

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING**

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

Board Members:

JOHN MOORE III. (CHAIR)
KITTY CALAVITA

REGINA HARRIS (VICE-CHAIR)
JULIE LEFTWICH
DEBORAH LEVINE

CHERYL OWENS
ISMAIL RAMSEY

PUBLIC ADVISORY

**THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82653396072>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial 1 669 900 6833 and enter Meeting ID 826 5359 6072. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

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, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

LAND ACKNOWLEDGEMENT

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

AGENDA

1. **CALL TO ORDER & ROLL CALL** (2 minutes)
2. **APPROVAL OF AGENDA** (5 MINUTES)
3. **PUBLIC COMMENT** (TBD)
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)
4. **APPROVAL OF MINUTES** (5 MINUTES)
Regular meeting of February 8, 2023
5. **ODPA STAFF REPORT** (5 MINUTES)
Announcements, updates, and other items.
6. **CHAIR AND BOARD MEMBERS' REPORTS** (5 MINUTES)
Announcements, updates and other items.
7. **CHIEF OF POLICE'S REPORT** (10 minutes)
Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

8. **SUBCOMMITTEE REPORTS (discussion and action) (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)
 - i. Update on subcommittee activity.

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)
 - b. Discussion on the PAB’s recommendations regarding BPD’s proposed drone policies (ODPA Staff) – (15 min)
 - c. Discussion regarding the appointment of subcommittee members for review of external fixed video surveillance camera policies – (5 min)
 - d. Consideration of Policy Complaint No. 2023-PR-0001, as amended. (ODPA Staff) – (5 min)
 - e. Notice & Discussion regarding the Berkeley Law Police Review Project’s (PRP) memorandum regarding the regulations pertaining to the timeline for complaints (ODPA Staff) – (5 min).

10. **PUBLIC COMMENT (TBD)**

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

CLOSED SESSION

Pursuant to the Court’s order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):

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

END OF CLOSED SESSION

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

13. **ADJOURNMENT (1 minute)**

Communications Disclaimer

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

Communication Access Information (A.R. 1.12)

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

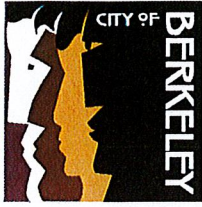
SB 343 Disclaimer

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

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

**POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
January 11, 2023**

<u>MINUTES</u>	
February 8 th , 2023 Regular Meeting Draft Minutes	Page 6
<u>AGENDA-RELATED</u>	
Item 8. – PAB Active Subcommittee List.	Page 24
Item 9.a – Materials Regarding the Return to In-Person Regular Meetings	Page 26
Item 9.c – Materials Regarding the Proposed External Fixed Video Surveillance Cameras	Page 44
Item 9.d – Amended Policy Complaint 2023-PR-0001	Page 59
Item 9.e. – Copy of the Berkeley Law Police Review Project’s (PRP) memorandum regarding the regulations pertaining to the timeline for complaints.	Page 63
<u>COMMUNICATIONS</u>	
None	



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, February 08, 2023, 6:30 P.M.

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

1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 6:30 P.M.

- Present: Board Member John Moore (Chair)
Board Member Regina Harris (Vice-Chair)
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens
Board Member Ismail Ramsey
- Absent: Board Member/s: Board Member Kitty Calavita
- ODPA Staff: Hansel Aguilar, Director of Police Accountability
Beneba Thomas, ODPA Investigator
Jose Murillo, ODPA Policy Analyst¹
- BPD Staff: Interim Chief Louis

2. APPROVAL OF AGENDA

Motion to approve the agenda.

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

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

Noes: None Abstain: None Absent: Calavita

3. PUBLIC COMMENT

1 Speaker

¹ Note: To provide clarity on the role, this position is now being referred to as the "ODPA Policy Analyst," although the classification within the City of Berkeley is "Associate Management Analyst."

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of January 31, 2023

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

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

Noes: None

Abstain: None

Absent: Calavita

5. ODPa STAFF REPORT

ODPA Policy Analyst reported:

- Staff is exploring the possibility of a press release page for the PAB and ODPa to be able to post off-agenda communications and other reports.
- Staff continues to work on compiling a list of any pending inquiries made by the PAB to the BPD, CAO, or ODPa.
- Staff will provide the updated training hours for Board members and updates are being made to the training curriculum. More details on the Board retreat and training will be provided later on in the meeting.
- Regarding pending policy reviews and complaints, the staff is currently working hard on the pending reviews and is working towards improving internal procedures to make the review process more transparent. More detailed updates will be provided to the Board at a later date.
- Regarding the PAB's annual report, Staff has made considerable progress and is currently waiting for additional data from the BPD to continue.

Director reported:

- Physical meeting locations are being secured. The Judge Henry Ramsey Jr South Senior Center will be the main location. However, the meetings in March and one meeting in April will be at a different location due to center availability. An updated list will be provided.
- Staff is working out the logistics to be able to allow for hybrid participation for members of the public. Guidance from the city clerk regarding in-person meetings is still pending but once that becomes available, staff will circulate it to the Board.
- The Director met with members of the Berkeley Police Association for a meet-and-greet meeting as required by the Charter.
- The ODPa was invited to provide a presentation to the "Cop Watch" DeCal class at UC Berkeley. Once more information is available, we will inform the Board.

Board member questions:

Q: Board member Leftwich asks if the ODPa has received further guidance from the Clerk regarding hybrid meetings and Board member participation. She notes that the Counsel for Alameda County released a memo that provided detailed information²

² See the attached memorandum written by the Alameda County Office of the County Counsel.

A: ODPa Staff informs the Board that they have not received detailed guidance but that they plan on following up on that topic. Once available, they will circulate that information to the Board.

Q: Board member Owens ask for an update on staffing and hiring for the ODPa.

A: Director Aguilar informs the Board that the search for the permanent ODPa investigator is in progress. He is also currently looking into the classifications for the Policy Analyst and Data Analyst so that the positions are reflective of the needs of the PAB and ODPa. Hopes to fill those positions by the first quarter and no later than the second.

Q: Board member Owens inquired about the status of the request for the contract of the independent investigator and whether the office has received it.

A: Director Aguilar informs the Board that the ODPa has not received it but that staff was informed that the Board may request specific sections for review. The reason for the delay in the production of the fully executed contract has been administrative. Staff will follow up on that request.

6. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore reported: Reserves his comments and reports for the next meeting. Notes that he and the Director have tentative plans to meet with the CAO and Interim Chief.

7. CHIEF OF POLICE'S REPORT

Interim Chief Louis reported:

- Staffing levels for sworn officers are currently at 144 sworn officers. One officer has submitted a 3-week notice of departure. 4 officers are in field training and 3 officers are currently in the academy.
- Recruitment and retention remain a priority for the BPD and they have been recently approved by the council to start a recruitment incentive program.
- Updates on cases of interest.
- BPD staff is working on providing the data requested by the ODPa for the annual report.
- Reports that a set of policies regarding fixed surveillance cameras have been sent to the ODPa for transmission to the full Board for review.

Board member questions:

Q: Vice-Chair Harris asks if the BPD knows why the officer who submitted a 3-week notice is leaving the department.

A: Interim Chief Louis states that the reason is still not clear but that anecdotal information suggests that there may be frustrations with challenges in the profession. An update will be provided to the Board as to the reasons in the next update.

Q: Board member Leftwich asks if body-worn camera (BWC) footage is used for training purposes and whether BWC footage is analyzed. She cites NACOLE's 2020

Webinar Series: Situating Body Worn Cameras (BWC) within Civilian Oversight (July 11, 2022)³

A: Interim Chief Louis states that BWC footage is indeed used as a training tool. Their current BWC contractor is working on a system that would allow for mass BWC footage analysis. The department would be interested in that technology when available and tested.

Q: Board member Owens inquires if the BPD conducts random audits of BWC footage.

A: Interim Chief Louis explains that the current BWC policy is the initial rollout policy. It is the policy that was developed through a meet-and-confer process with the Berkeley Police Association (BPA) and with input from the Police Review Commission (PRC). As is, the policy defines very specific instances where that BWC footage can be viewed and does not allow for random audits without a purpose.

Q: Vice-Chair Harris ask what the retention period for BWC footage is and follows up on the questions made by Board member Owens regarding audits.

A: Interim Chief Louis explains that the retention period can vary as there are different timelines but notes that there is a chart with all of the respective timelines that can be provided to the PAB and ODP. The Interim Chief further adds that the department is exploring BWC reviews as part of the random audits for the Early Warning System (EWS).

8. SUBCOMMITTEE REPORTS (DISCUSSION AND ACTION)

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

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
 - Board Member Owens reports that there are no significant updates at this time. The subcommittee and staff are still gathering information.

9. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Update on the plans for a PAB retreat & Board training.
 - Director Aguilar updates the Board on the status of the proposed PAB retreat. He states that the day of that retreat is being contemplated on March 11th or March 25th.
 - Board members provide feedback on preferred methods of communication.
- b. Discussion on the timeline for review of BPD's proposed drone policy and appointment of Board members to the relevant subcommittee.

³ See [2022 Webinar Series: Situating Body Worn Cameras \(BWC\) within Civilian Oversight \(July 11, 2022\)](#)

- Chair Moore and Board member Levine volunteer to review the proposed BPD drone policies.

c. Notice of Policy Complaint No. 2023-PR-0001 (ODPA Staff)

(Per Section G "Policy Complaints and Reviews" of the PAB's standing rules, the policy complainant(s) will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes with the time allotted subject to the discretion of the chair, who will consider the number of persons wishing to speak.)

Motion to table the matter until the complainant provides more information about their policy complaint.

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

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

Noes: None

Abstain: None

Absent: Calavita

10. PUBLIC COMMENT

2 speakers.

CLOSED-SESSION

Pursuant to the Court's order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and take action on the following matter(s):

11. PRESENTATION OF RECOMMENDATIONS REGARDING CASE NO. 25.

Motion to accept the findings and recommendations of the ODPa regarding Case No. 25

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

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

Noes: None

Abstain: None

Absent: Calavita

END OF CLOSED SESSION

12. ANNOUNCEMENT OF CLOSED-SESSION ACTION

- Chair Moore announces the closed-session actions.

13. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens, Leftwich) **By general consent, the meeting was adjourned at 8:05 p.m.**

ATTACHMENT 1



Memorandum

OFFICE OF THE COUNTY COUNSEL

DONNA R. ZIEGLER
COUNTY COUNSEL

DATE: January 17, 2023

TO: Eileen Ng for distribution to Brown Act Boards, Commissions and Committees

FROM: Kathleen Pacheco, Assistant County Counsel
Corrina Seeley VanDenBaard, Associate County Counsel

SUBJECT: Brown Act Compliance in 2023: Limited Options for Remote Meetings

I. BACKGROUND

Governor Newsom announced that he plans to lift the Covid-19 State of Emergency on February 28, 2023.¹ Since the beginning of the pandemic, many local legislative bodies have been meeting remotely under authority granted by the Governor first through a 2020 executive order (since rescinded) and, more recently, pursuant to the simplified approach included in Assembly Bill 361 (2021)² ("AB 361"). Since AB 361 applies only during a proclaimed state of emergency,³ local legislative bodies will no longer be able to utilize AB 361's simplified provisions for remote meetings after the State of Emergency has ended.

Numerous boards and commissions subject to the Brown Act have inquired about their ability to continue to hold remote meetings.

II. EXECUTIVE SUMMARY

The traditional teleconference provisions⁴ contained in the Brown Act, as amended by Assembly Bill 2449 (2022) ("AB 2449")⁵ do not authorize bodies to utilize teleconference to the same extent as AB 361. The traditional Brown Act teleconference rules provide for the ability to continue remote meetings subject to the right of the public to attend in person at any teleconference location, whereas AB 2449 allows individual members of a legislative body to appear remotely on a limited basis due to unforeseen circumstances. If a legislative body wishes to utilize teleconferencing to the widest degree possible after AB 361 is no longer applicable, it should look to the traditional Brown Act teleconference rules.

Attachment A provides a chart that compares the major provisions of AB 361, traditional Brown Act teleconference rules, and AB 2449. **Attachment B** provides a more detailed overview of AB 2449's provisions. Lastly, **Attachment C** provides a more detailed overview of the traditional Brown Act provisions.

¹ <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/>

² Codified at Gov't Code § 54953(e), and sunsets on the sooner of December 31, 2023, or when the Covid-19 State of Emergency ends (anticipated February 28, 2023).

³ Gov't Code § 54953(e).

⁴ Gov't Code § 54953(b).

⁵ AB 2449 (is effective January 1, 2023, and sunsets on December 31, 2025) revised Gov't Code § 54953 and §54954.2 and added §5354.2.

ATTACHMENT A
CHART COMPARING TELECONFERENCE OPTIONS

The following chart summarizes and compares the available teleconference options presently. Note, however, that if the Governor lifts the state of emergency effective March 1, 2023, AB 361 will no longer be an available option.

	Teleconference Options		
	Traditional Brown Act	AB 361 (effective until state of emergency lifted)	AB 2449
Public must be allowed to attend in person at legislative body member's remote location?	Yes. (Gov't Code § 54953(b)(3)).	No. (Gov't Code § 54953(e)(1)).	No. (Gov't Code § 54953(f)(1)).
Limit on the number of members that can use this option at the same time?	No. (Gov't Code § 54953(b)(1) & (2)).	No. (Gov't Code § 54953(e)(1)).	Yes, at least a quorum of the legislative body must be present at a singular physical location within the agency's jurisdiction. (Gov't Code § 54953(f)(1)).
Limit on the number of times a member can use this option per calendar year?	No. (Gov't Code § 54953(b)(1) & (2)).	No. (Gov't Code § 54953(e)(1)).	Yes. No more than three consecutive months of teleconferencing and no more than 20% of the meetings per calendar year. If the legislative body holds fewer than 10 meetings per calendar year, then a member may only teleconference twice per calendar year. (Gov't Code § 54953(f)(3)).
Members must use both audio and visual technology?	No, audio only is acceptable. (Gov't Code § 54953(j)(6)).	No, audio only is acceptable. (Gov't Code § 54953(j)(6)).	Yes. (Gov't Code § 54953((f)(2)(C)).

Quorum of the legislative body need to attend from within the agency's jurisdiction?	Yes, although all members may appear remotely in separate locations within the agency's jurisdiction. (Gov't Code § 54953(b)(3)).	No. (Gov't Code § 54953(e)(1)).	Yes, a quorum of the legislative body must appear in person at a singular place within the agency's jurisdiction. (Gov't Code § 54953(f)(1)).
Required to provide a physical meeting location for the public?	Yes, at the standard location where regular meeting agendas are posted and at the member's remote location. (Gov't Code § 54953(b)(2)(D)).	No. (Gov't Code § 54953(e)(4)).	Yes, but only at the standard meeting location. Agendas do not need to be posted at a member's remote location. (Gov't Code § 54953(f)(1)).
Required to provide call-in or internet-based broadcast for public?	No.	Yes. (Gov't Code § 54953(e)(2)(A)).	Yes, either a two-way audiovisual platform or a two-way telephonic service and live stream. The public must be able to provide comment via call-in option, an internet-based option, and an in-person location. (Gov't Code § 54953(f)(1)(A)).
Action must stop if the broadcast for the public is disrupted?	No express requirement to stop the meeting. However, the agency could choose to pause until technology issues are resolved.	Yes. (Gov't Code § 54953(e)(2)(B)).	Yes. (Gov't Code § 54953(f)(1)(D)).
Provisions are planned to sunset?	No.	Yes, law sunsets at the sooner of the end of 2023 or when the Covid-19 state of emergency ends (anticipated to be February 28, 2023).	Yes, sunsets at end of 2025.

ATTACHMENT B
OVERVIEW OF AB 2449 TELECONFERENCE PROVISIONS FOR “JUST CAUSE” AND
“EMERGENCY CIRCUMSTANCE”

Summary of Provisions:

Assembly Bill 2449 (2022) (“AB 2449”) amends the teleconferencing provisions of the Brown Act and adds subdivision (f) to Government Code section 54953. The provisions of AB 2449 are effective January 1, 2023, through December 31, 2025. These provisions allow board or commission members to participate remotely for “just cause” or in an “emergency circumstance.” AB 2449 also limits how frequently the “just cause” and “emergency circumstance” grounds can be used and imposes several other requirements that limit its practical value, including that at least a quorum of the legislative body must meet in the same physical location and the meeting must allow remote participants to interact through audio and visual.

For an agency to invoke the procedures under AB 2449, there must at least be a quorum of the board members or commissioners participating in person from a singular, physical location identified on the agenda. The location must be accessible to the public and must be located within the local agency’s jurisdiction. Local agencies must provide at least one of the following to facilitate a public meeting that equally allows remote participants to interact:

- A two-way audiovisual platform (defined to mean an online platform that provides participants with the ability to participate in a meeting through an interactive video conference and a two-way telephone function); and/or
- A two-way telephonic service and live webcasting of the meeting (defined to mean a telephone service that does not require internet access, is not provided as part of the two-way audiovisual platform and allows participants to dial a telephone number to listen and verbally participate).⁶

When participating remotely, board members or commissioners must participate through both audio and visual technology.⁷ Before any official action is taken, the board member or commissioner appearing remotely must publicly disclose whether any other individuals 18 years of age or older are in the room at the remote location with the member or commissioner, and what the individual’s relationship is to the board member or commissioner.⁸

If a disruption occurs that prevents the board or commission from convening the meeting both remotely and in person, the board or commission can take no further actions until public access to the meeting has been restored.⁹ This includes situations where the online platform for remote participation has been disrupted and the public may no longer access the meeting remotely. Actions taken during disruption may be challenged.¹⁰

⁶ Gov’t Code § 54953(f)(1)(A).

⁷ Gov’t Code § 54953(f)(2)(C).

⁸ Gov’t Code § 54953(f)(2)(B).

⁹ Gov’t Code § 54953(f)(1)(D).

¹⁰ *Id.*

a. Teleconferencing for “Just Cause” v. “Emergency Circumstances”

The teleconference provisions of AB 2449 apply only when a board member or commissioner can demonstrate “just cause” or an “emergency circumstance.”¹¹

“Just cause” means any of the following:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the member to participate remotely;
- A contagious illness that prevents a board member or commissioner from attending in person;
- A need related to a physical or mental disability not otherwise accommodated by subdivision (g); or
- Travel while on official business of the legislative body or another state or local agency.¹²

“Emergency circumstance” means a physical or family medical emergency that prevents a body member from attending in person.¹³

There are different procedures for invoking a “just cause” or an “emergency circumstance” :

	Just Cause	Emergency Circumstance
Reason for teleconferencing must be disclosed to the legislative body?	Yes. (Gov’t Code § 54953(f)(2)(A)(i)).	Yes. (Gov’t Code § 54953(f)(2)(A)(ii)).
Reason for teleconferencing must be approved by the legislative body?	No. (Gov’t Code § 54953(f)(2)(A)(i)).	Yes. (Gov’t Code § 54953(f)(2)(A)(ii)).
When does a teleconference request have to be made?	At the earliest opportunity. (Gov’t Code § 54953(f)(2)(A)(i)).	As soon as possible. If there is insufficient time to make the request before the posting of the public agenda, then the request may be made at the beginning of the meeting. (Gov’t Code § 54953(f)(2)(A)(ii)(I) & (II)).
Annual limit on the use of the teleconference option?	Yes. A member may not use this option more than two times per calendar year. (Gov’t Code § 54953(f)(2)(A)(i)).	Yes, total remote appearances may be for no more than three consecutive months or 20 percent (20%) of the regular meetings of the calendar year.
	Legislative body members may not use a combination of “just cause” and “emergency circumstance” to participate	

¹¹ Gov’t Code § 54953(f)(2)(A).

¹² Gov’t Code § 54953(j)(2).

¹³ Gov’t Code § 54953(j)(1).

	remotely for more than three months or 20 percent (20%) of the regular meetings of the calendar year. If the legislative body convenes fewer than 10 times a year, the member cannot participate remotely in more than two regular meetings. (Gov't Code § 54953(f)(3)).
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b. Process for Seeking to Participate Remotely for Just Cause

A legislative body member may appear remotely for just cause if the following circumstances apply:

- The member has provided a general description of the just cause at the earliest opportunity possible, including before the agenda publication deadline or at the start of the meeting;¹⁴
- The member has not met their limit for teleconferenced appearances for just cause in the calendar year: no more than two just cause teleconferencing appearances; no more than three months of consecutive teleconferencing appearances under just cause or emergency circumstances; and no more than 20 percent of the meetings;¹⁵
- The clerk has published the agenda listing the means by which the public may remotely access the meeting and offer public comment;¹⁶
- A quorum of the legislative body is physically present in a singular physical location within the agency's territorial jurisdiction;¹⁷
- The teleconferencing member turns on their audio and video (calling in by phone alone is not permitted);¹⁸
- The member discloses at the start of the meeting whether any other individuals aged 18 years or older are present in the room at the remote location, and the member discloses their relationship with such individuals;¹⁹ and
- All votes are taken by roll call.²⁰

c. Process for Seeking to Participate Remotely for Emergency Circumstances

A legislative body member may appear remotely for an emergency circumstance if the following circumstances apply:

- The member has provided a general description of the emergency circumstance at the earliest opportunity possible. If there is insufficient time to place the request on the posted agenda, then the request may be made at the beginning of the meeting. The general description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any other personal medical information that is already exempt under existing law;²¹

¹⁴ Gov't Code § 54953(f)(2)(A)(i).

¹⁵ Gov't Code § 54953(f)(2)(A)(i) and (f)(3).

¹⁶ Gov't Code § 54953(f)(1)(B).

¹⁷ Gov't Code § 54953(f)(1).

¹⁸ Gov't Code § 54953(f)(2)(C).

¹⁹ Gov't Code § 54953(f)(2)(B).

²⁰ Gov't Code § 54953(b)(2)(A).

²¹ Gov't Code § 54953(f)(2)(A)(ii).

- The member has not met their limit for teleconferenced appearances for just cause or emergency circumstances in the calendar year: no more than three months of consecutive teleconferencing appearances, or no more than 20 percent of teleconferenced appearances within a calendar year. If the legislative body meets for less than 10 meetings per calendar year, then the member can teleconference at no more than two meetings;²²
- The clerk has published the agenda listing the means by which the public may access the meeting and offer public comment;²³
- A quorum of the legislative body is physically present in a singular physical location within the agency's territorial jurisdiction;²⁴
- The legislative body votes to approve the teleconference appearance due to emergency circumstance;²⁵
- The teleconferencing member turns on their audio and video (calling in by phone alone is not permitted);²⁶
- The member discloses at the start of the meeting whether any other individuals aged 18 years or older are present in the room at the remote location, and the member discloses their relationship with such individuals;²⁷ and
- All votes are taken by roll call.²⁸

Summary Chart:

AB 2449 Rules (Effective January 1, 2023, through December 31, 2025) [Gov't Code § 54953(f) ²⁹]	
Summary	<ul style="list-style-type: none"> • Can be used only in the event of “just cause” or an “emergency circumstance.” (Gov't Code § 54953(f)(2)(A)). • Limits the number of times an individual member may appear remotely pursuant to this subdivision. (Gov't Code § 54953(f)(3)). • Quorum of the member of the legislative body must be physically present in a singular place within the agency's jurisdiction. (Gov't Code § 54953(f)(1)).
Just Cause	<ul style="list-style-type: none"> • Definition: “Just cause” is defined as any of the following: (1) childcare or caregiving for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation; (2) a contagious illness that prevents the member from attending in

²² Gov't Code § 54953(f)(3).

²³ Gov't Code § 54953(f)(1)(B).

²⁴ Gov't Code § 54953(f)(1).

²⁵ Gov't Code § 54953(f)(2)(A)(ii).

²⁶ Gov't Code § 54953(f)(2)(C).

²⁷ Gov't Code § 54953(f)(2)(B).

²⁸ Gov't Code § 54953(b)(2)(A).

²⁹ Note that subdivision (f) will be renumbered as subdivision (e) when AB 361 provisions sunset January 1, 2024.

	<p>person; (3) a need related to a disability not otherwise accommodated; or (4) travel while on official business of the legislative body or a state or local agency. (Gov't Code § 54953(j)(2)).</p> <ul style="list-style-type: none"> • Limits: Can be used for no more than two meetings per calendar year. (Gov't Code § 54953(f)(2)(A)(i)). • Approval: Unlike the "emergency circumstance" exception, approval by the legislative body is not required.
<p>Emergency Circumstance</p>	<ul style="list-style-type: none"> • Definition: An "emergency circumstance" is defined as a physical or family medical emergency that prevents a member from attending in person. (Gov't Code § 54953(j)(1)). • Limits: There is no specific limit on the number of times an "emergency circumstance" can be used, but the annual cap described below limits its use generally. (Gov't Code § 54953(f)(3)). • Approval: Remote participation due to "emergency circumstance" must be specifically approved by legislative body as an action item. A request can be added to an agenda at beginning of meeting if needed, and must be acted on at the beginning of the meeting. (Gov't Code § 54953(f)(2)(A)(ii)).
<p>Annual Limit</p>	<ul style="list-style-type: none"> • A member cannot participate remotely for more than three consecutive months or 20% of the regular meetings in a calendar year (i.e. "just cause" and "emergency circumstances" combined). (Gov't Code § 54953(f)(3)). • If the body regularly meets fewer than 10x/annually, member cannot participate remotely in more than two meetings. (Gov't Code § 54953(f)(3)).
<p>Notice and Agenda Requirements</p>	<ul style="list-style-type: none"> • Affected member must notify the legislative body (notice to the Clerk is sufficient) of their need to appear remotely as soon as possible, and no later than the start of the meeting, together with a "general description" of the grounds for remote participation. The general description need not exceed 20 words or identify any medical diagnosis or disability, or any other personal medical information that is exempt from disclosure under other laws. (Gov't Code § 54953(f)(2)(A)). • The request to appear remotely pursuant to the emergency exception should be placed on the posted agenda, if possible. If insufficient time to place the request on the agenda when it is

	<p>posted 72 hours prior to the meeting, the body can still take action on the request pursuant to Government Code § 54954.2(b)(4). (Gov't Code § 54953(f)(2)(A)(ii)(II)).</p> <ul style="list-style-type: none"> • Agendas do not need to be posted at each teleconference location. (Gov't Code § 54953(f)(1)). • The agenda must identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to via a call-in option, via an internet-based service option, and at the in-person location of the meeting. (Gov't Code § 54953(f)(1)(B) & (C)).
<p>Member and Public Participation</p>	<ul style="list-style-type: none"> • A member attending remotely must participate through both audio and visual technology. (Gov't Code § 54953(f)(2)(C)). • Prior to any action being taken, the member must disclose if someone over the age of 18 is in the same room and their relationship to that person. (Gov't Code § 54953(f)(2)(B)). • Public participation must allow for either a call-in option or an internet-based service option to directly address the body in real-time during public comment. (Gov't Code § 54953(f)(1)(C)). • Local agencies do not need to allow public participation at each (or any) location where members are joining remotely, but instead must "clearly advertise" how members of the public can participate on the agenda. (Gov't Code § 54953(f)(1) & (C)). Agencies must, however, allow for public attendance and participation at the primary meeting location where the quorum is present. (Gov't Code § 54953(f)(1)(C)). • In the event the meeting broadcast is disrupted, the meeting must pause until it is restored. (Gov't Code § 54953(f)(1)(D)).
<p>Quorum</p>	<ul style="list-style-type: none"> • A quorum of the legislative body members must participate in person at a single physical location within the body's territory. (Gov't Code § 54953(f)(1)).

ATTACHMENT C
OVERVIEW OF TRADITIONAL BROWN ACT TELECONFERENCE PROVISIONS

Summary of Provisions:

Government Code Section 54953(b) provides the traditional Brown Act teleconference rules, which were established before the Covid-19 pandemic. While the traditional teleconference provisions allow board members to participate in meetings remotely, the provisions are somewhat impractical given that the teleconference locations must be open and accessible to the public.

The Traditional Brown Act Teleconference provisions authorize teleconferencing under the following conditions³⁰:

1. The legislative body shall post agendas at all teleconference locations;
2. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding;
3. Each teleconference location shall be accessible to the public; and
4. At least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.

So long as the above requirements are met, there is no limit on the number of times a board or commission member may elect to teleconference. Additionally, there is no limit on the number of board or commission members who can use this teleconference option at the same time. Lastly, there is no sunset date on these provisions, so they can be used indefinitely.

If a legislative body wishes to utilize teleconferencing to the widest degree possible after AB 361 is no longer applicable, it should look to the traditional Brown Act teleconference rules. However, the board or commission member who wishes to teleconference must be prepared to have their teleconference location (whether it be a hotel room, home, or office) open and accessible to the public so that the public is able to participate in the meeting from that teleconference location.

Chart Summary:

Traditional Brown Act Teleconference Rules [Gov't Code § 54953(b)]	
Summary	<ul style="list-style-type: none"> • Teleconference can be used for any reason and can be utilized by any number of board or commission members for an indefinite number of times. (Gov't Code § 54953(b)(1) & (2)). • Must allow physical public participation at each teleconference location. (Gov't Code § 54953(b)(3)).
Agendas	<ul style="list-style-type: none"> • Agendas must be posted at each teleconference location where a legislative body member is present. (Gov't Code § 54953(b)(3)). • All teleconference locations must be listed on the agenda. (Gov't Code § 54953(b)(3)).

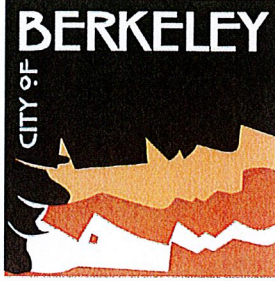
³⁰ Gov't Code § 54953(b)(3).

Public Participation	<ul style="list-style-type: none"> • Each teleconference location must be accessible to the public, and the public must be allowed to offer comments from each location. (Gov't Code § 54953(b)(3)). • Additional teleconference locations may be offered for the convenience of the participants (although not required). • All teleconference locations must be ADA-compliant. (Gov't Code § 54953(b)(2)(B)).
Quorum	<ul style="list-style-type: none"> • At least a quorum of the legislative body must be present within the agency's territory. (Gov't Code § 54953(b)(3)).

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
01-26-2023**

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

Drone Use Policy Formed 11-9-22	Requires Assignment		
Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations Formed 11-15-22	Calavita Moore Owens	Owens	



JANUARY

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30

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AUGUST

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OCTOBER

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NOVEMBER

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DECEMBER

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23	24	25	26	27	28	29
30	31					

**Police Accountability Board
Regular Meeting Schedule**

Locations

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

Virtual Meeting

Live Oak Community Center
1301 Shattuck Ave, Berkeley, CA 94709

Norther Berkeley Senior Center
1901 Heart Ave, Berkeley, CA 94703



**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

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.

CHECK COVID-19 SYMPTOMS

Cough



Fever or Chills



Lost of taste or smell



Congestion



Body aches



Shortness of breath



Sore throat



Vomiting or Diarrhea

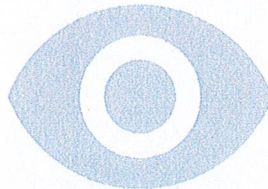


HAVE SYMPTOMS? IT IS RECOMMENDED THAT YOU

1) Stay Home



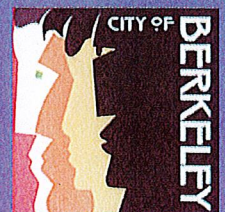
2) Monitor Symptoms



3) Get tested



SYMPTOMS CAN APPEAR 2-14 DAYS FROM EXPOSURE

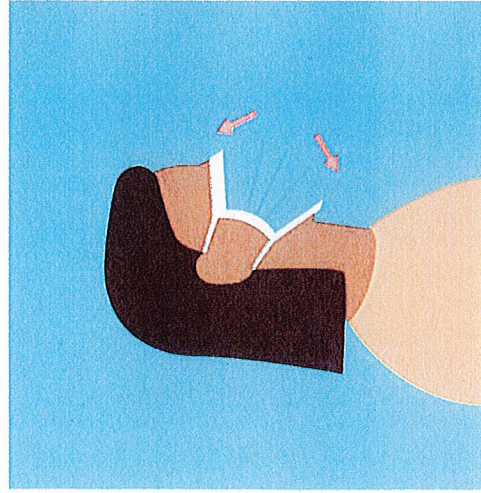


internal

**Please
do not
move chairs**

Masks Encouraged

Masks that cover the nose and mouth are encouraged for all attendees.



(Masks available upon request)



Memorandum

OFFICE OF THE COUNTY COUNSEL

DONNA R. ZIEGLER
COUNTY COUNSEL

DATE: January 17, 2023

TO: Eileen Ng for distribution to Brown Act Boards, Commissions and Committees

FROM: Kathleen Pacheco, Assistant County Counsel
Corrina Seeley VanDenBaard, Associate County Counsel

SUBJECT: Brown Act Compliance in 2023: Limited Options for Remote Meetings

I. BACKGROUND

Governor Newsom announced that he plans to lift the Covid-19 State of Emergency on February 28, 2023.¹ Since the beginning of the pandemic, many local legislative bodies have been meeting remotely under authority granted by the Governor first through a 2020 executive order (since rescinded) and, more recently, pursuant to the simplified approach included in Assembly Bill 361 (2021)² ("AB 361"). Since AB 361 applies only during a proclaimed state of emergency,³ local legislative bodies will no longer be able to utilize AB 361's simplified provisions for remote meetings after the State of Emergency has ended.

Numerous boards and commissions subject to the Brown Act have inquired about their ability to continue to hold remote meetings.

II. EXECUTIVE SUMMARY

The traditional teleconference provisions⁴ contained in the Brown Act, as amended by Assembly Bill 2449 (2022) ("AB 2449")⁵ do not authorize bodies to utilize teleconference to the same extent as AB 361. The traditional Brown Act teleconference rules provide for the ability to continue remote meetings subject to the right of the public to attend in person at any teleconference location, whereas AB 2449 allows individual members of a legislative body to appear remotely on a limited basis due to unforeseen circumstances. If a legislative body wishes to utilize teleconferencing to the widest degree possible after AB 361 is no longer applicable, it should look to the traditional Brown Act teleconference rules.

Attachment A provides a chart that compares the major provisions of AB 361, traditional Brown Act teleconference rules, and AB 2449. Attachment B provides a more detailed overview of AB 2449's provisions. Lastly, Attachment C provides a more detailed overview of the traditional Brown Act provisions.

¹ <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/>

² Codified at Gov't Code § 54953(e), and sunsets on the sooner of December 31, 2023, or when the Covid-19 State of Emergency ends (anticipated February 28, 2023).

³ Gov't Code § 54953(e).

⁴ Gov't Code § 54953(b).

⁵ AB 2449 (is effective January 1, 2023, and sunsets on December 31, 2025) revised Gov't Code § 54953 and §54954.2 and added §5354.2.

ATTACHMENT A
CHART COMPARING TELECONFERENCE OPTIONS

The following chart summarizes and compares the available teleconference options presently. Note, however, that if the Governor lifts the state of emergency effective March 1, 2023, AB 361 will no longer be an available option.

	Teleconference Options		
	Traditional Brown Act	AB 361 (effective until state of emergency lifted)	AB 2449
Public must be allowed to attend in person at legislative body member's remote location?	Yes. (Gov't Code § 54953(b)(3)).	No. (Gov't Code § 54953(e)(1)).	No. (Gov't Code § 54953(f)(1)).
Limit on the number of members that can use this option at the same time?	No. (Gov't Code § 54953(b)(1) & (2)).	No. (Gov't Code § 54953(e)(1)).	Yes, at least a quorum of the legislative body must be present at a singular physical location within the agency's jurisdiction. (Gov't Code § 54953(f)(1)).
Limit on the number of times a member can use this option per calendar year?	No. (Gov't Code § 54953(b)(1) & (2)).	No. (Gov't Code § 54953(e)(1)).	Yes. No more than three consecutive months of teleconferencing and no more than 20% of the meetings per calendar year. If the legislative body holds fewer than 10 meetings per calendar year, then a member may only teleconference twice per calendar year. (Gov't Code § 54953(f)(3)).
Members must use both audio and visual technology?	No, audio only is acceptable. (Gov't Code § 54953(j)(6)).	No, audio only is acceptable. (Gov't Code § 54953(j)(6)).	Yes. (Gov't Code § 54953((f)(2)(C)).

Quorum of the legislative body need to attend from within the agency's jurisdiction?	Yes, although all members may appear remotely in separate locations within the agency's jurisdiction. (Gov't Code § 54953(b)(3)).	No. (Gov't Code § 54953(e)(1)).	Yes, a quorum of the legislative body must appear in person at a singular place within the agency's jurisdiction. (Gov't Code § 54953(f)(1)).
Required to provide a physical meeting location for the public?	Yes, at the standard location where regular meeting agendas are posted and at the member's remote location. (Gov't Code § 54953(b)(2)(D)).	No. (Gov't Code § 54953(e)(4)).	Yes, but only at the standard meeting location. Agendas do not need to be posted at a member's remote location. (Gov't Code § 54953(f)(1)).
Required to provide call-in or internet-based broadcast for public?	No.	Yes. (Gov't Code § 54953(e)(2)(A)).	Yes, either a two-way audiovisual platform or a two-way telephonic service and live stream. The public must be able to provide comment via call-in option, an internet-based option, and an in-person location. (Gov't Code § 54953(f)(1)(A)).
Action must stop if the broadcast for the public is disrupted?	No express requirement to stop the meeting. However, the agency could choose to pause until technology issues are resolved.	Yes. (Gov't Code § 54953(e)(2)(B)).	Yes. (Gov't Code § 54953(f)(1)(D)).
Provisions are planned to sunset?	No.	Yes, law sunsets at the sooner of the end of 2023 or when the Covid-19 state of emergency ends (anticipated to be February 28, 2023).	Yes, sunsets at end of 2025.

ATTACHMENT B
OVERVIEW OF AB 2449 TELECONFERENCE PROVISIONS FOR “JUST CAUSE” AND
“EMERGENCY CIRCUMSTANCE”

Summary of Provisions:

Assembly Bill 2449 (2022) (“AB 2449”) amends the teleconferencing provisions of the Brown Act and adds subdivision (f) to Government Code section 54953. The provisions of AB 2449 are effective January 1, 2023, through December 31, 2025. These provisions allow board or commission members to participate remotely for “just cause” or in an “emergency circumstance.” AB 2449 also limits how frequently the “just cause” and “emergency circumstance” grounds can be used and imposes several other requirements that limit its practical value, including that at least a quorum of the legislative body must meet in the same physical location and the meeting must allow remote participants to interact through audio and visual.

For an agency to invoke the procedures under AB 2449, there must at least be a quorum of the board members or commissioners participating in person from a singular, physical location identified on the agenda. The location must be accessible to the public and must be located within the local agency’s jurisdiction. Local agencies must provide at least one of the following to facilitate a public meeting that equally allows remote participants to interact:

- A two-way audiovisual platform (defined to mean an online platform that provides participants with the ability to participate in a meeting through an interactive video conference and a two-way telephone function); and/or
- A two-way telephonic service and live webcasting of the meeting (defined to mean a telephone service that does not require internet access, is not provided as part of the two-way audiovisual platform and allows participants to dial a telephone number to listen and verbally participate).⁶

When participating remotely, board members or commissioners must participate through both audio and visual technology.⁷ Before any official action is taken, the board member or commissioner appearing remotely must publicly disclose whether any other individuals 18 years of age or older are in the room at the remote location with the member or commissioner, and what the individual’s relationship is to the board member or commissioner.⁸

If a disruption occurs that prevents the board or commission from convening the meeting both remotely and in person, the board or commission can take no further actions until public access to the meeting has been restored.⁹ This includes situations where the online platform for remote participation has been disrupted and the public may no longer access the meeting remotely. Actions taken during disruption may be challenged.¹⁰

⁶ Gov’t Code § 54953(f)(1)(A).

⁷ Gov’t Code § 54953(f)(2)(C).

⁸ Gov’t Code § 54953(f)(2)(B).

⁹ Gov’t Code § 54953(f)(1)(D).

¹⁰ *Id.*

a. Teleconferencing for “Just Cause” v. “Emergency Circumstances”

The teleconference provisions of AB 2449 apply only when a board member or commissioner can demonstrate “just cause” or an “emergency circumstance.”¹¹

“Just cause” means any of the following:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the member to participate remotely;
- A contagious illness that prevents a board member or commissioner from attending in person;
- A need related to a physical or mental disability not otherwise accommodated by subdivision (g); or
- Travel while on official business of the legislative body or another state or local agency.¹²

“Emergency circumstance” means a physical or family medical emergency that prevents a body member from attending in person.¹³

There are different procedures for invoking a “just cause” or an “emergency circumstance” :

	Just Cause	Emergency Circumstance
Reason for teleconferencing must be disclosed to the legislative body?	Yes. (Gov't Code § 54953(f)(2)(A)(i)).	Yes. (Gov't Code § 54953(f)(2)(A)(ii)).
Reason for teleconferencing must be approved by the legislative body?	No. (Gov't Code § 54953(f)(2)(A)(i)).	Yes. (Gov't Code § 54953(f)(2)(A)(ii)).
When does a teleconference request have to be made?	At the earliest opportunity. (Gov't Code § 54953(f)(2)(A)(i)).	As soon as possible. If there is insufficient time to make the request before the posting of the public agenda, then the request may be made at the beginning of the meeting. (Gov't Code § 54953(f)(2)(A)(ii)(I) & (II)).
Annual limit on the use of the teleconference option?	Yes. A member may not use this option more than two times per calendar year. (Gov't Code § 54953(f)(2)(A)(i)).	Yes, total remote appearances may be for no more than three consecutive months or 20 percent (20%) of the regular meetings of the calendar year.
	Legislative body members may not use a combination of “just cause” and “emergency circumstance” to participate	

¹¹ Gov't Code § 54953(f)(2)(A).

¹² Gov't Code § 54953(j)(2).

¹³ Gov't Code § 54953(j)(1).

	remotely for more than three months or 20 percent (20%) of the regular meetings of the calendar year. If the legislative body convenes fewer than 10 times a year, the member cannot participate remotely in more than two regular meetings. (Gov't Code § 54953(f)(3)).
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b. Process for Seeking to Participate Remotely for Just Cause

A legislative body member may appear remotely for just cause if the following circumstances apply:

- The member has provided a general description of the just cause at the earliest opportunity possible, including before the agenda publication deadline or at the start of the meeting;¹⁴
- The member has not met their limit for teleconferenced appearances for just cause in the calendar year: no more than two just cause teleconferencing appearances; no more than three months of consecutive teleconferencing appearances under just cause or emergency circumstances; and no more than 20 percent of the meetings;¹⁵
- The clerk has published the agenda listing the means by which the public may remotely access the meeting and offer public comment;¹⁶
- A quorum of the legislative body is physically present in a singular physical location within the agency's territorial jurisdiction;¹⁷
- The teleconferencing member turns on their audio and video (calling in by phone alone is not permitted);¹⁸
- The member discloses at the start of the meeting whether any other individuals aged 18 years or older are present in the room at the remote location, and the member discloses their relationship with such individuals;¹⁹ and
- All votes are taken by roll call.²⁰

c. Process for Seeking to Participate Remotely for Emergency Circumstances

A legislative body member may appear remotely for an emergency circumstance if the following circumstances apply:

- The member has provided a general description of the emergency circumstance at the earliest opportunity possible. If there is insufficient time to place the request on the posted agenda, then the request may be made at the beginning of the meeting. The general description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any other personal medical information that is already exempt under existing law;²¹

¹⁴ Gov't Code § 54953(f)(2)(A)(i).

¹⁵ Gov't Code § 54953(f)(2)(A)(i) and (f)(3).

¹⁶ Gov't Code § 54953(f)(1)(B).

¹⁷ Gov't Code § 54953(f)(1).

¹⁸ Gov't Code § 54953(f)(2)(C).

¹⁹ Gov't Code § 54953(f)(2)(B).

²⁰ Gov't Code § 54953(b)(2)(A).

²¹ Gov't Code § 54953(f)(2)(A)(ii).

- The member has not met their limit for teleconferenced appearances for just cause or emergency circumstances in the calendar year: no more than three months of consecutive teleconferencing appearances, or no more than 20 percent of teleconferenced appearances within a calendar year. If the legislative body meets for less than 10 meetings per calendar year, then the member can teleconference at no more than two meetings;²²
- The clerk has published the agenda listing the means by which the public may access the meeting and offer public comment;²³
- A quorum of the legislative body is physically present in a singular physical location within the agency's territorial jurisdiction;²⁴
- The legislative body votes to approve the teleconference appearance due to emergency circumstance;²⁵
- The teleconferencing member turns on their audio and video (calling in by phone alone is not permitted);²⁶
- The member discloses at the start of the meeting whether any other individuals aged 18 years or older are present in the room at the remote location, and the member discloses their relationship with such individuals;²⁷ and
- All votes are taken by roll call.²⁸

Summary Chart:

AB 2449 Rules (Effective January 1, 2023, through December 31, 2025) [Gov't Code § 54953(f) ²⁹]	
Summary	<ul style="list-style-type: none"> • Can be used only in the event of "just cause" or an "emergency circumstance." (Gov't Code § 54953(f)(2)(A)). • Limits the number of times an individual member may appear remotely pursuant to this subdivision. (Gov't Code § 54953(f)(3)). • Quorum of the member of the legislative body must be physically present in a singular place within the agency's jurisdiction. (Gov't Code § 54953(f)(1)).
Just Cause	<ul style="list-style-type: none"> • Definition: "Just cause" is defined as any of the following: (1) childcare or caregiving for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation; (2) a contagious illness that prevents the member from attending in

²² Gov't Code § 54953(f)(3).

²³ Gov't Code § 54953(f)(1)(B).

²⁴ Gov't Code § 54953(f)(1).

²⁵ Gov't Code § 54953(f)(2)(A)(ii).

²⁶ Gov't Code § 54953(f)(2)(C).

²⁷ Gov't Code § 54953(f)(2)(B).

²⁸ Gov't Code § 54953(b)(2)(A).

²⁹ Note that subdivision (f) will be renumbered as subdivision (e) when AB 361 provisions sunset January 1, 2024.

	<p>person; (3) a need related to a disability not otherwise accommodated; or (4) travel while on official business of the legislative body or a state or local agency. (Gov't Code § 54953(j)(2)).</p> <ul style="list-style-type: none"> • Limits: Can be used for no more than two meetings per calendar year. (Gov't Code § 54953(f)(2)(A)(i)). • Approval: Unlike the "emergency circumstance" exception, approval by the legislative body is not required.
<p>Emergency Circumstance</p>	<ul style="list-style-type: none"> • Definition: An "emergency circumstance" is defined as a physical or family medical emergency that prevents a member from attending in person. (Gov't Code § 54953(j)(1)). • Limits: There is no specific limit on the number of times an "emergency circumstance" can be used, but the annual cap described below limits its use generally. (Gov't Code § 54953(f)(3)). • Approval: Remote participation due to "emergency circumstance" must be specifically approved by legislative body as an action item. A request can be added to an agenda at beginning of meeting if needed, and must be acted on at the beginning of the meeting. (Gov't Code § 54953(f)(2)(A)(ii)).
<p>Annual Limit</p>	<ul style="list-style-type: none"> • A member cannot participate remotely for more than three consecutive months or 20% of the regular meetings in a calendar year (i.e. "just cause" and "emergency circumstances" combined). (Gov't Code § 54953(f)(3)). • If the body regularly meets fewer than 10x/annually, member cannot participate remotely in more than two meetings. (Gov't Code § 54953(f)(3)).
<p>Notice and Agenda Requirements</p>	<ul style="list-style-type: none"> • Affected member must notify the legislative body (notice to the Clerk is sufficient) of their need to appear remotely as soon as possible, and no later than the start of the meeting, together with a "general description" of the grounds for remote participation. The general description need not exceed 20 words or identify any medical diagnosis or disability, or any other personal medical information that is exempt from disclosure under other laws. (Gov't Code § 54953(f)(2)(A)). • The request to appear remotely pursuant to the emergency exception should be placed on the posted agenda, if possible. If insufficient time to place the request on the agenda when it is

	<p>posted 72 hours prior to the meeting, the body can still take action on the request pursuant to Government Code § 54954.2(b)(4). (Gov't Code § 54953(f)(2)(A)(ii)(II)).</p> <ul style="list-style-type: none"> • Agendas do not need to be posted at each teleconference location. (Gov't Code § 54953(f)(1)). • The agenda must identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to via a call-in option, via an internet-based service option, and at the in-person location of the meeting. (Gov't Code § 54953(f)(1)(B) & (C)).
<p>Member and Public Participation</p>	<ul style="list-style-type: none"> • A member attending remotely must participate through both audio and visual technology. (Gov't Code § 54953(f)(2)(C)). • Prior to any action being taken, the member must disclose if someone over the age of 18 is in the same room and their relationship to that person. (Gov't Code § 54953(f)(2)(B)). • Public participation must allow for either a call-in option or an internet-based service option to directly address the body in real-time during public comment. (Gov't Code § 54953(f)(1)(C)). • Local agencies do not need to allow public participation at each (or any) location where members are joining remotely, but instead must "clearly advertise" how members of the public can participate on the agenda. (Gov't Code § 54953(f)(1) & (C)). Agencies must, however, allow for public attendance and participation at the primary meeting location where the quorum is present. (Gov't Code § 54953(f)(1)(C)). • In the event the meeting broadcast is disrupted, the meeting must pause until it is restored. (Gov't Code § 54953(f)(1)(D)).
<p>Quorum</p>	<ul style="list-style-type: none"> • A quorum of the legislative body members must participate in person at a single physical location within the body's territory. (Gov't Code § 54953(f)(1)).

ATTACHMENT C
OVERVIEW OF TRADITIONAL BROWN ACT TELECONFERENCE PROVISIONS

Summary of Provisions:

Government Code Section 54953(b) provides the traditional Brown Act teleconference rules, which were established before the Covid-19 pandemic. While the traditional teleconference provisions allow board members to participate in meetings remotely, the provisions are somewhat impractical given that the teleconference locations must be open and accessible to the public.

The Traditional Brown Act Teleconference provisions authorize teleconferencing under the following conditions³⁰:

1. The legislative body shall post agendas at all teleconference locations;
2. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding;
3. Each teleconference location shall be accessible to the public; and
4. At least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.

So long as the above requirements are met, there is no limit on the number of times a board or commission member may elect to teleconference. Additionally, there is no limit on the number of board or commission members who can use this teleconference option at the same time. Lastly, there is no sunset date on these provisions, so they can be used indefinitely.

If a legislative body wishes to utilize teleconferencing to the widest degree possible after AB 361 is no longer applicable, it should look to the traditional Brown Act teleconference rules. However, the board or commission member who wishes to teleconference must be prepared to have their teleconference location (whether it be a hotel room, home, or office) open and accessible to the public so that the public is able to participate in the meeting from that teleconference location.

Chart Summary:

Traditional Brown Act Teleconference Rules [Gov't Code § 54953(b)]	
Summary	<ul style="list-style-type: none"> • Teleconference can be used for any reason and can be utilized by any number of board or commission members for an indefinite number of times. (Gov't Code § 54953(b)(1) & (2)). • Must allow physical public participation at each teleconference location. (Gov't Code § 54953(b)(3)).
Agendas	<ul style="list-style-type: none"> • Agendas must be posted at each teleconference location where a legislative body member is present. (Gov't Code § 54953(b)(3)). • All teleconference locations must be listed on the agenda. (Gov't Code § 54953(b)(3)).

³⁰ Gov't Code § 54953(b)(3).

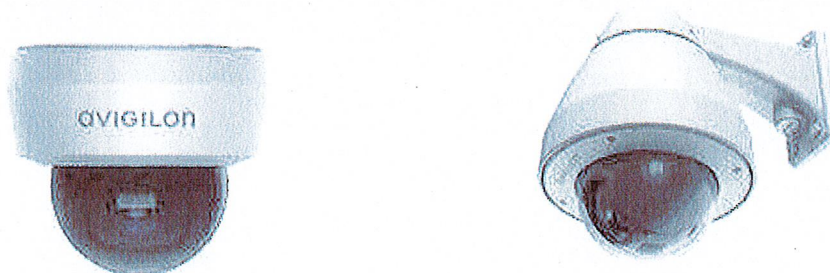
Public Participation	<ul style="list-style-type: none">• Each teleconference location must be accessible to the public, and the public must be allowed to offer comments from each location. (Gov't Code § 54953(b)(3)).• Additional teleconference locations may be offered for the convenience of the participants (although not required).• All teleconference locations must be ADA-compliant. (Gov't Code § 54953(b)(2)(B)).
Quorum	<ul style="list-style-type: none">• At least a quorum of the legislative body must be present within the agency's territory. (Gov't Code § 54953(b)(3)).

SURVEILLANCE CAMERAS

A. DESCRIPTION

The Avigilon camera system consists of three main components: The camera, the server, and a remote information management system referred to as the Avigilon Control Center Client application (ACC).

The first component, the Avigilon camera, is a device that incorporates a video recording from an image. The cameras are affixed to City of Berkeley-owned infrastructure including utility poles on City streets and parks. The cameras provide protection to indoor and outdoor spaces with high-resolution images of up to 5 MP, a wide field of view, and efficient bandwidth management in a compact design without compromising building aesthetics. Although license plate and facial recognition hardware is available, neither was purchased or installed. Without the hardware, these features cannot be activated. Audio is a standard feature of the camera, but will remain deactivated by the authorized administrators of the system.



The second component of the system is the server. Once the Avigilon camera captures the imagery, a local device called a server, functions as a repository for the data. Servers are physically secured on City property and video recordings are protected within the City's network. Servers are designed to store recorded events in real time for secure retrieval and analysis. Recorded videos are transferred from the server's storage into an information management system, Avigilon Control Center (ACC) application. ¹

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040AB839

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The third component is the Avigilon Control Center Client application (ACC) which streamlines data management and allows users to access videos on one secure platform. The ACC software provides various levels of analytics to sort stored videos faster and is a standard feature. These include pixel motion detection of vehicles and people. Vehicular characteristics are searchable by vehicle type and color. Personal characteristics are searchable by gender (gender is a binary search, female or male), hair color, age, and upper and lower body clothing color. Authorized users of the system can only access data stored on a server through the ACC application. The ACC application is located on the server and accessed solely through the City's secured intranet by protected login and password. The application does not allow the authorized administrator or system users to alter, manipulate, or edit any of the footage recorded by the server.

B. PURPOSE

Surveillance cameras will be utilized for the following business purposes:

- i. To prevent, deter and identify criminal activity.
- ii. To address identified areas of criminal activity.
- iii. To respond to critical incidents.
- iv. To assist in identifying, apprehending and prosecuting offenders.
- v. To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- vi. To augment resources in a cost-effective manner.
- vii. To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- viii. To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

C. LOCATION

Surveillance cameras encompassed by this report, are located at, or will be installed at, the following locations.

Future Projects:

- 6th Street at University Avenue

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- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th Street at Ashby Avenue
- San Pablo Avenue at Ashby Avenue
- Sacramento Street at Ashby Avenue
- College Avenue at Ashby Avenue
- Claremont Avenue at Ashby Avenue
- 62nd Street at King Street

Completed Projects:

- San Pablo Park
- City of Berkeley Marina
- Transfer Station

D. IMPACT

The primary intent of these cameras is to deter and address crime in the City of Berkeley. The Public Works Department will work to ensure that the video recordings are secured and only accessible to authorized personnel. The right to maintain someone's anonymity versus the need to collect information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the strictest requirements concerning the release of video recordings. There should not be any impact on anyone's civil liberties or civil rights. The camera system lacks the hardware to conduct license plate reader or facial recognition technology. Audio is a standard feature of the cameras, but will remain deactivated by the authorized administrators of the system. Staff is explicitly prohibited from using any facial recognition technology as outlined in BMC 2.99.

The Public Works Department will ensure responsible data management, transparency, and accountability including the posting of video surveillance notices.

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E. MITIGATION

In order to minimize violations of privacy, data shall be maintained in a secure, non-public accessible location, such locations require specialized system access including a dedicated password and log in. Data will be obtained or released in accordance with the use policy. Data will not be used to unlawfully discriminate against people based on race, ethnicity, political opinions, religious or philosophical beliefs, trade union membership, gender identity, disability status, sexual orientation or activity, or genetic and/or biometric data. Additionally, the Department will not use the camera surveillance system to scan footage and identify individuals based on any of the categories listed in the preceding sentence.

Employees are prohibited from retaining, duplicating, or distributing video recordings except for departmental business purposes in accordance with the use policy.

F. DATA TYPES AND SOURCES

The surveillance camera system's use is limited to capturing non-audio, video recordings on affixed City buildings, including utility poles on streets and within park boundaries. The Camera Surveillance system collects video recordings in high-resolution imagery that is stored securely on a local server and accessible by authorized users on the ACC application. As video images are recorded, the ACC application automatically stamps the video with the current date/time and the camera's identity.

G. DATA SECURITY

External users will not have access to the ACC application. The authorized administrator and designated staff will have access to video recordings. To gain system access, staff must obtain approval from system management. Authorized users will access the ACC application via a single sign-on and password administered by Information Technology. All system access including system log-in, access duration, and data access points is accessible and reportable by the Public Works authorized administrator. The application prohibits the authorized administrator and users from altering, manipulating, tampering, or editing video recordings.

The Public Works Director or his/her designee shall appoint a member of the department as the authorized administrator to coordinate the use and maintenance of the Surveillance Camera system and the storage of recordings, including:

1. Establishing a system for downloading, storing, and securing of recordings.
2. Designating persons responsible for downloading recorded data.
3. Establishing a maintenance system to ensure the working order of surveillance cameras.
4. Monitoring the system to prevent tampering, deleting, and copying recordings.

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5. Working in alignment with the State of California record retention policy, AB 839 to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
6. Maintaining an audit trail record for all access to video recording files, wherein access information for each file is logged using a secure log-in system. The ACC application associates an audit trail record with each user access information, thereby logging the date, time, user name, and activity occurring during each video recording file access.

H. FISCAL COST

Costs for future projects listed in Section C of this report are unknown at this time. Future costs will depend on additional maintenance, equipment, and parts. Ongoing costs include associated staff time relative to the system administrator's role of administering and maintaining the surveillance camera program. All cameras are purchased and wholly owned and operated by City of Berkeley.

Initial Purchase Costs:

San Pablo Park: \$64,829.46 – 1 server and 21 camera views

Zero Waste Transfer Station – Weigh Station: \$15,962.35 – 1 server and 10 camera views

Marina: \$106,620.14 – 2 servers and 45 camera views

Ongoing Costs:

Personnel, maintenance, and other ongoing costs, including compliance and other reporting and oversight requirements - \$13,443.20 per year.

I. THIRD PARTY DEPENDENCE AND ACCESS

All Camera Surveillance data is accessed by a secure network login and password and stored on servers maintained by the Department of Information Technology. There is no third-party dependence or external access to information other than the ACC is a proprietary technology which requires all the components to be Avigilon.

J. ALTERNATIVES

The City can decide to rely on traditional policing techniques as a method for addressing crime such as deploying sworn officers to patrol City buildings and parks.

There is a broad consensus – among the community– that surveillance cameras can be an important tool for deterring criminal activities.

K. EXPERIENCE OF OTHER ENTITIES

Neighboring cities including San Francisco, Oakland, and San Jose have adopted the use of Surveillance Cameras as a tool for reducing crime on city streets and parks. Many cities have developed their own usage policies which may include standards for use, data retention standards, and system controls.

External Fixed Video Surveillance Cameras

351.1 PURPOSE AND SCOPE

This policy provides guidance for the use of City of Berkeley external fixed video surveillance cameras by the Berkeley Police Department.

This policy only applies to fixed, overt, marked external video surveillance systems utilized by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department. This policy is intended to be the Use Policy, however all aspects of the Surveillance Use Policy, 1304 which corresponds with the External Fixed Video Surveillance Cameras is equally applicable.

351.2 POLICY

The Berkeley Police Department utilizes a video surveillance system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance safety and security in public areas and City property. Cameras may be placed in strategic locations throughout the City to detect and deter crime, to help safeguard against potential threats to the public, to help manage emergency response situations during natural and human-made disasters, to assist City officials in providing services to the community, among other uses.

Video surveillance in public areas will be conducted in a legal and ethical manner while recognizing and protecting constitutional standards of privacy.

351.3 OPERATIONAL GUIDELINES

Only City Council-approved video surveillance equipment shall be utilized. Members authorized to review video surveillance should only monitor public areas and public activities where no reasonable expectation of privacy exists. The City Manager shall obtain Council approval for any proposed additional locations for the use of video surveillance technology.

351.3.1 PLACEMENT AND MONITORING

Camera placement will be guided by the underlying purpose or strategy associated with the overall video surveillance plan. As appropriate, the Chief of Police should confer with other affected City departments when evaluating camera placement. Environmental factors, including lighting, location of buildings, presence of vegetation or other obstructions, should also be evaluated when determining placement.

Camera placement includes, but is not limited to: existing cameras such as those located at San Pablo Park, the Berkeley Marina, and cameras placed in Council identified and approved intersections throughout the City, and potential future camera locations as approved by City Council.

Current City Council approved locations:

- 6th Street at University Avenue

-
- San Pablo Avenue at University Avenue
 - 7th Street at Dwight Way
 - San Pablo Avenue at Dwight Way
 - 7th Street at Ashby Avenue
 - San Pablo Avenue at Ashby Avenue
 - Sacramento Street at Ashby Avenue
 - College Avenue at Ashby Avenue
 - Claremont Avenue at Ashby Avenue
 - 62nd Street at King Street

The cameras shall only record video images and not sound. Recorded images may be used for a variety of purposes, including criminal or civil investigations. The video surveillance system may be useful for the following purposes:

- (a) To prevent, deter and identify criminal activity.
- (b) To address identified areas of criminal activity.
- (c) To respond to critical incidents.
- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- (f) To augment resources in a cost-effective manner.
- (g) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- (h) To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

Unauthorized recording, viewing, reproduction, dissemination or retention is prohibited.

351.3.2 FIXED CAMERA MARKINGS

All public areas monitored by video surveillance equipment shall be marked in a conspicuous manner with unobstructed signs to inform the public that the area is under police surveillance.

351.3.3 INTEGRATION WITH OTHER TECHNOLOGY

The Department is prohibited from integrating or accessing system capabilities of the video surveillance system with other systems, such as gunshot detection, automated license plate recognition, facial recognition and other video-based analytical systems.

351.4 VIDEO SUPERVISION

Access to video surveillance cameras data shall be limited to Berkeley Police Department (BPD) personnel utilizing the camera database for uses described above, with technical assistance from Public Works personnel. Information may be shared in accordance with 351.6 or 1304.9 below. Members seeking access to the camera system shall seek the approval from the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure members are within department policy and applicable laws. Supervisors should ensure such use and access is appropriately documented.

351.4.1 VIDEO LOG

No one without authorization will be allowed to login and view the recordings. Access to the data must be obtained through the Public Works Department. All system access including system login, access duration, and data access points is accessible and reportable by the Public Works Department's authorized administrator. Those who are authorized and login should automatically trigger the audit trail function to ensure compliance with the guidelines and policy. This is further outlined in 1304.4 of the Surveillance Use Policy.

351.4.2 PROHIBITED ACTIVITY

Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.

Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.

Video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

351.5 STORAGE AND RETENTION OF MEDIA

The cameras should record minimally for one year as guided by Government Code 34090. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Any recordings needed as evidence in a criminal or civil proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

351.5.1 EVIDENTIARY INTEGRITY

All downloaded and retained media shall be treated in the same manner as other evidence. Media shall be accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, digital masking of innocent or uninvolved individuals to preserve anonymity, authenticity certificates and date and time stamping, shall be used as available and appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

351.6 RELEASE OF VIDEO IMAGES

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law, also referenced in Policy 1304.8.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804.

Requests for recorded images from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with a specific and legitimate law enforcement purpose.

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

351.7 VIDEO SURVEILLANCE AUDIT

The video surveillance software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.

BPD will enforce against prohibited uses of the cameras pursuant to Policy 1010, Personnel Complaints or other applicable law or policy.

The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within Professional Standards Bureau.

351.8 TRAINING

All department members authorized to operate or access video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy. Training should also address state and federal law related to the use of video surveillance equipment and privacy.

All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

351.9 MAINTENANCE

It shall be the responsibilities of the Public Works Department to facilitate and coordinate any updates and required maintenance.

Surveillance Use Policy-External Fixed Video Surveillance Cameras

1304.1 PURPOSE

This policy provides guidance for the use of City of Berkeley external fixed video surveillance cameras by the Berkeley Police Department (BPD). This policy only applies to fixed, overt, marked external video surveillance systems utilized by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department.

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

1304.2 AUTHORIZED USE

Only BPD members who receive training on this policy, who are then granted access by an administrator may access the data from the video surveillance cameras. This data may only be accessed to further a legitimate law enforcement purpose. Members must follow the necessary logging mechanisms, such as case number and case type when querying the database.

Recorded images may be used for a variety of purposes, including criminal or civil investigations. The video surveillance system may be useful for the following purposes:

- (a) To prevent, deter and identify criminal activity.
- (b) To address identified areas of criminal activity.
- (c) To respond to critical incidents.
- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- (f) To augment resources in a cost-effective manner.
- (g) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- (h) To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

The following are prohibited uses of the video surveillance system:

- (a) Unauthorized recording, viewing, reproduction, dissemination or retention is prohibited.
- (b) Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.
- (c) Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.
- (d) Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.
- (e) Video surveillance systems and recordings are subject to the Berkeley Police

Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

1304.3 DATA COLLECTION

The cameras will film and store video on City of Berkeley encrypted servers. License plate and facial recognition data hardware is not installed on the cameras. Audio is a standard feature of the camera, but is deactivated by the system administrator. The cameras and storage devices shall be wholly owned and operated/maintained by the City of Berkeley.

1304.4 DATA ACCESS

Access to video surveillance cameras data shall be limited to Berkeley Police Department personnel utilizing the camera database for uses described above, with technical assistance from Public Works personnel. Information may be shared in accordance with 1304.9 below. Members seeking access to the video surveillance system shall seek the approval from the Investigations Division Captain, or their designee.

1304.5 DATA PROTECTION

All data transferred from the cameras and the servers shall be encrypted. Access to the data must be obtained through the Public Works Department. All system access including system log-in, access duration, and data access points is accessible and reportable by the Public Works Department's authorized administrator. All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

1304.6 CIVIL LIBERTIES AND RIGHTS PROTECTION

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1304.4 Data Access, 1304.5 Data Protection, 1304.7 Data Retention, 1304.8 Public Access and 1304.9 Third Party Data Sharing serve to protect against any unauthorized use of video surveillance camera data. License plate and facial recognition data hardware is not installed on the cameras. Audio is a standard feature of the camera, but is deactivated by the system administrator. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1304.7 DATA RETENTION

The video surveillance camera system should record minimally for one year as guided by Government Code 34090. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court. All data will automatically delete after the aforementioned retention period by the System Administrator from Public Works.

Any recordings needed as evidence in a criminal or civil proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

Berkeley Police Department

Law Enforcement Services Manual

Surveillance Use Policy-External Fixed Video Surveillance Cameras

1304.8 PUBLIC ACCESS

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804.

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

1304.9 THIRD-PARTY DATA-SHARING

Requests for recorded images from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with specific and legitimate law enforcement purposes.

Data collected from the video surveillance system may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process

1304.10 TRAINING

All department members authorized to operate or access video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy. Training should also address state and federal law related to the use of video surveillance equipment and privacy.

All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

1304.11 AUDITING AND OVERSIGHT

The video surveillance software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. Video surveillance system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.

BPD will enforce against prohibited uses of this policy pursuant to Policy 1010, Personnel Complaints or other applicable law or policy.

The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within Professional Standards Bureau.

1304.12 MAINTENANCE

It shall be the responsibilities of the Public Works Department to facilitate and coordinate any updates and required maintenance.



POLICY COMPLAINT FORM

Office of the Director of Police Accountability (DPA)

1947 Center Street, 5th Floor, Berkeley, CA 94704

Web: www.cityofberkeley.info/dpa

E-mail: dpa@cityofberkeley.info

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

AMENDED

Date Received:

2/14/2023

DPA Case # 2023-PR-0001

1

Name of Complainant: Rahman Shereen
Last First Middle

Mailing Address: _____
Street City State Zip

Primary Phone: _____ Alt Phone: (_____) _____

E-mail address: _____

Occupation: Retired Gender: F Age: 78

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic: _____ Other: Bengladeshi

2

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

See attached.

3

Location of Incident (if applicable) _____

Date & Time of Incident (if applicable) _____

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.)

Relevant documents include DPA complaint #21, which the Board and OPDA have access to, but that I will not formally attach in order to comply with POBRA. In particular, the date of the incident, the complaint, and the transcribed interviews are all relevant.

6

CERTIFICATION

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

Shereen Rahman
Signature of Complainant

2/14/23
Date

7

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

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

I. BPD POLICIES AT ISSUE

I am asking the Board to review BPD policy 1010, which establishes the procedure for officer complaints and details officer responsibility during complaint processes.

§ 1010.7.3 deals with complaints to the Police Accountability Board in particular. It states, in full:

1010.7.3 COMPLAINTS TO THE POLICE ACCOUNTABILITY BOARD

Complaints made to the Police Accountability Board shall also be investigated by IAB as "external complaints."

(a) As directed by the City Manager, the requirement to testify before the Police Accountability Board shall not apply to non-sworn Parking personnel affiliated with the Investigations Division.

1. Personnel falling within the provisions of this exempted classification, however, shall fully cooperate with all aspects of external/internal personnel complaint investigations conducted by IAB and/or other designated Departmental staff.

Nowhere in § 1010.7.3, nor anywhere else in Policy 1010, is a process established for communicating with the PAB established. There is also no instruction for Berkeley Police Officers instructed to comply with PAB investigations.

II. STATEMENT OF FACTS

This policy review request is the result of DPA Complaint #21. As this board is aware, the complainant filed a complaint with the ODPa after suffering harm at the hands of two BPD officers. That complaint resulted from an incident at my apartment complex, where the complainant called the police for help after being physically attacked by my neighbors and their family. The police arrived and spoke with the other family first. By the time they spoke to the complainant, they had already made up their minds about what happened. The officers interrupted the complainant when she told her story, they called her a liar, and they threatened to arrest the complainant and put her in jail. The complainant is a 78-year-old woman from Bangladesh and both of these officers were much larger.

Because those officers treated the complainant so poorly when she called for help, I turned to the police accountability process. By no fault of her own, the investigation of her complaint took so long that the PAB was unable to schedule a hearing within the prescribed time. ODPa did schedule a hearing for December 16, 2022, but the hearing was cancelled the week before because the PAB was unable to staff the hearing and the involved officers were unable to attend. During a meeting in early January of 2022, ODPa gave reasons for the delay, which include the change in leadership of ODPa, scarce availability of the officers involved, and the PAB's inability to fully staff a hearing within the statutorily required time.

As a result of the delay, the complainant was unable to access the administrative procedure that ostensibly exists to provide a form of justice for those who are mistreated by BPD officers.

III. PROPOSED CHANGES TO BPD POLICIES

One of the reasons cited by ODPa for running the statute of limitations was scarce availability of the involved officers. In fact, the complainant was informed that one of the reasons that the December 16, 2022, hearing was cancelled was that the involved officer(s) were unable to attend.

With that in mind, we propose that the Board recommend an amendment to Policy 1010.7.3 that establishes an officer responsibility to be available for PAB hearings. We propose that BPD allow officers time off for hearings that happen during work hours. We also propose that BPD include a policy requiring officers make good faith efforts to comply and cooperate in a timely way with the ODPa and the Board during investigation and when scheduling hearings.

Memorandum

TO: Berkeley Police Accountability Board, Office of the Director of Police
Accountability

FROM: Maddie Driscoll, Berkeley Law Police Review Project
(mldriscoll14@berkeley.edu)

DATE: February 14, 2023

RE: Regulations pertaining to the timeline for complaints

I. Purpose

As this Board knows, DPA Complaint #21 was dismissed without a hearing after the statute of limitations ran on the complaint. This Board asked the complainant to file a policy complaint. The complainant submitted an Amended Policy Complaint to the ODPa on February 14, 2023, to address BPD Policy 1010. Policy 1010 governs officer responsibilities during the complaint and hearing process.

In this case, however, the Board's own regulations must also be examined. The primary reason the statute of limitations ran is because of ODPa and this Board, not because of poor BPD policies. Because there is no formal process for people to submit complaints about the Board's regulations, this memorandum highlights the regulation that we urge you to examine and our proposals for improvement.

II. PAB Regulation Article II § M

The regulation at issue is Article II § M of the most recent PAB regulations, published on November 11, 2022. § M reads, in full, as follows:

Time limits; extensions; tolling.

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct unless a Government Code section 3304(d) exception applies.
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as

deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days.

3. Tolling. If a subject officer is unavailable for an interview with ODPA staff or to attend a confidential personnel hearing due to any leave of absence, the 240- day time limit for complaint investigation and notification of discipline under Section 18(d) of Article XVIII of the City Charter shall be tolled pending availability of the officer. This provision shall apply only when the subject officer's leave of absence exceeds 14 consecutive days.

§§ M (1) and (3) are restatements of time limits contained within the City Charter. As this Board is aware, and as I mentioned during my public comment at the public PAB meeting on February 8, 2023, the Board does not have the power to amend those restrictions. The Board can, however, amend § M (2), since that regulation is independent from any City Charter requirement. Per Article VI of the Board's regulations, it has the power to amend its own regulations and submit amendments for ratification by City Council.

§ M (2) establishes that the deadline for ODPA investigation is 195 days after the city's discovery of misconduct. The stated purpose of this provision is "to ensure that all investigations and notifications are completed within 240 days." The regulation does not mention any other deadlines, timelines, or establish any other responsibilities for ODPA or this Board.

III. PAB Regulation Article II § M should include a more detailed timeline that establishes greater PAB oversight

Because the PAB is unable to change or amend the City Charter, which establishes inequitable statute of limitations exceptions, we must, as Board Member Owens stated at the most recent PAB meeting, come up with creative solutions. Establishing a more detailed complaint and investigation timeline that includes greater PAB oversight is a step toward ensuring that no complainant is put in this situation again.

Establishing a more detailed timeline would create more accountability. Rather than allowing 195 days to complete the investigation, the timeline should detail the amount of days to reach out to witnesses, to conduct interviews, and to reach out to BPD for more

information. Of course, sometimes those deadlines will need to be extended; investigations are variable and the amount of other work varies. Even still, having those deadlines will keep the complaint on the minds and the calendars of ODPa staff members.

There also need to be deadlines for scheduling hearings. A large part of the reason DPA Complaint #21 went unheard was because the officers and a full PAB board were unable to attend the scheduled December 16 hearing. The regulations should require that the scheduling process begin at least 45 days before the statute of limitations deadline and that the hearing itself be scheduled at least 21 days before the deadline. That way, there would be enough time to reschedule after cancellation or sudden unavailability.

Greater PAB oversight would ensure that these deadlines are followed. This oversight need not be extreme. Checking in at the established deadlines, asking for an update about the status of each complaint at PAB meetings, and maintaining a log of the status of each complaint may be enough. Even that minimal oversight would put more eyes on the complaints and ensure that they are progressing in a timely manner.

Director Aguilar and ODPa staff members Thomas, Murillo, and Martinez have helped so many harmed people. It is evident to us, and I'm sure to the PAB as well, that they care deeply about this work and about ensuring that complainants feel heard. It is troublesome that, in *spite* of that care, a complaint slipped through the cracks. There needs to be more formal guidelines to ensure that something like that does not happen again.

IV. The PAB should establish a procedure for complaints about its own process

In the current PAB regulations, there is no established procedure for filing a complaint about the PAB regulations or PAB actions. This is an oversight that should be corrected.

Just this year, there have been two complainants that have been dissatisfied with the PAB hearing process. DPA Complainant #20 spoke during the public comment portion of the PAB meeting on January 11, 2023, about feeling unheard during her hearing. DPA Complainant #21, about whom this memorandum specifically relates, was unable to access her hearing. When those complainants have attempted to raise concerns about PAB regulations or actions, procedural confusion has resulted.

Even my organization, the Berkeley Law Police Review Project, has been unsure how to go about raising complaints. We started by raising public comments, meeting with PAB members, and eventually wrote an explanatory memorandum. It was not confirmed that submitting a memorandum was an acceptable way of communicating with the PAB until a meeting with PAB Chief John Moore and ODPa staff on January 18, 2023. Going into this year, our group and our members had at least some familiarity and institutional knowledge

about how the PAB works and, because of that, we were able to figure out the best way to be heard. Many people, including the complainants mentioned above, have no idea where to start.

Currently, the only publicized system for people to voice complaints with the PAB is through public comment at PAB meetings. This is an inadequate forum. Some complainants might feel uncomfortable sharing their experiences with Berkeley police officers, especially when the meetings soon transition to an in-person format. Moreover, the three-minute comments are not the most effective format for complaints. There is no guarantee that the PAB will seriously review and consider complaints brought to their attention during the comment period. There is also no guarantee that Board members will respond to the complaint during their meetings, as happened after DPA Complainant #20 made her public comment.¹

Establishing a more formal process would not be difficult. The PAB can adapt the policy complaint form it uses for BPD policy complaints and include information about the process for submitting a complaint on its website. Any required amendment to the regulations would likely have no trouble passing, for this proposal implicates no other interest group. The PAB should also establish a process for reviewing those complaints and discussing the ones it deems necessary to discuss.

V. CONCLUSION

These proposals will make the PAB more accountable to the people that it serves. If you have any questions or would like to discuss further, I am happy to meet or correspond about either of these proposals. Thank you for your time and attention.

¹ To their credit, ODPA staff reached out to Complainant #20 after her public comment and addressed her concerns. It is important to remember, though, that this only happened *after* she attended the meeting and made her public comment – something that she was very anxious to do. An established complaint procedure would fix the confusion surrounding the process.