

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING**

**Wednesday, October 13, 2021
7:00 P.M.**

Board Members:

ISMAIL RAMSEY, CHAIR
MICHAEL CHANG, VICE-CHAIR
KITTY CALAVITA

REGINA HARRIS
JULIE LEFTWICH
DEBORAH LEVINE

NATHAN MIZELL
JOHN MOORE III
CHERYL OWENS

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting of the City of Berkeley Police Accountability Board will be conducted exclusively through teleconference and Zoom videoconference and there will not be a physical meeting location available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82237902987>. 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 **822 3790 2987**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

1. **CALL TO ORDER & ROLL CALL** (5 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.)

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

4. **APPROVAL OF MINUTES** (3 minutes)
 - a. Regular meeting of September 22, 2021.
 - b. Regular meeting of September 29, 2021.
5. **CHAIR'S REPORT** (5 minutes)

Update from Board member Mizell on Reimagining Public Safety Task Force
6. **DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT** (5 minutes)

Status of complaints; other items.
7. **CHIEF OF POLICE'S REPORT** (10 minutes)

Crime/cases of interest, community engagement/departments events, staffing, training, and other items of interest.
8. **SUBCOMMITTEE REPORTS (discussion and action)** (10 minutes)

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

 - a. Fair & Impartial Policing Implementation – met Oct. 7.
 - b. Director Search.
 - c. Regulations – met Oct. 12.
9. **OLD BUSINESS (discussion and action)**
 - a. Questions to City Attorney's Office regarding the confidential memo on the obligation to meet and confer over provisions of the Interim Regulations for handling complaints against sworn officers: 1) whether the City Attorney can meet with the PAB in closed session to discuss the memo; 2) can an executive summary can be produced for released to the public; 3) may the PAB as client waive attorney-client privilege so the memo can be made public. (15 minutes)
 - b. Status of memo from City Attorney's office regarding lawful changes to hearing process to correct imbalances. (5 minutes)
 - c. City Attorney conflict-of-interest issues. (15 minutes)
 - d. Continue discussion and adopt permanent Standing Rules for the Board's conduct of business. (30 minutes)
 - e. Policy complaint – Determine how to proceed on policy Complaint #7). (10 minutes)
10. **NEW BUSINESS (discussion and action)**
 - a. Review and answer questions about Interim Regulations for handling complaints, approved by City Council Oct. 5, 2021. (10 minutes)

From: Interim Director

- b. Training: Procedural justice as practiced by BPD;
OR Quasi-judicial obligations of the Board. (1 – 1.5 hours)

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. **CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #3**
12. **CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #8**

End of Closed Session

13. **ANNOUNCEMENT OF CLOSED SESSION ACTION** (1 minute)
14. **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.)
15. **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.

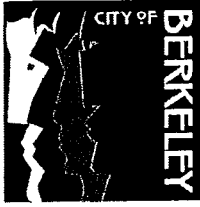
SB 343 Disclaimer

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
OCTOBER 13, 2021**

<u>MINUTES</u>	
September 22, 2021 Regular Meeting Draft Minutes	Page 7
September 29, 2021 Regular Meeting Draft Minutes	Page 11
<u>AGENDA-RELATED</u>	
Item 8. – Police Accountability Board Subcommittee list updated 9-9-21.	Page 15
Item 9.d. – DRAFT Standing Rules reflecting discussion at 9-29-21 meeting.	Page 17
Item 9.e. – Policy Complaint #7.	Page 23
<u>COMMUNICATIONS</u>	
9-30-21 Article from www.sfchronicle.com re Bad cops could lose their badges under new California law.	Page 25
Announcement: NACOLE Seeking Research Fellow – Special Project.	Page 29
PowerPoint: BPD Training on Patrol Responsibilities and Field Training – 9-29-2021.	



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, September 22, 2021, 7:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY CHAIR RAMSEY AT 7:04 P.M.

Present: Board Member Ismail Ramsey (Chair)
Board Member Michael Chang (Vice-Chair)
Board Member Kitty Calavita
Board Member Regina Harris
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Nathan Mizell
Board Member John Moore
Board Member Cheryl Owens (arrived 8:00 p.m.)

Absent: None

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability

BPD Staff: Lt. Dan Montgomery, Lt. Matt McGee, Ofc. Matthew Valle (BPA)

2. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Calavita/Leftwich) **Motion Carried by general consent**

3. PUBLIC COMMENT

There were 3 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of September 8, 2021

Moved/Second (Chang/Leftwich) **Motion Carried by general consent**

5. CHAIR'S REPORT

Chair Ramsey reported: Mayor's Working Group on Fair & Impartial Policing continues to meet re implementation of Council's recommendations. Monitoring will eventually switch over to the PAB's F&IP Subcommittee

Board member Mizell reported on the Reimagining Public Safety Task Force: Last meeting held Sept 9. Considered revised Call For Service report and alternative response report from NICJR. Also heard presentation from Copwatch. Next meeting Thursday, Sept. 30.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

-- 3 new complaints filed since the last PAB meeting. Case deadlines report was emailed to Board members and posted on website. Will extend investigation deadline on one case. Argued a Caloca appeal yesterday.

-- Interim Regulations on Sept. 28 Council agenda.

-- Board members should think about attendance at in-person NACOLE Conference in Tucson Dec. 12 – 16. Budgeted to send two Board members; traditionally Chair and Vice-Chair have first opportunity.

7. CHIEF OF POLICE'S REPORT

Lt. Montgomery reported on behalf of Interim Chief Louis:

-- Special Response Team activated in response to active shooter incident on Sept. 20 at 1700 block of 9th Street. Eventually three people taken into custody.

-- Shooting incidents trending up this year. BPD continues to recover guns during stops.

-- Conducted enforcement with CHP on Cedar & Milvia Streets of oversize commercial vehicles couple weeks ago.

-- Officers currently being enrolled in 36-hour Crisis Intervention Training. Tomorrow patrol officers will have a four-hour update on fair & impartial policing.

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. Fair & Impartial Policing Implementation – Interim Director will continue to schedule first meeting.

b. Director Search – no update.

c. Regulations – Chair Chang reported that the subcommittee is going through the full set of draft regulations very carefully.

9. OLD BUSINESS (discussion and action)

- a. i.) Hear and consider analysis from City Attorney's Office regarding lawful changes to hearing process to correct imbalances, and revise Interim Regulations and accompanying report to Council as necessary, to be submitted as a Supplemental Item for the Council's Sept. 28, 2021 meeting.

Interim Director reported that the City Attorney said their legal analysis could be ready as soon as this Friday. No action.

- ii.) Consider recommendation from Regulations Subcommittee that the Board send a letter to the City Attorney's Office, with a copy to the City Manager and Director of Human Resources requesting, in writing, the legal and/or contractual basis for meet-and-confer on the Interim Regulations proposed by the Board; and confirming that the legal opinion on the three significant provisions of the proposed Interim Regulations will be ready before the Board's Sept. 29 meeting.

Motion to send the letter to the City Attorney as it appears in the agenda packet.

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

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

Noes: None

Abstain: None

Absent: None

- b. Consider forming subcommittee for outreach activities.

Postponed to a future meeting.

- c. Training: Police Department organization; roles and responsibilities of Divisions and staff; chain of command.

Lt. Matt McGee gave a presentation and answered questions from Board members.

- d. Discuss and adopt permanent Standing Rules for the Board's conduct of business.

Postponed to the next meeting.

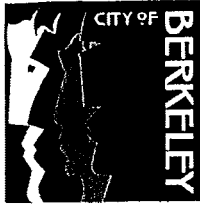
10. PUBLIC COMMENT

There were 4 speakers.

11. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Leftwich/Harris) **By general consent, the meeting was adjourned at 8:54 p.m.**



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, September 29, 2021, 7:00 P.M.

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

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

Present: Board Member Ismail Ramsey (Chair)
Board Member Michael Chang (Vice-Chair)
Board Member Kitty Calavita
Board Member Regina Harris
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Nathan Mizell (arrived 7:42 p.m.)
Board Member John Moore
Board Member Cheryl Owens

Absent: None

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability

BPD Staff: Lt. Dan Montgomery, Lt. Robert Rittenhouse, Prov. Lt. Frank Landrum, Sgt. Darren Kacalek (BPA), Ofc. Matthew Valle (BPA)

2. APPROVAL OF AGENDA

Motion to approve the agenda, as modified to hear Item #10.a. before Item #9.a.

Moved/Second (Calavita/Chang) Motion Carried by general consent

3. PUBLIC COMMENT

There were 4 speakers.

4. APPROVAL OF MINUTES

(Draft minutes not ready; postponed to the next meeting.)

5. CHAIR'S REPORT

Chair Ramsey reported:

- Presentation of Interim Regulations to Council was on last night's agenda but postponed. Continued to a special meeting on October 5 at 6:00 p.m.
- Fair & Impartial Policing: still trying to figure out overlap between Mayor's Working Group and PAB Subcommittee.

The Chair asked that all meeting participants maintain the same decorum on Zoom as one would at in-person meetings.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

- No new complaints filed since the last meeting.
- Officer interviews suspended due to lack of regulations being approved last night.

7. CHIEF OF POLICE'S REPORT

Lt. Montgomery reported on behalf of Interim Chief Louis:

- This afternoon, officers pursued a stolen vehicle first spotted by a bike officer. Pursuit onto Highway 24; vehicle crashed and three persons taken into custody; no life-threatening injuries. Vehicle was taken in carjacking and tied to thefts.
- Wrapping up officers' attendance LGBTQIA training. All will have been trained as of Sept. 30th.
- Current staffing = 154 officers, including 3 in academy and 4 yet to be in academy. Generally 8 – 15 officers out on injury or leave at any given time. Significant impacts on service delivery and has required forced overtime, resulting in employee exhaustion.

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. Fair & Impartial Policing Implementation – In process of scheduling first meeting.
- b. Director Search – Have not met yet; waiting to hear from HR Director.
- c. Regulations – Next meeting, set for Oct. 5 at 6:30 p.m., to be rescheduled.

9. OLD BUSINESS (discussion and action)

- a. Hear and consider analysis from City Attorney's Office regarding lawful changes to hearing process to correct imbalances, and obligation to meet and confer over those and other proposed provisions of the Interim Regulations for handling complaints against sworn officer.

(Heard following Item #10.a.) The Chair and the Interim Director gave a brief update; item continued to the next meeting.

Motion to suspend the rules and allow public comment now, before training [Item #9.b.], and again after standing rules [Item #9.c.], with individuals allowed to speak during both periods.

Moved/Second (Ramsey/Chang) **Motion Carried by general consent.**

PUBLIC COMMENT

There were 4 speakers.

- b. Training: Police Department patrol responsibilities; Field Training Officer program.

Provisional Lt. Landrum made a presentation and answered questions from Board members.

- c. Discuss and adopt permanent Standing Rules for the Board's conduct of business.

Discussion held. Interim Director to prepare redlined next draft reflecting discussion, for further consideration at the next meeting.

10. NEW BUSINESS (discussion and action)

- a. Policy complaint – Consider whether to open a review of policies raised in the incident described in a policy complaint (Complaint #7) and, if opened, determine how to proceed.

(Heard following Item #8.) The Complainant made a statement to the Board.

Motion to accept the policy complaint.

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

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

Noes: None

Abstain: None

Absent: None

Continued to the next meeting to determine next steps.

- b. City Attorney conflict-of-interest issues.

Postponed to the next meeting.

11. PUBLIC COMMENT

There was 1 speaker.

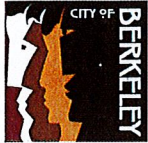
12. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Leftwich/Calavita) **By general consent, the meeting was adjourned at 10:03 p.m.**

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
9-9-21**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21	Calavita Chang Leftwich Owens <u>Public:</u> Kitt Saginor	Chang	Lt. Dan Montgomery
Director Search Formed 8-4-21	Levine Mizell Moore <u>Public:</u> Rivka Polatnick Marc Staton		
Fair & Impartial Policing Implementation Formed 8-4-21	Calavita Moore Owens Ramsey <u>Public:</u> George Lippman Elliot Halpern Jamie Crook		



DRAFT reflecting discussion at 9-29-2021 meeting

**Police Accountability Board
Standing Rules**

A. PURPOSE

These Standing Rules are established by the Police Accountability Board to ensure transparency and efficiency of our operations.

B. AMENDMENTS AND REVISIONS¹

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Board, except that the Board may not adopt rules that conflict with the enabling Charter amendment (Measure II) or the Commissioners' Manual.

C. AGENDA ITEMS – REGULAR MEETINGS

1. Individual Board members shall submit agenda items to the Board secretary by 12:00 noon one week before the meeting date.
2. ~~A Board member may place only one item on the agenda per meeting, and may not add items to the agenda unless prior agenda items from that Board member have been cleared. "Cleared" means that the Commission has either completed its consideration of the item, or agreed to move forward with the item by, for instance, forming a subcommittee or considering the issue as a whole commission, in which case the item belongs to the Commission, not the individual Board member.~~

Commented [KL1]: Bd mbr Calavita suggests deleting as unnecessary.

D. COMMUNICATIONS

Individual Board members shall submit communications to be included in the agenda packet to the Board secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed via email and/or hard copy at the meeting. If communications are received after 3:00 p.m. on the meeting day, the Board secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

E. MEETING PROCEDURES

1. Items shall be introduced by the Board member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing Board members in rotation to ensure that each Board member has the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of two minutes to speak each time they are given the floor.

¹ Language in BLUE adopted as part of Temporary Standing Rules on July 7, 2021. Still subject to change.

2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize Board members in rotation, giving each Board member the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the maker of the motion an additional minute to speak before putting the matter to a vote.
3. A pending motion may be modified by a "friendly amendment"; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.
5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert's Rules of Order.

F. PUBLIC COMMENT

1. Public comment shall be agendized near the beginning and at the end of each Board meeting. The Chair, subject to the consent of the Board, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

Commented [KL2]: Bd mbr Calavita does not remember this being done. Interim Director said this is optional

G. POLICY COMPLAINTS AND REVIEWS

1. An inquiry into a policy, when a request for the Board to review a BPD policy, practice, or procedure may be initiated by a civilian by filing a policy complaint on form provided by the Office of the Director of Police Accountability, and is considered is a "policy complaint."
 - a) The procedures for handling a policy complaint are set forth in Section II.A.4.b. of the Regulations for Handling Complaints Against Members of the Police Department.
 - a) Policy complaints should be brought to the Board for discussion and action within 30 days of filing or the next regular meeting of the Board if the 30 days has expired.
 - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other

Commented [LK3]: Section revised to incorporate provisions previously in the Regulations.

members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Board members may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the Board. The Board may accept the policy complaint upon a majority vote.

2. ~~A-The Board may-initiated a review of a BPD policy, practice, or procedure review may commence~~ upon a majority vote ~~of the Board members.~~

3. a) For policy complaints or policy reviews. Board members shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as whole Board, assigning a Board member to research the issue, asking staff to investigate or research, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Board.

b) The full Board may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action. Upon conclusion, a policy complaint shall be formally closed by a majority vote of the Board.

H. REGULAR MEETINGS

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The Board shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at ~~the South Berkeley Senior Center and other a location or~~ locations as may be determined by the Board, or virtually via teleconference when allowed by an emergency order.

Commented [KL4]: Bd mbr Owens asks if we are tied to this schedule. You are not. Note Charter requires that at the beginning of each calendar year the Board establish a schedule of at least 18 regular meetings for the year.

I. ELECTIONS

1. The election of the Chair will precede the election of the Vice-Chair, and the following nomination and election 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.
 - c) The nomination is seconded (the nomination fails if there is no second)
 - d) The presiding Chair declares the nomination process closed, when there are no further nominations.
 - e) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - f) Board members pose questions to each candidate.
 - g) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:

Commented [KL5]: Bd mbr Leftwich thinks it's awkward to not know who is running until the day of election. Interim Director says okay for individual Bd mbr to contact another before a meeting about nominating them, but communicating that to all others is a Brown Act violation. Think about having nominations at the meeting before the election.

- 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."
2. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
3. 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.

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the PRC Ordinance City Charter, the Chair may appoint members of the public to subcommittees in which they have expressed an interest. Such appointments are, subject to approval of the Board. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; and b) present themselves at a Board meeting before or at the time of the appointment and speak on the public record on intent to serve and what they will bring to the subcommittee work and deliberations.
2. Members of the public appointed to subcommittees are non-voting members and may not be selected to be the subcommittee Chair
3. Board member
4. s must constitute a majority of the membership of any subcommittee, but a subcommittee may convene and conduct business even if Board members are not a majority of subcommittee members present
5. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the Board.
6. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
7. The Chair, subject to the approval of the Board, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
8. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a Board meeting.

Commented [KL6]: I severed this part of the sentence because it is not in the Charter

Commented [KL7]: Bd member Calavita would like to open up to non-residents.

Commented [KL8]: Occurs to me that if subcommittee members don't have a vote, should a subcommittee meet if a Board members don't constitute a majority of those present?

K. MUTUAL AID AGREEMENTS

The Board shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the pacts between the BPD and other law enforcement entities.

~~L. SUBCOMMITTEE NOTES~~

~~Each PRC subcommittee must produce written notes of what occurred at each subcommittee meeting. These notes must be forwarded to the PRC Officer, who will post the notes to the PRC's website~~

Commented [KL9]: Bd mbr Calavita suggests deleting.

~~M.L. ANNUAL REPORT [Charter amendment Sec.16 (b) contains annual reporting requirement]~~

The Board secretary shall endeavor to present the annual report for the Board's approval no later than June 1 of each year. The Foreword shall be written by the Board member who served as Chair in the year of the report.

Commented [LK10]: Recommend deleting

~~A.M. FAMILIARITY WITH BERKELEY POLICE DEPARTMENT [Charter Amendment sec. 12 contains extensive training requirements.]~~

Within the first 6 months of their appointment, newly-appointed Board members shall endeavor to:

- 1) complete a ride-along with a sworn police officer, and
- 2) meet with Chief of Police and his/her command staff.

Commented [LK11]: Recommend deleting

~~O.N. KNOWLEDGE OF APPLICABLE LAWS AND RULES [See above re training]~~

Board members should be generally knowledgeable of ~~the Police Review Commission's enabling Ordinance (Ordinance No. 4644-N.S.; B.M.C. Chapter 3.32) City Charter, Article XIII, Section 125~~, the Regulations for Handling Complaints Against Members of the Police Department, and these Standing Rules. They should also bring copies of these documents to all Board meetings.

Commented [LK12]: Recommend deleting

~~P. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL~~

1. The Board regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the Board desires to bestow additional recognition upon those BPD personnel, or when a Board member on his or her own initiative wants the Board to recognize BPD personnel.
2. The Board may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.

Commented [KL13]: Bd mbr Leftwich said it's difficult to get a large stack of commendations at once, and some are often old. Interim Director said BPD sends them twice a year, could be a staffing issue. Could agendize fewer per meeting.

3. The Board secretary shall agendize commendations the Board receives from the BPD periodically, as received. A Board member wishing to initiate a commendation or other honor from the Board shall submit the proposal to the Board secretary for placement on the Board agenda in accordance with Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.
4. For the Board to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
 - a) Exceptional valor, bravery, or heroism;
 - b) Superior handling of a difficult situation;
 - c) An action or performance that is above and beyond typical duties;
 - d) Extraordinary compassion, empathy, or kindness.
5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of Board members present at the meeting to pass.
6. Following the meeting, the Board secretary shall communicate the Board's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

Commented [KL14]: Bd mbr Leftwich suggests also forwarding to Berkeleyside or other media outlets.

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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

Date Received:

9-13-21

DPA Case # 7

1

Name of Complainant: Farooqi Naila M.
Last First Middle

Mailing Address: 32 Turkshead Ct Redwood City CA 94065
Street City State Zip

Primary Phone: () _____ Alt Phone: () _____

E-mail address: _____

Occupation: Substitute Teacher Gender: F Age: 39

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.

309.3 - Officer Response to Call - "Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call."

309.4 - Communication Responsibilities - "[When] available information reasonably indicates that the public is threatened with serious injury or death and immediate police response is needed, [t]he dispatcher shall...(a)(c)(d)".

309.5 - Supervisory Responsibilities - "the Watch Commander or the field supervisor shall verify the following...(c) Affected outside jurisdictions are being notified as practical"

311.3 - Searches - Exceptions to warrant requirement: "Legitimate community caretaking interests", "Exigent circumstances"

The policy of the police responding to non-violent mental health calls for service.

3

Location of Incident (if applicable) 2315 College Avenue, Unit 407-A-1, Berkeley, CA

Date & Time of Incident (if applicable) December 4, 2020

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 attachment.

#3 - 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.

Nadeem's class member at UC Berkeley Haas School of Business messaged me that Nadeem didn't show up for an important class. It was uncharacteristic of Nadeem to miss any class, let alone an important presentation, so I was immediately concerned. Another classmate who lived in Berkeley called the Berkeley PD to do a welfare check at 2315 College Avenue. I called the officer, and the officer said that they went but no one answered the door. I told them I would be on my way from Redwood City, and I asked if they could meet me there.

When I arrived between 11am to 12pm, the officers were no longer there. I called the officer again. The officer told me that they could not "ping" Nadeem's phone inside his room, so they left and did not enter. I began banging on the door trying to get a response, believing my brother had to be in the room. The manager wouldn't open the door without the police present. I told the police my brother had bipolar schizophrenia, and I was concerned that he may be having an episode. In the past, he has had episodes and he usually calls for help, but I was even more concerned because he didn't call this time. The officer asked me if Nadeem had a weapon, and I said he did not. He did not own a gun or any knives. I continued to ask them to come and to open the door because I could hear something in the room, like the sound of running water. I told the officer I heard something.

The officer on the phone told me the sergeant said they had already gone and thus could not go back. The officer told me that maybe if I "asked the building manager nicely, she would open the door for me." I felt that was very condescending. In the end, the Berkeley PD didn't come. I waited for hours. I waited until almost 4pm, and finally the building manager realized Nadeem was a student and called UC PD to respond. I did not know that was an option. The UC PD responded rapidly and within minutes they were on the scene. The UC PD asked me why I wanted to enter the room so badly. I told him that my brother had bipolar schizophrenia, that I was not able to reach him, that I was concerned he was having an episode and needed help. The UC PD officer opened the door immediately, and rushed in to search for my brother.

The UC PD found my Nadeem. UC PD officers called Berkeley PD, the fire department, and medical for an emergency response. But by that time, it was too late. Nadeem was dead.

The coroner could establish no time of death. This leaves us wondering whether when we first responded, if the Berkeley PD had just opened the door, could they have saved my brother? Because of Berkeley PD lack of compassionate and proactive response, we now will never know.

Why not open the door when they first arrived? This was clearly a situation with legitimate community caretaking interests at stake as described under BPD Policy 311.3 (Searches). I was there to care for my brother, and was relying on the Berkeley PD for help. And they let me down.

- <https://www.sfchronicle.com/politics/article/Bad-cops-could-lose-their-badges-under-new-16499739.php>

POLITICS

Bad cops could lose their badges under new California law

Alexei Koseff

Sep. 30, 2021 Updated: Sep. 30, 2021 8:37 p.m

SACRAMENTO — California will create a police decertification process, joining 46 other states that have a system to strip officers of their badges for professional misconduct.

Gov. Gavin Newsom on Thursday signed SB2, by state Sen. Steven Bradford, D-Gardena (Los Angeles County), which will allow state regulators to revoke the licenses of officers who commit “serious misconduct,” including using excessive force, committing sexual assault, displaying bias and participating in a law enforcement gang.

The policy has long been sought by activists to prevent officers who are punished by one agency from simply moving to another jurisdiction, and it became a legislative priority in response to last year’s racial justice demonstrations.

Newsom signed the bill during a ceremony in Gardena, surrounded by weeping families who chanted the names of their sons and brothers who had been killed by police.

“Hopefully this provides a little hopefulness and softens the edges a little bit, that your most precious, your children’s lives were not in vain,” Newsom said.

Bradford called the signing “bittersweet,” because it resulted from “the unnecessary loss of lives due to rogue policing,” but he said it would be an important step toward rebuilding the relationship between communities of color and law enforcement.

“Many times it’s said, ‘Black and brown people hate the police.’ We don’t hate the police. We fear the police,” Bradford said. “This will help establish trust.”

But like other major policing bills this session, the version signed into law Thursday was significantly scaled back from Bradford's original proposal amid strong objections from police unions and other law enforcement groups over how the process should work. Newsom's office brokered last-minute changes that raised the threshold for decertification.

A provision of the bill that made it easier to sue an officer for a wrongful death was removed early on, though the law will lift their legal immunity for intentionally violating a person's civil rights during jail or prison custody.

The fight over legal protections for police is likely to continue next year. Some activists who lobbied for the decertification bill said they were satisfied with what passed, but frustrated at how much effort it took to win approval for something California should have done long ago. The first attempt last year died without ever coming up for a vote.

James Burch, policy director for the Anti Police-Terror Project, noted that some of the same legislators who knelt on the steps of the state Capitol last year shortly after the murder of George Floyd were reluctant to vote for the bill.

"When it is convenient and there are few consequences, many of the Democrats in the Capitol are willing to stand up for issues of racial justice and equity," he said. "When the rubber hits the road and their votes are needed, those same legislators are hard to find."

Starting in 2022, the new law directs the state Commission on Peace Officer Standards and Training to investigate allegations of "serious misconduct" against an officer. The commission will adopt regulations defining serious misconduct, which also includes acts of dishonesty and abuse of power on the job, such as falsifying evidence or intimidating a witness.

A civilian-controlled advisory board will review the findings and make a recommendation about whether to decertify an officer. A decision to strip an officer of his or her badge would need to be adopted by two-thirds of the commission and approved by an administrative law judge. The officer could potentially be suspended instead.

While California licenses hundreds of workers, from doctors to smog check technicians, it is one of the only states, along with Hawaii, New Jersey and Rhode Island, that do not have a system to take police off the streets if they violate professional standards. An earlier system that allowed the state to remove an officer's license when he or she was convicted of a felony was rolled back in 2003 under pressure from police unions.

Roger Goldman, a law professor emeritus at St. Louis University who studies police certification, said California's process would be among the strongest in the nation. He pointed to a provision that also prohibits hiring officers who have been decertified in other states and the lack of a requirement for an officer to be fired by an agency before the person's license can be revoked.

"That's a good idea, because in some states, they're so desperate for bodies, they keep people on that should be fired," Goldman said.

But he added that the law maintains a balanced approach for police, including identifying specific types of misconduct, as opposed to a general "lack of good moral character" that some states use, and relying on "clear and convincing evidence" for decertification, a higher standard of proof.

Both supporters and opponents of California's system are gearing up for further battles as it develops through regulations, which could settle questions like whether an officer can be decertified for misconduct outside the line of duty.

One major source of friction in the bill was the composition of the nine-member advisory board, only two of whom will come out of law enforcement. Police organizations and some legislators argued that the board would be biased against officers. A requirement that two members of the advisory board be victims of excessive force or people whose family members had been killed by police was ultimately softened to a recommendation.

Brian Marvel, president of the Peace Officers Research Association of California, a statewide federation of police unions, said in a statement that the organization "supports establishing a fair and balanced licensing program that affords peace officers the due process rights all American citizens are entitled to," but remains opposed to the process established through Bradford's bill because it believes

that the definition of serious misconduct is subjective and that the advisory board will be biased.

Newsom also signed seven more bills to change California policing practices, including:

- AB89, by Assembly Member Reggie Jones Sawyer, D-Los Angeles, which raises the minimum age for officers to 21 and creates a required curriculum in the community college system.
- AB481, by Assembly Member David Chiu, D-San Francisco, which requires law enforcement agencies to seek approval from their local governing bodies when they buy surplus military equipment.
- SB16, by state Sen. Nancy Skinner, D-Berkeley, which expands the types of police personnel records that are subject to public disclosure, including those related to excessive use of force and sustained findings of failure to intervene, unlawful arrests and searches, and discrimination.
- AB26, by Assembly Member Chris Holden, D-Pasadena, which sets new standards for what police departments must include in their use-of-force policies about officers intervening when they see excessive force by their colleagues.
- AB48, by Assembly Member Lorena Gonzalez, D-San Diego, which prohibits officers from firing rubber bullets or tear gas at a protest unless it is a life-threatening situation.
- AB490, by Assembly Member Mike Gipson, D-Carson (Los Angeles County), which bans restraints and transport methods that carry a substantial risk of suffocating the suspect.
- AB958, also by Gipson, which makes participating in a “law enforcement gang,” a group of officers within an agency that engage in a pattern of rogue on-duty behavior, a fireable offense.

*Alexei Koseff is a San Francisco Chronicle staff writer.
Email: alexei.koseff@sfchronicle.com Twitter: @akoseff*

Lee, Katherine

From: NACOLE Director of Training & Education <mcellhiney@nacole.org>
Sent: Friday, October 1, 2021 1:33 PM
To: Lee, Katherine
Subject: NACOLE Seeking Research Fellow - Application Deadline October 22, 2021

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Research Fellow - Special Project

The National Association for Civilian Oversight of Law Enforcement (NACOLE), a 501(c)(3) not-for-profit organization, is the nation's only non-profit organization of police oversight agencies, practitioners, and supporters. It has worked to legitimize law enforcement oversight as a professional field of study and practice and facilitated the development of professional standards, including a Code of Ethics, as well as core competencies and training guidelines for oversight practitioners. NACOLE works collaboratively with oversight practitioners, communities, academics, and law enforcement interested in oversight and is now engaging in a two-year project to develop a state-by-state directory of the legal obstacles that impede or limit independent civilian oversight of law enforcement.

Project Description

Throughout the United States, state statutes, municipal laws, and/or collective

bargaining agreements restrict efforts to improve law enforcement transparency and accountability. These legal obstacles place limits on civilian oversight agencies' authorities and processes in ways that undermine agencies' capacity to effectively carry out their mandates, provide transparency, and restore community trust in law enforcement through independent oversight. Such obstacles often restrict civilian oversight agencies' ability to conduct independent investigations or review internal investigations, limit their role in disciplinary processes, deny them access to law enforcement agency records and/or the use of subpoenas, prevent these agencies from releasing information to the public, and curb their ability to influence department policies, procedures, and training.

Specific statutory and contractual provisions illustrate some of the legal impediments that preclude implementation of effective civilian oversight of law enforcement practices. For example, in Kentucky and Rhode Island, the states' Officer Bills of Rights stipulate that civilians are not permitted to participate in the investigative process. In Tennessee, House Bill 658/Senate Bill 1407, which went into effect in May 2019, prohibits local community oversight agencies from possessing the power to issue subpoenas for obtaining documents or compelling witness testimony. In Fort Worth Texas, the meet and confer agreement between the city and the Fort Worth Police Officers Association, states that interviewing officers who are the subject of administrative hearing takes place "whenever practical," a provision that leads to critical investigative delays.

Responsibilities and Essential Skills

NACOLE is seeking a research fellow to collect and compile relevant data, distill and concisely summarize data, and conceptualize and develop a comprehensive report, searchable database, and/or directory, and draft relevant reports with supporting documentation and analysis. Candidates should possess knowledge and understanding of civilian oversight and law enforcement accountability issues; the ability to identify and comprehend state and municipal statutes and collective bargaining contracts; and have excellent

written and oral communication, organizational, and critical-thinking skills. Candidates should also be capable of working independently and as part of a team.

Preferred Minimum Qualifications

- Bachelor's degree in criminal justice, political science, public policy, sociology, or a related field
- Familiarity with law enforcement oversight or government accountability mechanisms
- Previous experience with research, data collection, data analysis, and report writing
- An equivalent combination of education, training, and experience may be considered

Interested candidates should send an initial application to Cameron McElhiney at mcellhiney@nacole.org by **October 22, 2021** and should include the following:

1. Cover letter containing research interests and career goals
2. Current CV or resume
3. Name and contact information for three (3) references

Questions may be directed to Cameron McElhiney at (317) 721-8133 or by email at mcellhiney@nacole.org. Qualified candidate materials will be reviewed and candidates scheduled for an interview at a later date.



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