIC COMMENT (TBD)**

0 Speakers Present.

**4. CLOSED SESSION**

**CLOSED SESSION**

a. Discussion and Action of ODPa Case 2023-CI-0002

The Board unanimously decides to have a hearing on the matter.

**END OF CLOSED SESSION**

**5. ANNOUNCEMENT OF CLOSED SESSION ACTIONS**

Chair Moore announces the closed session actions.

**6. ADJOURNMENT (1 MINUTE)**

**Motion to adjourn.**

Moved/Second (Blackaby/Harris). Meeting is adjourned by unanimous consent at 10:00 P.M.

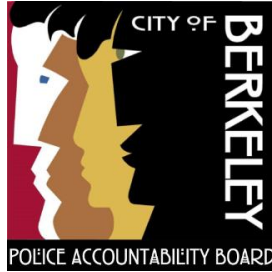
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Minutes Approved on: \_\_\_\_\_

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

# **LIST OF CURRENT PAB SUBCOMMITTEES**





**SUBCOMMITTEES LIST**  
**7-07-2023**

<b>Subcommittee</b>	<b>Board Members</b>	<b>Chair</b>	<b>BPD Reps</b>
<b>Regulations</b> Formed 7-7-21 Renewed 6-7-2023	Calavita Leftwich  <u>Public members:</u> Kitt Saginor		Lt. Dan Montgomery
<b>Fair &amp; Impartial Policing Implementation</b> Formed 8-4-21 Renewed 6-7-2023	Calavita Wilson  <u>Public members:</u> George Lippman Elliot Halpern	Calavita	Sgt. Peter Lee
<b>Surveillance Technology Policy</b> Formed 6-7-2023	Calavita Moore		
<b>Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations</b> Formed 11-15-22	Calavita Moore		
<b>Body-Worn Camera Policy</b> Formed 03-15-23	Harris Leftwich	Harris	
<b>Conflict of Interest</b> Formed 03-29-23	Leftwich Wilson	Leftwich	

**PRESENTATION MATERIALS FOR  
POLICY COMPLAINT NUMBER  
2023-PR-0005**



## POLICY COMPLAINT NOTICE

**Date:** September 22, 2023  
**To:** Honorable Members of the Police Accountability Board  
**From:** Hansel A. Aguilar, Director of Police Accountability *Ha*  
Jose Murillo, Policy Analyst *Jm*  
**Subject:** Notice of Policy Complaint No. 2023-PR-0005

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### Background:

On August 21, 2023, the Office of the Director of Police Accountability (ODPA) received a policy complaint form, along with additional attachments, via email at [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info). On September 4, 2023, an additional form was submitted to supplement the original. The completed policy complaint forms are attached herein as Attachment 1.

The complainant reports that she and her family have endured "intentional harassment, deliberate loud noise, [and] intentional vandalism" by their neighbors for several years. They have reached out to the Berkeley Police Department (BPD) regarding these issues. The complainant asserts that, despite making numerous requests for help, the BPD has not responded in a satisfactory or timely manner and has not taken adequate measures to address their issues. In her correspondence with the ODPA and BPD, she points out instances where officers failed to locate the specified address or adequately address the problem. Furthermore, she mentions being informed that the noise would likely persist due to the property's occupants being college-age students and the properties close proximity to UC Berkeley (See Attachment 2).

The complainant also notes that she has attempted to resolve the matter by contacting the landlord of the property in question but has been unsuccessful. Allegedly, the property owners have dismissed and insulted the complainant, causing strain in their relationship. ODPa staff referred the complainant to her local BPD Community Liaison officer in an effort to find a solution to the ongoing issues she has faced. As of September 5, 2023, the BPD Community Liaison has reached out to the complainant's neighbors to emphasize the importance of adhering to the city's designated quiet hours. Additionally, the BPD Community Liaison has contacted members of the UC Berkeley staff who may have influence over the property's residents and conveyed the complainant's concerns. (see Attachment 3).

**Potential Area(s) of Review:**

Upon reviewing the complaint and the related correspondences, the ODPa staff has identified the following matters for potential consideration by the Board, should they deem it suitable to initiate a review:

1. BPD's response time<sup>1</sup> and prioritization of noise complaint issues (See BPD Policy 1200 and 1202);
2. BPD's enforcement of noise standards in Berkeley<sup>2</sup> (See BPD Policy 1200 and 1202);
3. BPD's role in civil disputes for resolving neighbor conflicts<sup>3</sup> (see BPD Policy 430);

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<sup>1</sup> Calls for service are prioritized based on the urgency of the call. Calls are generally categorized under four categories that can be found here: <https://berkeleyca.gov/safety-health/police/report-crime>

<sup>2</sup> The City of Berkeley's noise standards as well as the relevant municipal codes can be found here: <https://berkeleyca.gov/city-services/livable-neighborhoods/noise-standards>

<sup>3</sup> Currently, the Berkeley Rent Board offers free mediation services to Berkeley landlords and tenants in units that are fully covered by the Rent Ordinance or registered under Measure MM. Issues that can be mediated include noise complaints but the parties in this case would not be eligible. For more information, please visit: <https://rentboard.berkeleyca.gov/services/mediation>

## **Recommendations:**

Upon receiving a policy complaint, per the Standing Rules<sup>4</sup>, the Board can choose from several potential courses of action, which include:

1. Accepting the policy complaint and assigning a Board member to investigate.
2. Accepting the policy complaint and directing ODPa staff to carry out an investigation.
3. Accepting the policy complaint and establishing a subcommittee to investigate the matter.
4. Temporarily deferring acceptance of the policy complaint and assigning a Board member to investigate it before formal acceptance.
5. Temporarily deferring acceptance of the policy complaint and instructing ODPa staff to investigate the matter.
6. Rejecting the policy complaint.

Considering the nature of this complaint, the BPD's active involvement in resolving the concerns in question, and the Board's current limited human resources, the ODPa recommends the Board either assign a single Board member to investigate the matter further or ask staff to investigate or research the issue before establishing a subcommittee or taking up the issue as a full Board.

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<sup>4</sup> See [https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard\\_StandingRules.pdf](https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard_StandingRules.pdf)

# ATTACHMENT 1



# 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

Date Received:

08/21/2023

DPA Case # <sup>2023-PR-0005</sup>

1

Name of Complainant: WHYTE. ANNE  
Last First Middle

Mailing Address: [REDACTED]  
Street City State Zip

Primary Phone: ( ) [REDACTED] Alt Phone: ( ) \_\_\_\_\_

E-mail address: [REDACTED]

Occupation: GRANDMOTHER Gender: FEMALE Age: BORN 1944

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.

Everyone in our household has been kept awake almost every night  
by exceptionally-loud noise from [REDACTED] for six consecutive  
"academic years." Friday last, again, there was excessive noise.  
Unfortunately, more than half of all City of Berkeley uniformed police  
officers who have "responded" to our requests for service have been  
"unable to find" [REDACTED], including last Friday.

3

Location of Incident (if applicable) [REDACTED]

Date & Time of Incident (if applicable) Now, more than six years of elder abuse and cruelty.

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.

We can demonstrate six years of on-going intentional cruelty - now seven years - with  
photographs, audio recordings, video recordings, e'mail, text messages, and lists of incidences.  
City of Berkeley already has many, not all, of our recordings sent by e'mail.  
SIX YEARS OF ELDER ABUSE HAS DONE SIGNIFICANT DAMAGE!

4 What changes to BPD policy, practice, or procedure do you propose?  
Some years ago, Officer [REDACTED] summarily instructed us that, when we call for service because there is yet another loud party or whatever, we MUST instruct a responding officer is (1) to park in front of [REDACTED], the building in front, (2) get out of the police car, (3) walk down the driveway to the building behind which is [REDACTED]. Officer [REDACTED]'s "instructions" have not worked!

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.)  
This last Friday, when this newest group of University of California students had just moved into [REDACTED], they had a party with amplified music; volume at our property line exceeded 100dBA at times. We provided Officer [REDACTED]'s "instructions" to Dispatcher # [REDACTED]. Eventually, Officer [REDACTED] "responded."  
However, Officer [REDACTED] "could not find [REDACTED]."  
Eventually, something happened, a male voice began shouting "FUCK! Get the FUCK out here! [etc.]" and the party stopped. Students ran out.

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

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

\_\_\_\_\_  
Date

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

Internet

Berkeley Police Dept.

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

Referred by: a retired Assistant Attorney General not in California.

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





# 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

Date Received:

09/04/2023

DPA Case # <sup>2023-PR-0005</sup>

1

Name of Complainant: WHYTE, ANNE  
Last First Middle

Mailing Address: [REDACTED]  
Street City State Zip

Primary Phone: ( ) [REDACTED] Alt Phone: ( ) \_\_\_\_\_

E-mail address: [REDACTED]

Occupation: GRANDMOTHER Gender: OLD! Age: OLD!

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.

It seems to be impossible for City of Berkeley Police Department employees to take seriously that SEVEN YEARS of intentional harassments, intentional loud noise, intentional vandalism, and etc. by tenants and "guests" in [REDACTED] is specifically ELDER ABUSE!  
April First 2017 to today = SEVEN YEARS of intentional ELDER ABUSE!

3

Location of Incident (if applicable) [REDACTED]

Date & Time of Incident (if applicable) SEVEN YEARS of FREQUENT CRUELTY!

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.

For seven years we have made requests for service by phone, e'mail, texts, and etc. outlining specific incidents, incidents when most City of Berkeley Police Department employees "blew-off" our requests for protection.

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

- City of Berkeley Police Department employees actually enforce black-letter law: City of Berkeley Municipl Code 13.40 et seq.
- City of Berkeley Police Department employees actually "find" [REDACTED] which is behind [REDACTED].
- City of Berkeley Police Department employees actually get out of police cars to actually approach [REDACTED] on foot.

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.)

- Please, see attached.
- Please note several e'mail recently sent to City of Berkeley Police Accountably
- Please review years of previous e'mail sent to just-about everyone, hoping someone in City of Berkeley Police Department would actually do something effective so we can sleep in our home without being woken, again and again and again and ...

6 CERTIFICATION

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

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

\_\_\_\_\_  
Date

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

- Internet
- Berkeley Police Dept.
- Newspaper: \_\_\_\_\_
- Referred by: \_\_\_\_\_
- Other: A friend looked-up to find - SURPRISE! SURPRISE! - City of Berkeley has Police Accountability!

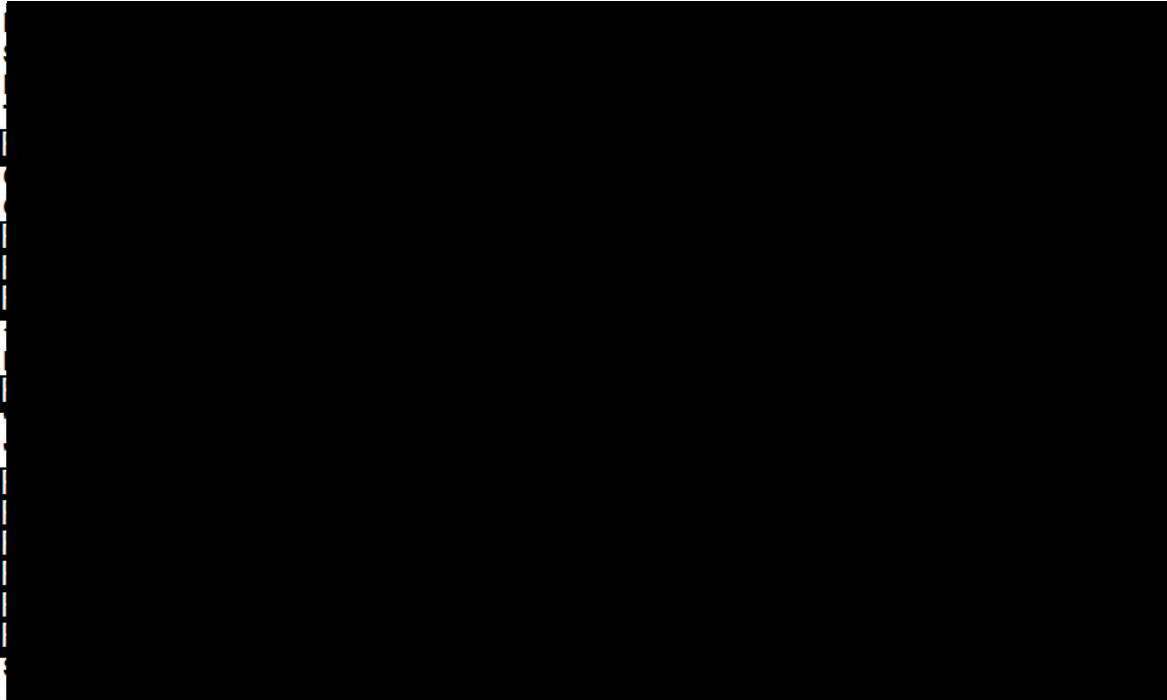
# ATTACHMENT 2

**Murillo, Jose**

---

**From:** Anne Whyte [REDACTED]  
**Sent:** Sunday, September 03, 2023 1:47 PM  
**To:** Murillo, Jose; Office of the Director of Public Accountability  
**Subject:** [REDACTED] - [REDACTED] CRUELTY MUST STOP.

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



AGAIN THIS "ACADEMIC YEAR," beginning on 2023 August 18, tenants and their guests in [REDACTED] have intentionally harassed us with loud noise in violations of Berkeley Municipal Code 13.40.

This is the SEVENTH YEAR tenants in [REDACTED] have intentionally harassed us.

As you ALL know, I am a handicapped grandmother almost 80 years old.

By law, my husband is, also, an "elder."

There are several other near-by neighbours older than 65 years old who are, by law, elders.

ELDER ABAUSE IS CRUELTY.  
MEHTA CRUELTY MUST STOP.

2023-2024 "ACADEMIC YEAR,"

- Several people moved into **REDACTED** on 2023 August 18. That night, 2023 August 18, tenants and their guests in **REDACTED** began making noise at about 9PM — loud noise in excess of 100dBA continued for hours. These brilliant intellectuals had their in-excess-of-100dBA gathering on the west side of **REDACTED** perhaps thinking that if they were out of direct line of site from our home and other homes, no one would be able to hear their noise in excess of 100dBA?

- On 2023 August 26, AGAIN, tenants and their guests in **REDACTED** began making noise at about 9PM — loud noise in excess of 100dBA continued for hours. AGAIN, these brilliant intellectuals had their in-excess-of-100dBA gathering on the west side of **REDACTED** perhaps thinking that if they were out of direct line of site from our home and other homes, no one would be able to hear their noise in excess of 100dBA?

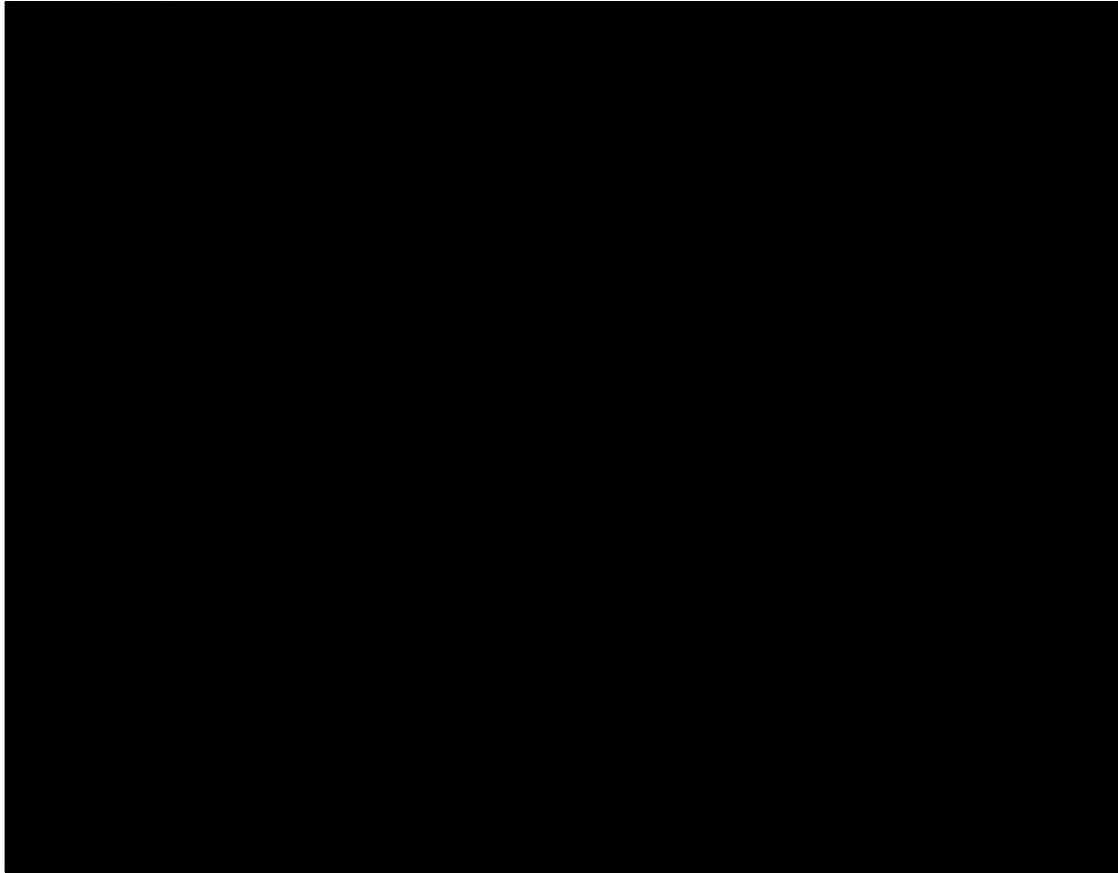
- On 2023 September 3, beginning at 12:30AM, tenants and their guests in **REDACTED** began making noise that included banging on windows and doors, yipping loudly, shrieking, shrieking even louder. Police arrived at a bout 2:30AM. As police were leaving, tenants and their guests **REDACTED** "waved" at us, smiling broadly!

**Murillo, Jose**

---

**From:**  
**Sent:**  
**To:**  
**Cc:**

**REDACTED**  
Saturday, August 26, 2023 11:08 PM



**Subject:**

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

**THIS IS THE SEVENTH YEAR OF LOUD  
NOISE FROM REDACTED  
!!!!**

**THIS IS THE SEVENTH YEAR OF LOUD  
NOISE FROM REDACTED  
!!!!**



THIS IS THE SEVENTH YEAR OF LOUD  
NOISE FROM **REDACTED**

!!!!

THIS IS THE SEVENTH YEAR OF LOUD  
NOISE FROM **REDACTED**

!!!!

THIS IS THE SEVENTH YEAR OF LOUD  
NOISE FROM **REDACTED**

!!!!

THIS IS THE SEVENTH YEAR OF LOUD  
NOISE FROM **REDACTED**

!!!!

THIS IS THE SEVENTH YEAR OF LOUD  
NOISE FROM **REDACTED**

!!!!

We have a longer video, also!

It is 11PM. No officer has “responded”!

From: Anne Whyte <**REDACTED**>  
Subject: **REDACTED**  
Date: August 26, 2023 at 10:37:22 PM PDT

To:

<po

RE

RE

BPI

This video is before we called City of Berkeley Police from our deck so University of California Women's lacrosse team would be able to hear that phone call!!!

Spoke with #517

Reported:

Loud noise

Elder abuse

Asked that any officer who responded to call me because several previous CoBPD uniformed officers who "responded" have "not been able to find REDACTED !!!

Note: On 2023 August 18 CoBPD officers "could not find REDACTED"

[Click to Download](#)

IMG\_2141.MOV

0 bytes

Anne Whyte

REDACTED



**Murillo, Jose**

---

**From:** Anne Whyte [REDACTED]  
**Sent:** Tuesday, August 22, 2023 8:13 AM  
**To:** Murillo, Jose; Office of the Director of Public Accountability  
**Subject:** WHYTE - COMPLAINT (Rev #1) about [REDACTED] (1) a short audio recording and (2) a video recording  
**Attachments:** COMPLAINT - [REDACTED] - 2023 AUGUST 21.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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

PLEASE NOTE: This “party” at [REDACTED] on Friday, 2023 August 18, was **NOT AS NOISEY** as “parties” at [REDACTED] several times every week during these SIX YEARS of ELDER ABUSE.

230818\_2109\_01\_02\_01  
1drv.ms



VIDEO starts just before 10:00 PM and runs to about 11:30 PM after end of this “party” on Friday, 2023 August 18.

It’s a very big video, about 4GB

**[REDACTED]-08-18 video ~10-00 PM to ~11-30 PM.mov**

1drv.ms

**Murillo, Jose**

---

**From:** Anne Whyte **REDACTED**  
**Sent:** Thursday, July 27, 2023 10:02 AM  
**To:** Humbert, Mark  
**Cc:** Murillo, Jose; Office of the Director of Public Accountability  
**Subject:** WHYTE -- QUIET ENJOYMENT OF OUR HOME -- 5

GEE-WHIZZZ!!!

COUNCILMEMBER HUMBERT, YOU SURE-  
DO MAKE IT SOUND AS THOUGH OUR QUIET ENJOYMENT OF OUR  
HOME AS IMPORTANT TO YOU!!!

CLEARLY, THE HEALTH, WELFARE,  
AND SAFETY OF OUR FAMILY AS A PRIORITY FOR YOU!!!

GOSH!!!

THANKS SOO SOOO MUCH!!!

On Jul 27, 2023, at 9:51 AM, Humbert, Mark **REDACTED** wrote:

I'll have my legislative assistant look into this when he returns from leave, and see what we can find out. Mark

Mark Humbert  
Councilmember District 8

---

**From:** Anne Whyte **REDACTED**  
**Sent:** Thursday, July 27, 2023 9:41 AM  
**To:** Humbert, Mark **REDACTED**  
**Cc:** Murillo, Jose <JMurillo@berkeleyca.gov>; Office of the Director of Public Accountability <OfficeoftheDirectorofPoliceAccountability@berkeleyca.gov>  
**Subject:** WHYTE -- QUIET ENJOYMENT OF OUR HOME -- 1

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

Although legally **REDACTED** is “4 bd / 2 ba /1,490 sqft,” this out-of-state property owner — Joginder Mehta lives

in Maryland — advertises **REDACTED**

**REDACTED** “Remodeled 7 BD/ 5BA House perfect for Student Living” with “2,200 sq ft” of conditioned living space.

Joginder Mehta has recently advertised **REDACTED**  
**REDACTED** for rent of “\$11,375”/ month.

**REDACTED** is not a legal “mini-dorm”

<MEHTA - **REDACTED** - \$\$11,375 - RENTAL ADVERT AS OF 2023 FEBRUARY 15.png>

**Murillo, Jose**

---

**From:** Anne Whyte **REDACTED**  
**Sent:** Thursday, July 27, 2023 9:24 AM  
**To:** Humbert, Mark  
**Cc:** Office of the Director of Public Accountability; Murillo, Jose  
**Subject:** WHYTE -- QUIET ENJOYMENT OF OUR HOME -- 1

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

Councilmember Humbert, did you know that CoBPD misinterprets this notice (below) to provide that, no matter how loud the intentionally-loud noise is or how often intentionally-loud noise intentionally wakes neighbors, CoBPD can “ticket” intentionally-loud student-terrorists if-and-only-if there are “ten or more” student-terrorists intentionally harassing neighbours?

In this instance, everyone in our household have been woken again and again and again and ... most nights for six years by residents of the garage apartment just-about forty feet from our bedroom windows.

This garage apartment is **REDACTED** .

Date:

To:

Dear:

The City of Berkeley was required to abate the public nuisance caused by a gathering of 10 or more persons at (location of property) \_\_\_\_\_, which substantially disrupted the quiet enjoyment of property in a significant segment of the adjacent neighborhood. This is the (second/third/fourth, etc.) such public nuisance at this property within the last 120 days, and thus, a penalty of \_\_\_\_\_ (\$750, \$1,500, etc.) is imposed on you. If you fail to remit this fine to the City of Berkeley by \_\_\_\_\_ (30 days from the date of this notification), you will be liable for an additional \$100 penalty, plus interest. The payment should be remitted to the address listed below.

Your liability is based on the fact that you were:

An owner of the property to whom was sent prior notice of a public nuisance at the property within the previous 120 days; and/or

An owner of the property who resided on or adjacent to the property when the public nuisance took place; and/or

An owner of the property who was present when a Notice of a public nuisance was first posted at the property; and/or

A person who resided on or was otherwise in control of the property when the public nuisance took place; and/or

A person who organized or sponsored the event that created the public nuisance at such property; and/or

A person who attended the event constituting the public nuisance at such property and engaged in the conduct which resulted in the public nuisance.

If you believe that you are not liable you may contest the issuance of the administrative citation by requesting a hearing pursuant to BMC Section [1.28.060](#).

Sincerely yours,

\_\_\_\_\_

(Name, title, address and phone number of signatory)

# ATTACHMENT 3

**Murillo, Jose**

---

**From:** Anne Whyte [REDACTED]  
**Sent:** Wednesday, September 06, 2023 5:01 PM

**To:**  
[REDACTED]

**Subject:** [REDACTED] - SEVEN YEARS OF ELDER ABUSE CONTINUED ON 2023 AUGUST 18, AUGUST 26, AND SEPTEMBER 3

Good afternoon, Officer [REDACTED]

Although this e’mail outlines a tiny portion of seven years of cruelty and elder abuse done to me and abuse done to our household since April First 2017, by owners, “managers,” tenants and tenants’ 24/7 guests, it is very important that you do not misunderstand:

Officer [REDACTED], we are glad that a City of Berkeley Police Department uniformed officer actually did speak with these “brilliant intellectuals” who are newest abusers in [REDACTED]!

Once, years ago, City of Berkeley Police Department Officer [REDACTED] did speak with one of the previous abusive cabals of student-terrorists living in [REDACTED]. That official visit did not work out well! City of Berkeley Police Department Officer

██████ was accompanied by City of Berkeley Police Department Officer Smar T Pants; Officer Smar T Pants made exceptionally clear by his tone and manner of speaking, accentuated by his body language — slumped in our chair with his legs wide apart, yanking off his mask time-and-again to slurp his refreshments — that this meeting was an extremely-annoying waste of his valuable time. At the end of this meeting, as had happened with absolutely every other meeting with City of Berkeley Police Department Officer ██████, she lectured me about everything I had done wrong to “cause” these student-terrorists to harm me and my family. And, of course, very-loud noise and intentional harassments from **REDACTED** ██████ continued unabated, night and day!

And everyone in our household is very surprised that anyone — anyone at all — associated with the University of California would be willing to work with you to do anything to protect us! For years we have asked for someone at the University of California — anyone at the University of California — to protect us! For years, Associate Director, Government and Community Relations, Jen Loy, has repeated, time and time again: “YOU are not part of OUR University, so OUR University will do nothing to protect YOU!” and such! (Even our requests that obvious chronic alcoholism of a majority of each cabal of cruel University of California student-terrorists living at **REDACTED** ██████ be addressed went unheeded by University of California employees.)

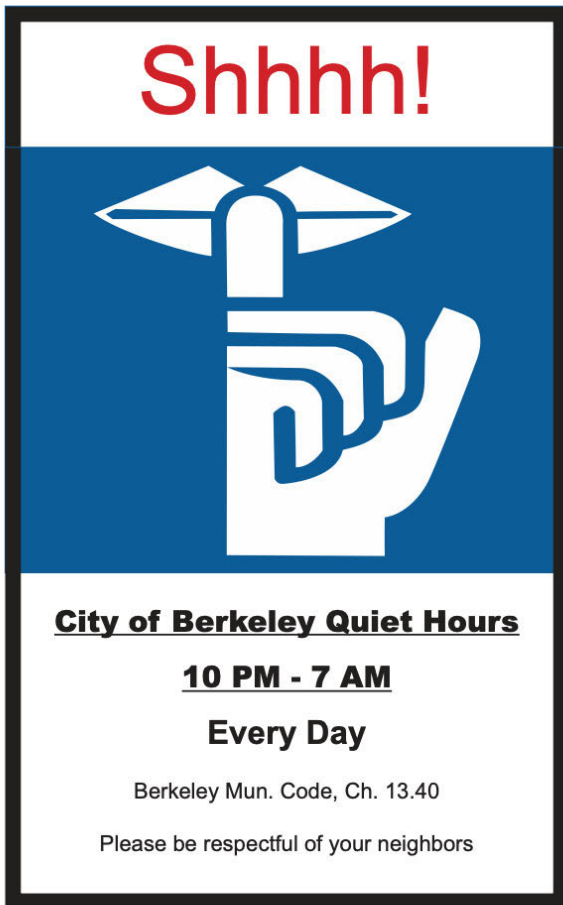
Officer ██████ this morning, just to make sure our “Shhhh!” sign was still there, I took this photo.





Sure enough! Our “Shhh!” sign is still where we installed it, years ago, right outside the door of **REDACTED** !

Our “Shhhh!” sign is so obvious — about two years ago, we installed an even-bigger “Shhhh!” sign — bigger than our first “Shhhh!” sign — surely, Officer **REDACTED** you noticed our “Shhhh!” sign as you tried to get past the car that is far too close to the entry to **REDACTED** **REDACTED**? (Officer **REDACTED** there is no legal fire exit from **REDACTED** , but City of Berkeley employees have repeatedly demonstrated they just don’t care about legal fire exits at **REDACTED** either.)



And, Officer [REDACTED], did you happen to notice how those harsh too-bright lights at [REDACTED] — lights that flash-on to light several bedrooms and baths in our home — always do a great job to fully light our “Shhhh!” sign?

2023 AUGUST 18:

- So, Officer [REDACTED] these newest tenants in [REDACTED] must have seen our “Shhhh!” sign! Berkeley Municipal Code 13.40 restricts noise between “10PM and 7AM Every Day:”
- Surely, these newest tenants in [REDACTED] must have seen our “Shhhh!” sign when they came to look at [REDACTED], before signing a lease?
- Perhaps parents of these newest tenants in [REDACTED] saw our “Shhhh!” sign when parents of these newest tenants came to look at [REDACTED], before signing a lease?
- Several of these newest tenants moved into [REDACTED] on 2023 August 18.
- As they moved into [REDACTED] on 2023 August 18, these newest tenants in [REDACTED] must have seen our “Shhhh!” sign.

- None the less, that night — 2023 August 18 — these newest tenants and their guests went to the west-side of **REDACTED** to party and make loud noise, including amplified music, in excess of 100 dBA for hours despite having been clearly notified that Berkeley Municipal Code 13.40 restricts noise between "10PM and 7AM Every Day:" <https://1drv.ms/v/s!AsgCKjjKBD0h8QTeMokJa8hEdwN?e=t1ROgr>
- Unfortunately, the City of Berkeley Police Department uniformed officer who "responded" more than an hour-and-a-half after my request for protection — my request for protection from this abuse included my statement to that dispatcher that this very loud noise was elder abuse — and, more unfortunately, that City of Berkeley Police Department uniformed officer failed to "find" **REDACTED** — he said he "drove around," including driving up-and-down on Benvenue, but that City of Berkeley Police Department uniformed officer never got out of that City of Berkeley Police Department vehicle.

### 2023 AUGUST 26:

- Then, Officer **REDACTED**, for a week these newest tenants in **REDACTED** came and went, each time walking right past our "Shhh!" sign: Berkeley Municipal Code 13.40 restricts noise between "10PM and 7AM Every Day:"
- But, because there had been no City of Berkeley Police Department contact with these newest tenants in **REDACTED** about violating black-letter law, on 2023 August 26, these newest tenants in **REDACTED** had yet another very loud party and make noise, including amplified music, in excess of 100 dBA for hours despite having been clearly notified that Berkeley Municipal Code 13.40 restricts noise between "10PM and 7AM Every Day:" <https://1drv.ms/v/s!AsgCKjjKBD0h8Rd7brEwhTrNCGWS?e=eyH2pf>
- Unfortunately, the City of Berkeley Police Department uniformed officer "responded" more than an hour-and-a-half after my request for protection — my request for protection from this abuse included my statement that this very loud noise was elder abuse ... etc., etc., etc., etc., etc., etc.,

### 2023 SEPTEMBER 3:

- So, Officer **REDACTED** then, for another week, these newest tenants in **REDACTED** came and went, each time walking right past our "Shhh!" sign: Berkeley Municipal Code 13.40 restricts noise between "10PM and 7AM Every Day:"
- Because there had been no City of Berkeley Police Department contact with these newest tenants in **REDACTED** about violating black-letter law, on Sunday, 2023 September 3, beginning with banging on the door and windows at 12:30AM, there were hours of loud shrieking and shouts of whatever. At 2AM, again I called City of

Berkeley Police Department non-emergency phone number to ask that I and our family be protected from more abuse by these newest tenants in **REDACTED**.

- To our surprise, two City of Berkeley Police Department uniformed officers actually “found” **REDACTED** in less than an hour.
- These two City of Berkeley Police Department uniformed officers carefully went inside with these newest tenants in **REDACTED** — knowing we have cameras on our home, now — and, after a few minutes, left.
- These newest tenants in **REDACTED** came to their doorway — You know, Officer Futch, that same doorway you used at **REDACTED**? — that same doorway that is not a legal fire exit — smiled and waved! So “charming”!

Officer **REDACTED**, how is it that it would take you coming to speak with these newest tenants in **REDACTED** for them to “understand,” despite having been clearly notified that Berkeley Municipal Code 13.40 restricts noise between “10PM and 7AM Every Day,” for these “brilliant intellectuals” — “athletes” at the University of California, no less — to, perhaps, “hear” and, perhaps, understand that ELDER ABUSE IS A CRIME even if the weapons used to abuse elders living near-by is self-important narcissistic loud noise?

- Do these brilliant intellectuals” know how to read?
- Can these “brilliant intellectuals” tell time?
- Did these “brilliant intellectuals” take a Civics Class in their previous “education” the included respect for law?
- Is there a chance these “brilliant intellectuals” took a Civics Class in their previous “education” the included discussions about the “Social Contract”?  
<[https://en.wikipedia.org/wiki/Social\\_contract](https://en.wikipedia.org/wiki/Social_contract)>
- Is there any chance even one of these “brilliant intellectuals” — these “brilliant intellectuals” who are newest abusers in **REDACTED** — had any moral teaching of any kind in their previous “education”?

After seven years of cruelty and abuse from those associated with **REDACTED**, everyone in our family has asked me to point out, again: tenants and their 24/7 “guest” in **REDACTED** are the ONLY loud University of California students in our neighbourhood! Every other student household has generally been good neighbours!

Since April First 2017, owners, “managers,” tenants and tenants’ 24/7 “guests” have caused severe harm to me and to every member of our household. In just a few months I will be eighty years old. Each and every year of **these seven years on on-going cruelty** has stolen a year of the limited number of years of life I have left. Each and every year of cruelty by owners, tenants, and tenants’ 24/7 “guests” has done substantial harm to everyone in our household.

Again, Officer [REDACTED] thank you for at least trying to make it possible for our family to have quiet enjoyment of our home, for the first time since April First 2017! Thank you for at least trying to make it possible for our family to sleep in our home.

Again, thank you, Officer [REDACTED],  
Mrs Whyte

PS: Officer [REDACTED] although we have not been allowed to actually see or read City Of Berkeley Police Department Case # [REDACTED], you might want to read those documents. Our expenses for that cruelty by tenants and their 24/7 "guest" in [REDACTED] were substantial. In addition to several "trophies" flung through the window at [REDACTED] into our garden, we still have a box of shards of broken glass from that cruelty — that box weighs six-plus pounds — and, from time to time, we find more shards of broken glass in our garden. Those tiny shards of glass are very hard to get out of fingers or feet!

On Sep 5, 2023, at 7:21 AM, [REDACTED] wrote:

Good morning Mrs. White,  
I wanted to take a moment to address your concerns about the ongoing noise issues at the address, [REDACTED]. I understand how disruptive excessive noise can be to the neighborhood, and I appreciate your patience as we work towards a resolution.  
I personally responded to the [REDACTED] location and had a conversation with the students who live there. I made sure to emphasize the importance of adhering to the city's designated quiet hours. In addition to that, I reached out to some members of the UC Berkeley staff who may have an influence over the residents at that location. During our discussion, I conveyed your concerns as well as the persisting problems regarding noise from this address. Additionally I have a meeting, today with a number of UCB staff, this will also be discussed during that meeting.  
Please know I will continue monitoring and addressing the issues that arise. Thank you for bringing this matter to my attention, Mrs. White. If you have any further concerns, please don't hesitate to reach out.  
Kind regards,  
[REDACTED]

---

From: Anne@LivingSpacesCA.com <[REDACTED]>  
Sent: Monday, September 4, 2023 10:00 AM  
To: [REDACTED]

[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]





THIRD: As I have repeated, again and again, to just-about every City of Berkeley Police Department employee I have dealt with through these SEVEN YEARS OF ELDER ABUSE: "I am a handicapped grandmother almost (my age at that time) years old." So, today, "Officer [REDACTED]," "I AM A HANDICAPPED GRANDMOTHER ALMOST EIGHTY YEARS OLD! AND I AM VERY SHORT OF SLEEP!"

As I wrote to you on "August 28, 2023 at 5:32:22 PM PDT" (below) [REDACTED], in just a few months I will be eighty years old. Each year of cruelty has taken from me another year of the limited number of years of life I have left. Each year of cruelty has stolen a year of the limited number of years of life I have left. Each and every year of cruelty by owners, tenants, and tenants' 24/7 "guests" has done substantial harm to everyone in our household."

FOURTH:

- OUR FAMILY HAS BEEN DEPRIVED OF SLEEP BY SEVEN YEARS OF INTENTIONALLY LOUD NOISE AND HARASSMENTS BY TENANTS AND TENANTS' 24/7 "GUESTS" AT [REDACTED]!
- INTENTIONALLY LOUD NOISE FROM [REDACTED] [REDACTED] HAS DEPRIVED EVERYONE IN OUR HOUSEHOLD OF SLEEP FOR SEVEN YEARS!
- EVERYONE IN OUR HOUSEHOLD HAS BEEN CHRONICALLY SLEEP DEPRIVED BY SEVEN YEARS BY INTENTIONALLY LOUD NOISE FROM [REDACTED] [REDACTED]!
- EVERYONE IN OUR HOUSEHOLD HAS BEEN CHRONICALLY SLEEP DEPRIVED FOR SEVEN YEARS, AND THAT DEPRIVATION HAS SIGNIFICANTLY DAMAGD OUR HEALTH!
- EVERYONE IN OUR HOUSEHOLD HAS BEEN CHRONICALLY SLEEP DEPRIVED FOR SEVEN YEARS, AND THAT DEPRIVATION HAS SIGNIFICANTLY DAMAGD OUR LIVES!
- FOR SEVEN YEARS OF EVERYONE IN OUR HOUSEHOLD HAS BEEN DEPRIVED OF QUIET ENJOYMENT OF OUR HOME, DAY AND NIGHT!
- DAMAGES DONE TO ME AND TO OUR FMAILY BY SEVEN YEARS OF INTENTIONAL CRUELTY DONE BY OWNERS, "MANAGERS," TENANTS,

AND TENANTS' 24/7 "GUESTS" OF REDACTED HAVE BEEN LIFE CHANGING!

- AFTER SEVEN YEARS OF OUR REQUESTS FOR FULL AND FAIR ENFORCEMENT OF BLACK-LETTER LAW — REQUESTS THAT CITY OF BERKELEY POLICE DEPARTMENT EMPLOYEES PROTECT ELDERS FROM FURTHER HARM — IT WOULD BE EXPECTED CITY OF BERKELEY POLICE DEPARTMENT EMPLOYEES COULD "FIND" REDACTED !

But, "Officer [REDACTED]," you wrote "I drove to the address last Saturday night at 11:30 PM." Clearly, "Officer [REDACTED]," you did not get out of your City of Berkeley Police Department vehicle to actually "find" REDACTED. Clearly, "Officer [REDACTED]," like almost every City of Berkeley Police Department "uniform" before you, you did not get out of your City of Berkeley Police Department vehicle to actually "find" REDACTED. Our video from August 26, 2023 clearly demonstrates your failure, "Officer [REDACTED]"

So, I have no way of knowing if Dispatch [REDACTED] did tell you about my request to be called by whichever City of Berkeley Police Department "uniform" "responded" to our request for protection from elder abuse — AFTER SEVEN YEARS OF SIMILAR REQUESTS — but what we do know is (1) you did not call me, (2) you did not actually "find" REDACTED because you did not get out of your vehicle, and (3) your response to my request for a written response was disrespectful, rude, and snide.

LAST: "Officer [REDACTED]," in my opinion, you are just one more self-important City of Berkeley Police Department "uniform" who doesn't respect The Law — in my opinion, you are just one more self-important City of Berkeley Police Department "uniform" who doesn't respect residents of Berkeley — in my opinion, you are just one more self-important City of Berkeley Police Department "uniform" who really just can't be bothered to actually do the job you have been hired to do.

If this e'mail sounds as though I might be angry about City of Berkeley Police Department's many failures to protect me and protect our family, my anger could possibly be because I am angry about City of Berkeley Police Department's seven years of repeated intentional failures to protect me and our family and snide disrespects!

Mrs Whyte

On Sep 1, 2023, at 10:32 PM, [REDACTED] wrote:  
Hi Anne,



When I drove to the address last Saturday night at 11:30 PM, I did not hear any loud music or noise and that was confirmed by the surveillance video that you sent me. Please direct any further concerns to the area coordinator.

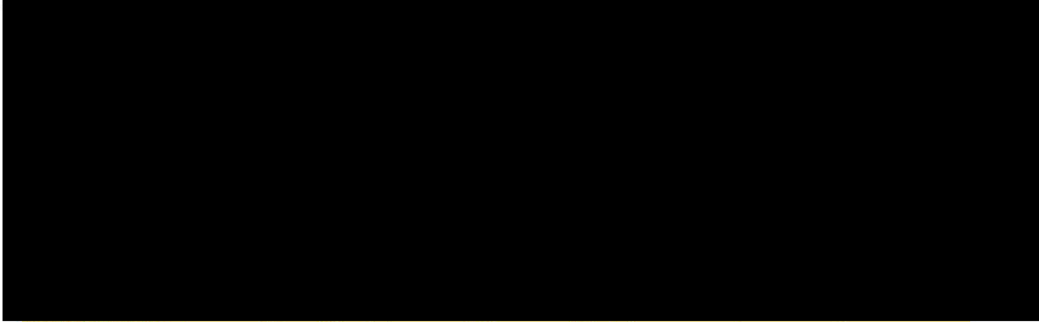
Warm Regards,

Officer [REDACTED]

---

From: Anne Whyte [REDACTED] >

Sent: Thursday, August 31, 2023 5:54 PM



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

Good afternoon, Officer [REDACTED]

Re-reading my e'mail to you on 2023 August 28, I see that I had not stated clearly that we do expect a reply from you.

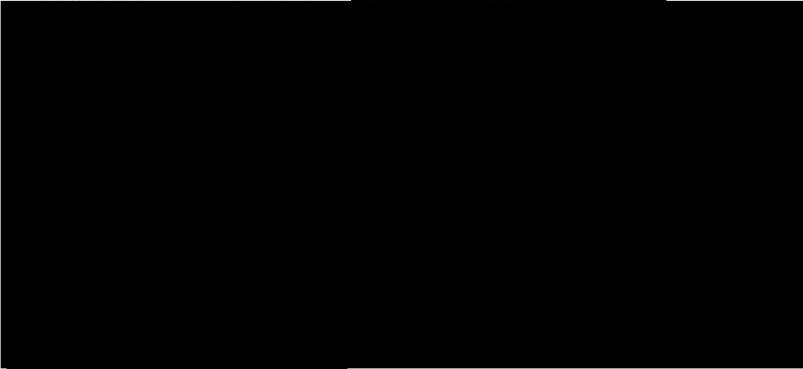
Again, thank you for your service.

Anne Whyte

From: Anne Whyte <[Anne@LivingSpacesCA.com](mailto:Anne@LivingSpacesCA.com)>

Subject: [REDACTED] - VERY LOUD NOISE ON 2023 AUGUST 18 AND AUGUST 26,

Date: August 28, 2023 at 5:32:22 PM PDT



Good afternoon, Officer [REDACTED]

When I spoke to Dispatch # [REDACTED] at 10:03PM on August 26, 2023, I specifically asked that whichever City of Berkeley uniformed officer responded to our request for protection — our request that simple unambiguous black-letter law be enforced — our request that simple unambiguous Berkeley Municipal Code 13.40 be enforced — should call me, because since April First, 2017, so many City of Berkeley uniformed officers have "not been able to find" [REDACTED].

However, no City of Berkeley uniformed officer called me on August 26, 2023.

Later, Dispatch # [REDACTED] was clearly annoyed when I called to ask what had happened. Dispatch [REDACTED] told us you were the City of Berkeley employee who “responded” to our request for protection from loud noise coming from [REDACTED] — clearly, that very loud noise from [REDACTED] was intentional — clearly that intentional very loud noise from [REDACTED] continued after 10PM — clearly intentional very loud noise from [REDACTED] exceeded 100dBA — on August 26, 2023.

Dispatch [REDACTED] said you “responded” and you had “found everything quiet” or something like that. Dispatch [REDACTED] said you had “responded” at about 11:30PM to our request [REDACTED] made at 10:03PM. Officer [REDACTED], we reviewed our video; unfortunately, we do not see any City of Berkeley uniformed officer approach [REDACTED], the garage apartment condominium behind [REDACTED]

- Officer [REDACTED], here is a video of similar intentional loud noise at [REDACTED] — including amplified music — recorded on 2023 August 18:  
<https://1drv.ms/v/s!AsgCKjjKBD0h8QTeMokJa8hEdwN?e=t1ROgr>
- 
- Officer [REDACTED] here is a video of what you may have missed at [REDACTED] on 2023 August 26:  
<https://1drv.ms/v/s!AsgCKjjKBD0h8Rd7brEwhTrNCGWS?e=eyH2pf>

From April First, 2017 to today includes seven University of California “academic years.” During every one of those seven University of California “academic years,” owners, tenants, and tenants’ 24/7 “guests” at [REDACTED] has been intentionally loud — intentionally loud and intentionally cruel. By now, there are perhaps hundreds of e’mail sent to various City of Berkeley employees that briefly outline cruelty done to me and cruelty done to everyone in our household. Most of my e’mail to City of Berkeley employees has a subject line starting: “[REDACTED].”

Officer [REDACTED], in just a few months I will be eighty years old. Each year of cruelty has taken from me another year of the limited number of years of life I have left. Each year of cruelty has stolen a year of the limited number of years of life I have left. Each and every year of cruelty by owners, tenants, and tenants' 24/7 "guests" has done substantial harm to everyone in our household.

Officer [REDACTED] thank you for your service,  
Anne Whyte

**PRESENTATION MATERIALS FOR  
POLICY COMPLAINT NUMBER  
2023-PR-0006**



## MEMORANDUM

**Date:** October 6, 2023  
**To:** Honorable Members of the Police Accountability Board  
**From:** Hansel A. Aguilar, Director of Police Accountability *Ha*  
Jose Murillo, Policy Analyst *JM*  
**Subject:** Notice of Policy Complaint No. 2023-PR-0006

---

### Background:

On September 20, 2023, the Office of the Director of Police Accountability (ODPA) received a policy complaint form, along with additional attachments, via email at [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info). (See Attachment 1).

The Complainant stated, "City of Berkeley employees create permission structures that 'reward' University of California students for a wide variety of uncivil, destructive-to-our-neighborhoods, self-important 'bad behaviors' [...] One of those many permission structures consistently provided by City of Berkeley Police Department employees to University of California students is not to ticket out-of-state vehicles for violations of parking limitations." The Complainant further stated that "when various neighbors have casually asked City of Berkeley Police Department employees 'why' out-of-state vehicles are not ticketed for parking violations, the consistent reply has been: 'it's just too much trouble—it's not worth the bother and bookkeeping because the owner is out-of-state!' and similar comments." (See Attachment 1).

On September 27, 2023, the ODPA staff engaged in a conversation with the Complainant to clarify the details outlined in their complaint. During this discussion, the ODPA staff was able to determine that the Complainant was concerned about the following:

1. The complaint stemmed from a multitude of concerns raised by the Complainant and her neighbors, who frequently encounter the inconvenience of having their driveways obstructed and believe that local parking codes are not consistently enforced.
2. The alleged irregular enforcement primarily occurs during the UC Berkeley academic year, and parking code enforcement does not appear to target vehicles with out-of-state license plates for parking violations.
3. Allegedly, traffic enforcement officers have stated that issuing citations to vehicles with out-of-state plates is not considered worthwhile due to the perceived difficulty in collecting fines from these drivers.

Parking regulations within Berkeley are enforced by Parking Enforcement Officers<sup>1</sup>. These officers patrol assigned areas of the city to enforce parking violations and issue citations. It's a uniformed position within the Parking Enforcement Unit of the City's Police Department, with responsibility for enforcing the State Vehicle Code and local ordinances governing vehicle parking. In addition, officers answer questions from the public regarding parking laws, operate scooters/jeeps, and maintain records of their work. Parking Enforcement Officer operations are supervised by the BPD's Traffic Bureau. (See Attachment 2).

**Potential Area(s) of Review:**

While there are no current BPD policies that specifically discuss out of state ticketing, the policies related to traffic operations can be found under Chapter 5 of the BPD Law Enforcement Services Manual<sup>2</sup> and include:

- 500 - Traffic Function and Responsibility . . . . . 461
- 501 - Motor Vehicle Collision Investigations . . . . . 464
- 502 - Vehicle Towing and Release . . . . . 473
- 503 - Tow Hearings . . . . . 481
- 504 - Impaired Driving . . . . . 483

<sup>1</sup> [Berkeley Municipal Code 14.08.100](#)

<sup>2</sup> [BPD Policy Manual 5 4 2023.pdf \(berkeleyca.gov\)](#)

- 505 - Traffic Citations . . . . . 490
- 506 - Disabled Vehicles . . . . . 493
- 507 - 72-Hour Parking Violations . . . . . 494

**Recommendation:**

Upon receiving a policy complaint, the Board can choose from several potential courses of action<sup>3</sup>, which include:

1. Accepting the policy complaint and assigning a Board member to investigate.
2. Accepting the policy complaint and directing ODPA staff to carry out an investigation.
3. Accepting the policy complaint and establishing a subcommittee to investigate the matter.
4. Temporarily deferring acceptance of the policy complaint and assigning a Board member to investigate it before formal acceptance.
5. Temporarily deferring acceptance of the policy complaint and instructing ODPA staff to investigate the matter.
6. Rejecting the policy complaint.

After conducting a thorough examination of the provided information, ODPA staff recommends that the PAB considering assigning a board member to work with the Traffic Bureau Lieutenant, who is responsible for overseeing the Traffic Unit and Parking Enforcement, to further explore this issue.

---

<sup>3</sup> [Section G. "Policy Complaints and Reviews" of the PAB's Standing Rules](#)

# ATTACHMENT 1





**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

Date Received:

09-20-2023

DPA Case # 2023-PR-0006

1

Name of Complainant: WHITE, ANNIE

Mailing Address: \_\_\_\_\_ Middle \_\_\_\_\_

Primary Phone: ( \_\_\_\_\_ ) \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

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

Occupation: GRANDMOTHER Gender: OLD Age: OLD

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.

(CITY OF BERKELEY POLICE) DEPARTMENT  
CREATING PERMISSION STRUCTURES!

3

Location of Incident (if applicable) OWEN AVENUE, GARBER STREET

Date & Time of Incident (if applicable) AND, LIKELY LAST WEEK.

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.

PLEASE, SEE ATTACHED -

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

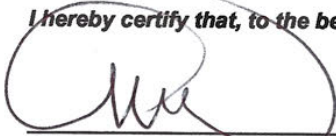
ENFORCE THE LAW

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.)

PLEASE SEE ATTACHED

6 CERTIFICATION

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



Signature of Complainant

2023 SEP 20

Date

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

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

**From:** Anne Whyte [REDACTED]  
**Sent:** Wednesday, September 20, 2023 5:03 PM  
**To:** [REDACTED]  
**Cc:** Office of the Director of Public Accountability  
<[OfficeoftheDirectorofPoliceAccountability@berkeleyca.gov](mailto:OfficeoftheDirectorofPoliceAccountability@berkeleyca.gov)>  
**Subject:** City of Berkeley Police Department employees create PERMISSION STRUCTURES that reward Univeristy of California students

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

WE REQUEST THAT ANY AND ALL LAWS AND REGULATIONS BE ENFORCED WITHOUT BIAS OR BIGOTRY.

Again and again and again and again and again and again and ... , City of Berkeley employees create PERMISSION STRUCTURES that "reward" Univeristy of California students for a wide variety of un-civil destructive-to-our-neighbourhoods self-important "bad behaviors."

As each and every parent knows, as peer-reviewed publish research has consistently demonstrated, as any administrator in any city government anywhere on our shared small blue Earth knows ... "rewards" provided by City of Berkeley employees for smaller violations of civil conduct, inevitably lead to far more destructive "bad behaviors" by Univeristy of California students.

One of those many PERMISSION STRUCTURES consistently provided by City of Berkeley Police Department employees to Univeristy of California students is not to ticket out-of-state vehicles for violations of parking limitations.

For more than ten years, City of Berkeley Police Department employees have chronically not ticketed out-of-state vehicles for violations of parking limitations in our neighbourhood.

When various neighbours have casually asked City of Berkeley Police Department employees "Why?" out-of-state vehicles are not ticketed for parking violations, the consistent reply has been: "It's just too much trouble – it's not worth the bother and bookkeeping – because the owner is out-of-state!" and similar comments.

South of Berkeley's Univeristy of California campus, there are currently several out-of-state vehicles that have been parking where the out-of-state vehicle is blocking driveways in clearly-marked red zones, parking too close to corners in clearly-marked red zones, and on and on and ... that have not been ticketed by City of Berkeley Police Department employees.

Just one example, every day since mid-July, this out-of-state vehicle has been frequently parked crowding or blocking various near-by driveways. These photos were taken in front of [REDACTED] where this NEVADA Ford Bronco SUV is frequently parked.







# ATTACHMENT 2



## City of Berkeley Parking Enforcement Officer

<b>SALARY</b>	\$34.60 - \$36.60 Hourly \$5,997.33 - \$6,344.00 Monthly	<b>LOCATION</b>	Berkeley, CA
<b>JOB TYPE</b>	Career	<b>JOB NUMBER</b>	2021-09-28840
<b>DEPARTMENT</b>	Police	<b>OPENING DATE</b>	09/20/2021
<b>CLOSING DATE</b>	10/21/2021 5:00 PM Pacific		

### **BENEFITS OF WORKING FOR BERKELEY**

[Berkeley, California](#) is a small city with a big reputation. At just ten square miles of land and seven square miles of water, Berkeley is famous around the globe as a center for academic achievement, scientific exploration, free speech, and the arts, and home to over 50 parks, a top-ranked university, and the largest public marina in the San Francisco Bay. As an employer, the City of Berkeley offers all the benefits of a career in the public sector while fostering diversity, creativity, and innovation. Join a team of high-caliber, experienced staff with a shared mission of serving the Berkeley community and promoting an accessible, safe, healthy, environmentally-sound and culturally-rich city. Benefited employees receive a myriad of financial and other [benefits](#), including CalPERS pension and other retirement plans, medical and dental coverage, tuition reimbursement, paid time off and more.

### **JOB OPPORTUNITY**

Parking Enforcement Officers patrol an assigned area of the City to enforce parking violations and issue citations. This is a uniformed position in the Parking Enforcement Unit of the City's Police Department, with responsibility for enforcement of the State Vehicle Code and local ordinances governing parking of vehicles. In addition, incumbents answer questions from the public regarding parking laws, operate scooters/jeeps, and maintain records of work performed.

Applicants must successfully pass a Police Department background check to be considered for this position.

Typical duties may include:

- Patrols an assigned area of the City to observe automobiles, motorcycles, commercial vehicles and other vehicles for parking violations; enforces related local regulations and ordinances and State vehicle code laws;
- Places warning tags on vehicles subject to towing; arranges for towing of abandoned vehicles, vehicles with expired licenses, or illegally parked vehicles;
- Issues citations for expired meters, improper use of specially designated or timed zones or lots, improper parking such as parking in crosswalks or other sidewalks, expired registration, improperly licensed vehicles, improperly parked motorcycles, parking in preferential areas, and related violations;
- Operates computer equipment and two-way radio; marks vehicles to detect abuse of timed areas; accesses the California Law Enforcement Telecommunication System (CLETS) data bases to determine vehicle identity;
- Completes data required for citations including but not limited to code sections violated, time, date and location of offense, vehicle license plate number and/or vehicle identification number;



- Answers a wide variety of questions from the public regarding parking and related traffic laws, location of public buildings, parks, municipal facilities, and other points of interest; interacts with hostile and irate parking violators; responds to complaints from the public;
- Maintains records of work performed and surveillance of long-term parking violations;
- Completes declarations of citation circumstances to assist in prosecution of parking violations;
- Notifies police of incidents involving abusive behavior by the public;
- Signs off on correctable citations for registration and equipment violations;
- Tags and/or reports malfunctioning parking meters, faded paint on curbs, vandalized signs, and other obstacles that may impede enforcement or hinder the public from understanding and obeying the law;
- Checks operational condition of enforcement vehicles and performs routine operator maintenance such as filling gas tank, checking and adding oil, inflating tires, etc.;
- Reports malfunctioning enforcement vehicles and takes them to the Corporation Yard for service and repair;
- Provides traffic control when assigned or as necessary

## MINIMUM QUALIFICATIONS

### Education:

Equivalent to High School graduation

AND

### Experience:

Two (2) years of work and experience, which involved a significant amount of public contact that must include dealing with hostile and irate individuals.

### Other Requirements:

Possession of a valid California driver's license and a satisfactory driving record; willingness to work evenings, nights, weekends and holidays, out of doors in all weather conditions and on an emergency basis, as needed.

Employment, academic degrees, licenses, certificates, and other credentials are subject to confirmation as part of the appointment process.

## APPLICATION PROCESS

Knowledge of: Applicable local and State codes, ordinances and regulations governing parking within the City limits; safe work methods and safety regulations pertaining to the work including driving habits; and basic geographic layout of the City.

Ability to: Operate a motor vehicle safely while observing parking violations and conditions; interact tactfully and effectively with those encountered in the course of the work, including hostile and irate citizens; write clear and concise records, reports, declarations, and citations; understand and follow oral and written instructions; read, interpret and apply parking codes and ordinances; use sound independent judgment within established procedures and regulations; and read and interpret maps.

## EXAM PROCESS

Applications must be received in our office no later than the closing date (5 p.m.). Postmarks and faxed applications will not be accepted. Your application must be filled out completely. Incomplete and/or inaccurate information on the application may be cause for disqualification from the examination process.

The examination process will consist of:



1. Review of applications for minimum qualifications for the position and to ensure all materials have been submitted.
2. Written Examination - Applicants possessing these requirements will advance to a multiple-choice written examination. The examination will cover elements of the knowledge and abilities identified in this announcement.

Applicants who meet the minimum qualifications will be invited to participate in a written examination and those receiving a passing score will have their names placed on an employment eligible list. Candidates selected for an interview will be notified by the Police Department and final candidates selected for hire must pass a background investigation and medical/psychological examinations prior to appointment.

Candidates under final consideration for employment with the City should expect to undergo an employment background/reference check that may include, but is not limited to: employment history, confirmation of educational credentials and degrees, licenses including driver's license, registrations, certificates, and other credentials as part of the appointment process. Some positions, depending on the nature of the work, also require a credit check and a review of Summary Criminal History obtained from the State Department of Justice through Live Scan Fingerprinting.

**DISCLAIMER:** The provisions of this bulletin do not constitute a contract, expressed or implied, and any provisions contained in this bulletin may be modified or revoked without notice. Tests may consist of any combination of written, oral or other exercises or assessment procedures that test content. Components may include, but are not necessarily limited to, typing, math, reading, writing, and analytical skills; problem-solving ability; computer and software proficiency, or any other job-related knowledge, skill, ability or qualification. The City may, without notice, change or eliminate any particular assessment component or combination of components as needs dictate.

All City employees are required to provide services as Disaster Service Workers in the event of an emergency/disaster.

**Exam Access Accommodation:** In compliance with local, state and federal laws and regulations, the City of Berkeley will employ and promote qualified individuals without regard to disability. The City is committed to making reasonable accommodations in the examination process and in the work environment. Individuals requesting reasonable accommodations in the examination process must do so no later than the final filing date for receipt of applications, otherwise, it may not be possible to arrange accommodations for the selection process. Such requests should be addressed to the Department of Human Resources | (510) 981-6800 | [hr@cityofberkeley.info](mailto:hr@cityofberkeley.info) | 2180 Milvia Street, 1st Floor, Berkeley CA 94704.

**Alternative Application Formats:** This application material is available in alternative formats upon request. Alternative formats include audio-format, braille, large print, electronic text, etc. Please contact the **ADA Coordinator**, 2180 Milvia Street, Berkeley | Phone: (510) 981-6300 | TTY: (510) 981-6347 | [ADA@cityofberkeley.info](mailto:ADA@cityofberkeley.info) and allow 7-10 days for production of the material in an alternative format.

The City of Berkeley is an EEO/ADA Employer.

#### **PRE-EMPLOYMENT PROCESS**

Candidates under final consideration for employment with the City will undergo an employment background/reference check that may include, but is not limited to: employment history, confirmation of educational credentials and degrees, licenses including driver's license, registrations, certificates, other credentials, credit check, criminal history check, and Live Scan fingerprinting.

#### **EQUAL EMPLOYMENT OPPORTUNITY (EEO) EMPLOYER**

The City of Berkeley is an Equal Employment Opportunity (EEO) employer. All employment actions shall be administered regardless of race, color, national origin, ancestry, religion, age, physical or mental disability or medical condition, sex, gender, gender identity, gender expression, sexual orientation, genetic information, marital status, pregnancy, political affiliation, veterans' status, or any other status protected under federal, state, or local law.

#### **DISASTER SERVICE WORKER**

All City employees are required to provide services as Disaster Service Workers in the event of an emergency/disaster.

10/6/23, 9:21 AM

City of Berkeley

**Phone**

(510) 981-6800

**Job Bulletin**

2180 Milvia Street (1st floor)  
Human Resources Department  
Berkeley, California, 94704

**Website**

<https://berkeleyca.gov/your-government/jobs>

**PRESENTATION MATERIALS FOR  
POLICY COMPLAINT NUMBER  
2023-PR-0007**



## MEMORANDUM

**Date:** October 6, 2023  
**To:** Honorable Members of the Police Accountability Board  
**From:** Hansel A. Aguilar, Director of Police Accountability *(Ha)*  
Jose Murillo, Policy Analyst *JM*  
**Subject:** Notice of Policy Complaint No. 2023-PR-0007

---

### Background:

On September 22, 2023, a policy complaint form was filed with the Office of the Director of Police Accountability (ODPA). The form included various personnel complaint forms related to the subject of the policy complaint. A redacted version of this complaint is attached to this memorandum as Attachment 1. The policy complaint concerns the enforcement practices of restraining orders by the BPD.

### Recommendation:

Upon receiving a policy complaint, the Board can choose from several potential courses of action<sup>1</sup>, which include:

1. Accepting the policy complaint and assigning a Board member to investigate.
2. Accepting the policy complaint and directing ODPA staff to carry out an investigation.
3. Accepting the policy complaint and establishing a subcommittee to investigate the matter.
4. Temporarily deferring acceptance of the policy complaint and assigning a Board member to investigate it before formal acceptance.

---

<sup>1</sup> [Section G. "Policy Complaints and Reviews" of the PAB's Standing Rules](#)

5. Temporarily deferring acceptance of the policy complaint and instructing ODPa staff to investigate the matter.
6. Rejecting the policy complaint.

The ODPa suggests that the PAB consider delaying or deferring any decision regarding the acceptance or rejection of the policy complaint due to an ongoing personnel complaint. This recommendation is in accordance with Section II.G.1.b. of the Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department, which stipulates that "no member of a hearing panel should publicly express an opinion regarding policies directly linked to the subject matter of a pending complaint."<sup>2</sup> Currently, there is an active personnel complaint, and the investigation's outcome remains uncertain. Given that any member may potentially serve on the hearing panel, the ODPa advises exercising caution to prevent any potential interference with the ongoing investigation. This precautionary measure is particularly important since policy complaints necessitate public commentary on the raised policy questions.

---

<sup>2</sup> [PAB-ODPA.Interim.Regis .Approved.2021-10-05.pdf \(berkeleyca.gov\)](#)

# ATTACHMENT 1



# 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

Received by DPA  
Date Received:

SEP 22 2023

DPA Case # 2023-PR-0007

1

Name of Complainant: [Redacted]

Mailing Address: [Redacted]

Primary Phone: [Redacted] Alt Phone: ( )

E-mail address: [Redacted]

Occupation: retired Gender: F Age: 69

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.

Police practice regarding restraining orders

3

Location of Incident (if applicable) [Redacted]

Date & Time of Incident (if applicable) June 6, 2023 through the present

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.

See attached

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

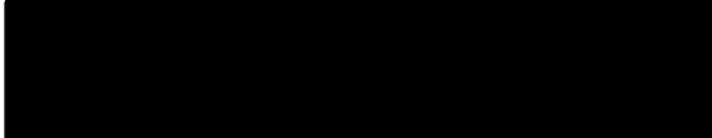
see attached

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

6 CERTIFICATION

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



Sept 18, 2023  
Date

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

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



**PRESENTATION MATERIALS FOR  
POLICY COMPLAINT NUMBER  
2023-PR-0008**



## MEMORANDUM

**Date:** October 6, 2023  
**To:** Honorable Members of the Police Accountability Board  
**From:** Hansel A. Aguilar, Director of Police Accountability *Ha*  
Jose Murillo, Policy Analyst *JM*  
**Subject:** Notice of Policy Complaint No. 2023-PR-0008

---

### Background:

On September 27, 2023, a policy-related complaint was formally lodged with the Office of the Director of Police Accountability (ODPA). (See Attachment 1).

The complainant asserts the existence of an ongoing issue pertaining to the retention of police officers who, both during their duty and off-duty hours, exhibit behavior that poses a potential threat to the community. The complainant strongly recommends that the city undertake significant measures to bolster the enforcement mechanisms of the Police Accountability Board. These measures should encompass the development of comprehensive anti-racist hiring practices, enhanced oversight of disciplinary actions related to policy violations within the police department, and heightened transparency regarding the efforts of the Berkeley Police Department to address potential instances of racial profiling and other forms of discriminatory misconduct.

In the instances detailed by the complainant, specific policies are mentioned, including those concerning standards of conduct (Policy 321), Fair and Impartial Policing

(Policy 401), and Off-Duty Law Enforcement Actions (Policy 344). Notably, the PAB currently maintains a subcommittee dedicated to Fair & Impartial Policing and has initiated discussions regarding the potential establishment of a new subcommittee that would concentrate on matters related to off-duty law enforcement actions.

**Potential Area(s) of Review:**

The complainant has specified the subsequent policies contained within the Berkeley Police Department's Law Enforcement Services Manual: 321.5.3, 321.5.9 (f), 401.1, 401.2, 321.4, 321.5.8 (m), 321.5.9 (h), and 344.3. (See Attachment 2).

**Recommendation:**

Upon receiving a policy complaint, the Board can choose from several potential courses of action<sup>1</sup>, which include:

1. Accepting the policy complaint and assigning a Board member to investigate.
2. Accepting the policy complaint and directing ODPa staff to carry out an investigation.
3. Accepting the policy complaint and establishing a subcommittee to investigate the matter.
4. Temporarily deferring acceptance of the policy complaint and assigning a Board member to investigate it before formal acceptance.
5. Temporarily deferring acceptance of the policy complaint and instructing ODPa staff to investigate the matter.
6. Rejecting the policy complaint.

The ODPa recommends that the PAB consider referring this policy complaint to a subcommittee should it determine that such a referral is appropriate and chooses to

---

<sup>1</sup> [Section G. "Policy Complaints and Reviews" of the PAB's Standing Rules](#)

accept the complaint. The policies in question, including the standards of conduct (Policy 321), Fair and Impartial Policing (Policy 401), and Off-Duty Law Enforcement Actions (Policy 344), may fall within the scope of either the Fair and Impartial Subcommittee or that of a newly established subcommittee focused on standards of conduct both on and off-duty.

# ATTACHMENT 1



# 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

Date Received: \_\_\_\_\_

DPA Case # \_\_\_\_\_

**1**

Name of Complainant: Arbaugh Avery Graham  
Last First Middle

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

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

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

Occupation: Student Gender: Male Age: 20

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.

Due to space limitations, this section's response is available on attached Document 1.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3**

Location of Incident (if applicable) See attached document 1.

Date & Time of Incident (if applicable) See attached document 1.

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.

See attached document 1.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4

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

See attached document 1.

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.)

Incident 1: Attached as "Document 2" is a press release by the non-profit organization "Copwatch" giving context to the video of the incident of racial profiling. While the video of the incident could not be attached, it is hosted at [https://www.youtube.com/watch?v=t6FYKSBn\\_7g](https://www.youtube.com/watch?v=t6FYKSBn_7g).

Incident 2: Attached as "Document 3" is the complaint filed by Brian Lindhurst Jr. filing a lawsuit against Sgt. Marble following Incident 2.

6

**CERTIFICATION**

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

*Overy Orbaugh*

Signature of Complainant

9/27/2023

Date

7

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

- Internet
- Berkeley Police Dept.
- Newspaper: \_\_\_\_\_
- Referred by: \_\_\_\_\_
- Other: Word of mouth.

## DOCUMENT 1

### **PAB Policy Complaint Form:**

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

There has been a pattern of continued employment of police officers whose behavior on and off duty has indicated that they are a danger to the community. A specific relevant example is that of Sergeant Marble, an officer who was filmed violating Berkeley Police Department Policies on racial profiling (violations of 321.5.3, 321.5.9 (f), 401.1, 401.2, Berkeley Police Department Law Enforcement Services Manual) and was alleged to have, while off-duty, used racial slurs while assaulting a Black community member and threatening him with his police-issued weapon (violations of 321.4, 321.5.8 (m), 321.5.9 (h), 344.3, Berkeley Police Department Law Enforcement Services Manual). During this alleged assault, he invoked his status as a police officer by saying "I am the Law."

The lack of transparent steps taken by the Berkeley Police Department to respond to these incidents and others like it, and the continued employment of Sgt. Marble in particular indicates a lack of willingness by the Berkeley Police Department to protect our community from officers who have demonstrated racist and violent behavior or to address racism within the Berkeley Police Department in general.

#### **3. Location of Incident (if applicable):**

Incident 1 (racial profiling): People's Park, 2556 Haste St, Berkeley, CA 94704

Incident 2 (off-duty racist attack on Brian Lindhurst by Sgt. Marble): Near 3200 Terrace View Avenue, Antioch, CA 94531

#### **Date & Time of Incident (if applicable):**

Incident 1 (racial profiling): July 2, 2017 at 11:00 am

Incident 2 (off-duty racist attack on Brian Lindhurst by Sgt. Marble): July 16, 2022 at 2:15 am

#### **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.**

Incident 1 (racial profiling): On July 2, 2017, Sgt. Marble racially profiled a Black man in establishing reasonable suspicion. Sgt. Marble stopped a Black man near People's Park after the Black man argued with an acquaintance about cigarettes. Sgt. Marble explicitly stated that the man was stopped because he was Black and thus matched the description of an earlier



unrelated police report. When the man questioned Marble's reasoning for stopping him, Marble interrupted him by saying, "Don't give me that Black crap." Marble escalated the situation by falsely detaining the man and putting him in handcuffs. Another police officer pinned the man to the ground. The encounter ended with the falsely detained man being let go.

Incident 2 (off-duty racist attack on Brian Lindhurst Jr. by Sgt. Marble): On July 16, 2022, Sgt. Marble physically assaulted and yelled racial slurs at Brian Lindhurst Jr. Lindhurst filed the lawsuit *Lindhurst v. City of Berkeley* (Case No. 3:2023cv04513) on August 31, 2023, in the US District Court for the Northern District of California. In this lawsuit, Lindhurst alleges that on July 16, 2022, Lindhurst was visiting a friend in Antioch, who was a neighbor of Marble's. The lawsuit alleges that Marble approached the men without legal justification, repeatedly yelled "Nigger" and "You do not belong here" at Lindhurst. Sgt. Marble invoked his status as a police officer by saying "I am the Law" to assert authority, punched Lindhurst in the face, and cocked and pointed a semiautomatic handgun at Lindhurst's face. After Mr. Lindhurst's friend pleaded for several minutes with Sgt. Marble to not shoot Mr. Lindhurst, Sgt. Marble finally lowered his gun and walked back inside his home.

#### **4. What changes to BPD policy, practice, or procedure do you propose?**

We urge a full independent investigation into both incidents involving Sgt. Marble, including whether Sgt. Marble faced any repercussions pertaining to the policy violations we allege, and whether the response by the department to these incidents was appropriate.

Given the rampant non-enforcement of internal policies by the Berkeley Police Department, we also strongly urge the city to adopt more robust enforcement mechanisms for the Police Accountability Board, including a role in crafting more comprehensive anti-racist hiring practices, oversight over punishment for violations of department policy, and transparency in steps taken by the Berkeley Police Department to enforce internal policies against racial profiling and other racist violence.

The Berkeley Police Department also needs to make clear to its officers and the public the repercussions for officers who routinely violate department policy and create standards of enforcement to ensure consistent responses to such violations.

We urge the Berkeley Police Department to be more transparent with the public going forward and to take accountability for the actions of their officers.

## DOCUMENT 2

Press Release

For Immediate Release

[Berkeley Copwatch](#)

September 11, 2023

### **Copwatch Re-releases Footage showing Berkeley Police Officer Marble Racially Profile Man at People's Park in 2017**

Local Copwatch activists were not surprised by allegations of racist violence and a federal [lawsuit](#) filed against Berkeley and Berkeley Police Sergeant David Marble. The recent lawsuit describes an incident on July 16, 2022, when Brian Lindhurst Jr was visiting a friend in Antioch, who happens to be a neighbor of Marble's. The lawsuit alleges that Marble approached the men, used racial slurs, punched Lindhurst in the face and threatened him with a gun.

Berkeley Copwatch has identified footage of Marble from 2017 that clearly demonstrates his racial animus as he interrupts a young, Black man to say, "Don't give me that 'Black' crap." He proceeds to escalate the situation and falsely arrests the man, who is eventually released after being threatened with force and arrest.

[This video](#) corroborates Lindhurst's account of racist violence. The video shows a situation of false arrest becoming escalated and increasingly dangerous for the detained man. The man was outraged because he knew his rights, knew that it was a false arrest and knew that it was racially motivated. To our knowledge, no complaint or lawsuit was ever filed in this situation. According to Paul Kealoha Blake, the Copwatcher who recorded the original incident in 2017, "This is just one of the many times that I have encountered Marble on the street over the years. He is almost always messing with a person of color. It's hard to believe that BPD had no idea that this guy has such a racism problem."

In a recent [Berkeleyside article](#), Matthai Chakko claims that there are "systems of review, investigation and discipline built into our police operations." In fact, BPD and the civilian oversight board, the Police Accountability Board (PAB), are *not* protecting the community from racist police violence. The Berkeley police often refuse to report and share information with outside agencies. The BPD continues to prevent the PAB from its investigations by withholding necessary information and access. This prevents PAB from fulfilling its charter to provide oversight and accountability of the BPD.

Berkeley Copwatch demands:

- **Officer Marble must be removed from the BPD so he can no longer intimidate, degrade and abuse our community.**
- **The Berkeley City Council must address racism within BPD and release those who engage in it.**
- **The Contra Costa District Attorney must review the incident and re-consider charging him with hate crimes as described by the plaintiff.**

**Attend City Council Meeting September 12, 2023**

**5:30 pm Rally and Speakout**

**[Agenda Packet](#)**

**CONTACT:**

**[Andrea Prichett](#)**

**Volunteer with [Berkeley Copwatch](#)**

**Phone: (510) 229-0527**

**[andreaprichett@berkeley.net](mailto:andreaprichett@berkeley.net)**

# DOCUMENT 3

1 JOHN L. BURRIS Esq., Bar No. 69888  
2 BENJAMIN NISENBAUM, Esq., Bar No. 222173  
3 CHRISTOPHER A. DEAN, Esq., Bar No. 550322  
4 **BURRIS, NISENBAUM, CURRY & LACY**  
5 Airport Corporate Centre  
6 7677 Oakport Street, Suite 1120  
7 Oakland, California 94621  
8 Telephone: (510) 839-5200  
9 Facsimile: (510) 839-3882  
10 John.Burris@bncllaw.com  
11 Ben.Nisenbaum@bncllaw.com  
12 Chris.Dean@bncllaw.com

13 Attorneys for Plaintiff

14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 BRIAN LINDHURST, JR.,

17 Plaintiff,

18 vs.

19 CITY OF BERKELEY a municipal corporation;  
20 SERGEANT DAVID MARBLE, individually  
21 and in his official capacity as a police officer for  
22 the City of Berkeley, and DOES 1-25, inclusive,  
23 individually, jointly, and severally,

24 Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

## INTRODUCTION

25 1. This case arises out of City of Berkeley police sergeant David Marble's racially motivated unconstitutional use of force and false imprisonment of Brian Lindhurst, Jr. ("Plaintiff"). On July 16, 2022, Sergeant Marble, without cause or legal justification, physically blocked and assaulted Mr. Lindhurst and yelled racial obscenities at him while he was attempting to leave his friend's home.

# DOCUMENT 3

1           2.       This civil rights and state tort action seeks compensatory and punitive damages  
2 from Defendants for violating various rights under the United States Constitution and state law  
3 in connection with Plaintiff's false imprisonment and the excessive force used against Plaintiff  
4 during his encounter with Sergeant Marble.

## JURISDICTION

5  
6           3.       This action arises under Title 42 of the United States Code, § 1983. Title 28 of  
7 the United States Code §§ 1331 and 1343 confer jurisdiction upon this Court. The unlawful acts  
8 and practices alleged herein occurred in the County of Contra Costa, which is within the judicial  
9 district of this Court. This Court also has supplemental jurisdiction over Plaintiff's state law  
10 causes of action under 28 U.S.C. § 1367. Supplemental jurisdiction of this court is invoked  
11 pursuant to 28 U.S.C. § 1367 over the State law claims which are so related to federal claims in  
12 the action that they form part of the same case or controversy under Article III of the United  
13 States Constitution.

14           4.       Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants are  
15 believed to reside in this district and all incidents, events, and occurrences giving rise to this  
16 action occurred in this district.

## PARTIES

17           5.       Plaintiff BRIAN LINDHURST, JR. ("PLAINTIFF" or "LINDHURST") has  
18 been and is a resident of California and a United States Citizen.

19           6.       Defendant CITY OF BERKELEY ("CITY") is an incorporated public entity duly  
20 authorized and existing as such in and under the laws of the State of California; and at all times  
21 herein mentioned, Defendant CITY has possessed the power and authority to adopt policies and  
22 prescribe rules, regulations, and practices affecting the operation of the CITY OF BERKELEY  
23 Police Department and its tactics, methods, practices, customs, and usage. At all relevant times,  
24 Defendant CITY was the employer of Defendant Sergeant DAVID MARBLE, individually and  
25 as a peace officer. Defendant CITY is vicariously liable under principles of respondeat superior  
for the California state law violations alleged against the individual defendant officer.

# DOCUMENT 3

1           7. Defendant DAVID MARBLE (hereinafter “MARBLE”) was a police sergeant  
2 for the CITY OF BERKELEY. MARBLE is being sued in his individual capacity under 42  
3 U.S.C. § 1983, and in his individual and official capacity as a police sergeant under Plaintiff’s  
4 state law claims.

## ADMINISTRATIVE PREREQUISITES

5  
6           8. Plaintiff is required to comply with an administrative tort claim requirement  
7 under California Government Code Section 910. Plaintiff submitted a claim under the CA Tort  
8 Claims Act on January 12, 2023. Plaintiff received notice/personal delivery that the claim was  
9 rejected on March 1, 2023. Plaintiff has exhausted all administrative remedies pursuant to  
10 California law.

## FACTUAL ALLEGATIONS

11           9. On July 16, 2022, at approximately 2:15 a.m. at or near 3200 Terrace View  
12 Avenue, Antioch, CA 94531, City of Berkeley police Sergeant David Marble falsely imprisoned  
13 Plaintiff Brian Lindhurst and physically assaulted him while Mr. Lindhurst was leaving his  
14 friend’s home.

15           10. Mr. Lindhurst was standing outside the front driver side door of his vehicle with  
16 his friend, preparing to leave after visiting his friend’s home. Mr. Lindhurst had frequently  
17 visited his friend in the area and had no negative encounters with anyone in the neighborhood,  
18 including Defendant Sergeant David Marble. That evening, Sergeant Marble began to yell  
19 “What are you doing over here?” at Mr. Lindhurst from his front door. At first, Mr. Lindhurst  
20 was astonished by Sergeant Marble’s remarks, given that he was neither breaking the law nor  
21 involved in any trouble. However, Mr. Lindhurst calmly explained that he was visiting his  
22 friend who lived in the neighborhood. Sergeant Marble then approached the two young men  
23 with his Labrador Retriever, blocking Mr. Lindhurst from leaving in his own vehicle. Sergeant  
24 Marble was extremely aggressive and clearly intoxicated as he began to yell profanities at Mr.  
25 Lindhurst. During this time, Mr. Lindhurst was unaware that Sergeant Marble was a police  
officer.

# DOCUMENT 3

1           11.     Mr. Lindhurst and his friend again tried to explain to Sergeant Marble that the  
2 friend lived in the home adjacent to Sergeant Marble’s home and that Mr. Lindhurst was  
3 leaving. Sergeant Marble then yelled, “You all do not belong here, niggers do not belong here,”  
4 while continuing to obstruct Mr. Lindhurst’s attempt to remove himself from the situation. Mr.  
5 Lindhurst was terrified of what could occur but he kept his composure and remained calm.

6           12.     Despite Mr. Lindhurst’s calm and compliant demeanor, Sergeant Marble  
7 continued to yell “Nigger” and “You do not belong here.” Mr. Lindhurst and his friend  
8 repeatedly explained to Sergeant Marble that the friend lived in a neighboring home and pointed  
9 to the home so that Sergeant Marble could see and understand. To their shock, Sergeant Marble  
10 responded by charging towards Mr. Lindhurst. To deescalate the situation and prevent Sergeant  
11 Marble from attacking Mr. Lindhurst, Mr. Lindhurst’s friend jumped in front of Sergeant  
12 Marble. However, Sergeant Marble pushed past the friend and punched Mr. Lindhurst in the  
13 right side of his face. Mr. Lindhurst, who feared that he would be attacked again, prepared to  
14 call 911.

15           13.     Sergeant Marble walked away with his Labrador Retriever and returned seconds  
16 later with his government-issued gun. Mr. Lindhurst recalls that the gun was a black semi-  
17 automatic handgun, similar to firearms that are carried by law enforcement officers. Sergeant  
18 Marble cocked the handgun back and pointed it at Mr. Lindhurst. Mr. Lindhurst, who was  
19 unarmed, stated to Sergeant Marble that he was going to call the authorities if he tried to attack  
20 him again. Sergeant Marble responded, “I am the Law,” invoking his status as a law  
21 enforcement officer and implying that he was the authority figure in the situation and that Mr.  
22 Lindhurst needed to obey him. Terrified for Mr. Lindhurst’s safety, Mr. Lindhurst’s friend  
23 pushed him into his car and grabbed Sergeant Marble’s arms, begging him not to shoot Mr.  
24 Lindhurst. After several minutes of pleading, Sergeant Marble yelled more profanities at the  
25 two men but finally lowered his gun and walked back inside his home. Shaken, Mr. Lindhurst  
left the area.

# DOCUMENT 3

1           14.     As a result of Sergeant Marble’s racially motivated assault, Mr. Lindhurst  
2 suffered physical injuries, including bruising to his face. In addition, Mr. Lindhurst also  
3 suffered and continues to suffer from emotional distress because of this encounter.

4           15.     In addition, Mr. Lindhurst did not pose a threat of serious injury or harm to  
5 Sergeant Marble or anyone in the neighborhood while he was standing in front of his car. The  
6 violent assault inflicted on him by Sergeant Marble was entirely unreasonable, unlawful, and  
7 unnecessary.

## DAMAGES

8           16.     As a consequence of Defendants’ violations of Plaintiff’s state constitutional  
9 rights and federal civil rights under 42 U.S.C. §§ 1983 and the Fourth and Fourteenth  
10 Amendments, Plaintiff was physically, mentally, and emotionally injured and damaged as a  
11 proximate result of Defendants’ wrongful conduct.

12           17.     Plaintiff found it necessary to engage the services of private counsel to vindicate  
13 his rights under the law. Plaintiff is therefore entitled to an award of attorneys’ fees and costs  
14 pursuant to statute(s) in the event that he is the prevailing parties in this action under 42 U.S.C.  
15 §§ 1983 and 1988. Plaintiff is also entitled to punitive damages under 42 U.S.C. §§ 1983 and  
16 1988 as the conduct of Defendants was malicious, wanton, and oppressive.

## FIRST CAUSE OF ACTION

17                   **(Violation of the Fourth and Fourteenth Amendments of the United States**  
18                   **Constitution – Excessive Force and Due Process)**

19                   **(42 U.S.C. § 1983)**

20                   **(Plaintiff against Defendant MARBLE, and DOES 1-25)**

21           18.     Plaintiff re-alleges and incorporates by reference paragraphs 1 through 17 of this  
22 Complaint.

23           19.     42 U.S.C. § 1983 provides in part, “Every person who, under color of any  
24 statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of  
25 Columbia, subjects, or causes to be subjected, any citizen of the United States or other person  
within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured



# DOCUMENT 3

1 by the Constitution and laws, shall be liable to the party injured in an action at law, suit at  
2 equity, or other proper proceeding for redress.”

3 20. Plaintiff had firmly established rights under the Fourth and Fourteenth  
4 Amendments to be free from official infliction of physical abuse, assault, battery, and  
5 intentional infliction of emotional distress, unreasonable search and seizure, and excessive,  
6 unreasonable and/or arbitrary force being used against him without due process.

7 21. Defendant MARBLE interfered with Plaintiff’s above-mentioned rights under  
8 the Fourth and Fourteenth Amendments when he held Plaintiff against his will, used excessive  
9 and unreasonable force to punch Plaintiff in the face, and brandished a state-issued firearm at  
10 Plaintiff. Defendant MARBLE’s actions was a conscious disregard to Plaintiff, who was  
11 peaceful, non-threatening, complying with the law, and attempting to leave the area. Defendant  
12 MARBLE was acting under the color of law and in his official capacity as a police official, as  
13 indicated by his statement to Plaintiff, “I am the Law.”

14 22. As a result, Defendant MARBLE is liable for excessive force and due process  
15 violations.

16 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

17 **SECOND CAUSE OF ACTION**  
18 **(Violation of Bane Act – California Civil Code § 52.1)**  
19 **(Plaintiff against Defendants MARBLE and CITY OF BERKELEY and DOES 1-25)**

20 23. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 22 of this  
21 Complaint.

22 24. Civil Code Section 52.1 authorizes suit against anyone who by threats,  
23 intimidation, or coercion interferes with the exercise or enjoyment of rights secured by the state  
24 or federal Constitutions or laws without regard to whether the victim is a member of a protected  
25 class. Civil Code Section 52(a) provides for damages up to three times actual damages, with a  
minimum of \$4,000 for each violation.

# DOCUMENT 3

1           25. Defendants' above-described conduct threatened Plaintiff's federal constitutional  
2 right to be free and secure from unreasonable searches and seizures and Plaintiff's state  
3 constitutional right to protection from bodily restraint, harm, or personal insult. By physically  
4 surrounding Plaintiff, blocking Plaintiff's ability to leave the area, physically intimidating  
5 Plaintiff, punching Plaintiff in the face without cause, and brandishing a state-issued firearm at  
6 Plaintiff while Plaintiff was calm, non-threatening, and complying with the law. Defendant  
7 MARBLE interfered with and demonstrated a reckless disregard for Plaintiff's right to be free  
8 from unreasonable searches and seizures and Plaintiff's right to be protected from bodily  
9 restraint, harm, or personal insult.

10           26. Under Government Code Section 815.2(a), Defendant CITY OF BERKELEY is  
11 vicariously liable to Plaintiff for his injuries and damages suffered as alleged herein, incurred as  
12 a proximate result of the aforementioned wrongful conduct of Defendant MARBLE.

13           27. As a result, Defendants are liable for a violation of California Civil Code Section  
14 52.1.

15           WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

### **THIRD CAUSE OF ACTION**

16           **(Violation of Ralph Civil Rights Act – California Civil Code § 51.7)**  
17           **(Plaintiff against Defendants MARBLE and CITY OF BERKELEY and DOES 1-25)**

18           28. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 27  
19 of this Complaint.

20           29. Civil Code Section 51.7 authorizes suit against anyone who commits any  
21 violence, or intimidation by threat of violence, against a person on account of statutorily  
22 protected characteristics, including race. For each violation of Civil Code Section 51.7, Civil  
23 Code Section 52(b) (2) provides for actual damages, punitive damages, reasonable attorney's  
24 fees, and an additional \$25,000.

25           30. Plaintiff is informed and believes and thereon alleges that the conduct of  
Defendant MARBLE was motivated by racial prejudice and the use of racial profiling against

# DOCUMENT 3

1 Plaintiff. Plaintiff is clearly identifiable as a Black man. Defendant MARBLE became  
2 suspicious that Plaintiff did not belong in the neighborhood because of his race and targeted  
3 him, repeatedly calling him “nigger,” shouting “You do not belong here,” and ultimately  
4 punching him in the face. In engaging in such conduct, Defendant MARBLE violated Plaintiff’s  
5 rights under California Civil Code Section 51.7 to be free from violence, or intimidation by  
6 threat of violence, committed against him because of his race.

7 31. Under Government Code Section 815.2(a), Defendant CITY OF BERKELEY is  
8 vicariously liable to Plaintiff for his injuries and damages suffered as alleged herein, incurred as  
9 a proximate result of the aforementioned wrongful conduct of Defendant MARBLE.

10 32. As a result, Defendants are liable for a violation of California Civil Code Section  
11 51.7.

12 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

## **FOURTH CAUSE OF ACTION**

### **(Negligence)**

#### **(Plaintiff against Defendants MARBLE and CITY OF BERKELEY and DOES 1-25)**

13  
14  
15 33. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 32  
16 of this Complaint.

17 34. An individual is liable for injuries caused by failure to exercise reasonable care  
18 in the circumstances. A cause of action for negligence arises when there is a legal duty to use  
19 due care, there is a breach of the legal duty, and the breach is the proximate or legal cause of the  
20 resulting injury.

21 35. Defendant MARBLE, without due care when interacting with Plaintiff, injured  
22 Plaintiff. Defendant MARBLE had a duty as a police official to use reasonable force and to not  
23 abuse his power. Defendant MARBLE breached that duty by aggressively charging towards  
24 Plaintiff, preventing Plaintiff from leaving the area, yelling racial obscenities at Plaintiff,  
25 punching Plaintiff in the face, and threatening him with a government-issued firearm without

# DOCUMENT 3

1 cause or legal justification. Plaintiff was injured in his face, and he continues to suffer from  
2 severe emotional distress as a proximate and direct cause of the Defendants' negligent conduct.

3 36. Pursuant to Government Code Section 815.2(a), Defendant CITY OF  
4 BERKELEY is vicariously liable to Plaintiff for his injuries and damages suffered as alleged  
5 herein, incurred as a proximate result of the aforementioned wrongful conduct of Defendant  
6 MARBLE.

7 37. As a result, Defendants are liable for negligence.

8 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

## **FIFTH CAUSE OF ACTION**

### **(Assault/Battery)**

9 **(Plaintiff against Defendants MARBLE and CITY OF BERKELEY and DOES 1-25)**

10 38. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 37  
11 of this Complaint.

12 39. Defendant MARBLE acted with intent to cause harmful or offensive contact or  
13 threatened to touch Plaintiff in a harmful or offensive manner. Defendant MARBLE then  
14 touched Plaintiff in a harmful and offensive manner. Moreover, it reasonably appeared to  
15 Plaintiff that Defendant MARBLE was about to carry out the threat. Plaintiff did not consent to  
16 the harmful contact. Battery occurred when Defendant MARBLE actually made contact with  
17 and harmed Plaintiff. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

18 40. Defendant MARBLE intended to touch Plaintiff in a harmful or offensive  
19 manner. Plaintiff reasonably believed that he was about to be touched in a harmful or offensive  
20 manner. It reasonably appeared to Plaintiff that Defendant MARBLE was about to carry out the  
21 threat. Plaintiff did not consent to Defendant MARBLE's harmful contact, which ultimately led  
22 to his injuries. Defendant MARBLE's actions were excessive and unreasonable.

23 41. Under Government Code Section 815.2(a), Defendant CITY OF BERKELEY is  
24 vicariously liable to Plaintiff for his injuries and damages suffered as alleged herein, incurred as  
25 a proximate result of the aforementioned wrongful conduct of Defendant MARBLE.

# DOCUMENT 3

1 42. As a result, Defendants are liable for assault and battery.  
2 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

3 **SIXTH CAUSE OF ACTION**  
4 **(Intentional Infliction of Emotional Distress)**  
5 **(Plaintiff against Defendants MARBLE and CITY OF BERKELEY and DOES 1-25)**

6 43. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 42  
7 of this Complaint.

8 44. A defendant's conduct is "outrageous" when it is so extreme as to exceed all  
9 bounds of that usually tolerated in a civilized community.

10 45. Defendant MARBLE's above-described conduct constituted reckless disregard  
11 of the probability of causing emotional distress. Plaintiff subsequently suffered severe or  
12 extreme emotional distress. Defendant MARBLE's unprovoked conduct in screaming racial  
13 obscenities at Plaintiff, physically blocking Plaintiff from leaving the area, punching Plaintiff in  
14 the face, and brandishing a state-issued firearm at Plaintiff was the actual and proximate cause  
15 of the emotional distress suffered by Plaintiff.

16 46. Under Government Code Section 815.2(a), Defendant CITY OF BERKELEY is  
17 vicariously liable to Plaintiff for his injuries and damages suffered as alleged herein, incurred as  
18 a proximate result of the aforementioned wrongful conduct of Defendant MARBLE.

19 47. As a result, Defendants are liable for intentional infliction of emotional distress.  
20 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

21 **SEVENTH CAUSE OF ACTION**  
22 **(False Imprisonment)**  
23 **(Plaintiff against Defendants MARBLE and CITY OF BERKELEY and DOES 1-25)**

24 48. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 47  
25 of this Complaint.

49. California Penal Code section 236 defines false imprisonment as the unlawful  
violation of the personal liberty of another person.

# DOCUMENT 3

1           50. Defendant MARBLE unlawfully violated the personal liberty of Plaintiff by  
2 intentionally confining Plaintiff against his will and without lawful privilege. Defendant  
3 MARBLE yelled racial profanities at Plaintiff and prevented him from leaving the area.  
4 Defendant MARBLE stated that he was the law creating a presumption that he was law  
5 enforcement. Consequently, Plaintiff was unable to leave the area and forced to remain in a  
6 position where Defendant MARBLE could physically assault and verbally abuse him.

7           51. Under Government Code Section 815.2(a), Defendant CITY OF BERKELEY is  
8 vicariously liable to Plaintiff for his injuries and damages suffered as alleged herein, incurred as  
9 a proximate result of the aforementioned wrongful conduct of Defendant MARBLE.

10           52. As a result, Defendants are liable for false imprisonment.

11           WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

## **JURY DEMAND**

12           Plaintiffs hereby demand a jury trial in this action.

## **PRAYER**

13           WHEREFORE, Plaintiffs pray for relief, as follows:

- 14           1. For general damages according to proof;
- 15           2. For special damages, including but not limited to, past, present and/or future  
16 wage loss, income and support, medical expenses and other special damages in a sum to be  
17 determined according to proof;
- 18           3. For punitive damages and exemplary damages in amounts to be determined  
19 according to proof as to Defendants MARBLE and CITY OF BERKELEY;
- 20           4. Any and all permissible statutory damages;
- 21           5. For reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and California Code  
22 of Civil Procedure § 1021.5;
- 23           6. For cost of suit herein incurred; and
- 24           7. For such other and further relief as the Court deems just and proper.  
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# DOCUMENT 3

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Dated: August 31, 2023

**Burris, Nisenbaum, Curry & Lacy, LLP**

*/s/ John L. Burris*

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John L. Burris  
Benjamin Nisenbaum  
Christopher A. Dean  
Attorneys for Plaintiff



JS 44 (Rev. 04/21)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  Brian Lindhurst</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Contra Costa</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorneys (Firm Name, Address, and Telephone Number)</b>                  Burris, Nisenbaum, Curry &amp; Lacy - John L. Burris                  7677 Oakport Street, Suite 1120, Oakland, CA 94621</p>	<p><b>DEFENDANTS</b>                  City of Berkeley, et al</p> <p>County of Residence of First Listed Defendant _____                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.                  Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:25%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:45%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>INTELLECTUAL PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 42 U.S.C. Statute 1983

Brief description of cause:  
 Excessive Force by Berkeley Police Department Officer

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: August 31, 2023    SIGNATURE OF ATTORNEY OF RECORD: /s/ John L. Burris

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



# ATTACHMENT 2

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## Standards of Conduct

### 321.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Berkeley Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

### 321.2 POLICY

The continued employment or appointment of every member of the Berkeley Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

### 321.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

#### 321.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Standards of Conduct*

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The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

#### **321.3.2 SUPERVISOR RESPONSIBILITIES**

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- (a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- (b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- (c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- (d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

#### **321.4 GENERAL STANDARDS**

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees shall at all times be courteous and civil to the public and to one another. They shall be quiet, orderly, attentive and respectful and shall exercise patience and discretion in the performance of their duties.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

#### **321.5 CAUSES FOR DISCIPLINE**

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

##### **321.5.1 LAWS, RULES AND ORDERS**

- (a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.

# Berkeley Police Department

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- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.
- (c) Violation of federal, state, local or administrative laws, rules or regulations.

#### 321.5.2 ETHICS

- (a) Using or disclosing one's status as a member of the Berkeley Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.

#### 321.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

#### 321.5.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (b) Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member

# Berkeley Police Department

## Law Enforcement Services Manual

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knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

#### 321.5.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.
- (e) Failure to sign in/out for duty on the timesheet, unless specifically authorized by a supervisor.

#### 321.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
  - 1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away or appropriating any Berkeley Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
- (e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

#### 321.5.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Standards of Conduct*

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- (e) Failure to notify the Department within 72 hours of any change in name, residence address or contact telephone number(s).

#### 321.5.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.
- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
  - (a) While on department premises.
  - (b) At any work site, while on-duty or while in uniform, or while using any department equipment or system.
  - (c) Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Entering any place of amusement while on duty, except when necessary in the performance of duty or periodic inspection.
- (h) Improper political activity including:
  - (a) Unauthorized attendance while on-duty at official legislative or political sessions.
  - (b) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
- (i) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Standards of Conduct*

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- (j) Joining or participating in any employee organization except an employee organization which is composed solely of peace officers which concerns itself solely and exclusively with the wages, hours, working conditions, welfare and advancement of academic and vocational training in furtherance of the police profession and which is not subordinate to any other organization.
- (k) Failure to secure the permission of a Commanding Officer before placing any material on a Departmental bulletin board.
- (l) Using departmental business cards for anything other than official business.
- (m) Any act on- or off-duty that brings discredit to this department.

#### 321.5.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency that may result in criminal prosecution or discipline under this policy.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Standards of Conduct*

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- (m) Incurring unauthorized expense - Employees shall not knowingly and intentionally incur any unauthorized Departmental expense or liability without approval of a superior officer or supervisor when necessary under emergency conditions.
- (n) Failure to provide information to citizens - Employees shall comply whenever possible with requests by citizens for public information. If necessary, they shall direct such persons to the nearest location where information may be obtained.
- (o) Failure to Identify - Employees on official business shall identify themselves as Berkeley Police employees or officers. When requested, employees shall promptly state their name, rank and badge number, except when disclosure of identity could compromise safety and/or an investigation (i.e., riot situations, undercover operations, etc.).
- (p) Failure to maintain communication, when on duty or officially on call - Employees who are on duty or officially on call shall be directly available by normal communication or shall keep their office, supervisor, or commanding officer informed of the means by which they may be reached when not immediately available.
- (q) Any other on-- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

#### 321.5.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
- (g) Any personal action contributing to a preventable traffic collision in the course of employment or appointment.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

#### 321.5.11 INTOXICANTS

- (a) Reporting for work:
  - 1. Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.



# Berkeley Police Department

## Law Enforcement Services Manual

### *Standards of Conduct*

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- (b) Possession:
  - 1. Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
  - 2. Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.
- (c) Intoxicants on-duty:
  - 1. Use of Intoxicants. Except as necessary in the performance of an official assignment, having the odor of an alcoholic beverage on the person, clothing, or breath, being under the influence of alcohol or other intoxicants, or the consumption of alcohol or other intoxicants while on duty is strictly prohibited.
  - 2. A Command Officer must give prior approval for any use of alcohol in the performance of an official assignment.
- (d) Prescription medication:
  - 1. Employees may use prescription medications, except medical marijuana, while on duty pursuant to the specific instructions of a physician who has advised the employee that the prescribed medication in the amount actually ingested does not adversely affect the employee's ability to safely perform their duties, including tasks that require physical coordination, mental alertness and sound judgment, such as, operating office equipment and driving a vehicle, or, in the case of sworn officers, making detentions/arrests and handling weapons.
- (e) Use of marijuana:
  - 1. Possession of marijuana, including medical marijuana, or being under the influence of marijuana on or off-duty is prohibited and may lead to disciplinary action.
- (f) Intoxicants in uniform:
  - 1. No employee off duty and in uniform, or in any part of uniform dress, shall:
    - i. Consume any alcoholic beverage or other intoxicant in public view or in any place accessible to the public;
    - ii. Be in public with the odor of an alcoholic beverage on the person, clothing, or breath; or
    - iii. Be under the influence of alcohol or other intoxicants.
- (g) Intoxicants off-duty:
  - 1. No off-duty employee shall consume any alcoholic beverage or other intoxicant to an extent which renders one unfit to report for one's next regular tour of duty (including having the odor of an alcoholic beverage on the person), which results in the of violation of any law, or which results in the commission of an obnoxious or offensive act which might tend to discredit the Department.

## Off-Duty Law Enforcement Actions

### 344.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This policy is intended to provide guidelines for officers of the Berkeley Police Department with respect to taking law enforcement action while off-duty.

### 344.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged. Officers should not attempt to initiate enforcement action when witnessing minor crimes, such as suspected intoxicated drivers, reckless driving or minor property crimes. Such incidents should be promptly reported to the appropriate law enforcement agency.

Officers are not expected to place themselves in unreasonable peril. However, any sworn member of this department who becomes aware of an incident or circumstance that he/she reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage may take reasonable action to minimize the threat.

When public safety or the prevention of major property damage requires immediate action, officers should first consider reporting and monitoring the activity and only take direct action as a last resort.

### 344.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal regulations and department policy. All firearms and ammunition must meet guidelines as described in the department Firearms Policy. When carrying firearms while off-duty officers shall also carry their department-issued badge or an authorized flat badge and identification.

Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage or taken any drugs or medications or any combination thereof that could adversely affect the officer's senses or judgment.

### 344.4 DECISION TO INTERVENE

There is no legal requirement for off-duty officers to take law enforcement action. However, should officers decide to intervene, they must evaluate whether the action is necessary or desirable, and should take into consideration the following:

- (a) The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.
- (b) The inability to communicate with responding units.
- (c) The lack of equipment, such as handcuffs, OC or baton.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Off-Duty Law Enforcement Actions*

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- (d) The lack of cover.
- (e) The potential for increased risk to bystanders if the off-duty officer were to intervene.
- (f) Unfamiliarity with the surroundings.
- (g) The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

Officers should consider waiting for on-duty uniformed officers to arrive, and gather as much accurate intelligence as possible instead of immediately intervening.

#### 344.4.1 INTERVENTION PROCEDURE

If involvement is reasonably necessary the officer should attempt to call or have someone else call 9-1-1 to request immediate assistance. The dispatcher should be informed that an off-duty officer is on-scene and should be provided a description of the officer if possible.

Whenever practicable, the officer should loudly and repeatedly identify him/herself as a police officer until acknowledged. Official identification should also be displayed.

#### 344.4.2 INCIDENTS OF PERSONAL INTEREST

Officers should refrain from handling incidents of personal interest, (e.g., family or neighbor disputes) and should remain neutral. In such circumstances officers should call the responsible agency to handle the matter.

#### 344.4.3 NON-SWORN RESPONSIBILITIES

Non-sworn personnel should not become involved in any law enforcement actions while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable.

#### 344.4.4 OTHER CONSIDERATIONS

When encountering a non-uniformed officer in public, uniformed officers should wait for acknowledgement by the non-uniformed officer in case he/she needs to maintain an undercover capability.

### **344.5 REPORTING**

Any off-duty officer who engages in any law enforcement activity, regardless of jurisdiction, shall notify the Watch Commander as soon as practicable. The Watch Commander shall determine whether a report should be filed by the employee.

Officers should cooperate fully with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

## Fair and Impartial Policing

### 401.1 PURPOSE AND SCOPE

This policy is intended to reaffirm the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which dispatchers and officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way, including identifying, intercepting, and documenting profiling by proxy.

California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This policy explicitly prohibits racial profiling and other biased policing. This policy describes the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in making law enforcement decisions.

#### 401.1.1 DEFINITIONS

Definitions related to this policy include:

**Bias-based policing** - Any police-initiated action that relies on the race, ethnicity or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being engaged in criminal activity.

### 401.2 POLICY

Investigative detentions, traffic stops, arrests, searches and property seizures by officers will be based on a standard of reasonable suspicion or probable cause. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause.

Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities except when officers are:

- (a) Seeking specific person(s) who have been described in part by any of the above listed characteristics, or
- (b) The person(s) are being sought for a specific law enforcement purpose.

Discrimination or harassment based on a trait or class described above is considered a “serious allegation” of misconduct.

### 401.3 RESPONSIBILITY TO REPORT AND TAKE CORRECTIVE ACTION

Employees who become aware of another employee engaging in biased policing shall adhere to reporting procedures set forth in the Personnel Complaints Policy.

A supervisor or command officer who becomes aware of biased policing shall adhere to notification and administrative procedures set forth in the Personnel Complaints Policy.

All reports of biased policing shall be investigated in accordance with the Personnel Complaints Policy.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Fair and Impartial Policing*

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#### **401.4 PROFILING BY PROXY**

Bias, racism or profiling by proxy occurs in a call for service when an individual call the police and makes false or ill-informed claims about persons they dislike or are biased against. Dispatchers and Officers have a role in mitigating bias-based calls for service (CFS), and proper handling of these calls is important to maintain and build trust between the police and the community.

Call takers have a responsibility to do an initial screen and triage of all calls to ensure they are accurately entered as the correct CFS with the appropriate priority attached. Call takers should ask questions and explore whether there are concrete, observable behaviors that form the basis of the suspicious activity or crime the RP is reporting. Calls for service (CFS) should focus on behaviors of involved parties, not appearance. Reports of suspicious activity require the reporting party (RP) to articulate something criminal or reasonably suspicious about a person's behavior.

If a Call Taker believes an RP is making a bias-based call for service, they should:

1. Create a call for service,
2. Enter the details provided by the RP in the call narrative
3. In the Nature of Call field enter: "Supervisor review required" which will ensure that the call is not ready for dispatch, and
4. Notify the on duty supervisor. Supervisor will review the merits of the call for service and either approve for dispatching or notify a Watch Commander (or designee)
5. Watch Commander will determine if a response will be provided and/or follow-up up with the RP for more information.

#### **401.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

The Chief of Police or the authorized designee shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and reported annually to the DOJ (Penal Code § 13012; Penal Code § 13020).

##### **401.5.1 DEMOGRAPHIC DATA PROCEDURES**

All sworn officers shall provide demographic statistical data once for each individual as listed below:

- (a) All vehicle and bicycle detentions.
- (b) All pedestrian detentions
- (c) Anytime anyone is detained, regardless of the cause
- (d) Anytime anyone is searched regardless of the cause.

Officers shall provide demographic statistical data pursuant to the requirements of the RIPA statute, AB 953.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Fair and Impartial Policing*

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#### **401.6 ADMINISTRATION**

Each year, the Operations Division Captain shall review the efforts of the Department to prevent racial or biased based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

The annual report should not contain any identifying information about any specific complaint, member of the public or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors should review the annual report and discuss the results with those they are assigned to supervise.

#### **401.7 TRAINING**

Training on racial or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training Bureau.

- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial or bias-based profiling.
- (b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this department who received initial racial or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity and cultural trends (Penal Code § 13519.4(i)).

**ODPA PRELIMINARY RESEARCH  
ON OFF-DUTY CONDUCT FOR  
SWORN OFFICER**



## MEMORANDUM

**To:** Honorable Board Member Leftwich, Police Accountability Board (PAB)  
**CC:** Police Accountability Board (PAB)  
**From:** Hansel Aguilar, Director of Police Accountability (DPA) *Ha*  
Michelle Verger, Policy Analyst (ODPA) *MV*  
**Date:** 10/06/2023  
**Subject:** Preliminary Research on Off-Duty Conduct for Sworn Officers

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At the September 27, 2023 regular meeting of the PAB, Board Member Leftwich expressed interest in establishing a subcommittee to explore issues relating to off-duty conduct of sworn law enforcement officers. The purpose of this memorandum is to provide Board Member Leftwich and the PAB members with some preliminary research on off-duty conduct to inform their creation of the subcommittee to review the BPD Policies outlined in the Berkeley Police Department Law Enforcement Services Manual.

### **Background:**

The following materials are intended to provide background on existing Berkeley Police Department (BPD) policies on off-duty conduct [ATTACHMENT A]. Federal Case Law also applies and is added in order to amplify the review of the off-duty BPD policies [ATTACHMENT B].

Off-Duty Conduct generally refers to any conduct of a law enforcement public servant that occurs when they are not in the process of performing services for the City of Berkeley.



A preliminary review of off-duty conduct regulations and case law shows that law enforcement agencies in the US have some form of off-duty regulations in place. Berkeley is no different. BPD has a policy manual with more than 75 references to how sworn officers should or should not conduct themselves in various ways while off-duty. Additionally, federal case law both allows for and limits the ability of employers to discipline employees for this conduct, in particular as it relates to speech.

**ATTACHMENT A**

**Berkeley Police Department Law Enforcement Services Manual as it Pertains to Off-Duty Conduct**

Source	Details
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>321.2 POLICY</b> The continued employment or appointment of every member of the Berkeley Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>321.4 GENERAL STANDARDS</b> Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority. Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty. Employees shall at all times be courteous and civil to the public and to one another. They shall be quiet, orderly, attentive and respectful and shall exercise patience and discretion in the performance of their duties. Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.</p> <p style="text-align: center;"><b>(m)</b> Any act on- or off-duty that brings discredit to this department.</p>
<a href="#">Berkeley Police Department Law Enforcement Services</a>	<p><b>321.5.1(c) CAUSES FOR DISCIPLINE</b> The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other</p>

<a href="#">Manual (LEXIPOL)</a>	<p>rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:</p> <p><b>(c)</b> Violation of federal, state, local or administrative laws, rules or regulations. <i>[more discussion on this below]</i></p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>321.5.2(a)(b) ETHICS</b></p> <p><b>(a)</b> Using or disclosing one’s status as a member of the Berkeley Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.</p> <p><b>(b)</b> The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>321.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM</b></p> <p>Discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>321.5.8(m)(l) PERFORMANCE</b></p> <p><b>(l)</b> Using departmental business cards for anything other than official business.</p> <p>...</p> <p><b>(m)</b> Any act on- or off-duty that brings discredit to this department.</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>321.5.9(f)(h)(q) CONDUCT</b></p> <p><b>(f)</b> Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.</p> <p>...</p> <p><b>(h)</b> Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member’s relationship with this department.</p> <p>...</p>

	<p><b>(q)</b> Any other on-- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>321.5.11(e)(g) INTOXICANTS</b></p> <p><b>(e)</b> Use of marijuana: 1. Possession of marijuana, including medical marijuana, or being under the influence of marijuana on or off-duty is prohibited and may lead to disciplinary action.</p> <p>...</p> <p><b>(g)</b> Intoxicants off-duty: 1. No off-duty employee shall consume any alcoholic beverage or other intoxicant to an extent which renders one unfit to report for one's next regular tour of duty (including having the odor of an alcoholic beverage on the person), which results in the of violation of any law, or which results in the commission of an obnoxious or offensive act which might tend to discredit the Department.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>306.3.5(a-i) AUTHORIZED OFF-DUTY FIREARMS</b> The carrying of firearms by members while off-duty is permitted by the Chief of Police but may be rescinded should circumstances dictate (e.g., administrative leave). Members who choose to carry a firearm while off-duty, based on their authority as peace officers, will be required to meet the following guidelines:</p> <p><b>(a)</b> The member may use his/her duty firearm or may use a personally owned firearm that is carried and inspected in accordance with the Personally Owned Duty Firearms requirements in this policy. A member carrying his/her duty firearm will be deemed to have complied with (c), (d) and (e) of this section. 1. The purchase of the personally owned firearm and ammunition shall be the responsibility of the member.</p> <p><b>(b)</b> The firearm shall be carried concealed at all times and in such a manner as to prevent accidental unintentional cocking, discharge or loss of physical control.</p> <p><b>(c)</b> It will be the responsibility of the member to submit the firearm to the Department Armorer for inspection prior to being personally carried. Thereafter the firearm shall be subject to periodic inspection by the Department Armorer.</p> <p><b>(d)</b> Prior to carrying any off-duty firearm, the member shall demonstrate to the Firearms and Tactics Unit (FTU) Staff</p>

	<p>that he/she is proficient in handling and firing the firearm and that it will be carried in a safe manner.</p> <p><b>(e)</b> The member will successfully qualify with the firearm prior to it being carried.</p> <p><b>(f)</b> Members shall provide written notice of the make, model, color, serial number and caliber of the firearm to the Personnel and Training Sergeant or his or her designee, who will maintain a list of the information.</p> <p><b>(g)</b> If a member desires to use more than one firearm while off-duty, he/she may do so, as long as all requirements set forth in this policy for each firearm are met.</p> <p><b>(h)</b> Members shall only carry department-authorized ammunition.</p> <p><b>(i)</b> When armed, officers shall carry their badges and Berkeley Police Department identification cards.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>306.4 EQUIPMENT</b> Firearms carried on- or off-duty shall be maintained in a clean, serviceable condition. Maintenance and repair of authorized personally owned firearms are the responsibility of the individual member.</p> <p><b>306.4.1 REPAIRS OR MODIFICATIONS</b> Each member shall be responsible for promptly reporting any damage or malfunction of an assigned firearm to a supervisor or the a member of the FTU staff. Firearms that are the property of the Department or personally owned firearms that are approved for department use may be repaired or modified only by a person who is department-approved and certified as an armorer or gunsmith in the repair of the specific firearm. Such modification or repair must be authorized in advance by the Personnel and Training Sergeant or their designee and documented in armorer records.. Any repairs or modifications to the member's personally owned firearm shall be done at his/her expense and must be approved by the Personnel and Training Sergeant or their designee.</p> <p><b>306.4.2 HOLSTERS</b> Only department-approved holsters shall be used and worn by members. Members shall periodically inspect their holsters to make sure they are serviceable and provide the proper security and retention of the handgun. All patrol holsters must provide Level 3 retention.</p> <p><b>306.4.3 TACTICAL LIGHTS</b> Tactical lights may only be installed on a firearm carried on- or off-duty after they have been examined and approved by the Personnel and Training Sergeant or his or her designee. Once the approved tactical lights have been properly installed on any firearm, the member shall qualify with the firearm</p>

	<p>to ensure proper functionality and sighting of the firearm prior to carrying it.</p> <p><b>306.4.4 OPTICS OR LASER SIGHTS</b> Optics or laser sights may only be installed on a firearm carried on- or off-duty after they have been examined and approved by the Personnel and Training Sergeant or his or her designee. Any approved sight shall only be installed in strict accordance with manufacturer specifications. Once approved sights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it. Except in an approved training situation, a member may only sight in on a target when the member would otherwise be justified in pointing a firearm at the target. Laser sights are prohibited for duty use except as outlined in the policy covering Special Response Team. Laser sights may be installed on off duty firearms after they have been examined and approved by the Personnel and Training Sergeant or his or her designee.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>306.5(g) SAFE HANDLING, INSPECTION AND STORAGE</b> Members shall maintain the highest level of safety when handling firearms and shall consider the following:</p> <p style="padding-left: 40px;"><b>(g)</b> Any firearm authorized by the Department to be carried on- or off-duty that is determined by a member to be malfunctioning or in need of service or repair shall not be carried. It shall be promptly presented to the Department Armorer for inspection and repair. Any firearm deemed in need of repair or service will be immediately removed from service. If the firearm is the member's primary duty firearm, a replacement firearm will be issued to the member until the duty firearm is serviceable.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>306.5.3 ALCOHOL AND DRUGS</b> Firearms shall not be carried by any member, either on- or off-duty, who has consumed an amount of an alcoholic beverage, taken any drugs or medication, or has taken any combination thereof that would tend to adversely affect the member's senses or judgment</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services</a></p>	<p><b>306.7 FIREARM DISCHARGE</b> Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was</p>

<a href="#">Manual (LEXIPOL)</a>	<p>discharged as a use of force, the involved member shall adhere to the additional reporting requirements set forth in the Use of Force Policy.</p> <p><b>(b)</b> If off-duty at the time of the incident, the member shall file a written report or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>341.2.7 DRESS CODE</b> As representatives of the Department, volunteers are responsible for presenting a professional image to the community. Volunteers shall dress appropriately for the conditions and performance of their duties. Volunteers shall conform to department-approved dress consistent with their duty assignment. Uniforms authorized for volunteers should be readily distinguishable from those worn by sworn officers. The uniform or identifiable parts of the uniform shall not be worn while off-duty except volunteers may choose to wear the uniform while in transit to or from official department assignments or functions provided an outer garment is worn over the uniform shirt so as not to bring attention to the volunteer while he/she is off duty</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>344.4 DECISION TO INTERVENE</b> There is no legal requirement for off-duty officers to take law enforcement action. However, should officers decide to intervene, they must evaluate whether the action is necessary or desirable, and should take into consideration the following:</p> <p><b>(a)</b> The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.</p> <p><b>(b)</b> The inability to communicate with responding units.</p> <p><b>(c)</b> The lack of equipment, such as handcuffs, OC or baton.</p> <p><b>(d)</b> The lack of cover.</p> <p><b>(e)</b> The potential for increased risk to bystanders if the off-duty officer were to intervene.</p> <p><b>(f)</b> Unfamiliarity with the surroundings.</p> <p><b>(g)</b> The potential for the off-duty officer to be misidentified by other peace officers or members of the public. Officers should consider waiting for on-duty uniformed officers to arrive, and gather as much accurate intelligence as possible instead of immediately intervening.</p>
<a href="#">Berkeley Police Department Law</a>	<p><b>344.4.1 INTERVENTION PROCEDURE</b> If involvement is reasonably necessary the officer should attempt to call or have someone else call 9-1-1 to request immediate assistance. The</p>



<a href="#">Enforcement Services Manual (LEXIPOL)</a>	<p>dispatcher should be informed that an off-duty officer is on-scene and should be provided a description of the officer if possible. Whenever practicable, the officer should loudly and repeatedly identify him/herself as a police officer until acknowledged. Official identification should also be displayed.</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>350.6 OFF-DUTY EVENTS</b> Employees who wish to attend a public event off-duty and in uniform must have completed their probationary period of employment at the Berkeley Police Department.</p> <p><b>(a)</b> Eligible employees wishing to attend an event shall do the following:</p> <ol style="list-style-type: none"> <li>1. Determine what kind of event it is, i.e. a presentation regarding a law enforcement career vs. a discussion about current events;</li> <li>2. Confirm with the school or location that permission has been granted for the officer's appearance.</li> <li>3. Send an email to their supervisor requesting permission to attend and giving the details of the event (i.e. date, time, location, etc.).</li> </ol> <p><b>(b)</b> If the request is approved, the officer shall:</p> <ol style="list-style-type: none"> <li>1. On the day of the event, notify the Communications Center that he/she is in uniform and off-duty, and provide the location and expected duration of the event.</li> <li>2. While in route to the event, make an effort to conceal the upper portion of their BPD uniform.</li> </ol> <p>Employees attending events outside of Berkeley will not be allowed to bring a department vehicle, either for transportation or as part of the presentation, unless extraordinary circumstances exist and supervisor approval is obtained</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>405.3.1 PEACE OFFICER RIDE-ALONGS</b> Off-duty members of this department or any other law enforcement agency will not be permitted to ride-along with on-duty officers without the expressed consent of the Watch Commander. In the event that such a ride-along is permitted, the off-duty employee shall not be considered on-duty and shall not represent themselves as a peace officer or participate in any law enforcement activity except as emergency circumstances may require.</p>
<a href="#">Berkeley Police Department</a>	<p><b>600.8 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES</b> Use of social media and any other Internet source to</p>

<a href="#">Law Enforcement Services Manual (LEXIPOL)</a>	<p>access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet should only be accessed by members while on-duty and for purposes related to the mission of this department. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using department equipment. Information obtained via the Internet should not be archived or stored in any manner other than department-established record keeping systems (see the Records Maintenance and Release and the Criminal Organizations policies)</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>701.2 [Personal Communication Devices (PCDs) POLICY</b> The Berkeley Police Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any department-issued PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy. The inappropriate use of a PCD while on-duty may impair officer safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws. Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory personnel.</p>
<a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a>	<p><b>701.5 PERSONALLY OWNED PCD</b></p> <p>Except with prior express authorization from their supervisor, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing memorandum of understanding or collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate</p>

	<p>compensation. Members who independently document off-duty department-related business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>703.4.4 ENFORCEMENT ACTIONS</b> When driving a take-home vehicle to and from work outside of the jurisdiction of the Berkeley Police Department or while off-duty, an officer shall not initiate enforcement actions except in those circumstances where a potential threat to life or serious property damage exists (see the Off-Duty Law Enforcement Actions and Law Enforcement Authority policies). Officers may render public assistance when it is deemed prudent (e.g., to a stranded motorist). Officers driving take-home vehicles shall be armed, appropriately attired and carry their department-issued identification. Officers should also ensure that department radio communication capabilities are maintained to the extent feasible.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>1011.3 WEARING OF SAFETY RESTRAINTS</b> All members shall wear properly adjusted safety restraints when operating or riding in a seat equipped with restraints, in any vehicle owned, leased or rented by this department while on- or off-duty, or in any privately owned vehicle while on-duty. The member driving such a vehicle shall ensure that all other occupants, including non-members, are also properly restrained.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>1020.4 DEPARTMENT RESOURCES</b> Employees are prohibited from using any department equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or databases of this department or other agencies through the use of the employee's position with this department.</p> <p><b>1020.4.1 REVIEW OF FINANCIAL RECORDS</b> Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government Code § 1126). Prior to providing written approval for an outside employment position, the Department may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists. Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Department becomes concerned that a conflict of interest exists based on a financial reason, the Department may request that the employee provide his/her personal financial records for</p>

	<p>review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>1023.2(h) WEARING AND CONDITION OF UNIFORM AND EQUIPMENT</b> Police employees wear the uniform to be identified as the law enforcement authority in society. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis or other time of need.</p> <p><b>(h)</b> If the uniform is worn while in transit, an outer garment shall be worn over the uniform shirt so as not to bring attention to the employee while he/she is off-duty</p>
<p><a href="#">Berkeley Police Department Law Enforcement Services Manual (LEXIPOL)</a></p>	<p><b>1029.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT</b> To meet the department’s safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern):</p> <p><b>(a)</b> Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees.</p> <p><b>(b)</b> Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees. Examples may include:</p> <ol style="list-style-type: none"> <li>1. Statements that indicate disregard for the law or the state or U.S. Constitution.</li> <li>2. Expression that demonstrates support for criminal activity.</li> <li>3. Participating in sexually explicit photographs or videos for compensation or distribution.</li> </ol> <p><b>(c)</b> Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.</p>

	<p><b>(d)</b> Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.</p> <p><b>(e)</b> Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Berkeley Police Department.</p> <p><b>(f)</b> Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.</p> <p><b>(g)</b> Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, Berkeley Police Department Law Enforcement Services Manual Employee Speech, Expression and Social Networking Copyright Lexipol, LLC 2023/05/04, All Rights Reserved. Published with permission by Berkeley Police Department Employee Speech, Expression and Social Networking - 815 marked vehicles, equipment or other material that specifically identifies the Berkeley Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.</p> <p><b>(h)</b> Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:</p> <ol style="list-style-type: none"><li><b>1.</b> When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).</li><li><b>2.</b> During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment. Employees should take reasonable and prompt action to remove any content, including content posted by others, that is in violation</li></ol>
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	of this policy from any web page or website maintained by the employee (e.g., social or personal website)
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## **ATTACHMENT B**

**Federal and Supreme Court Cases Relevant to Any Inquiry Regarding Off-Duty Conduct**

Resource	Case Law Name & Reference No. (if applicable)	Summary
Federal Law Enforcement Training Centers Video on Government Employees and Free Speech	N/A	<p><i>Government employees, including police officers, do not have to give up their First Amendment Rights by virtue of their employment. But that right is not without limitations, moreso than for the general public. They occupy positions of trust and statements they make freely can contradict government policy or hinder government function. Government employees must accept certain limitations to their Free Speech rights.</i></p> <p><i>Often, these cases regard statements that are controversial in a public forum or social media post. Afterwards, the employer may try to take adverse action against the employee – demotion, reprisal, or removal – and the employee files a complaint against their employer for infringement of their First Amendment Right.</i></p> <p><i>Courts consider many different issues:</i></p> <ol style="list-style-type: none"> <li><i>1. Was the employee acting as a private citizen or in their official capacity? If statements are made pursuant to their official duties they are not entitled to their First Amendment Rights in their totality. When speech is related to a matter of public concern it is at the center of what the First Amendment protects. Was it a personal grievance or a matter of broader public purpose (social, political, etc.)? If it was a matter of broader public purpose the court balances the employee’s First Amendment Right against the Employer’s rights as a provider of public services. When the latter outweighs the former, the employer can limit the employee’s speech.</i></li> <li><i>2. When, where, and how was it said?</i></li> </ol>



		<p>3. <i>Did the speech harm the employee’s official duties, their coworkers, or the public confidence in the organization?*</i></p> <p>4. <i>Often, protected speech accompanies an adverse reaction that was not protected. The former must be a substantial or motivating factor in the latter to remain protected. Unrelated misconduct guarantees the employer’s right to take disciplinary action. If the government can prove it would have taken the action anyway, regardless of the speech, it make act.</i></p> <p><i>*Law enforcement agencies have been recognized as different from other government agencies in that their trustworthiness is even more important. The Supreme Court has also recognized that there is a stronger government interest in regulating the speech of police officers than other public employees.</i></p>
Ninth Circuit of Appeals	<a href="#">Gibson v. Office of Attorney Gen., 561 F.3d 920, 925 (9th Cir. 2009)</a>	The Ninth Circuit reiterated the “sequential five-step series of questions” to consider when evaluating a public employee’s First Amendment retaliation claim: (1) [W]hether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff’s protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.
U.S. Supreme Court	<a href="#">Garcetti v. Ceballos, 547 U.S. 410, 417 (2006)</a> ;	The Supreme Court has “made clear that public employees do not surrender all their First Amendment rights by reason of their employment. Rather, the First

	<p><a href="#"><u>Borough of Duryea v. Guarnieri, 564 U.S. 379, 383-86 (2011)</u></a> (applying <i>Garcetti</i> public concern test to public employee’s First Amendment Petition Clause claims).</p>	<p>Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen addressing matters of public concern.”</p> <p>“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” 547 U.S. at 421-22.</p> <p>The Supreme Court, however, limited its ruling in two respects. First, in an explicit effort to avoid having its holding serve as an invitation for employers to restrict employees’ rights “by creating excessively broad job descriptions,” the Court noted that “the listing of a given task in an employee’s written job description is neither necessary nor sufficient to demonstrate that conducting the task is within the scope of the employee’s professional duties for First Amendment purposes.” <i>Id.</i> at 424-25. Second, the Court recognized that</p> <p>[t]here is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence ... [F]or that reason [we] do not[] decide whether the analysis we conduct today would apply in the same manner to a case involving speech-related to scholarship or teaching. <i>(later codified by the Ninth Circuit)</i></p>
<p>Ninth Circuit of Appeals</p>	<p><a href="#"><u>Gibson, 561 F.3d at 925</u></a> (quoting <i>Eng v. Cooley</i>, 552 F.3d 1062, 1070 (9th Cir. 2009))</p>	<p>The “public concern inquiry is purely a question of law,” , that depends on the “content, form, and context of a given statement, as revealed by the whole record.”</p>

	<a href="#"><u>Ulrich v. City &amp; County of San Francisco, 308 F.3d 968, 976-77 (9th Cir. 2002)</u></a>	
U.S. Supreme Court	<a href="#"><u>Hartman v. Moore, 547 U.S. 250 (2006)</u></a> <a href="#"><u>Lakeside-Scott v. Multnomah County, 556 F.3d 797, 799 (9th Cir. 2009)</u></a> <a href="#"><u>Awabdy v. City of Adelanto, 368 F.3d 1062, 1071 (9th Cir. 2004); Sloman v. Tadlock, 21 F.3d 1462, 1465, 1469 n.10 (9th Cir. 1994)</u></a>	With respect to causation, “[i]t is clear . . . that the causation is understood to be but-for causation, without which the adverse action would not have been taken.” <i>Hartman v. Moore</i> . Thus, “upon a prima facie showing of retaliatory harm, the burden shifts to the defendant official to demonstrate that even without the impetus to retaliate he would have taken the action complained of (such as firing the employee).” <i>Id.</i>
U.S. Supreme Court	<a href="#"><u>Monell v. Department of Soc. Svcs., 436 U.S. 658 (1978)</u></a>	<p>Under the Monell doctrine, a municipality may be held liable for an officer’s actions when the plaintiff establishes the officer violated their constitutional right, and that violation resulted from an official municipal policy, an unofficial custom, or because the municipality was deliberately indifferent in a failure to train or supervise the officer. However, this narrow interpretation may not benefit all plaintiffs.</p> <p>This means that cities may be responsible for their employee’s behavior <i>only</i> when their employee is acting through an official government policy. The plaintiff is suing a municipality for implementing customs or policies that caused the unconstitutional behavior, not suing the municipality for the employee’s actions.</p>