

OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING**

**Wednesday, January 11, 2023  
6:30 P.M.**

**Board Members:**

JOHN MOORE III. CHAIR  
KITTY CALAVITA

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

## LAND ACKNOWLEDGEMENT

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

### AGENDA

1. **CALL TO ORDER & ROLL CALL** (2 minutes)
2. **APPROVAL OF AGENDA** (5 MINUTES)
3. **PUBLIC COMMENT** (TBD)  
*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)*
4. **APPROVAL OF MINUTES** (5 MINUTES)  
Regular meeting of December 9, 2022.
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. Controlled Equipment Subcommittee. (Welcome more Board members to join.) (Chair: Moore)
  - b. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
    - i. Update on subcommittee activity.
  
9. **OLD BUSINESS (discussion and action) (15 min)**
  - a. Discussion regarding future access to BPD Internal Affairs Bureau Reports and information (Calavita)
  
10. **NEW BUSINESS (discussion and action) (45 min)**
  - a. Nomination of PAB Chairperson and Vice-Chairperson (10 min) – (ODPA Staff)
  - b. Discussion regarding a potential reoccurring agenda Item for the review of updated Lexipol policies (10 min) - (Owens)
  - c. Discussion regarding recent LA Times article (10 min.) – (Moore)
  - d. Presentation of Findings and Recommendation(s) for Policy Complaint #31 – Drone Usage Policy (15 minutes) – (ODPA Staff)
  
11. **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 take action on the following matter(s):*

12. **PRESENTATION OF RECOMMENDATION(S) REGARDING COMPLAINT #21 (10 MIN)**  
 (A continuation of the discussion held during the December 9, 2022 closed session)
13. **PRESENTATION OF RECOMMENDTION(S) REGARDING COMPLAINT #30 (10 MIN)**
14. **PENDING CASE UPDATES (5 MIN)**

**END OF CLOSED SESSION**

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

16. **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**

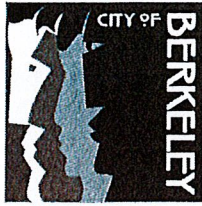
Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

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

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

<b><u>MINUTES</u></b>	
December 7, 2022 Regular Meeting Draft Minutes	Page 6
<b><u>ADMINISTRATIVE MATERIALS</u></b>	
Commissioner Attendance Report (July 1, 2022 – December 31, 2022)	Page 11
2023 PAB Regular Meeting Schedule	Page 13
<b><u>AGENDA-RELATED</u></b>	
<b>Item 8.</b> – 12-01-2022 PAB Subcommittee List.	Page 15
<b>Item 10.a.</b> – Standing Rules Section I. Elections	Page 18
<b>Item 10.c.</b> – Relevant articles	Page 20
<b>Item 10.d.</b> – Findings & Recommendations for Policy Complaint #31	Page 22
<b><u>COMMUNICATIONS</u></b>	
None	

# DRAFT MINUTES FOR DECEMBER 7, 2022



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

DRAFT

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

**Wednesday, December 7, 2022, 7:00 P.M.**

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

**1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 7:01 P.M.**

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

Absent: None

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

BPD Staff: Jen Louis, Interim Chief of Police

CAO Staff: James Chang, Deputy City Attorney

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda.**

Moved/Second (JL/KC) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: None

**3. PUBLIC COMMENT**

5 speakers.

#### 4. APPROVAL OF MINUTES

**Motion to approve *Regular Meeting Minutes of November 9, 2022* as amended.**

Moved/Second (KC/JL) **Motion Carried**

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

Noes: None

Abstain: None

Absent: None

**Motion to approve *Special Meeting Minutes of November 15, 2022* as amended.**

Moved/Second (KC/JL) **Motion Carried**

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

Noes: None

Abstain: None

Absent: None

**Motion to approve *Special Meeting Minutes of November 21, 2022***

Moved/Second (KC/JL) **Motion Carried**

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

Noes: None

Abstain: None

Absent: None

#### 5. ODPa STAFF REPORT

- Director Aguilar provides an update on staff activity since the last regular meeting and items of interest to the PAB including the transmittal of the proposed permanent regulations to the City Attorney's Office for review.
- Jose Murillo shares a presentation regarding staff attendance and participation in the 2022 Annual Conference for the American Society of Criminology.

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

Chair Moore reported:

- States that he is still waiting on guidance regarding investigative powers that the PAB has.

Vice-Chair Mizell:

- States that this meeting will be his last now that the vote that placed him on the rent board will be confirmed the next day.

#### 7. CHIEF OF POLICE'S REPORT (10 MINUTES)

Interim Chief Louis reported:

- Provides a report on staffing. States that low staffing continues to be an issue for the department. Provides an update on current recruitment efforts.
- Provides a report on crime in the city and shooting incidents.
- Provides a report on the efforts to address hate crimes.

Interim Chief Louis answers Board Member questions.



## 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. Controlled Equipment Subcommittee. (Welcome more Board members to join.)
  - Chair Moore reported that the subcommittee is still looking to recruit new members.
- b. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations.
  - i. Update on 11/29/2022 Subcommittee Meeting.
  - ii. Update regarding inclusion of members of the public.
  - Board member Owens provides an update on subcommittee activity and states that a process and direction have been identified. Ask staff to accelerate the recruitment efforts for members of the public.
- c. Police Chief Process (ad hoc) Subcommittee.
  - No update. Will remain active until an appointment is made.

## 9. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Discussion on the proposed regular meeting schedule for 2023 and other important dates.

**Motion to approve the PAB's 2023 Regular Meeting Schedule with a start time of 6:30 pm.**

Moved/Second (IR/JL) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: None

- b. Discussion on a proposed Board retreat meeting for the planning of next year and what that retreat can look like.
- c. Discussion regarding future access to BPD Internal Affairs Bureau Reports and information. The item will be continued at a later meeting.

## 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 RECOMMENDATION(S) REGARDING COMPLAINT #21**

**Motion to request that ODPa staff further research and consult with the CAO regarding complaint #21.**

Moved/Second (CO/IR) **Motion Carried.**

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

Noes: None

Abstain: None

Absent: None

**END OF CLOSED SESSION**

**12. ANNOUNCEMENT OF CLOSED SESSION ACTION (TBD)**

An announcement is made regarding closed session action.

**13. ADJOURNMENT**

**Motion to adjourn the meeting.**

Moved/Second (NM/IR) **By general consent, the meeting was adjourned at 10:31 p.m.**

COMMISSIONER ATTENDANCE REPORT  
(JULY 1, 2022 – DECEMBER 31, 2022)



# Commissioner Attendance Report

## For the period July 1 through December 31, 2022

Police Accountability Board

Hansel Alejandro Aguilar

Commission Name:

Secretary Name:

Commissioner Last Name	13-Jul	27-Jul	14-Sep	28-Sep	12-Oct	25-Oct	9-Nov	7-Dec
1 Calavita	Absent	Attended	Attended	Attended	Attended	Attended	Attended	Attended
2 Harris	Attended	Leave of Absence	Attended	Attended	Attended	Attended	Leave of Absence	Attended
3 Leftwich	Attended	Attended	Attended	Leave of Absence	Attended	Attended	Attended	Attended
4 Levine	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
5 Moore	Attended	Attended	Attended	Attended	Absent	Attended	Attended	Attended
6 Owens	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
7 Ramsey	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
8								
M								

### Instructions for Completing this Form

This report tracks attendance of *current commissioners* at REGULAR commission meetings. Special meetings and subcommittee meetings are not included.

1. Gather your 2022 REGULAR meeting dates and roster of current commissioners.
2. Enter the **dates** of each REGULAR meeting for each month. Add columns as needed if you had more than one REGULAR meeting in a month.
3. Enter the names of your **current** commissioners in the column provided. Add rows if needed for commissions with more than 9 members.
4. For each meeting, select from the dropdown options to indicate whether the commissioner attended the meeting, had an approved leave of absence/excused absence, or was absent.
5. For meetings prior to the commissioner's appointment, choose "N/A"
6. Return this form via email to [commission@cityofberkeley.info](mailto:commission@cityofberkeley.info) by the deadline. Call us at x6908 or email us with any questions about completing the form.

# 2023 PAB REGULAR MEETING SCHEDULE

# Police Accountability Board 2023 Regular Meeting Schedule

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

Approved by the PAB on 12-07-2022

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

FEBRUARY						
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26	27	28				

MARCH						
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APRIL						
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MAY						
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JUNE						
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JULY						
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30	31					

AUGUST						
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SEPTEMBER						
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OCTOBER						
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NOVEMBER						
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DECEMBER						
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31						

FEDERAL HOLIDAY

RELIGIOUS HOLIDAY

REGULAR MEETING

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

# ACTIVE SUBCOMMITTEE LIST

**POLICE ACCOUNTABILITY BOARD  
SUBCOMMITTEES LIST  
01-05-2022**

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



<b>Drone Use Policy</b> Formed 11-9-222	Requires Assignment		
<b>Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations</b> Formed 11-15-22	Calavita Moore Owens	<b>Owens</b>	

# MATERIAL FOR ITEM 10.A

Nomination of PAB Chairperson and Vice-Chairperson

## PAB STANDING RULES SECTION I

### I. ELECTIONS

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the nomination of the Chair will precede the nomination of the Vice-Chair, and the following nomination process will be followed for each office:
  - a) The presiding Chair declares the nomination process open.
  - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated and may decline the nomination.
  - c) The nomination is seconded (the nomination fails if there is no second).
2. At the second January meeting of the year, the following election process will be followed for each office:
  - a) Additional nominations shall occur in accordance with section I.1.
  - b) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
  - c) Board members pose questions to each candidate.
  - d) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
    - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
    - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.
    - iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign "heads" and "tails."
3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

# MATERIAL FOR ITEM 10.C.

Discussion regarding recent LA Times article

## REFERENCED ARTICLES

Goldberg, Noah. "Berkeley City Manager Failed to Reveal Past Investigation of Police Chief Pick, Officials Say." *Los Angeles Times*, Los Angeles Times, 30 Dec. 2022, <https://www.latimes.com/california/story/2022-12-29/top-berkeley-official-failed-to-reveal-investigation-into-her-police-chief-pick>

Goldberg, Noah. "Berkeley's Top Cop Faced Internal Accusations of Misconduct as She Rose through Ranks." *Los Angeles Times*, Los Angeles Times, 28 Dec. 2022, <https://www.latimes.com/california/story/2022-12-28/berkeley-top-cop-faced-internal-accusations-of-misconduct-as-she-rose-through-ranks>

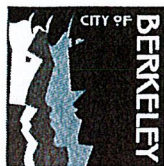
Mayer, Phil. "Berkeley Mayor Responds to Sexual Harassment Allegations against Interim Police Chief." *KRON4*, KRON4, 30 Dec. 2022, <https://www.kron4.com/news/bay-area/berkeley-mayor-responds-to-sexual-harassment-allegations-against-interim-police-chief/>

Raguso, Emilie. "Berkeley Police Chief Jen Louis Faced Harassment Claims in 2017. Should City Officials Have Been Told?" *The Berkeley Scanner*, The Berkeley Scanner, 4 Jan. 2023, <https://www.berkeleyscanner.com/2023/01/04/policing/berkeley-police-chief-jen-louis-2017-misconduct-allegations/>

Savidge, Nico. "Will Sexual Harassment Allegations Derail Jen Louis' Appointment as Berkeley Police Chief?" *Berkeleyside*, 5 Jan. 2023, [https://www.berkeleyside.org/2023/01/05/berkeley-police-chief-jen-louis-allegations?utm\\_source=Berkeleyside%2Bnewsletters&utm\\_campaign=e780165fa0-RSS\\_DAILY\\_BRIEFING&utm\\_medium=email&utm\\_term=0\\_aad4b5ee64-e780165fa0-333653909&goal=0\\_aad4b5ee64-e780165fa0-333653909&mc\\_cid=e780165fa0&mc\\_eid=f685987189](https://www.berkeleyside.org/2023/01/05/berkeley-police-chief-jen-louis-allegations?utm_source=Berkeleyside%2Bnewsletters&utm_campaign=e780165fa0-RSS_DAILY_BRIEFING&utm_medium=email&utm_term=0_aad4b5ee64-e780165fa0-333653909&goal=0_aad4b5ee64-e780165fa0-333653909&mc_cid=e780165fa0&mc_eid=f685987189)

# MATERIAL FOR ITEM 10.D.

Presentation of Findings and Recommendation(s) for Policy Complaint #31 – Drone Usage Policy




Office of the Director  
Of Police Accountability

### Memorandum

Date: Thursday, January 05, 2023

To: Honorable Members of the Police Review Commission (PAB)

From: Hansel Aguilar, Director of Police Accountability   
Jose Murillo, Policy Analyst

Re: Policy Complaint #31 – Berkeley Police Department (BPD) Drone Usage Policy

#### **Recommendation:**

The PAB should not proceed with Policy Complaint #31 at this time, but rather consider focusing its resources on the upcoming review of a new BPD drone use policy and acquisition report.

#### **Fiscal Impacts of Recommendation:**

Acceptance of this recommendation will reduce the amount of time necessary to research, draft, review, and recommend a drone usage policy on behalf of the Board and ODPa staff. Given that BPD has already conducted the necessary research to draft a drone usage policy, the PAB and ODPa would only have to dedicate time to the review and recommendation process. Proceeding with the complaint may duplicate work already conducted by BPD and place an unnecessary strain on the already scarce PAB resources<sup>1</sup>.

#### **Current Situation and its Effects:**

Presently, BPD's Law Enforcement Services Manual does not include language specific to the use of drones under the umbrella of its surveillance technology policies. The use and acquisition of drones are only regulated by Berkeley Municipal Code 2.99, Acquisition

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<sup>1</sup> As of 1/5/2023, the PAB is operating under a reduced capacity pending the appointment of two new board members.

and Use of Surveillance Technology which provides a general procedure for the use and acquisition of surveillance technology as defined by BMC 2.99.020(1)<sup>2</sup>.

For BPD to acquire and use any new surveillance technologies, a surveillance use policy for each surveillance technology with a corresponding surveillance technology report must be presented to the PAB for review and to the City Council for final approval<sup>3</sup>. However, BMC 2.99.040 allows for the temporary acquisition and use of surveillance equipment by the City Manager when exigent circumstances exist as defined by 2.99.020(5)<sup>4</sup>.

### **Background:**

Policy Complaint #31 was received by the ODPa on October 13, 2022, and was presented to the Board at its regular meeting on October 25, 2022. The complaint alleged that BPD had acquired drones from the Alameda County Sheriff's Office (ASCO) for use at the Solano Stroll event which is hosted in partnership with the City of Albany<sup>5</sup>. The complaint included a link to an article written by Tracy Rosenberg of Oakland Privacy. The article included a report of drones being flown over the event<sup>6</sup> and a temporary acquisition notice written by Interim Chief Louis to the Berkeley City Council<sup>7</sup>. The PAB was concerned about the alleged actions and sought answers from Interim Chief Louis (hereinafter "Interim Chief") who was present at the October 25<sup>th</sup> regular meeting.

Through the PAB member's line of questioning at the public meeting, Interim Chief Louis clarified that the drones mentioned in Rosenberg's article were not requested by BPD and that it was the Albany PD who independently submitted the request to the ACSO. The Interim Chief also clarified that the temporary acquisition notice was a precautionary

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<sup>2</sup> "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 1(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

<sup>3</sup> See attachment 1, a copy of the relevant Berkeley Municipal Code including BMC 2.99.030 which outlines the acquisition and use policy.

<sup>4</sup> "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

<sup>5</sup> See attachment 2, a redacted copy of complaint #31.

<sup>6</sup> See attachment 3, a copy of the relevant Oakland Privacy Article.

<sup>7</sup> See attachment 4, a copy of the temporary acquisition notification made by Interim Chief Louis.



measure to ensure compliance with BMC 2.99.040. At the time, it was believed that ACSO drones were flown over Berkeley's airspace. Within the acquisition report, the Interim Chief noted that there were exigent circumstances behind the increased security, including the use of drones, citing "unfortunate recent attacks on similar events."<sup>8</sup> The complainant was also present at the regular meeting and allotted a moment to speak. The complainant stated the following in the relevant part:

*"The PAB needs to take the appropriate steps to recommend to the Council a clear definition set in policy or ordinance that does not allow surveillance via drones or otherwise of strolls, gatherings, rallies or marches simply because gun violence is a pandemic in this country at large—that is simply the reality. It is the PAB's and Council's responsibility to address that reality and not for city staff to break the English language and change the definition of exigent circumstances [...] But again, the [interim] chief has completely backtracked from the letter she sent, and caused this whole complaint process to start. I wouldn't have started this process had that letter not been sent. I was informed of [the presence of drones at the Solano Stroll] by my Councilmember who was incredibly upset because she thought as well that [the event] was not an exigent circumstance [that would justify BPD's request for drones]"*<sup>9</sup>.

The information presented at the regular meeting indicated that this complaint originated from a misunderstanding between BPD staff and the Interim Chief. As noted above, the Complainant made this policy review request based on the information available at that time, which we now know to be inaccurate and incomplete. The complainant further acknowledged that he would not have filed had the incorrect information not been presented. However, like the complainant, the PAB had additional concerns regarding the timeline of the events, BPD's interpretation of the surveillance technology acquisition procedures, and the precedent that could be established as a result of this event.

Having heard from the Interim Chief, the complainant, and members of the public, the PAB motioned to initiate a fact-finding inquiry as to the acquisition and use of the drones at the Solano Stroll event. The motion passed after receiving six (6) "yes" votes and two (2) "no" votes and ODP staff was asked to look into the incident before a final decision to accept or deny the complaint was made<sup>10</sup>. The purpose of the investigation was to answer the following questions:

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<sup>8</sup> See attachment 4.

<sup>9</sup> PAB Regular Meeting, 1:27:00 to 1:32:00 (hh:mm:ss): <https://youtu.be/TLRFVA6PUL8>

<sup>10</sup> See attachment 5, a copy of the PAB regular meeting minutes for October 25, 2022.

1. To what extent, if at all, were members of the BPD involved in the acquisition of ASCO drones as part of the security measures for the Solano Stroll event?
2. How were ASCO drones used during the event and were they deployed within Berkeley's jurisdiction?
3. What constitutes an "exigent circumstance"?

Soon after the motion for a fact-finding investigation, Interim Chief Louis provided notice to the PAB that a new drone usage policy was in the works for the BPD. Subsequently, on November 9<sup>th</sup>, 2022, the PAB established a subcommittee to review these policies.

### **Rationale for Recommendation**

On November 3, 2022, Interim Chief Louis submitted an update to her original notification to the City Council which provided additional context and information obtained from Albany PD<sup>11</sup>. That same day, Interim Chief Louis informed the ODPa that BPD was in the process of drafting a drone usage policy and acquisition report per the requirements of BMC 2.99<sup>12</sup>. At the time of writing, the policy and respective report were under review by the City Attorney's Office (CAO) and will be forwarded to the PAB as soon as the CAO's review has concluded. The additional information provided by Interim Chief Louis answered several of the questions posed by the PAB's request for a fact-finding inquiry.

To answer the relevant questions, ODPa staff reviewed the original complaint, the Oakland Privacy article, and the available correspondence from Interim Chief Louis regarding this matter. The information collected from these sources was used to provide the following answers:

- 1. To what extent, if at all, were members of the BPD involved in the acquisition of ASCO drones as part of the security measures for the Solano Stroll event?**

BPD staff was not involved in the acquisition of the ASCO drones. According to the update by Chief Louis,<sup>13</sup> BPD staff learned that Albany PD had requested ASCO drones at a planning meeting before the event. The Albany PD had requested the drones to scan the rooftops along Solano Avenue for any potential

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<sup>11</sup> See attachment 6, a copy of an updated temporary acquisition report submitted by Interim Chief Louis to the City Council.

<sup>12</sup> See attachment 7, a copy of the notice provided by Chief Louis to the ODPa regarding the pending policy drafts.

<sup>13</sup> See attachment 6.

threats to the public; however, the drones were not used for the initial purpose. Officers present at the Solano Stroll believed that the requested use of the drones was carried out due to the presence of the ACSO drone team. Interim Chief Louis made a notification to the City Manager based on that assumption and followed the procedure under BMC 2.99 out of precaution and recorded the use in the Surveillance Technology Report<sup>14</sup>. That entry has since been removed as the acquisition and use did not involve BPD nor was the technology used within the city<sup>15</sup>.

**2. How were ASCO drones used during the event and were they deployed within Berkeley's jurisdiction?**

ASCO drones were not deployed within Berkeley's air space nor were they used to scan the rooftops as originally reported. According to an inquiry made by Interim Chief Louis to the Albany PD<sup>16</sup>, the ASCO drones were used for two calls for service within Albany's jurisdiction. The first instance was a response to a burglary in progress and the second instance was in response to a report of a missing child. In both of these cases, Albany PD ground units were able to resolve the issue and the drones were grounded. The drones were not flown within Berkeley's jurisdiction and the overall use of the drones was limited.

**3. What constitutes an "exigent circumstance"?**

The definition of an "exigent circumstance" is defined under BMC 2.99.020(5). An "exigent circumstance" is defined as an *emergency* involving *imminent* danger of death or serious physical injury to any person, or imminent danger of significant property damage<sup>17</sup>. Although "emergency" and "imminent" are not defined in the BMC, the Berkeley Police Department Law Enforcement Service Manual does define those terms throughout its various policies. An "emergency" is defined as "situations involving an imminent threat to the safety or welfare of any person"<sup>18</sup>

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<sup>14</sup> See Attachment 6.

<sup>15</sup> See Attachment 6.

<sup>16</sup> See attachment 6.

<sup>17</sup>"Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

<sup>18</sup> BPD Policy 326.13

and events “such as a large fire, earthquake, riot or other such natural or civil emergencies<sup>19</sup>.” An “imminent” threat or danger is considered to exist when “based on the totality of the circumstances, it is objectively reasonable to believe that a person [or situation] has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury<sup>20</sup>.” Based on these definitions, for a situation to be “exigent,” there must be a condition or situation that presents an immediate danger to human life and/or property.

Given the aforementioned information which clarifies and provides additional context to the Interim Chief’s September 30, 2022 *Notification regarding use of Unmanned Aerial Vehicle (Drone)*, the ODPa recommends that the PAB not proceed with Policy Complaint #31 at this time. The ODPa instead, encourages the Board to consider focusing its resources on the upcoming review of a new BPD drone use policy and acquisition report. Formally accepting Policy Complaint #31 at this time, would be redundant and moot considering that:

- (1) the BPD is actively developing a policy that directly addresses this policy issue;
- (2) the draft policy will be reviewed by the PAB and;
- (3) the complainant in this policy review request has indicated that the additional information provided on the October 25, 2022 meeting alleviates his concern of the BPD’s involvement in drone usage at the event in question.

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<sup>19</sup> BPD Policy 332.5

<sup>20</sup> BPD Policy 300.4

# ATTACHMENT 1

## 2.99.030 City Council Approval Requirement.

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:
  - a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;
  - b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;
  - c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or
  - d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.
2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology. No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police Review Commission to act, shall prohibit the City Manager from proceeding with its own review and potential adoption.
3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsections (1) (a)-(d).
4. Evidence received relating to the investigation of a specific crime that may have been generated from Face Recognition Technology but was not intentionally solicited shall not be a violation of this ordinance.
5. Notwithstanding any other provision of this Chapter, it shall be a violation of this ordinance for the City Manager or any person acting on the City Manager's behalf to obtain, retain, request, access, or use: i) any Face Recognition Technology; or ii) any information obtained from Face Recognition Technology, except for personal communication devices as defined by Section 2.99.020 or section 2.99.030(4). The inadvertent or unintentional receipt, access to, or use of any information obtained from Face Recognition Technology shall not be a violation of this subsection provided that the City Manager or any person acting on the City Manager's behalf does not request or solicit the receipt, access to, or use of such information, and all copies of the information are promptly destroyed upon discovery of the information, and the information is not used for any purpose.

The City Manager shall log the receipt, access to, or use of any such information in its Annual Surveillance Technology Report. The Surveillance Technology Report shall identify measures taken by the City to prevent the further transmission or use of any information inadvertently or unintentionally obtained through the use of Face

Recognition Technology; provided, however, that nothing in this Chapter shall limit the ability to use such information in connection with a criminal investigation. (Ord. 7676-NS § 2, 2019; Ord. 7592-NS § 2 (part), 2018)

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**The Berkeley Municipal Code is current through Ordinance 7838-NS, passed November 3, 2022.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: [www.berkeleyca.gov](http://www.berkeleyca.gov)

Code Publishing Company

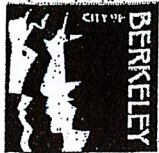
# ATTACHMENT 2



Received by DPA

OCT 13 2022

Date Received:



# POLICY COMPLAINT FORM

Office of the Director of Police Accountability (DPA)

1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704

Web: [www.cityofberkeley.info/dpa](http://www.cityofberkeley.info/dpa)

E-mail: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

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

DPA Case # 31

1

Name of Complainant: \_\_\_\_\_  
Last First Middle

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

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

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

Occupation: \_\_\_\_\_ Gender: M Age: 66

Ethnicity:  Asian  Black/African-American  Caucasian

Latino/Hispanic  Multiethnic: \_\_\_\_\_  Other: \_\_\_\_\_

2

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

REQUESTING SHERIFF DRONES TO SURVEILLANCE  
SOLANO STROLL IN VIOLATION OF SURVEILLANCE  
ORDINANCE. SEE DETAILED EXPLANATION AT:  
OAKLANDPRIVACY.ORG/DRONES-FLEW-OVER-SOLANO-STROLL OR  
TINYURL.COM/BDZKTEE9 OR  
JUST GO TO OAKLANDPRIVACY.ORG AND SCROLL DOWN OR ATTACHED <sup>SEE</sup>

3

Location of Incident (if applicable) SOLANO AVE

Date & Time of Incident (if applicable) SEPT 10, 10-3 PM (2022)

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

BPD REQUESTED SHERIFF DRONES. THEY CLAIM 'EXIGENT CIRCUMSTANCES'  
WHICH IS NONSENSE. THEY REPORTED THIS USE TO CITY COUNCIL  
AS REQUIRED, THAT REPORT IS LINKED TO IN THE CITED  
ARTICLE ABOVE.

4

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

CLARIFY THAT 'EXIGENT CIRCUMSTANCES' MEANS AN EMERGENCY AND THAT DRONES MAY NOT BE USED TO SURVEILL CROWDS, STREET FAIRS, PROTESTS, GATHERINGS, ETC EXCEPT IN AN EMERGENCY

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Police Accountability Board in evaluating your complaint.)

SEE ATTACHED  
SEE BERKELEY MUNICIPAL CODES / BMG / 2.99

6

CERTIFICATION

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

James P. Massey  
Signature of Complainant

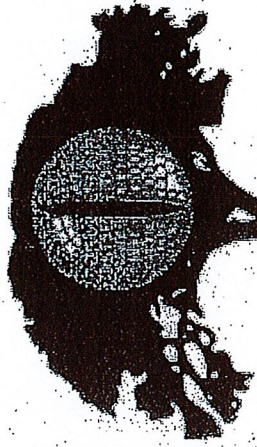
10/7/22  
Date

7

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

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

# ATTACHMENT 3



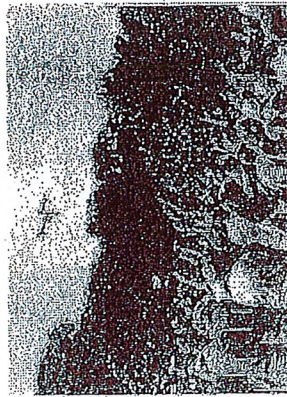
# OAKLAND PRIVACY

..... I'VE BEEN WATCHING YOU WATCHING ME

DRONES

## Drones Flew Over The Solano Stroll

by Tracy Rosenberg • October 5, 2022



In September, the next door cities of Berkeley and Albany hold a street fair called the Solano Stroll, along the avenue that crosses both cities. The event attracts thousands of people. A report filed with the Berkeley City Council due to the requirements of Berkeley's surveillance ordinance framework revealed the **Alameda County Sheriff's Office flew drones "unobtrusively" over the event**, focusing on the perimeter of the rooftops. The use of the sheriff's department drones **would not have been known** to the public without the 2018 surveillance ordinance, which requires reports to the City Council after the temporary use of unpermitted technologies for exigent circumstances.

The city of Berkeley passed a sweeping moratorium on police use of drones in 2015, which has since expired. The Council has allowed the use of drones for fire rescue purposes, but no other use has been allowed. The Berkeley Police Department declared the temporary use of the sheriff's department drones at the street fair to be an "exigent circumstance", meaning there was an imminent threat to life and property. However, **the report submitted on Friday September 30 via email described the exigent circumstance as "recent attacks on similar events" with no further details.** This is possibly a reference to a mass shooting in Highland Park, IL at a 4th of July parade.

The notification of use suggests that future street fairs, festivals, parades and community gatherings in the City of Berkeley may be subjected to "unobtrusive" drone use in the future by the Alameda Sheriff's Department at the invitation of the Berkeley Police Department despite the lack of a specific imminent threat directed at that event, unless clear instructions are provided by the City Council regarding any future use.

The video footage taken by the drones, per the Alameda Drone policy, should have been destroyed after the mission since it did not contain evidence of criminal activity. However, no verification has been received that this has occurred. The list of authorized missions for departmental drone use does not include monitoring street fairs.

According to Police 1: the Alameda County Sheriff's Department has more than 50 drones in their arsenal, some outfitted with zoom cameras and thermal imaging. Long time sheriff Greg Ahern was not re-elected in June of 2022 and will soon be replaced by incoming sheriff Yesenia Sanchez.

In 2013, then Berkeley council member, now Berkeley Mayor Jessie Arreguin told Oakland North: "We advise the sheriff not to buy a drone," Arreguin said. "Although we do not have control over our airspace, we have made it clear that we do not want drones flying over Berkeley."

(edit)

← Oakland Privacy Rights Fellowship 2022-2023 ~ Applications  
Open

# ATTACHMENT 4

**From:** Louis, Jennifer A.  
**Sent:** Friday, September 30, 2022 10:53 AM

**Subject:** Notification regarding use of Unmanned Aerial Vehicle (Drone)  
**Importance:** High

Internal

Good morning,

I am providing the below information so that you may complete the required notification to City Council of Exigent Circumstances use of surveillance technology.

**UAV used to inspect rooftops along Solano Stroll.**

On September 10, 2022, Berkeley and Albany hosted the Solano Stroll street event. Solano Stroll is a family event that has drawn thousands to the Solano Avenue Street fair.

Additional officers were deployed to ensure safety of those in attendance. Traffic control barriers were put in place to exclude vehicles and turn the Avenue into a pedestrian mall. Due to unfortunate recent attacks on similar events, additional security measures were undertaken to ensure the safety of attendees.

The Alameda County Sheriff's Office Drone Team responded to conduct routine checks of the rooftops for potential threats. They were asked to fly the perimeter of the roofline and limit their travel over the Avenue itself. Fortunately, there were no issues or threats to the crowds and the event was a huge success from a security perspective. With the assistance of the Sheriff's Office, we were able to ensure safety with a strategic and unobtrusive use of their drone technology. They were also prepared to deploy to assist emergency operations if there was an attack or major emergency.

Below I have included the applicable ordinance language for background.

**ORDINANCE NO. 7,592--N.S. ADDING CHAPTER 2.99 TO THE BERKELEY MUNICIPAL CODE, ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY**

**2.99.040 Temporary Acquisition and Use of Surveillance Equipment**

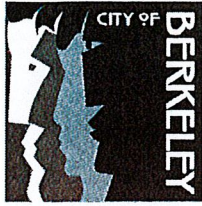
Notwithstanding the provisions of this Chapter, the City Manager may borrow, acquire and/or temporarily use Surveillance Technology in Exigent Circumstances without following the requirements in Sections 2.99.030 and 2.99.040. However, if the City Manager borrows, acquires or temporarily uses Surveillance Technology in Exigent Circumstances he or she must take all of the following actions:

1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged;
2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Surveillance Acquisition Report and Surveillance Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Sections 2.99.030 and 2.99.040; and
3. Include the Surveillance Technology in the City Manager's next annual Surveillance Technology Report.

Jen Louis  
Interim Chief of Police  
Berkeley Police Department

# ATTACHMENT 5





OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

**POLICE ACCOUNTABILITY BOARD**  
REGULAR MEETING  
**MINUTES**  
*(approved)*

**Tuesday, October 25, 2022, 7:00 P.M.**

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

**1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 7:00 P.M.**

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

Absent: None.

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

BPD Staff: Interim Police Chief Jennifer Louis  
Lt. K. Reece

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda as amended.**

*Amendments:* Remove items 8.a; Table Item 9.a to November 9<sup>th</sup> Meeting.

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

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

Noes: None

Abstain: None

Absent: None

**3. PUBLIC COMMENT**

8 speakers.

**4. APPROVAL OF MINUTES**

**Motion to approve Regular Meeting Minutes of October 12, 2022**

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

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

Noes: None

Abstain: None

Absent: None

**5. ODPa STAFF REPORT**

*Director Aguilar* reports that he has inquired about the PAB receiving city of Berkeley emails to ensure that sensitive documents are secure.

*Management Analyst Murillo* provides updates as to the action items discussed last week. He reported that ODPa staff is working on uploading past PRC annual reports and has been organizing data for the production of 2021 & 2022 annual reports. Lastly, he provided a status update as to various policy topics that have been presented to the Board and ODPa (See Page 11-14 of the Agenda Packet).

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

*Chair Moore* reported that he appreciates the efforts of ODPa and the Board. Emphasizes the importance of making sure that all Board positions are filled so the Board is at full strength.

*Board member Leftwich* clarified her proposed idea of an ODPa/PAB gathering.

*Board member Ramsey* stated that he appreciates Berkeley Law student involvement with the PAB. Notes that the PAB and Berkeley Law's Police Review Project may not always agree.

*Vice-Chair Mizell* notes that relationship building is important in the work of the PAB and supports proposal for a ODPa/PAB social gathering to encourage relationship building. On a separate topic, he provided notice that the City Council would convene for a closed session the following Friday (October 28, 2022) for the consideration of the appointment of the City's next Police Chief.

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

Interim Chief Louis provided BPD staffing updates and reported on an arrest made by BPD of a man who had allegedly followed a 12-year-old girl as she was leaving school. Chief Louis also reported on the rise of catalytic converter thefts and the most recent information on the matter. In response to a public comment, Chief Louis elaborated on the usage of Alameda County Sheriff drones at the Solano Avenue Stroll in September. She clarified that BPD had not requested the drones and that the request originated Albany PD. She proceeded to answer Board member questions on the topic which would be considered in the discussion of Item 11.a.

**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. Regulations Subcommittee – see Item #9. a. below. (Look at 9-14-22 PAB packet, pp 13-35.).
  - 1. Discussion regarding the possibility of adding another PAB member to the Regulations subcommittee and referring the regulations back the subcommittee.

*Item 8.a. removed from the agenda by general consent.*

- b. Controlled Equipment Subcommittee. (Welcome more Board members to join.)  
Chair Moore encouraged more PAB members to join. Board member Owens states that she would be interested after finalization of permanent regulations.
- c. Police Chief Process (ad hoc) Subcommittee  
There will be a city council closed session on Friday, 10/28 to discuss the new Police Chief.

**9. OLD BUSINESS (discussion and action)**

- a. Finalize review of draft proposed permanent Regulations for Handling Investigations and Complaints.

*Item 9.a. tabled to the next regular meeting by general consent.*

**10. PUBLIC COMMENT REGARDING AGENDA ITEM 11.A.**

- a. Public Comment for item 11.a.  
2 speakers (Complainant and a member of the public)

**11. NEW BUSINESS (discussion and action)**

- a. Discussion on Policy Complaint #31 regarding BMC 2.99 and BPD Policy 1106 – Special Order 2020-0006

**Motion to initiate a fact-finding inquiry as to the usage of drones during the September 10<sup>th</sup> “Solano Stroll Event” on Salona Avenue.**

Note: This motion is not to accept the policy complaint nor does it reject. The Board would like to first determine the correct sequence of actions leading up to the events of the complaint before formally initiating a policy review

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

Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Moore

Noes: Owens, Ramsey. Abstain: None Absent: None

b. Discussion regarding PAB member stipends (Cheryl Owens)

Board member Owens inquired about the tracking of stipends and training hours. She would appreciate if staff could notify the PAB before stipends are due to provide the opportunity for members to update any training hours. The intention is to help board members stay up to date on stipend amounts and training hours.

c. Discussion regarding the policy priorities of the Board

The Board wishes for policy reviews that involve a death to be prioritized. Would like to see more completed policy reviews. Management Analyst asks the PAB what they envision the final work product would be. The Board suggest a report that includes a description of the incident that inspired the policy review, an analysis of the policy, if there have been similar events elsewhere, and any recommendations as to the policy.

d. Discussion on a proposed closed session discussion regarding the City Attorney's analysis of PAB Authority

Board members expressed their concerns about not being able to discuss attorney-client privileged memos as a group. Board member Ramsey stated that board members are allowed to discuss publicly their individual understandings of the law, but may not disclose privileged communications with the City Attorney's office. DCA Chang agreed with the statement.

**12. PUBLIC COMMENT**

3 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):

**13. PRESENTATION OF ADMINISTRATIVE CLOSURE OF COMPLAINT #23**

**Motion to administratively close complaint #23.**

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

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

Noes: None

Abstain: None

Absent: None

**14. PRESENTATION OF ADMINISTRATIVE CLOSURE OF COMPLAINT #24**

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**Motion to administratively close Complaint #24**

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

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

Noes: None

Abstain: None

Absent: None

**15. DISCUSSION REGARDING COMPLAINT #19**

**Motion to close complaint #19 and continue the existing policy review initiated at the July 27, 2022 regular meeting.**

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

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

Noes: None

Abstain: None

Absent: None

**END OF CLOSED SESSION**

**16. ANNOUNCEMENT OF CLOSED SESSION ACTION**

The decision to administratively close complaints #23 and #24 was announced. The decision to close complaint #19 and continue the existing policy review was announced.

**17. ADJOURNMENT**

**Motion to adjourn the meeting.**

Moved/Second (Owens, Calavita) **By general consent, the meeting was adjourned at 10:38 p.m.**

# ATTACHMENT 6

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**From:** Louis, Jennifer A.  
**Sent:** Thursday, November 3, 2022 5:20 PM  
**To:** Williams-Ridley, Dee <[DWilliams-Ridley@cityofberkeley.info](mailto:DWilliams-Ridley@cityofberkeley.info)>  
**Cc:** Buddenhagen, Paul <[PBuddenhagen@cityofberkeley.info](mailto:PBuddenhagen@cityofberkeley.info)>; Bellow, LaTanya <[LBellow@cityofberkeley.info](mailto:LBellow@cityofberkeley.info)>  
**Subject:** UPDATE: Notification regarding use of Unmanned Aerial Vehicle (Drone)

Internal

I want to provide an update on the notification I made to you on September 30, 2022 and identify a correction to the Surveillance Tech Report that is on tonight's agenda regarding the reported use of a drone on September 10, 2022 at the Solano Stroll. As a result of this new information, the technology report should indicate only two uses for this reporting period.

In regards to the Solano Stroll event I wanted to provide the additional information:

In a planning meeting shortly before the Solano Stroll, BPD learned that Albany PD had made a request to Alameda County Sheriff's Office for a drone to scan the rooftops along the entire event for potential threats during the event. The BPD officers present at the Solano Stroll believed that the request made by Albany had been carried out by the ACSO drone team. Therefore, knowing the sensitivities involved with the use of this technology and with a mindset of absolute transparency, I made notification to the City Manager and the use of the drone was added to the Surveillance Technology Report.

Knowing that the use of the drone at Solano Stroll created significant interest and concern, we went back to Albany PD to clarify the specific facts associated with the drone use that day. Albany PD informed us that the preplanning discussion to scan the rooftops was never carried out the day of the event.

What remains the same as first reported is that BPD neither directly requested a drone nor asked Albany PD to request a drone on our behalf. That request was made by Albany PD to ACSO. Also accurate (and helps explain why our officers involved with the event believed the drone was used as originally planned) is that ACSO's Drone Team was present at the Solano stroll with Albany PD. However, we learned today that ASCO only responded on a standby basis in case of an emergency. Albany PD personnel who were in direct contact with the drone team have reported to us that an ACSO drone was never flown over Berkeley airspace and they sent a drone up for two calls during the Solano Stroll:

- 1) An auto burglary in progress call, in Albany jurisdiction, wherein Albany PD arrived on scene prior to the drone being overhead, contacted the involved parties and the drone was landed.

- 2) A report of a missing child in Albany PD jurisdiction, once child was located the drone landed..

I apologize for the misinformation but am glad that I have been given an opportunity to correct it.

Jen

Jen Louis  
Interim Chief of Police  
Berkeley Police Department

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# ATTACHMENT 7

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**From:** Louis, Jennifer A.

**Sent:** Thursday, November 3, 2022 6:27 PM

**To:** Aguilar, Hansel <[HAguilar@cityofberkeley.info](mailto:HAguilar@cityofberkeley.info)>

**Subject:** FW: UPDATE: Notification regarding use of Unmanned Aerial Vehicle (Drone)

Internal

Good evening,

I wanted to provide you with the below information which I just provided the City Manager and will be speaking about at Council tonight as it relates to our annual technology use reports submitted pursuant to the Surveillance Technology Ordinance. It directly relates to a topic that came up at the last PAB meeting. It is also relevant as it relates to the drone Use Policy and Acquisition report that you will be receiving from us soon.

Captain Mike Durbin will be present at the November 9th PAB meeting to provide information during the Chief's Report and will be able to speak on this as well.

Jen

Jen Louis

Interim Chief of Police

Berkeley Police Department

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