

# CITY OF BERKELEY



## POLICE REVIEW COMMISSION 2020 ANNUAL REPORT



# CITY OF BERKELEY

## POLICE REVIEW COMMISSION

### Commissioners - 2020

Kitty Calavita, **Chair**

Nathan Mizell, **Vice-Chair**

Gwen Allamby

Michael Chang

Juliet Leftwich

Elisa Mikiten

Hans Isaac Moore

George Perezvelez

Ismail Ramsey

Kitt (Karen) Saginor (11-18 through 12-8)

### Mayor

Jesse Arreguin

### Councilmembers

Rashi Kesarwani (District 1)

Cheryl Davila; Terry Taplin\* (District 2)

Benjamin Bartlett (District 3)

Kate Harrison (District 4)

Sophie Hahn (District 5)

Susan Wengraf (District 6)

Rigel Robinson (District 7)

Lori Droste (District 8)

(\*sworn in 12-2-2020)

### City Manager

Dee Williams-Ridley

### Deputy City Managers

David A. White

Paul Buddenhagen



To the City and Community of Berkeley:

The Berkeley Police Review Commission presents its 2020 Annual Report. The report includes statistical data concerning police misconduct complaints filed during the year and an outline of the complaint process, as well as the Commission's work and achievements. This was a challenging year in the context of continued revelations of excessive use of force by police nationally, and renewed national and local calls for policing reforms and enhanced oversight.

COVID-19 put regular meetings of the PRC on hold from mid-March to late May. Since June, we have held virtual meetings at our usual bi-monthly pace. Despite the challenges, the PRC has successfully engaged significant and weighty policy reviews involving multiple subcommittee meetings and collaborations with the BPD.

Subsequent to a referral from City Council, the Use of Force Subcommittee worked diligently, and in dialogue with representatives of the BPD, over the course of many hours across nine meetings drafting a new use of force policy, which the full PRC finalized and City Council passed on July 23. An amended version of that policy was referred back to the PRC in November, and the Commission presented its recommendations about those amendments to City Council in December.

Also in response to a referral from City Council, the PRC created a Subcommittee on the Use and Acquisition of Controlled Equipment Ordinance. This too was a labor-intensive process, with the PRC presenting its recommendations on the Ordinance to a City Council committee in December. In addition to these two major projects, a new subcommittee was created to review policies related to the BPD Service of Warrants.

The PRC also finalized its work developing a new protocol for stops and searches of those on supervised release status--such as probation or parole--which limits inquiries of those the police detain in vehicle or pedestrian stops as to their supervised release status, as well as limiting searches based solely on detainees' supervised release status. This new protocol was drafted in the context of data showing racial disparities in BPD stops and searches, and in the interest of offsetting such disparities.

A Charter Amendment which will potentially strengthen police oversight and enhance transparency was passed overwhelmingly by Berkeley voters. The PRC had been a central player for several years in drafting versions of the Amendment, and in 2020 held a special meeting to respond to Council's request for a final review before the Charter Amendment was officially put on the ballot.

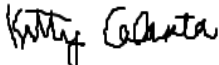
Three PRC Commissioners have served on the Mayor's Working Group on Fair and Impartial Policing since its launch over a year ago, with one Commissioner—Ismael Ramsey—serving as Chair of the Working Group. The Group has recently concluded its work, and a package of recommendations will be presented to City Council. In a further response to calls for racial justice and police reform, the City solicited proposals for a Reimagining Policing project, with the PRC Officer and PRC Chair on the panel to evaluate proposals for the reimagining work.

Several Commissioners participated in the annual conference (virtual this year) of the National Association for Civilian Oversight of Law Enforcement (NACOLE). Commissioner George Perezvelez has been especially active in this organization and this year was elected to the NACOLE Board of Directors, a particular honor for the City of Berkeley.

On behalf of the PRC, I would like to thank PRC Officer Katherine J. Lee, Investigator Byron Norris, and Administrative Support Maritza Martinez. Their expertise, hard work, and commitment are central to the smooth functioning of the Commission as an effective oversight body. I also extend thanks to the BPD and to Chief Andrew Greenwood for their collaboration with the Commission and their commitment to and work on behalf of the Berkeley community. Finally, we are grateful to the Mayor, City Council, City staff, and the many community groups and advocates who work tirelessly to advance public safety for all.

Police oversight activities are grounded in a commitment to transparency, accountability, and public safety. This year has presented challenges and opportunities, and the collaboration and hard work of many have facilitated the realization of these oversight goals. I am confident that such collaboration and commitment will continue to reap benefits in enhanced civilian oversight as the new Police Accountability Board is established.

Respectfully,

A handwritten signature in black ink that reads "Kitty Calavita". The signature is written in a cursive, slightly slanted style.

Kitty Calavita  
Police Review Commission  
Chair 2020



Police Review Commission (PRC)

April 22, 2021

Dee Williams-Ridley  
City Manager  
2180 Milvia Street  
Berkeley, CA 94704

Dear Ms. Williams-Ridley,

I am pleased to present to you the 2020 Annual Report for the Police Review Commission. The purpose of this report, provided in accordance with the PRC's enabling ordinance (Ord. No. 4644-N.S.), is to furnish statistical data regarding the number of complaints received, their general characteristics, and manner of conclusion.

While 2020 was a challenging year, PRC staff was able to continue receiving and investigating complaints, and bringing cases to Board of Inquiry Hearings. This report includes data on the number of hearings, the various categories of allegations heard, and whether the allegations against an officer were sustained, not sustained, unfounded, or exonerated. Data on the ethnicity, gender and ages of complainants, as well as comparisons to statistics from the previous four years, is also reported.

This report also describes the other work undertaken by the Police Review Commission and staff in 2020. The Commission began the year in "normal" mode, stopped meeting when the pandemic hit, and resumed meeting after the George Floyd incident created a heightened, collective resolve to tackle issues of racial justice and police reform. As a result, the PRC was asked to weigh in on several policing-related issues, most notably, to complete its review of a revised police Use of Force policy in a truncated timeframe.

This Annual Report chronicles the accomplishments of the PRC in its last full year of existence. I reflect on 2020 and the upcoming transition in the letter to the community that follows.

Respectfully submitted,

A handwritten signature in blue ink that reads "Katherine J. Lee".

Katherine J. Lee  
Police Review Commission Officer

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To the Berkeley Community:

The year 2020 marks the last full year of the City of Berkeley Police Review Commission. In mid-2021, the PRC will be replaced by a Police Accountability Board, staffed by a Director of Police Accountability, as mandated by a ballot measure approved overwhelmingly last November. When voters established the Police Review Commission through a ballot initiative in April 1973, it was the first civilian oversight agency in the country with authority to investigate alleged police misconduct. Nearly a half-century later, this community will benefit from an overhauled form of oversight of police independent from city management with enhanced authority.

Obviously, 2020 was a year like no other. In mid-March, meetings of the PRC and all other city commissions were suspended, and city offices closed. With many resources redirected to address the pandemic, city government gradually resumed business, much of it remotely. The PRC met just three times from mid-March through late May, convening only to conduct time-sensitive, essential business. Subcommittees were dormant. PRC staff kept its doors virtually open by being available by phone and email, and accepted complaints online, by mail, or in-person by appointment (with appropriate precautions). Staff and commissioners joined the legions of others learning how to use Zoom and other virtual meeting platforms, as Commission meetings, staff meetings, and investigatory interviews shifted from in-person to remote.

Then, the brutal and senseless killing of George Floyd at the hands of police officers rattled our world for a second time in 2020. Racial and social justice issues, including urgent calls for police reform, were pushed to the fore. Suddenly, all of the PRC's work became essential business, and full Commission and subcommittee meetings resumed, the latter at an unprecedented pace. The City Council asked for the PRC's recommendations on several proposals to re-envision policing, from sweeping ideas for reimagining how public safety services are delivered, to small measures, such as ensuring that "bad apples" from other jurisdictions aren't eligible for hire in Berkeley. Details of this policy work are described in the Policy Review section of this report.

The Commission itself enjoyed a year of unusual stability, with eight commissioners serving the entire year, and one vacant seat that was filled at year's end.

Your three PRC staff members will serve as interim staff for the Police Accountability Board until a permanent Director of Police Accountability is hired. Byron Norris, our PRC Investigator, Maritza Martinez, our administrative support staff, and I, have held these roles for 12, 20, and 7 years, respectively. We are committed to ensuring a smooth transition, so that the new agency functions successfully from the start. It is a privilege to be a part of this momentous changeover.

Best regards,



Katherine J. Lee  
Police Review Commission Officer

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# 2020 PRC ANNUAL REPORT

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# I. EXECUTIVE SUMMARY 2020

## Meetings

In 2020, the Commission held 42 regular, special, and subcommittee meetings, and Board of Inquiry hearings. By comparison, 50 such proceedings were held in 2019. The pandemic-related stay-at-home order caused the cancellation of some meetings.

## Complaints

In 2020, the Commission received 12 individual complaints and 2 policy complaints. In 2019, the Commission received 17 individual complaints and 2 policy complaints.

## Complainants

The demographic distribution of individual and policy complainants in 2020 was: 12 females, 2 males; and 10 Caucasians, 4 Hispanics. Complainants ranged from 27 to 76 years of age.

## Board of Inquiry (BOI) Proceedings

The Commission held 3 BOI proceedings (2 hearings and 1 complaint dismissal) in which a panel of commissioners considers allegations against police officers. One finding of police misconduct was sustained, on an allegation of discourtesy, out of 8 total allegations.

## Caloca Appeals

Subject officers may seek review of a BOI “sustained” finding through a *Caloca* appeal. In 2020, the sole sustained finding was not appealed.

## Policy Review Highlights

The Commission’s most noteworthy achievement of 2020 was reviewing and recommending changes to the Police Department’s Use of Force policy. The PRC’s review of the Department’s newly overhauled policy was put on hold due to the pandemic until the summer, when the City Council asked the PRC to complete its work in less than two months. A subcommittee worked with Department representatives, and the PRC’s version was largely approved by the Council.

Another major accomplishment was review of a draft ordinance regulating the Use and Acquisition of Controlled Equipment. This legislation is intended to provide transparency in the weaponry used by the Police Department, including reporting on the frequency and location of use. This review was also accomplished in a tight timeframe.

### Berkeley Police Department

At the end of 2020, BPD had 161 sworn police officers and received 60,799 calls for service. (This figure includes phone calls to BPD requesting service, calls resulting from an officer personally observing a situation requiring service, and direct contacts to BPD by a person requesting help).

## II. INTRODUCTION

Berkeley's Police Review Commission (PRC) was established by voter initiative in 1973. It is one of the oldest civilian oversight agencies in the nation and the first one authorized to conduct investigations. In 2021, the PRC will be replaced by a Police Accountability Board and staffed by a Director of Police Accountability.

## III. MISSION STATEMENT

The mission of the Police Review Commission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

## IV. STAFF

The PRC Office is a division of the City Manager's Office with a staff of three:

- **The PRC Officer** administers the daily operations of the PRC office, supervises staff, oversees complaint investigations, and serves as Secretary to the Commission. As Secretary, the PRC Officer staffs commission meetings and provides managerial support in the execution of PRC policies and procedures.
- **The PRC Investigator** conducts in-depth investigations of civilian complaints against members of the Berkeley Police Department, assists with special projects, and periodically serves as Acting Commission Secretary.
- **The Office Specialist III** manages the front office, provides administrative support to the PRC Officer and Investigator, prepares and maintains PRC records, and compiles statistics.

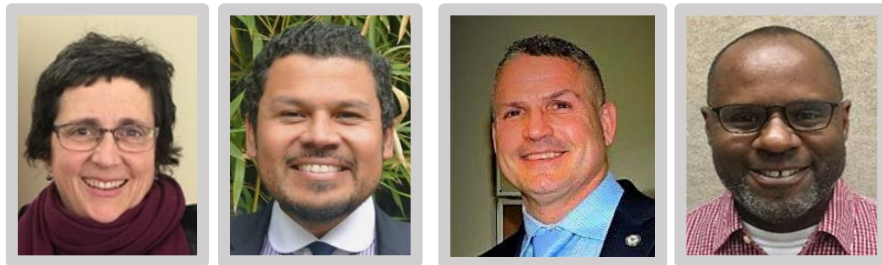
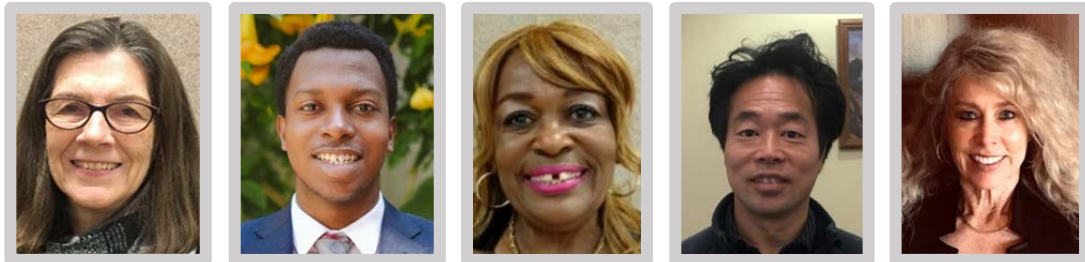


**Maritza Martinez**, Office Specialist III (joined staff in March 2001);  
**Byron Norris**, PRC Investigator (joined staff in October 2009);  
**Katherine Lee**, PRC Officer (joined staff in January 2014).



## V. COMMISSIONERS

Nine Berkeley residents are appointed by the Mayor and members of the City Council to serve on the PRC. These Commissioners represent diverse backgrounds and viewpoints and therefore provide invaluable community perspectives. The Commission generally meets twice a month. Individual commissioners also attend subcommittee meetings and Board of Inquiry Hearings throughout the year. The Commissioners devote considerable volunteer time and effort toward fulfilling their duties.



Commissioners as of the end of 2020:

*Top Row* -- **Chair Kitty Calavita, Vice-Chair Nathan Mizell, Gwen Allamby, Michael Chang, Juliet Leftwich**

*Middle Row* –**Elisa Mikiten, Hans Moore, George Perezvelez, Ismail Ramsey.**

Another Commissioner who served in 2020:

*Bottom Row* – **Kitt (Karen) Saginor**



## VI. COMPLAINTS

### 1. INDIVIDUAL COMPLAINTS - Investigation

A complaint consists of one or more claims of alleged misconduct against one or more individual BPD officers. Timely-filed<sup>1</sup> complaints are investigated and prepared for hearing or, if the complainant and subject officer agree, referred for mediation. In some instances, cases are referred to the Commission for administrative closure. Cases may be submitted for closure for reasons such as: the complaint does not allege misconduct on its face or is frivolous; the investigative deadlines are not met; the complainant fails to cooperate; the complainant requests closure.

In cases where an investigation is completed, the PRC investigator interviews the complainant, subject officer, and witnesses; collects other evidence; and prepares a written report. A Board of Inquiry Hearing (BOI) is then scheduled, which consists of three Commissioners impaneled to hear testimony and render findings. The findings from the BOI are forwarded to the City Manager and the Chief of Police.

When a complaint is filed with the PRC, a copy is forwarded to the Berkeley Police Department's Internal Affairs Bureau, which conducts its own, separate investigation. Under the Memorandum of Understanding between the City and the Berkeley Police Association, any discipline that involves a loss or reduction of pay or discharge must occur within 120 days of the incident giving rise to the disciplinary action or the date the City had knowledge of the incident. While the PRC does not impose or recommend discipline, the City Manager and Chief of Police may consider the PRC's BOI findings when considering discipline, if the findings are issued in time to meet the 120-day deadline.

Separate from the disciplinary process, subject officers can appeal PRC sustained allegations, which are heard by the state Office of Administrative Hearings. (See page 19.)

The standard of proof – the amount of evidence required at a BOI to sustain an allegation – is “clear and convincing evidence.” This standard is higher than a preponderance of the evidence but lower than beyond a reasonable doubt. The four categories of findings are:

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<sup>1</sup> Complaints must be filed within 90 calendar days of the alleged misconduct, unless a complainant is incapacitated or otherwise prevented from filing a complaint. A complaint filed between 91 and 180 calendar days of the alleged misconduct can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to timely file.



1. **Sustained:** the alleged act did occur, and was not justified;
2. **Not Sustained:** the evidence fails to support the allegation, however it has not been proven false;
3. **Unfounded:** the alleged act did not occur; and
4. **Exonerated:** the alleged act did occur but was lawful, justified and proper.

Complainant Advocates. Since the fall of 2017, students at UC Berkeley Law School have, through the Berkeley Police Review Project, assisted people who file individual complaints with the PRC and desire representation throughout the process. These services are provided free of charge. Law students have since helped many complainants prepare for their cases. Because subject officers are usually represented at hearings, the Commission believes that complainants feel less intimidated and better prepared having an advocate assist them before and during the hearing.

### **MEDIATION – an alternative to investigation**

After an individual files a complaint, he or she may opt for mediation. This will go forward if the officer who is the subject of the complaint agrees. Mediations are conducted by an independent, professional mediator. A mediation gives both the complainant and the subject officer the opportunity to speak and respond to each other in a respectful environment. At the conclusion of mediation, the complaint is closed and the Commission is notified. Once mediation is completed and the complaint closed, the complainant cannot opt for an investigation.

## **2. POLICY COMPLAINTS**

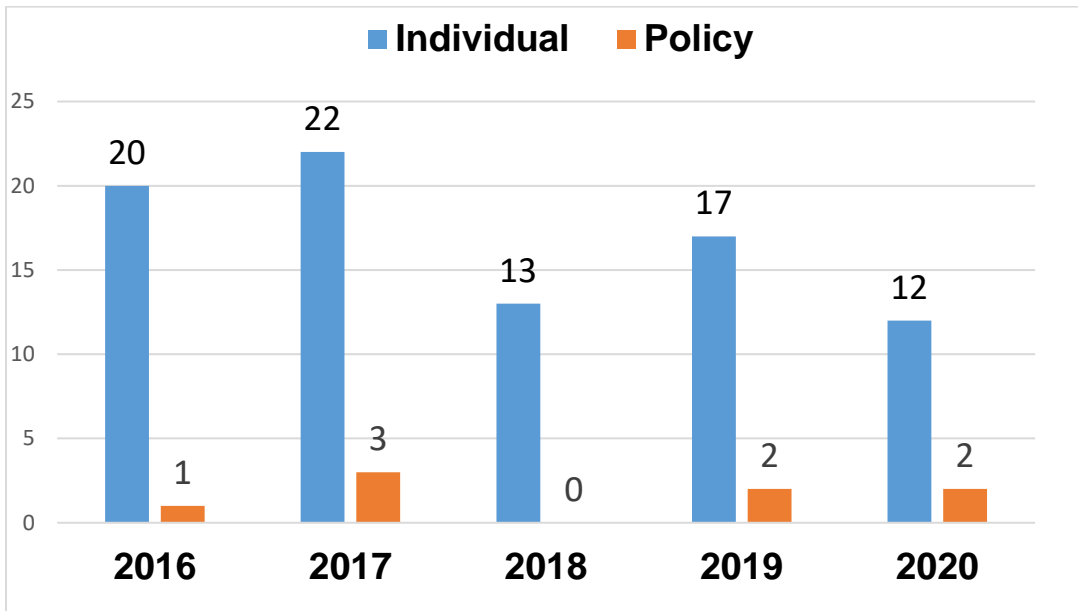
A policy complaint is a request from a member of the public to the Commission to review a particular BPD policy, practice, or procedure, because the complainant believes that the policy could be improved or should be revised. Complaints or concerns about BPD policies are presented by staff to the full commission at a regular meeting. The Commission may conduct its own review; form a subcommittee to review the policy, or ask staff to conduct an investigation or take other action, and present a report at a future meeting. After conducting its own review, or receiving a report from a subcommittee or staff, the PRC may close the complaint without further action or recommend changes in policy, practice or procedures to the BPD and the City Manager.



# VII. STATISTICS 2016 - 2020

## 1. COMPLAINTS RECEIVED

In 2020, the PRC received a total of 14 complaints, of which 12 were individual complaints and 2 were policy complaints. The average number of complaints filed yearly over the past five years is 18.4.



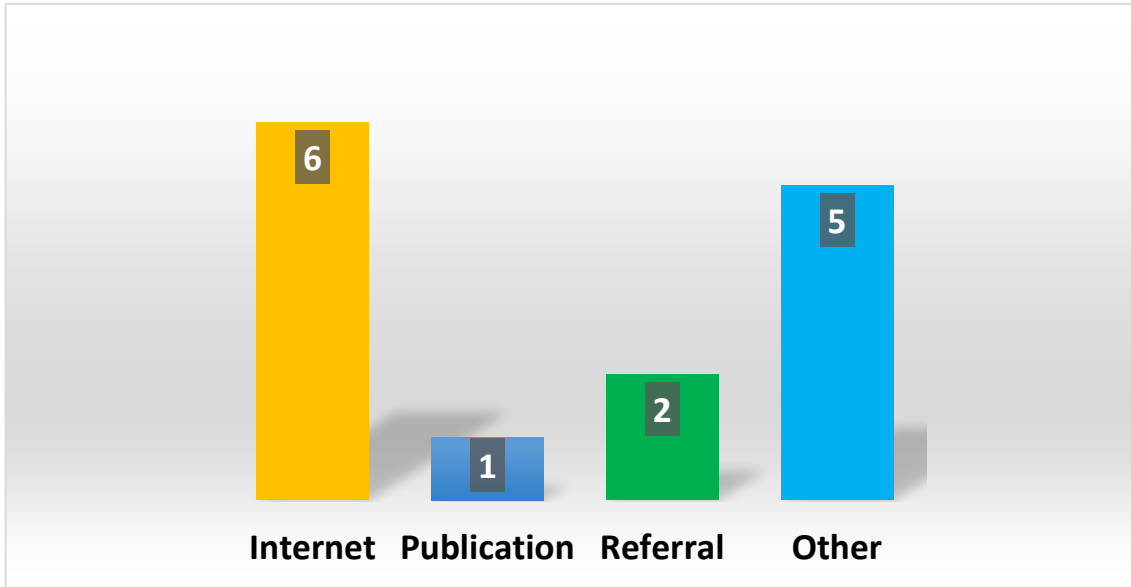
COMPLAINTS RECEIVED	2016	2017	2018	2019	2020
Individual	20	22	13	17	12
Policy	1	3	0	2	2
<b>Total</b>	<b>21</b>	<b>25</b>	<b>13</b>	<b>19</b>	<b>14</b>





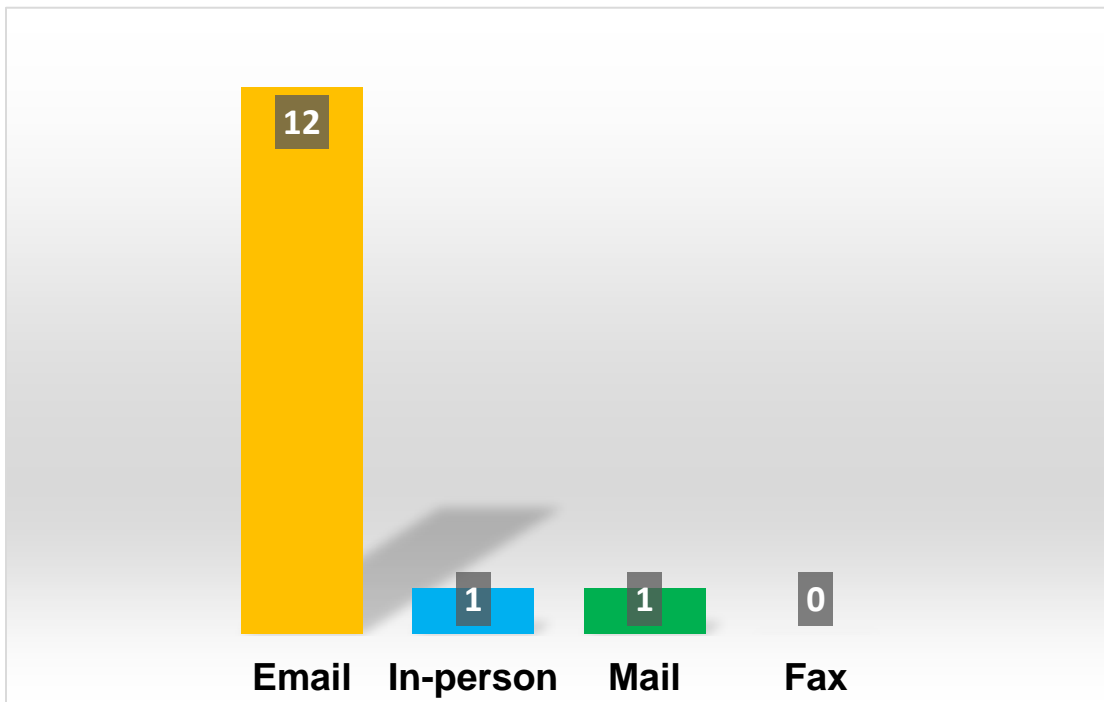
### How Complainants in 2020 Heard About the PRC

On the complaint forms, complainants are asked to check a box stating how they learned about the Police Review Commission.



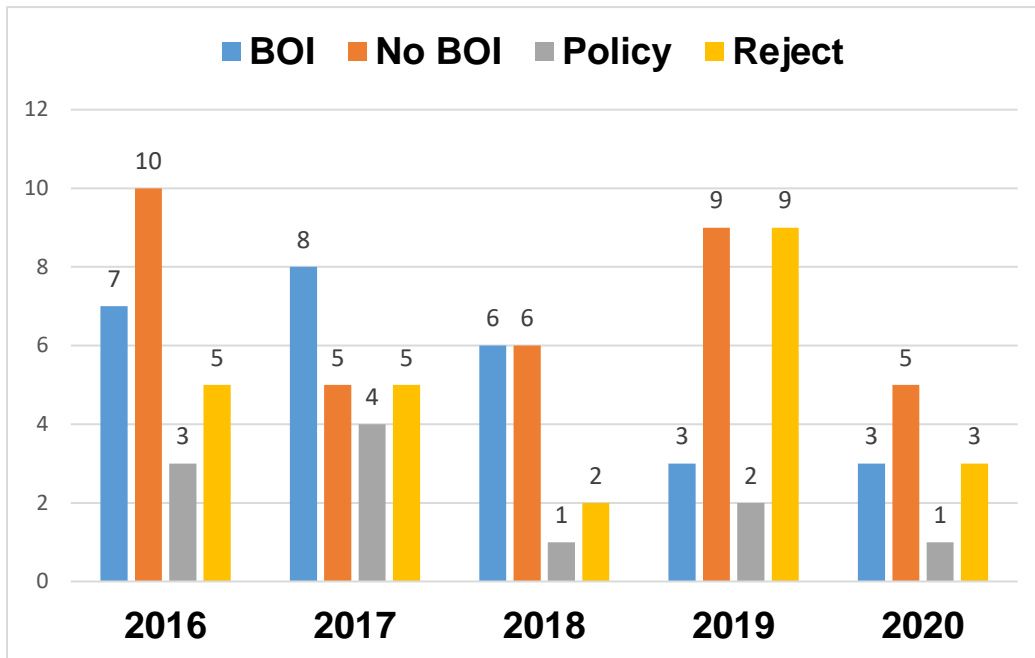
### How Complainants Filed with the PRC in 2020

Persons may file individual and policy complaints electronically online, by e-mail, U.S. mail, fax, or in person at our offices.





## 2. COMPLAINTS CLOSED



Complaints are closed as a result of a *Board of Inquiry (BOI)*, *administrative closure*, or as a *reject*.<sup>2</sup> PRC staff will reject individual or policy complaints that do not meet the minimum filing requirements of a valid complaint. For example, the person filing an individual complaint was not the aggrieved party, or the policy complaint failed to identify a police policy or practice necessitating a Commission review. In 2019 and 2020, the PRC held fewer Board of Inquiry Hearings compared to previous years.

<sup>2</sup> Note that a complaint is not necessarily closed in the same year that it is received.



<b>COMPLAINTS CLOSED</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>BOIs</b>	<b>7</b>	<b>8</b>	<b>6</b>	<b>3</b>	<b>3</b>
Hearings	5	8	5	2	2
Dismissals (failure to appear)	2	0	1	1	1
<b>No BOIs (administrative closure)</b>	<b>10</b>	<b>5</b>	<b>6</b>	<b>9</b>	<b>5</b>
Mediation	5	1	6	3	1
Other	5	4	0	6	4
<b>Policy</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>1</b>
<b>Rejected</b>	<b>5</b>	<b>5</b>	<b>2</b>	<b>9</b>	<b>3</b>
Individual	5	4	2	9	3
Policy	0	1	0	0	0
<b>Total Cases Closed</b>	<b>25</b>	<b>22</b>	<b>15</b>	<b>23</b>	<b>12</b>

Starting with last year's report, statistics were revised to reflect the following changes:

- Rejects are shown in the closed complaint graph and in the closed complaint table;
- Policy complaints that were considered but denied by the Commission are no longer categorized as rejects; these complaints are still included in the total number of policy complaints closed; and
- Dismissals are included with the BOI closed cases table.

These changes resulted in revisions to previously published complaint closure statistics for the years 2016 to 2018.



### 3. ALLEGATIONS HEARD AT BOARDS OF INQUIRY

**Allegation categories:**

**EXF**=Excessive Force

**DIS**=Discourtesy

**ASD**=Improper Arrest, Search, Seizure, or Stop/Detention

**DET**=Improper Detention Procedures

**PRJ**=Discrimination

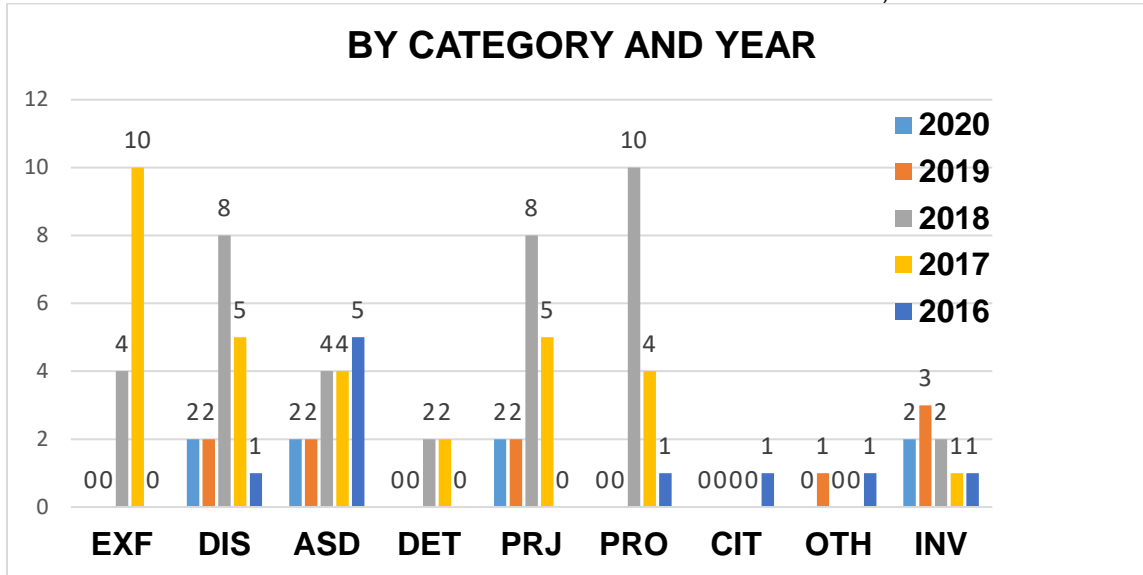
**PRO**=Improper Police Procedures

**CIT**=Improper Citation or Tow

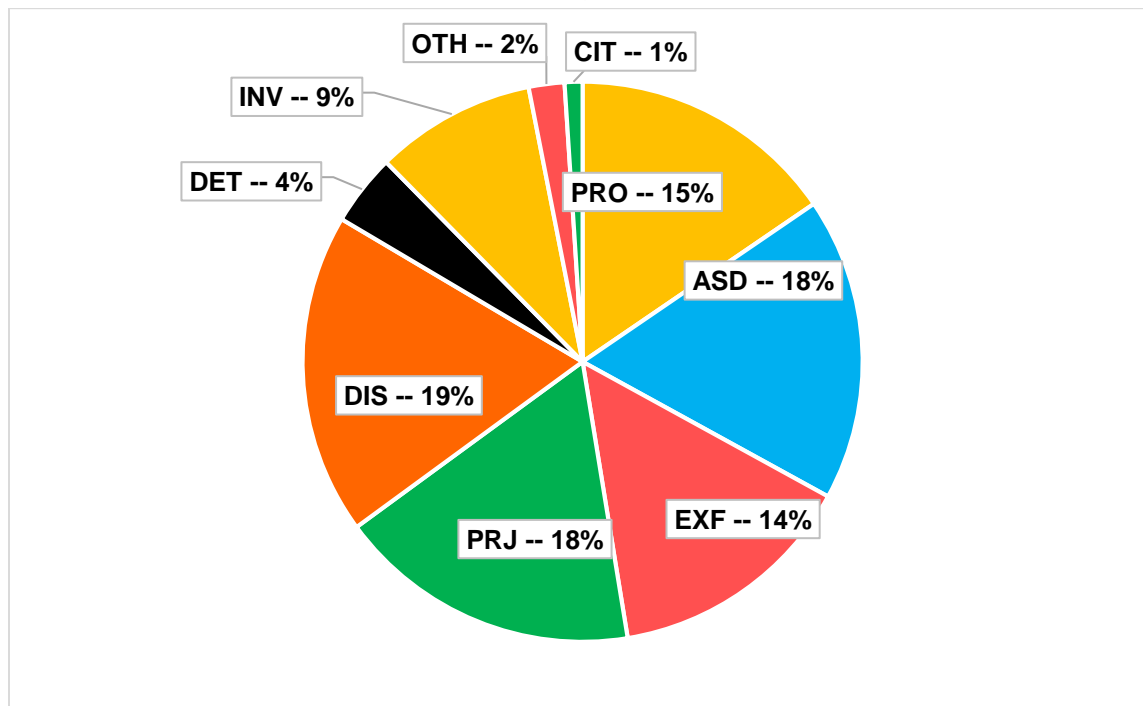
**OTH**=Other (see p. 14 for examples)

**INV**=Improper Investigation

**HAR**=Harassment (no allegations heard 2016 – 2020)



### BY PERCENTAGE, for the years 2016-2020 combined





#### 4. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY

In 2020, a Board of Inquiry hearing was convened in three cases to make findings on allegations. One hearing did not go forward, however, as the complainant failed to appear. The PRC Regulations require dismissal in such situations.

Eight allegations were decided in the remaining two cases. Whether separate types of allegations are lodged against one officer in the same case, or one type of allegation is made against multiple officers, each allegation against each officer is counted individually. For example, if an allegation of discourtesy is made against three officers, the statistics will reflect three separate allegations for that case.

Of the 8 allegations considered in 2020, 1 was sustained, 1 was not sustained and 6 were unfounded.

For the Board of Inquiry to make a finding, a majority (at least two of the three commissioners on the BOI) must agree on the same finding.

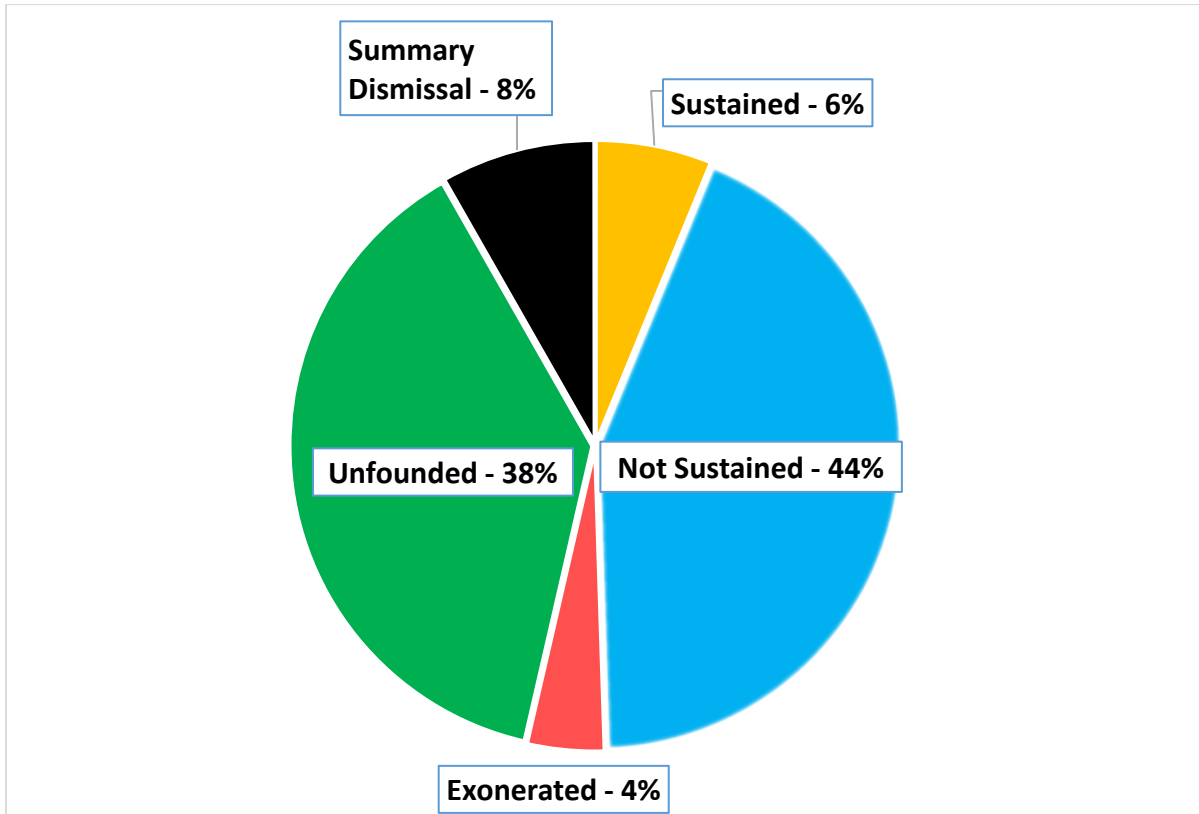
This table shows how the decisions made on allegations in 2020 compare to those of the preceding four years.

Finding Categories	2016	2017	2018	2019	2020
Sustained	2	0	2	1	1
Not Sustained	3	15	23	0	1
Exonerated	1	3	0	0	0
Unfounded	2	11	13	5	6
Summary Dismissal	2	2	0	4	0
<b>Total</b>	<b>10</b>	<b>31</b>	<b>38</b>	<b>10</b>	<b>8</b>



### BOARD OF INQUIRY FINDINGS

(Percentage by category, for the years 2016 – 2020 combined)



### RATES OF “SUSTAINED” FINDINGS 2016 – 2020

The percentage of allegations sustained of the total number of allegations heard at a Board of Inquiry Hearing for 2016-2020 are shown on this table.

2020	1 of 8 allegations sustained	13%
2019	1 of 10 allegations sustained	10%
2018	2 of 38 allegations sustained	5%
2017	0 of 31 allegations sustained	0%
2016	2 of 10 allegations sustained	20%

### DECISIONS ISSUED WITHIN 120 DAYS OF THE COMPLAINT

Of the two cases in which a BOI hearing was held in 2020, findings were issued within 120 days of the complaint date in both of them.



## 5. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY

(Detailed by finding and type of allegation)

Board of Inquiry Hearings 2020											2 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	Totals
Sustained	0	1	0	0	0	0	0	0	0	0	1
Not Sustained	0	0	0	0	0	0	0	0	0	1	1
Exonerated	0	0	0	0	0	0	0	0	0	0	0
Unfounded	0	1	2	0	2	0	0	0	0	1	6
<b>Totals</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>8</b>

Board of Inquiry Hearings 2019											2 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	Totals
Sustained	0	1	0	0	0	0	0	0	0	0	1
Not Sustained	0	0	0	0	0	0	0	0	0	0	0
Exonerated	0	0	0	0	0	0	0	0	0	0	0
Unfounded	0	1	0	0	0	0	0	0	1	3	5
Summarily Dism.	0	0	2	0	2	0	0	0	0	0	4
<b>Totals</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>10</b>

Board of Inquiry Hearings 2018											6 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	Totals
Sustained	0	1	0	0	0	0	1	0	0	0	2
Not Sustained	4	7	1	0	2	0	7	0	0	2	23
Exonerated	0	0	0	0	0	0	0	0	0	0	0
Unfounded	0	0	3	2	6	0	2	0	0	0	13
<b>Totals</b>	<b>4</b>	<b>8</b>	<b>4</b>	<b>2</b>	<b>8</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>38</b>

(See next page for explanation of allegation categories.)



Board of Inquiry Hearings 2017											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	0	0	0	0	0	0	0	0	0	0
Not Sustained	5	1	1	0	3	0	4	0	0	1	15
Exonerated	0	2	0	1	0	0	0	0	0	0	3
Unfounded	3	2	3	1	2	0	0	0	0	0	11
Summarily Dism.	2	0	0	0	0	0	0	0	0	0	2
<b>Totals</b>	<b>10</b>	<b>5</b>	<b>4</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>31</b>

Board of Inquiry Hearings 2016											5 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	0	1	0	0	0	0	0	0	1	2
Not Sustained	0	0	2	0	0	0	0	0	1	0	3
Exonerated	0	0	0	0	0	0	1	0	0	0	1
Unfounded	0	1	0	0	0	0	0	1	0	0	2
Summarily Dism.	0	0	2	0	0	0	0	0	0	0	2
<b>Totals</b>	<b>0</b>	<b>1</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>10</b>

**Allegation Categories****EXF**=Excessive Force**DIS**=Discourtesy**ASD**=Improper Arrest, Search, Seizure, or Stop/Detention**DET**=Improper Detention Procedures**PRJ**=Discrimination**HAR**=Harassment**PRO**=Improper Police Procedures**CIT**=Improper Citation or Tow**OTH**=Other (includes Abuse of Discretion, Breach of Confidentiality, Failure to Identify Oneself, Lack of Discretion, Threat, Abuse of Authority, and Retaliation)**INV**=Improper Investigation



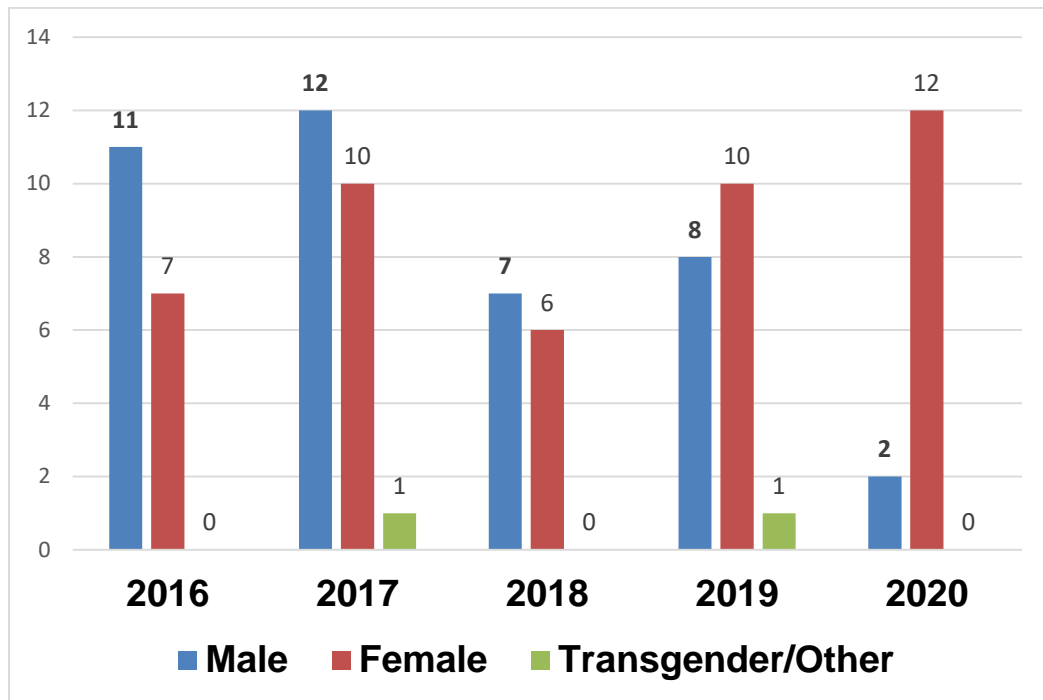


## 6. COMPLAINANT DEMOGRAPHICS

Those who file individual complaints and policy complaints are asked to report their ethnicity, gender, and age, so that the PRC can track this information for statistical purposes. These statistics reflect demographic information as provided by the complainant.

Past reports have provided demographics of individual complainants only. Starting last year, demographic statistics incorporate policy complainants for 2016 - 2020.

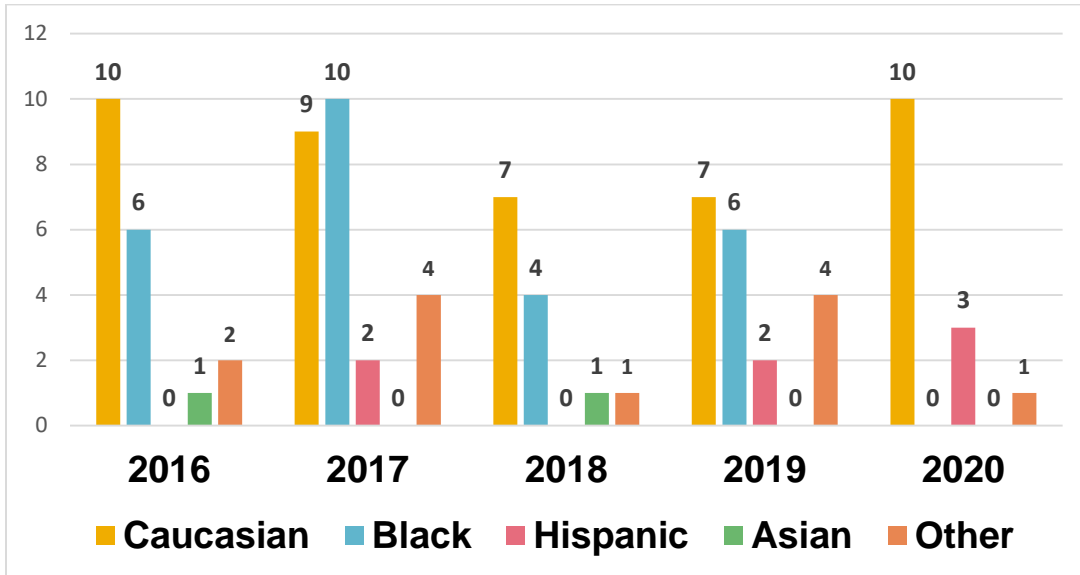
### COMPLAINANTS' GENDER



In 2020 many more females than males filed complaints, a significant contrast to prior years. Last year, female complainants slightly outnumbered male complainants and, before 2019, male complainants consistently outnumbered female complainants.

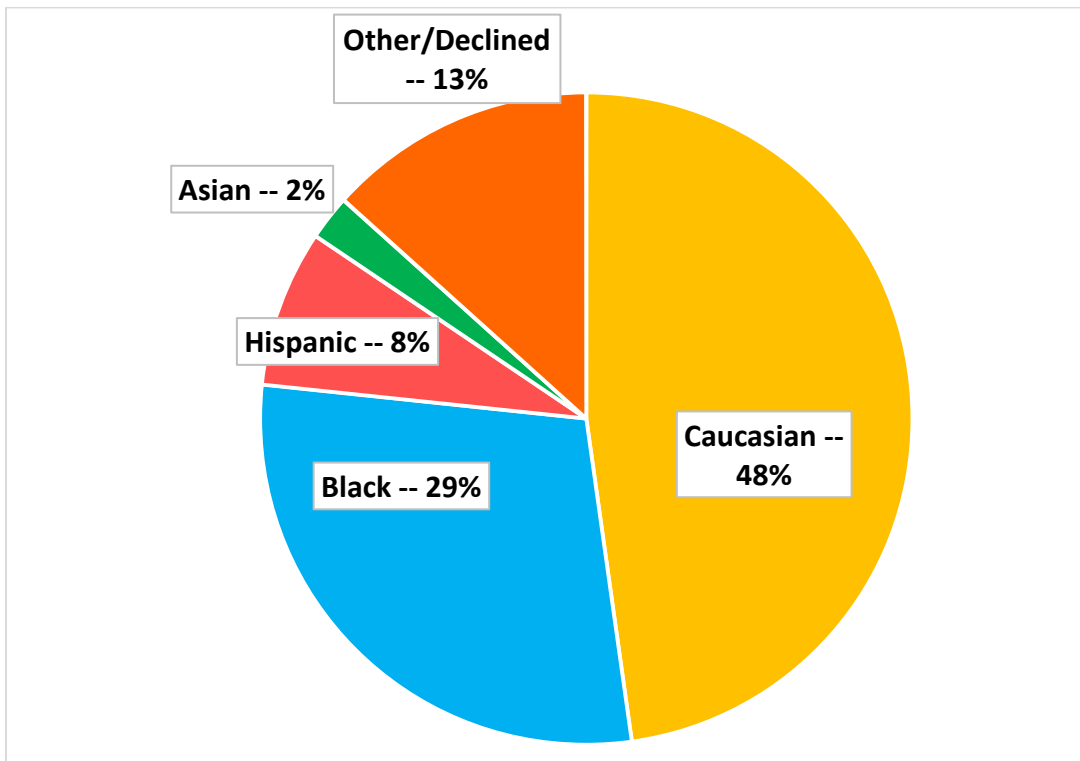


## COMPLAINANTS' ETHNICITY



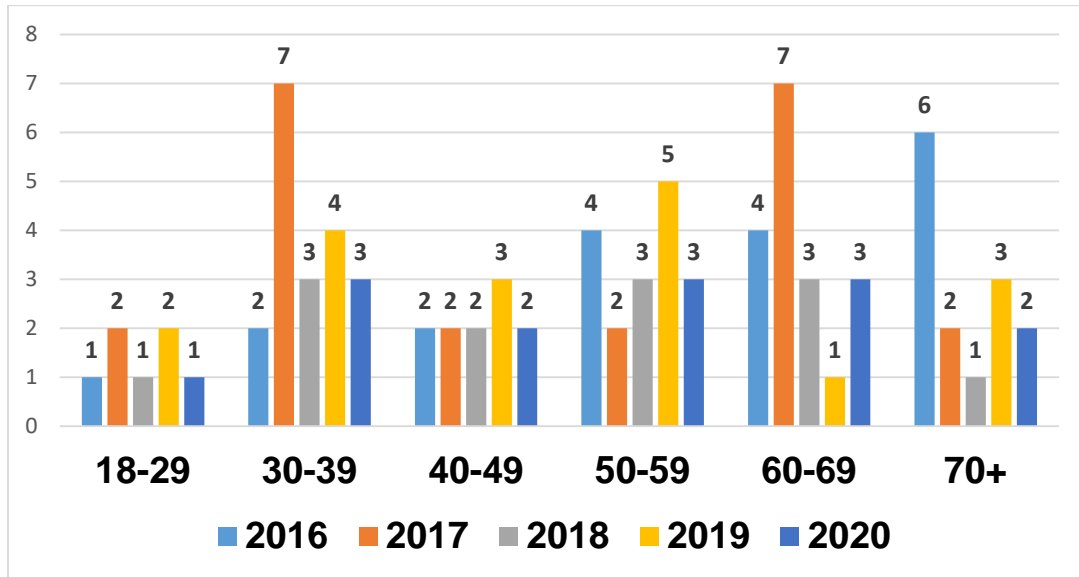
In 2020, the majority (10) of the 14 complainants were Caucasian. The PRC did not receive any complaints from Black people in 2020, which is highly unusual.

**Percentage of complainants by reported ethnicity, for the years 2016 to 2020 combined.**



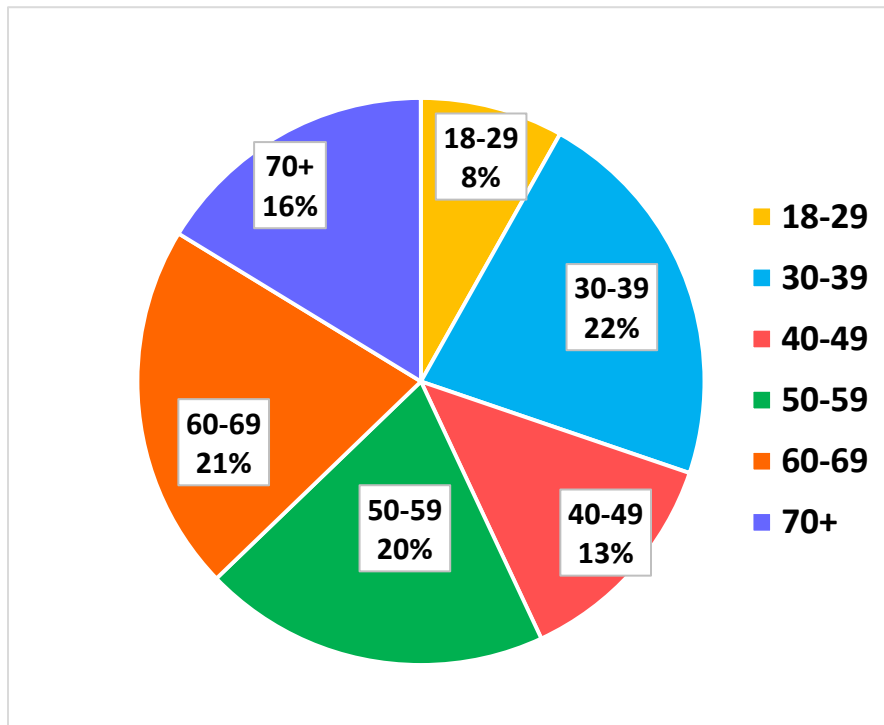


### COMPLAINANTS BY AGE GROUP



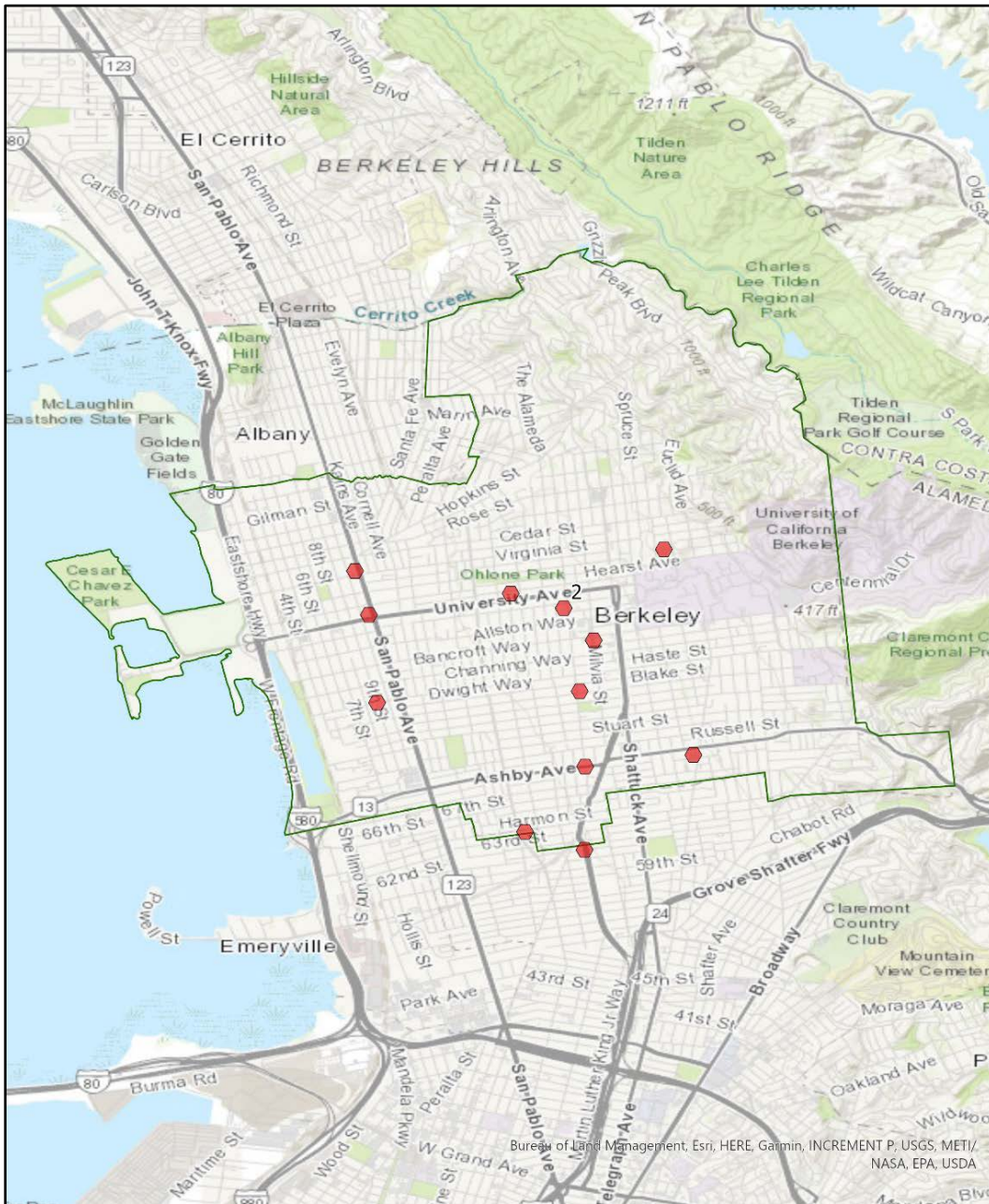
Complainants who filed in 2020 were fairly evenly spread out among age groups.

Percentage of complainants by reported age, for the years 2016 to 2020 combined.





7. INCIDENT LOCATION MAP FOR 2020



This map shows where misconduct is alleged to have occurred for the individual complaints filed in 2020. One complainant alleged misconduct occurred in two locations. Two instances of alleged misconduct occurred at 2100 Martin Luther King, Jr. Way, which houses the Berkeley Police Department. That address is used for allegations that the officers' investigations were inadequate.



## 8. APPEALS OF BOARD OF INQUIRY FINDINGS - CALOCA

Police officers can appeal findings of misconduct that are sustained at a Board of Inquiry Hearing. These are referred to as *Caloca* appeals, in reference to the court cases that established the officers' right to appeal.<sup>3</sup>

In the *Caloca* appeal process, an administrative law judge (ALJ) from the State Office of Administrative Hearings conducts an “*independent re-examination*” of the decision. The PRC must prove, by clear and convincing evidence, that the sustained finding should be upheld.

A *Caloca* appeal was not filed for the sole sustained finding made in 2020.

This table shows the outcome of appeals decided each year from 2016 to 2020.

Year	PRC Sustained Findings Appealed	<i>Caloca</i> Ruling
2020	None filed.	N/A
2019	(1 case) 1 allegation	1 allegation upheld ( <i>Sustained</i> )
2018	(1 case) 1 allegation	1 allegation overturned ( <i>Unfounded</i> )
2017	(1 case) 1 allegation	1 allegation upheld ( <i>Sustained</i> )
2016	(1 case) 1 allegation	1 allegation upheld ( <i>Sustained</i> )

<sup>3</sup> See *Caloca v. County of San Diego* (1999) 72 Cal.App.4<sup>th</sup> 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4<sup>th</sup> 433.



# VIII. POLICY REVIEW, TRAINING, OUTREACH, AND OTHER WORK

## 1. POLICY REVIEW by full Commission

A policy review is an examination by the commission of a particular BPD policy to determine whether the department has faithfully executed the policy or whether to recommend changes to the policy. Policy reviews are initiated by one of three ways: a member of the public files a PRC Policy Complaint; the City Council refers a policy issue to the Commission; or the Commission on its own initiative votes to conduct a policy review.

The events of 2020 caused a shift in the timing and focus of the Commission’s policy review work. When the first stay-at-home orders were issued, policy work was halted. After the George Floyd incident, policy reviews resumed, focused largely on referrals from the City Council. Other policy work requiring assistance or input from the police department could not resume due to the department’s [lack of capacity]



*Police Review Commission in Session (2019)*

### **Use of Force Policy**

The Commission’s most significant policy review of 2020 was a major revision to the Police Department’s Use of Force policy (Policy 300). The Department submitted its draft policy to the PRC in January 2020; the policy was a substantial overhaul from the prior General





Order and responded to a City Council referral and new state law. In anticipation of receiving the revised policy, the PRC formed a **USE OF FORCE POLICY SUBCOMMITTEE**, consisting of **Commissioners Perezvelez (Chair), Chang, Leftwich and Ramsey**. The subcommittee met twice before going on hiatus in March. Then in June, as one of a number of initiatives and actions spurred by a push to examine police practices that was occurring nationwide, the City Council directed the PRC to complete review of the use of force policy before its summer recess. The Use of Force Policy Subcommittee went into overdrive, meeting seven times over 2-1/2 weeks in June, for almost 20 hours total. They were joined in this effort by six members of the Department, including Chief Greenwood, and by the City Attorney and a Deputy City Attorney. In crafting a Use of Force policy, the Subcommittee looked to other jurisdictions' policies, followed the directives of the Council to incorporate certain elements, and reviewed literature on best practices. The Subcommittee ultimately settled on a standard for use of force that is somewhat higher than the constitutionally mandated standard.

The Subcommittee presented a proposed policy to the full Commission, which deliberated over two meetings, one of them a special meeting, to ensure timely completion. In late July, the PRC submitted a draft policy to the City Council, where Chair Calavita and Commissioners Perezvelez and Ramsey made a presentation. The Council approved the policy with some revisions. Late in the year, after training of officers on the new Use of Force policy had begun, Chief Greenwood returned to the PRC with suggested changes to the policy to clarify issues that had arisen during training. The PRC reviewed the changes and sent them to the Council with approval of all but a couple of the revisions. The Council approved almost every change.

### **Police Acquisition & Use of Controlled Equipment Ordinance**

A proposed ordinance regulating the Police Department's acquisition and use of "Controlled Equipment" was referred to the PRC from the City Council's Public Safety Policy Committee. The purpose of the ordinance is to ensure transparency about the specialized firearms and other weapons, such as explosives and chemicals, that the Police Department uses or plans to acquire. The Department would be required to specify how the public's welfare, safety, and civil liberties would be safeguarded when it uses controlled equipment that it currently owns and plans to acquire.

The PRC formed a **POLICE ACQUISITION & USE OF CONTROLLED EQUIPMENT ORDINANCE SUBCOMMITTEE**, comprised of **Commissioners Mizell (Chair), Leftwich, and Mikiten**.



Working under a deadline, the subcommittee met six times over two months, and its recommended draft ordinance was reviewed by the full Commission over two meetings. The PRC submitted its recommended draft to the Public Safety Policy Committee in October. The Committee commenced its review in December and is anticipated to finish in 2021.

### **Probation and Parole Searches**

In late 2019, the Commission considered a subcommittee's recommendations on two related issues: to stop asking detainees, as a routine matter, whether they are on probation or parole; and to severely restrict when non-consent searches are performed on all probationers and parolees. Asking the question was viewed as unnecessary and contributing to mistrust of law enforcement, and, because searches of those on supervised release are discretionary, they were seen as possibly contributing to the racial disparities of searches of motorists' cars. The Commission approved both recommendations in early 2020, with the proviso that it would consider revisions to the search provision from the BPD. The BPD eventually submitted proposed alternate language to both provisions in the fall of 2020, which the Commission approved with minor changes.

### **Surveillance Technology acquisition and use policies**

Under the Surveillance Technology Use & Community Safety Ordinance, acquisition and use policies for new technologies must be submitted to the PRC for review before being sent to the City Council for approval. This allows for public debate to ensure that the benefits of a particular technology outweigh the costs of potential intrusions into civil liberties and privacy rights. In 2020, the Public Works and Information Technology Departments asked the PRC to consider a surveillance acquisition report and surveillance technology use policy for a street level imagery project. This project involved use of a camera mounted on a vehicle to digitally collect data on the City's infrastructure assets, such as traffic lights, trees, walkways and parking meters. The PRC recommended to the City Council that it approve the project with a couple provisos, and City Council gave its final approval.

### **Police reform initiatives**

No "police revolving door" – A proposal to amend the Police Department's Policy 1000, pertaining to the recruitment and selection of officers, was referred to the PRC from the Council Agenda and Rules Committee. The amendment would ensure that a police officer candidate's history of serious misconduct, as well as resigning while being investigated





for serious misconduct, would disqualify the candidate from consideration. The PRC recommended approval of the policy revision, with one change. The Council Committee adopted the change, and that version was passed by the Council.

Right to ID officers – A second referral from the Council Agenda and Rules Committee concerned a proposed addition to the Berkeley Municipal Code to require that police officers be identifiable by name and badge number when on duty. While the PRC agreed with the intent of the proposal, it had concerns with the penalty structure. The authoring Councilmember ultimately withdrew his legislation, finding that it was duplicative of pre-existing Departmental policies.

## 2. POLICY REVIEW by Subcommittees

Ad-hoc (temporary) subcommittees are established as needed to address BPD policy issues and policy complaints by members of the community, and to research and provide recommendations to the full Commission pertaining to other police-related issues or to respond to referrals from the City Council.

Each subcommittee is comprised of two to four commissioners, appointed by the PRC Chairperson. Occasionally, members of the general public serve on subcommittees, as permitted by the PRC Ordinance. Representatives from the Berkeley Police Department often attend PRC subcommittee meetings. In addition to the **Use of Force Policy** and **Controlled Equipment Ordinance Subcommittees** described above, the following subcommittees were active in 2020:

### **MOU Compendium Subcommittee (Formerly Mutual Aid Pacts Subcommittee)**

#### **Commissioners Perezvelez (Chair), Allamby, Mikiten**

The Commission forms a subcommittee each year to review BPD's mutual aid agreements and memoranda of understanding with other law enforcement agencies and organizations (referred to as the "MOU Compendium"). By ordinance, the BPD must submit this compendium to the City Council annually for review and approval. Of the dozens of agreements submitted by the BPD each year, the PRC generally focuses on the new or revised agreements, and selects others of particular interest.

The MOU Compendium Subcommittee met once in 2020, completing the review work it had begun in late 2019. The full Commission approved the compendium, as recommended by the Subcommittee.



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**Warrant Service Policy Subcommittee**  
**Commissioners Ramsey (Chair), Calavita, Chang, Moore**  
**Public member Kitt Saginor**

In light of the tragic case of Breonna Taylor and other search warrant executions resulting in death or serious injury, the PRC formed a subcommittee to review the Department's proposed policy on service of warrants. It did not have an opportunity to meet in 2020, but will begin its work in 2021.

**Tow Fees Subcommittee**  
**Commissioners Leftwich (Chair), Calavita, Mizell**

In response to a policy complaint filed by a complainant whose van was towed, the PRC formed this subcommittee to explore whether a process for eliminating or reducing towing and storage fees due to hardship could be established. This subcommittee also did not meet before the end of 2020, but will convene in 2021.

### 3. TRAINING

This year's **Annual NACOLE Conference** was held virtually from July to September. The National Association for Civilian Oversight of Law Enforcement is a network of agencies and individuals working to establish and improve oversight of law enforcement in the U.S. Although the traditional opportunity to gather with fellow oversight practitioners from across the country was absent, the virtual format – 32 seminars, given 3 – 4 days per week over 10 weeks, allowed participants to attend many more sessions than at an in-person conference. The PRC Officer, PRC Investigator, and Commissioners Calavita, Leftwich, Mikiten, and Perezvelez attended numerous sessions.

### 4. OTHER WORK

**Charter Amendment creating new Police Accountability Board and Director of Police Accountability**

In November 2020 a ballot measure to amend the City Charter to establish a Police Accountability Board (Board) and Director of Police Accountability passed with a resounding 84% of the vote. The new Board and Director will answer to the City Council and replace the Police Review Commission and PRC staff.

Measure II had its genesis in a version of a Charter amendment the PRC submitted to the City Council in 2018. The Council modified the PRC's proposal and directed the City Manager to commence meet-and-confer proceedings with affected unions; those negotiations continued through 2019 and concluded in early 2020. The PRC expressed



eleven points of concern with the ballot measure in April 2020. The Council voted to place the proposal on the November ballot. The measure specified that the new Board and Director be in place no later than January 1, 2022, but in July 2020, the Council passed a resolution, contingent on the measure passing in November, to have the new Board seated by July 1, 2021 and all functions of the Board and Director operational by that date. The PRC Officer began meeting with key City staff in late 2020 to plan the transition.

### **Mayors' Working Group on Fair & Impartial Policing**

In November 2019, Mayor Jesse Arreguin convened a Working Group on Fair & Impartial Policing. Its charge was to analyze relevant information and developing a departmental action plan to address disparities in police stops, searches, use of force, and yield rate from stops, and to build a foundation for a subsequent community process to build trust between Berkeley Police and the community. Commissioners Calavita, Mizell, and Ramsey were among those appointed to this body, and Comm. Ramsey was selected as Chair. The group finalized its recommendations and the end of 2020 and will present them to the City Council in early 2021.

### **Reimagining Public Safety Task Force**

The City Council passed a package of items providing for the development of a new paradigm of public safety in Berkeley in mid-July 2020. One of the items directed the City Manager to engage a consultant to lead a community engagement process, with the goal of achieving a new and transformative model of positive, equitable, and community-centered safety for Berkeley. The City issued a request for proposals for a consultant to perform this work. Commissioner Calavita and PRC Officer Lee were among the community members, City staff, and other stakeholders who served on a review panel. This panel reviewed prospective consultants' proposals, selected top respondents to interview, conducted the interviews, and agreed on a consultant to recommend to the City Council for approval.

### **Police Department Commendations**

The PRC regularly reviews letters of commendation of employees of the Police Department from both members of the public and fellow departmental employees. In 2020, the Commission refined the written standards by which it would recognize exemplary service to the community, and extended its own appreciation and commendations to 37 sworn officers and civilian staff of the BPD.



## IX. 2020 MEETINGS & HEARINGS

Type of Meeting or Hearing	Number
Regular PRC Meetings	18*
Special Meetings	4
Boards of Inquiry (BOI)	3
MOU Compendium Subcommittee	1
Use of Force Policy Subcommittee	10
Police Acquisition & Use of Controlled Equipment Ord. Subcommittee	6
<b>TOTAL</b>	<b>42</b>

\* Two regular meetings were canceled due to the stay-at-home orders.

### 2020 MEETING & HEARING DATES

#### January

8 Regular Meeting  
 22 MOU Compendium  
 22 Regular Meeting  
 31 BOI, Complaint #2465

#### February

5 Regular Meeting  
 26 Use of Force  
 26 Regular Meeting

#### March

4 Use of Force  
 11 Regular Meeting

#### April

8 Regular Meeting

#### May

13 Regular Meeting  
 27 Regular Meeting

**June**

10 Regular Meeting  
11 Use of Force  
15 Use of Force  
17 Use of Force  
19 Use of Force  
22 Use of Force  
24 Use of Force  
24 Regular Meeting  
26 Use of Force  
29 Special Meeting

**July**

8 Regular Meeting  
22 Regular Meeting

**August**

11 Controlled Equipment Ordinance  
25 Controlled Equipment Ordinance  
28 BOI, Complaint #2471

**September**

2 Controlled Equipment Ordinance  
9 Controlled Equipment Ordinance  
9 Regular Meeting  
16 Use of Force  
17 BOI, Complaint #2473  
22 Controlled Equipment Ordinance  
23 Regular Meeting  
29 Controlled Equipment Ordinance  
30 Special Meeting

**October**

14 Regular Meeting  
28 Special Meeting  
28 Regular Meeting

**November**

18 Regular Meeting

**December**

9 Special Meeting  
9 Regular Meeting

