



**APPROVED**

**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING**

Minutes

**Wednesday, February 22, 2023, 6:30 P.M.**

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

**1. CALL TO ORDER & ROLL CALL (2 minutes)**

Present: Board Member John Moore (Chair)  
Board Member Regina Harris (Vice-Chair)  
Board Member Kitty Calavita  
Board Member Deborah Levine  
Board Member Cheryl Owens  
Board Member Ismail Ramsey

Absent: Board Member Juliet Leftwich

ODPA Staff: Hansel Aguilar, Director of Police Accountability  
Beneba Thomas, ODPA Investigator  
Jose Murillo, ODPA Policy Analyst

BPD Staff: Captain Durbin

CAO Staff: James Chang, Deputy City Attorney

**2. APPROVAL OF AGENDA (5 MINUTES)**

**Motion to approve the Agenda**

Moved/Second (Calavita/Harris) Motion Carried.

Ayes: Harris, Calavita, Levine, Moore, Owens, and Ramsey.

Noes: None Abstain: None Absent: Leftwich.

**3. PUBLIC COMMENT (1 Speaker)**

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955  
Website: [www.cityofberkeley.info/dpa/](http://www.cityofberkeley.info/dpa/) Email: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

The speaker expressed interest in learning more about the appointment process for PAB members. There was little to no information posted on the webpage.

#### 4. APPROVAL OF MINUTES (5 MINUTES)

Motion to approve Regular Meeting Minutes of February 8, 2023, with corrections to be made.

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

Ayes: Harris, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: Calavita

Absent: Leftwich

Vice-Chair Harris identifies a mistake on the February 8<sup>th</sup>, 2023 minutes. She states that under the Q&A session with Interim Chief Louis, a question was marked as being asked by Board member Owens but that she was the one who had inquired about the auditing of Body Worn Camera footage.<sup>1</sup>

#### 5. ODPa STAFF REPORT (5 MINUTES)

Announcements, updates, and other items.

Director Aguilar reported the following:

- Staff is preparing for the return to in-person meetings. Staff visited the Live Oak Community Center on Friday, February 17<sup>th</sup> to decide on the arrangement to accommodate social distancing and other covid-19 precautions. Staff is also working on the technology for a hybrid platform.
- The staff has received the service agreement between the city and the private investigator hired to look into the BPD Downtown Taskforce and Bike Unit allegations.

Policy Analyst Murillo reported the following:

- The PAB has several upcoming timelines, including a pending review of the external fixed video surveillance camera policy with a deadline of March 10<sup>th</sup>, 2023, and a review of the Police Equipment and Community Safety Ordinance 2022 Annual Report by April 18<sup>th</sup>.
- The CAO has forwarded the redlined proposed permanent regulations to the PAB and ODPa for review. Board members are asked to review the redlines and prepare for discussion.
- ODPa staff attended a conference hosted by the California Civilian Oversight Alliance (CCOA) on Tuesday, February 21, 2023, and Wednesday, February 22, 2023, where they participated in presentations on Search and Seizure training, legislative updates, Sheriff Oversight, and Coordinated Response Training. It was

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<sup>1</sup> ODPa staff conducted a review of the recording of the regular meeting held on February 8<sup>th</sup>, 2023 to verify the error. Subsequently, it was determined that the minutes were accurate as presented. For reference, the relevant section can be found between minutes 36:44 and 39:51 of the meeting recording. The full recording of the February 8<sup>th</sup>, 2023 meeting can be accessed at:

<https://www.youtube.com/watch?v=bK7cGc9Ema4&t=939s>

a valuable networking event for the ODPa, providing opportunities to meet with counterparts from other oversight agencies across the state. More information about the CCOA can be found here: <https://californiaccoa.wixsite.com/california-civilian>

Q&A with ODPa Staff:

**Q:** Board member Owens asks the ODPa for a status on the requested log of all of their questions to the BPD, CAO, ODPa, and any other relevant agencies. She also asks if the ODPa has a document that can be provided to the Board that summarizes pending complaint reviews and their status.

**A1:** Policy Analyst Murillo informs the Board that staff is still working on the log of questions and that the delay has been a result of recent time-sensitive deadlines. He notes that staff has reformatted meeting minutes to better track questions and/or requests. Staff will provide a preliminary log.

**A2:** Director Aguilar informs the PAB that there is a log with pending complaint reviews and their status. Staff will provide access to that log.

**Q:** Board member Calavita asks the ODPa for the status of filling the PAB's vacancies.

**A:** Director Aguilar informs the Board that the ODPa does not have a clear timeline at the moment but that he has been in contact on various occasions with the Mayor and City Council on the matter.

Other Comments:

- Board member Ramsey informs the ODPa that he is on the Senate's calendar for a floor vote on his appointment to be the U.S. attorney in the Northern District of California and may be appointed in the next few weeks.

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

Announcements, updates, and other items.

Chair Moore reported:

- He updates the Board on a few PAB-related items on his calendar. He announces that he will be speaking as the Chair of the PAB at the Wellstone Democratic Renewal Club on their panel titled "Police reform in Oakland and Berkeley: Is it working?" where he will present on the status of civilian oversight in Berkeley.
- He lets the Board know that he and Director Aguilar met with the CAO to talk about timelines and the status of other items moving forward. He invites Deputy City Attorney Chang to debrief the Board on the items of their meeting.
  - o Deputy City Attorney Chang provides the following updates:
    - DCA Chang informs the Board that the feedback on the proposed permanent regulations has been sent back to the Board with suggestions.
    - He informs the Board of the upcoming steps to approve the regulations, including that the regulations would be considered by

- the Board, sent to the City Council, and subject to a meet and confer process with the BPA as required by state labor law.
- He states that the CAO will be shepherding this process but will lean heavily on the DPA to present the Board in this process which could take months.
- He lets the Board know he has submitted a request for a memo issued by the city manager to all departments that informs them of the PAB's charter authorities in terms of requesting documents.
  - Board member Owens states that this is something that the CAO could have supported the Board with sooner and a lot of confusion could have been avoided.

Other comments:

- Board member Owens expresses her frustration with how long it takes for the CAO to respond to the PAB. She asks whether an independent counsel is needed due to the capacity constraints of the CAO so that the Board can receive answers promptly—especially since the Board is relatively new. She further notes that it is important for the Board and ODPA to have access to independent legal counsel to better represent their interest.
  - DCA Chang responds to Board member Owens. He states that, like much of the city, the CAO has been impacted by understaffing. The CAO is working towards recruiting and hiring more staff attorneys within the next few months. They hope to augment their capacity with these new staff members to better serve all of their internal clients, including the Board, by being able to turn things around more quickly.
- Vice-Chair Harris states that she feels the same way as Board member Owens. She states that given the capacity issues of the city, it would be great for the Board to have outside counsel so that the Board can move forward with its work and get things done. That the Board has been stagnant for too long and that the Board needs to move forward. She asks the CAO to consider their capacity when determining whether to allow for an independent counsel to support the Board.

**7. CHIEF OF POLICE'S REPORT (10 minutes)**

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

Captain Durbin reports the following on behalf of the Chief:

- Staffing levels remain the same. One officer resigned but one new officer was pulled out of the field training program, leaving staffing at 144. There are three officers in field training and three officers at the academy.

- The officer that resigned was due to personal reasons and not work-related conditions.
- He provides an update on the new recruitment and retention team and their activities.
- He provides a report on cases of interest. Notes that 2023 has seen a spike in stolen vehicles. He notes that detectives have expressed that license plate readers would help with solving these vehicle-related crimes.
- EWS audit findings will be sent over in the next couple of weeks for review.
- PAB's request for data and policies has been transmitted to the ODPA.

**Q&A with BPD:**

**Q:** Board member Ramsey ask what the methods or ways the BPD would have deployed license plate readers were.

**A:** The way other agencies use this technology is that they set up license plate readers on a fixed post and scan for reported license plates (stolen vehicles, plates from suspected vehicles used in crimes). Once the system detects their reported plates, officers are notified and can be deployed to search for these vehicles.

**Q:** Board member Ramsey clarifies whether it would mean they would need a series of license plate readers collecting large amounts of data on all cars traveling through the city.

**A:** Yes, they would need various license plate readers located across the city in fixed locations. The cameras would presumably read all of the plates from vehicles coming in and out of the city to be able to match it to a report plate number.

**Q:** Board member Calavita states that her understanding of this technology is that the readers are only effective so long as the plates are not changed. She wants to confirm if this is also the department's understanding.

**A:** Yes, that understanding is accurate.

**Q:** Board member Calavita asks if the Board will receive the BPD's Fair and Impartial policing report before it goes to the City Council.

**A:** The F&I report is included in the BPD's annual report. The specific section will be pulled and forwarded to the PAB.

**Q:** Vice-Chair Harris asks if the department has any policy for auditing officer performance.

**A:** The department conducts annual performance appraisals for officers and staff. The closest thing to an audit is the process done regarding the EWS policy.

**Q:** Vice-Chair Harris asks if it is known how much time supervisors spend with their subordinate officers in the field.

**A:** Most officers see their sergeants more frequently and their evaluations are performed by their sergeant and reviewed by the higher chain of command. The department does not know how much time is spent by sergeants in the field but the expectation is that they are out in the field as much as possible.

**Q:** Vice-Chair Harris inquires about the instances where body-worn camera footage can be inspected and asks if it's limited to only investigations and complaints. This question is a follow-up regarding the auditing of BWC footage discussed at the previous regular meeting.

**A:** Audits of BWC are not happening at the moment. BWC can be reviewed for other reasons other than investigations and complaints.

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

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

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
- Board member Owens reports that the subcommittee continues to gather information. The subcommittee has encountered some roadblocks in obtaining information but they are making progress.

**9. NEW BUSINESS (discussion and action) (30 min)**

- a. Discussion on the in-person meeting protocols for future PAB regular meetings (ODPA Staff) – (10 min)
  - Policy Analyst Murillo provides an update on in-person meeting locations and meeting protocols. He states that ODPA staff is looking into how we can implement hybrid meetings.
  - Director Aguilar adds that staff is considering systems that would not be a heavy lift to implement. Notes that other jurisdictions have a dedicated staff person for this task but that is not available at the moment. So, the technology needs to be easy to use with the staff available.
- b. Discussion on the PAB's recommendations regarding BPD's proposed drone policies (ODPA Staff) – (15 min)
  - Board member Levine provides an overview of the considerations made by the subcommittee in reviewing this policy.

- Policy Analyst Murillo answers Board member questions regarding MOUs and the procedural history of the proposed policies. He provides the relevant context as it relates to the work of the PRC in these policies.

***Motion on the following page.***

**Motion to approve the drafted PAB's recommendations regarding BPD's proposed drone policies with the suggested adjustments and to send it to the BPD, Council, and City Manager.**

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

Ayes: Harris, Calavita, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Leftwich

- c. Discussion regarding the appointment of subcommittee members for review of external fixed video surveillance camera policies – (5 min)
- Board member Calavita volunteers to join the subcommittee and assist with the review of the external fixed video surveillance camera policies.
- d. Consideration of Policy Complaint No. 2023-PR-0001, as amended. (ODPA Staff) – (5 min)

**Motion to accept Policy Complaint No. 2023-PR-0001, as amended.**

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

Ayes: Harris, Calavita, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Leftwich

- e. Notice & Discussion regarding the Berkeley Law Police Review Project's (PRP) memorandum regarding the regulations about the timeline for complaints (ODPA Staff) – (5 min).
- Board member Owens states that she understands the frustrations of the Berkeley Law Police Review Project members and the complainant but that the events behind this memorandum were out of the ordinary. That it is not a structural problem in the process but more of a rare occurrence.
- Board member Calavita concurs. She states this was a unique situation and tying staff to specific deadlines as suggested would be a mistake given that a reoccurrence of this event is unlikely in the future.
- Chair Moore agrees. He states that the circumstances surrounding this complaint were out of the ordinary for the PAB and that he also believes it is unlikely to occur. That adding these deadlines would take away the flexibility that the ODPA needs to conduct their work. He notes the importance of establishing better lines of communication with stakeholders so that we can better serve the community and each other.

- Director Aguilar notes that some of these conversations are a matter of raising more public education. That the policy complaint related to this memo is a good opportunity to provide more insight into the logistics of the complaint process.
- Board member Owens suggests that members of the public use public comment or direct communications to the ODPa ([dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)) if they have any feedback for the Board in the future.

**10. PUBLIC COMMENT (2 Speakers)**

Speaker 1: Commented on BPD helicopter policy and made reference to City Council *Resolution 51408*. The speaker indicated that she has attempted to locate the policy but is unable to locate it on the City website and would like to bring that to the Board's attention and suggest that the Board consider seeing if they can locate it for their records.

Speaker 2: Inquired about the procedural safeguards that can be put in place so that complainants are not negatively impacted by these issues. The speaker further commented on the scheduling of the hearings. Finally, the speaker stated that it was important to raise awareness about the public comment section.

**CLOSED SESSION**

*Under 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):*

**11. Complaint case updates – (5 min)**

**END OF CLOSED SESSION**

**12. ANNOUNCEMENT OF CLOSED SESSION ACTION (1 minute)**

Chair Moore reports that the Board received case status updates and that a special meeting was tentatively scheduled for March 8, 2023.

**13. ADJOURNMENT (1 minute)**

**Motion to adjourn the meeting.**

Moved/Second (Owens, Leftwich) **By general consent, the meeting was adjourned at 9:30 p.m.**

Minutes Approved [as amended] on:

MARCH 15, 2023

Hansel Aguilar, Commission Secretary:

