

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING**

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

Board Members:

JOHN MOORE III. (CHAIR)
KITTY CALAVITA

REGINA HARRIS (VICE-CHAIR)
JULIE LEFTWICH
DEBORAH LEVINE

CHERYL OWENS
ISMAIL RAMSEY

PUBLIC ADVISORY

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

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

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

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

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

LAND ACKNOWLEDGEMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the 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 January 31, 2023
5. **ODPA STAFF REPORT** (5 MINUTES)
Announcements, updates, and other items.
6. **CHAIR AND BOARD MEMBERS' REPORTS** (5 MINUTES)
Announcements, updates and other items.
7. **CHIEF OF POLICE'S REPORT** (10 minutes)
Crime/cases of interest, community engagement/departments events, staffing, training, and other items of interest.

8. **SUBCOMMITTEE REPORTS (discussion and action) (10 min)**
Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
 - i. Update on subcommittee activity.

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

- a. Update on the plans for a PAB retreat & Board trainings (ODPA Staff) – (5 min)
- b. Discussion on the timeline for review of BPD's proposed drone policy and appointment of Board members to the relevant subcommittee – (5 min)
- c. Notice of Policy Complaint No. 2023-PR-0001 (ODPA Staff) – (20 min)
(Per Section G "Policy Complaints and Reviews" of the PAB's standing rules, the policy complainant(s) will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes with the time allotted subject to the discretion of the chair, who will consider the number of persons wishing to speak.)

10. **PUBLIC COMMENT (TBD)**

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

CLOSED SESSION

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

11. **PRESENTATION OF RECOMMENDATIONS REGARDING CASE NO. 25**
– (15 min)

END OF CLOSED SESSION

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

13. **ADJOURNMENT (1 minute)**

Communications Disclaimer

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

Communication Access Information (A.R. 1.12)

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

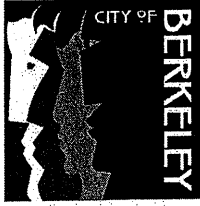
SB 343 Disclaimer

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

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

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

<u>MINUTES</u>	
January 31, 2023 Regular Meeting Draft Minutes	Page 6
<u>AGENDA-RELATED</u>	
Item 8. – PAB Active Subcommittee List.	Page 13
Item 9.a – Proposed PAB Training Curriculum	Page 15
Item 9.b – Copy of Berkeley Municipal Code Chapter 2.99 “Acquisition and Use of Surveillance Technology”	Page 34
Item 9.c – Section G of the PAB’s Standing Rules	Page 43
Item 9.c – Copy of Policy Complaint 2023-PR-0001	Page 44
<u>COMMUNICATIONS</u>	
None	



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Tuesday, January 31, 2023, 6:30 P.M.

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

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

Present: Board Member John Moore (Chair)
Board Member 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

BPD Staff: Cpt. Michael Durbin

2. APPROVAL OF AGENDA

Motion to approve the agenda.

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

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

Noes: None

Abstain: None

Absent: Ramsey

3. PUBLIC COMMENT

0 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of January 11, 2023

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

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

Noes: None

Abstain: None

Absent: Ramsey

- Board member Leftwich requested that ODPa staff include the specific questions and requests made by the Board to the CAO, BPD, or ODPa within the minutes.

5. ODPa STAFF REPORT

ODPa Staff / Director reported:

- Director Aguilar addresses Board member Leftwich's request and states that the ODPa is actively working towards compiling a list of those requests. He also informs the Board that ODPa staff is working to create a log that tracks all of the questions asked and their status
- Director Aguilar reports that the ODPa has created a log for the BPD with the pending request. This log includes the request, the charter authority that allows the said request, and deadlines.
- Board member Leftwich suggests that the ODPa provide the current log of requests so that the Board can help fill in any missing items.
- Board member Owens asks a question about the 10-day timeline for receiving requested documents/records and the application to other city departments, including the CAO. Deputy City Attorney Chang confirms that the timelines apply to records and document requests. Board member Owens asks for a follow-up regarding the contract for the independent investigator as it relates to the allegations to the BPD Downtown Task Force & Bike Unit allegations. Deputy City Attorney Chang states that he will forward that request to the individual responsible for that request.
- Director Aguilar provides an update on the Board's website. He informs the Board that the ODPa is working with the communications department to make changes to the website.
- Director Aguilar provides an update on the planning for the Board's retreat planning. He states that there will be a planning session and that the Board will be informed of the potential dates for the retreat at a later time.
- Director Aguilar provides an update on the status of the ODPa's search for a new space.
- Director Aguilar informs the Board of the details for the 2023 NACOLE annual conference & the newly formed California Civilian Oversight Alliance.

6. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore reported:

- Chair Moore thanks the Board, BPD, and ODPa Staff for the time, energy, and effort they put into their work.

7. CHIEF OF POLICE'S REPORT

Captain Durbin reported:

- No changes to staffing levels. The number of officers remains at 144 out of 181 with 4 in field training and 4 in the academy. Dispatcher staffing is also low with the current level at 20 out of 36. BPD is also in the process of a community service officer exam. These officers will be tasked with responding to lower levels. A recruitment and retention unit will be formed to help with recruitment.
- BPD continues to send officers to the 4-day crisis intervention training program in Oakland. The Interim Chief has directed all Lieutenants and Sergeants to attend the basic internal affairs investigation course.
- There are updates on the cases of interest and crime trends. The annual report to the council will be released soon on March 14th.
- Provides updates on policies currently being worked on by BPD. The audit on EWS is currently in process.
- BPD released a statement to the public regarding Tyre Nichols' death.

8. SUBCOMMITTEE REPORTS (DISCUSSION AND ACTION)

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

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
- Board member Owens, as the chair of the subcommittee, provides an update on the work of the subcommittee. She informs the Board that the subcommittee is still working out its approach to the policy review and its inclusion of members of the public.

9. OLD BUSINESS (DISCUSSION AND ACTION)

- a. Update on the discussion regarding future access to BPD Internal Affairs Bureau Reports and information (Calavita)
- Board member Calavita informs the Board that a memo and letter were sent to the Chief addressing the Board's request. The Director informs the Board that a response by the Chief has not been received but that the ODPa was informed of opposition to that request.
 - Board member Owens asks Deputy City Attorney what the remedy for non-compliance to document requests is. DCA Chang states that their office will look

into that and provide a memorandum. Board member Owens also inquires about the status of the proposed permanent regulations to which DCA Chang reports that feedback may be provided within the first half of February.

- Board member Calavita inquires about whose responsibility it would be to enforce charter violations.
- Board member Leftwich requested that the Board be allowed to have a closed session to discuss the feedback on the proposed permanent regulations and that the conflict of interest be formally addressed. DCA Chang states that a memo has already been provided addressing this issue and that the CAO will search for that memo and provide it to the Board. As to the regulations, DCA Chang states that the regulations subcommittee can meet in an informal setting to discuss the feedback on the permanent regulations.

10. NEW BUSINESS (DISCUSSION AND ACTION)

a. Nomination and election of PAB Chairperson and Vice-Chairperson

- Director Aguilar asks if there are any additional nominations for the role of chair. no additional nominations were made for the chair.
- Board member Moore, as the sole nominee for Chair, declines his two minutes to speak to receive questions from the Board.
- Board member Owens tells the Board that Board member Moore has done a good job as Chair and that she looks forward to the year ahead.

Motion for a roll call vote to elect Board Member Moore as the next Chair of the PAB.

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

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

Noes: None

Abstain: None

Absent: None

- Director Aguilar proceeds to the nomination and election of the PAB Vice-Chairperson.
- Board member Leftwich nominates Board member Harris for Vice Chair, Board member Owens seconds the nomination. Board member Harris accepts the nomination.
- Board member Calavita nominates Board member Owens for Vice Chair. Board member Owens respectfully declines the nomination.
- Board member Harris, as the sole nominee, accepts the nomination.

Motion for a roll call vote to elect Board Member Harris as the next Vice Chair of the PAB.

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

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

Noes: None

Abstain: None

Absent: None

- Chair Moore is re-elected as the PAB chair and Board member Harris is the new Vice Chair.

- b. Discussion regarding the possibility of bringing in Captain Bolton, a national consultant on Early Intervention Systems, to do a presentation.
 - Captain Bolton is an expert on Early Intervention Systems. He would give the PAB a presentation on EIS systems that would fit into the PAB's training.
 - Board member Calavita states that Captain Bolton has expressed interest. The Board request that the ODPa coordinates that presentation and invites BPD's Early Warning System coordinators to participate.

- c. Notice of potential topics of interest for future PAB review.
 - i. Budget Review Authority under Section 125(21) of the Charter
 - ii. Overtime Usage of BPD
 - The Board understands the importance of these topics. Regarding the topic of overtime, the city auditor discusses these topics. Concerning the review of BPD's budget, the Board is open to reviewing it during the next biannual proposal.

- d. In-Person Transition Plan and Meeting Places.
 - Director Aguilar provides the options for venues for the Board's in-person meetings. Director Aguilar proposes the idea of rotating the venue around the city.
 - Board member Ramsey states that he likes the idea of a rotating venue but is partial to the Judge Henry Ramsey Jr. South Berkeley Senior Center (the venue named after Board member Ramsey's father and used by the PRC in the past).
 - Board member Leftwich states that she has a preference for a location with a parking lot for convenience and safety reasons.
 - Board member Levine expresses her interest in the safety precautions related to addressing the Covid-19 pandemic. She would be interested in a venue that would allow us to take the proper precautions such as social distancing, proper ventilation, etc.
 - Board member Calavita expresses her preference for one location instead of a rotation to make sure it is easily accessible and avoid any confusion.

11. 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):

12. PRESENTATION OF RECOMMENDATIONS REGARDING CASE NO. 2488

Motion to administratively close Complaint No. 2488 and initiate a policy review.

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

Ayes: Calavita, Harris, Leftwich, Levine, Moore, Owens, and Ramsey.
Noes: None Abstain: None Absent: None

13. PRESENTATION OF RECOMMENDATION(S) REGARDING COMPLAINT NO. 17

Motion to administratively close Complaint No. 17 and continue with a policy review.

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

Ayes: Calavita, Harris, Leftwich, Levine, Moore, Owens, and Ramsey.
Noes: None Abstain: None Absent: None

14. CONTINUED PRESENTATION OF RECOMMENDATION(S) REGARDING COMPLAINT NO. 19

Motion to administratively close Complaint No. 19 and continue with a policy review.

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

Ayes: Calavita, Harris, Leftwich, Levine, Moore, Owens, and Ramsey.
Noes: None Abstain: None Absent: None

15. PRESENTATION OF OBJECTION ACCEPTANCE FOR CASE NO. 21

Motion to accept objection for Case no. 21.

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

Ayes: Calavita, Harris, Moore, Owens, and Ramsey.
Noes: None Abstain: Leftwich, Levine Absent: None

16. PENDING CASE UPDATES

END OF CLOSED SESSION

17. ANNOUNCEMENT OF CLOSED-SESSION ACTION

- Chair Moore announces the closed-session actions

18. ADJOURNMENT

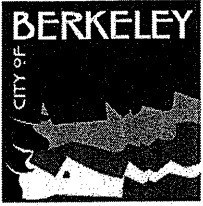
Motion to adjourn the meeting.

Moved/Second (KC, CO) By general consent, the meeting was adjourned at 9:28 p.m.

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

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

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



OFFICE OF THE DIRECTOR
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PROPOSED PAB TRAINING CURRICULUM

INITIAL SUBMISSION: FEBRUARY 8, 2023
DRAFTED BY: HANSEL AGUILAR, DPA

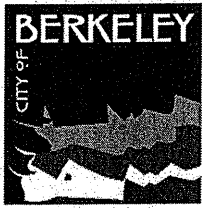
RECOMMENDED ORIENTATION AND TRAINING: BOARD, COMMITTEE, AND COMMISSION MEMBERS

The National Association for Civilian Oversight of Law Enforcement (NACOLE) is committed to the establishment, development, education and technical assistance for local civilian oversight agencies. NACOLE is also committed to supporting the training of appointed Board, Committee, and Commission Members so that they may acquire the understanding, knowledge, and skills necessary to perform responsibly in their assignment in civilian oversight in law enforcement.

Providing new members with the information they need to perform effectively is a critical step in the development of a strong board or commission. The responsibilities for developing and implementing an effective program of board orientation are shared between oversight practitioners and the board itself. There must be a commitment to developing a well-informed board, one with the knowledge needed to lead an effective organization.

Civilian oversight boards are comprised of individuals with a variety of backgrounds. They have differing life, cultural, professional and educational backgrounds and varying degrees of exposure to law enforcement and corrections professionals, municipal government operation, the criminal justice system, and the full and diverse range of communities served by local law enforcement agencies.

The types and depth of relevant training depend on the role, duties and authority of the board or commission. Some boards and commissions review all documents, statements and evidence discovered in investigations while others render



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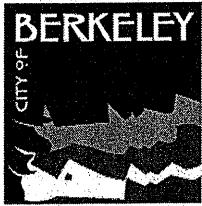
PROPOSED PAB TRAINING CURRICULUM

decisions based on summaries or presentations by agency investigators or law enforcement managers. Others deal solely with broader policy issues. Each agency must critically assess the tasks and functions its members will perform and determine the skills, expertise or training they need to acquire in order to perform their duties. As such, NACOLE has not mandated minimum structured training programs or hourly classroom requirements in connection with member appointments.

https://www.nacole.org/recommended_training_for_board_and_commission_members

The following curriculum was modeled after NACOLE's recommended curriculum and tailored to the City of Berkeley, Police Accountability Board needs and Charter minimum requirements. The learning modules are guided by the 13 principles of effective oversight: **Independence; Clearly Defined and Adequate Jurisdiction and Authority; Unfettered Access to Records and Facilities; Access to Law Enforcement Executives and Internal Affairs Staff; Full Cooperation; Sustained Stakeholder Support; Adequate Funding and Operational Resources; Public Reporting and Transparency; Policy and Patterns in Practice Analysis; Community Outreach; Community Involvement; Confidentiality, Anonymity, and Protection from Retaliation; Procedural Justice and Legitimacy.** The training consists of facilitated discussions from various representatives from the relevant City Departments and community stakeholders. It can be completed in-person, virtually or in a hybrid fashion.

PRINCIPLE	LEARNING TASK	CHARTER MINIMUM REQUIREMENT	ESTIMATED HOURS OF TRAINING	TRAINING SOURCE/FACILITATOR
INTRODUCTION TO BOARDS & COMMISSIONS	Review & Understand: <ul style="list-style-type: none"> Purpose, Mission, Scope, City Values and Culture Legal Considerations 	<ul style="list-style-type: none"> 125(12)(a)(1) 	<ul style="list-style-type: none"> 1 .5 1 	Clerk/DPA C.A.O./CC/MAYOR/CM IT

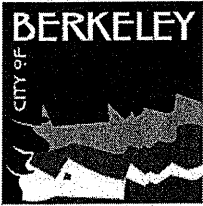


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PROPOSED PAB TRAINING CURRICULUM

<p>INTRODUCTION to CIVILIAN OVERSIGHT</p>	<ul style="list-style-type: none"> • Technological resources • Quasi-judicial duties and obligations of the Board 	<ul style="list-style-type: none"> • 125(12)(a)(1) 	<ul style="list-style-type: none"> • .5 • .5 • .5 	<p>DPA/ NACOLE VIDEOS / Initial PRC Rep</p>
<p>INDEPENDENCE</p>	<ul style="list-style-type: none"> • Introduction To Civilian Oversight • Historical Account Leading to the establishment of the oversight agency • Local Oversight Agency 	<ul style="list-style-type: none"> • 125(12)(a)(1) 	<ul style="list-style-type: none"> • .5 	<p>DPA/CM/CAO</p>
<p>CLEARLY DEFINED AND ADEQUATE JURISDICTION AND AUTHORITY</p>	<p>Review & Understand Principle and Practice</p> <ul style="list-style-type: none"> • PAB Charter- Municipal Code establishing oversight agency • Community Expectations of Oversight Agency • Local Government Expectations of Oversight Agency • Legal Considerations 	<ul style="list-style-type: none"> • 125(12)(a)(1) 	<ul style="list-style-type: none"> • .25 • .25 • .25 • .25 	<p>BPD/C.A.O./CM/DPA Initial PRC Rep NACOLE VIDEOS</p>
<p>UNFETTERED ACCESS TO RECORDS AND FACILITIES</p>	<p>Review & Understand</p> <ul style="list-style-type: none"> • PAB Charter • PAB Interim Regs/Final Regs • Relevant California Codes • Relevant California Case Law 	<ul style="list-style-type: none"> • 125(12)(a)(1) 	<ul style="list-style-type: none"> • .25 • .25 	<p>BPD/C.A.O./CM/DPA</p>

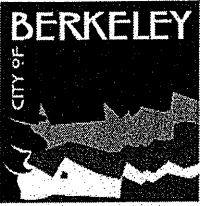


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PROPOSED PAB TRAINING CURRICULUM

	125(12)(a)(6)	BPD/C.A.O./CM/DPA	
<p>ACCESS TO LAW ENFORCEMENT EXECUTIVES AND INTERNAL AFFAIRS STAFF</p>	<ul style="list-style-type: none"> • BPD Overview <p>Review & Understand</p> <ul style="list-style-type: none"> • Organization, history, and cultural evolution of the law enforcement agency • Role and responsibilities of patrol, custodial and specialized units • Chain of command and supervisory responsibilities • Written communication system and training procedures 	<ul style="list-style-type: none"> • .25 • .25 • .25 • .25 • .25 	
<p>PROCEDURAL JUSTICE AND LEGITIMACY</p>	<ul style="list-style-type: none"> • 125(12)(a)(2) • 125(12)(a)(3) • 125(12)(a)(5) <p>Review & Understand</p> <ul style="list-style-type: none"> • Case law concerning: <ul style="list-style-type: none"> ○ stops & detentions, ○ search, seizure and arrest, ○ rights of arrested persons • Medical screening • Use of force guidelines and procedures (lethal and non-lethal): <ul style="list-style-type: none"> ○ Defensive tactics 	<ul style="list-style-type: none"> • 1 • .25 • 1 	<p>BPD/C.A.O/DA NACOLE OUTSIDE PARTNERS</p>

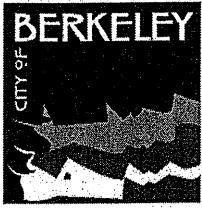


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PROPOSED PAB TRAINING CURRICULUM

<ul style="list-style-type: none"> ○ Takedown and pain compliance holds and maneuvers ○ Handcuffing techniques ○ Baton use ○ Use electronic control devices, OC spray, and restraint devices ○ Firearms 	<ul style="list-style-type: none"> • .50 • .50 • .50 • .50 • .25 • .25 • .25 • .25 • .25 • .25 		
<ul style="list-style-type: none"> ○ Investigation and review of shootings and in-custody deaths ○ Steps in the criminal justice process: <ul style="list-style-type: none"> ○ arrest, booking, arraignment, trial ○ bail, hearings, trial ○ patrol practices and procedures ○ Duties of patrol officers, sergeants and managers ○ Rules of conduct for officers 			

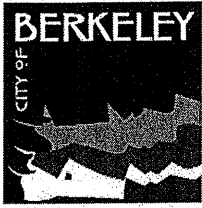


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PROPOSED PAB TRAINING CURRICULUM

FULL COOPERATION	<ul style="list-style-type: none"> • Agency procedures re: <ul style="list-style-type: none"> ○ detentions and ○ searches of persons and vehicles • Booking, custody and prisoner transport procedures • Handling and processing of prisoner property • Juvenile procedures • Traffic stop procedures • First amendment activities • Biased based policing/ racial profiling 	<ul style="list-style-type: none"> • 125(12)(a)(1) 	<ul style="list-style-type: none"> • .25 • .25 	BPD/City Attorney/DPA/ OUTSIDE PARTNERS
SUSTAINED STAKEHOLDER SUPPORT	<ul style="list-style-type: none"> • Review & Understand PAB Charter & Interim Regulations • Review & Understand Principles and Practices of successful outreach and engagement (BPD & PAB) • City and External Resources 	<ul style="list-style-type: none"> • 125(12)(a)(5) 	<ul style="list-style-type: none"> • .5 • .5 	Communications/DPA/ OUTSIDE PARTNERS
ADEQUATE FUNDING AND	<ul style="list-style-type: none"> • Review & Understand Principle and Practice • City Budget 101 	<ul style="list-style-type: none"> • 125(12)(a)(5) 	<ul style="list-style-type: none"> • .5 • .5 	CM/BUDGET OFFICE/DPA/ NACOLE/ OUTSIDE PARTNERS

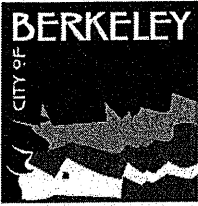


OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

Public

PROPOSED PAB TRAINING CURRICULUM

OPERATIONAL RESOURCES				
PUBLIC REPORTING AND TRANSPARENCY	<ul style="list-style-type: none"> Review & Understand <ul style="list-style-type: none"> FOIA/BROWN ACT/PUBLIC RECORDS ACT Website Management 	<ul style="list-style-type: none"> 125(12)(a)(1) 	<ul style="list-style-type: none"> .25 .25 	BPD/PBA/C.A.O./CM/DPA/COMMUNICATIONS
POLICY AND PATTERNS IN PRACTICE ANALYSIS	<ul style="list-style-type: none"> Review & Understand: <ul style="list-style-type: none"> The complaint, investigative and disciplinary processes Procedures and practices for misconduct investigations, including interviewing and report writing, collection and preservation of evidence, sources of information, and due diligence standards. ODPA Procedures <ul style="list-style-type: none"> Intake Procedures Investigative Procedures and Practices; Audits Hearings / Meetings Case Review, <ul style="list-style-type: none"> Presentations Evaluating credibility 	<ul style="list-style-type: none"> 125(12)(a)(1); 125(12)(a)(4) 	<ul style="list-style-type: none"> .33 .33 .33 	BPD/PBA/C.A.O./CM/DPA

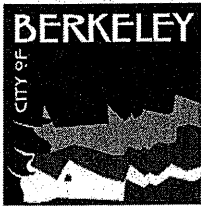


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PROPOSED PAB TRAINING CURRICULUM

<p>COMMUNITY OUTREACH</p>	<p>and reaching findings</p> <ul style="list-style-type: none"> ○ Mediation of complaints ○ Policy Recommendations ○ Communications 	<p>125(12)(a)(5)</p>	<ul style="list-style-type: none"> • .25 • .25 • .25 • .25 	<p>BPD/OUTSIDE PARTNERS</p>
	<p>Review & Understand:</p> <ul style="list-style-type: none"> • BPD Training, resources and procedures for dealing with mentally-disturbed individuals and individuals under the influence of drugs or alcohol • Community and cultural awareness training for BPD • Understanding the history, culture, and concerns of 			



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PROPOSED PAB TRAINING CURRICULUM

	<p>communities served by the law enforcement agency</p> <ul style="list-style-type: none"> • BPD Community relations and outreach 			
COMMUNITY INVOLVEMENT	<p>Review & Understand:</p> <ul style="list-style-type: none"> • Committees • City Council 	<ul style="list-style-type: none"> • .25 • .25 	<p>BPD/C.A.O./CM/DPA INITIAL PRC REP NACOLE VIDEOS</p>	
CONFIDENTIALITY, ANONYMITY, AND PROTECTION FROM RETALIATION	<p>Review & Understand:</p> <ul style="list-style-type: none"> • Confidentiality requirements • State / Local Laws relating to peace officers' personnel actions, rights and privacy 	<ul style="list-style-type: none"> • 125(12)(a)(4) • .50 • .50 	<p>BPD/C.A.O./CM/DPA/BPA INITIAL PRC REP NACOLE VIDEOS</p>	

Recommended Training for Board and Commission Members

NACOLE is committed to establishment, development, education and technical assistance for local civilian oversight agencies. NACOLE is also committed to supporting the training of appointed board, committee, and commission members so that they may acquire the understanding, knowledge, and skills necessary to perform responsibly in their assignment in civilian oversight in law enforcement.

Providing new members with the information they need to perform effectively is a critical step in the development of a strong board or commission. The responsibilities for developing and implementing an effective program of board orientation are shared between oversight practitioners and the board itself. There must be a commitment to developing a well-informed board, one with the knowledge needed to lead an effective organization.

Civilian oversight boards are comprised of individuals with a variety of backgrounds. They have differing life, cultural, professional and educational backgrounds and varying degrees of exposure to law enforcement and corrections professionals, municipal government operation, the criminal justice system, and the full and diverse range of communities served by local law enforcement agencies.

The types and depth of relevant training depend on the role, duties and authority of the board or commission. Some boards and commissions review all documents, statements and evidence discovered in investigations while others render decisions based on summaries or presentations by agency investigators or law enforcement managers. Others deal solely with broader policy issues. Each agency must critically assess the tasks and functions its members will perform and determine the skills, expertise or training they need to acquire in order to perform their duties. As such, NACOLE has not mandated minimum structured training programs or hourly classroom requirements in connection with member appointments.

1. Orientation

- a. Civilian Oversight of Law Enforcement
 - i. Civilian Oversight of Law Enforcement
 - ii. Models of Civilian Oversight

- b. Local Oversight Agency
 - i. Historical Account Leading to establishment of the oversight agency
 - ii. Charter, Ordinance, Municipal Code establishing oversight agency
 - iii. Community Expectations of Oversight Agency
 - iv. Local Government Expectations of Oversight Agency
- c. Legal Considerations
 - i. Public records and public meeting laws
 - ii. Confidentiality requirements
 - iii. State / Local Laws relating to peace officers' personnel actions, rights and privacy
 - iv. Case law concerning stops & detentions, search, seizure and arrest, rights of arrested persons
 - v. Steps in the criminal justice process: arrest, booking, arraignment, bail, hearings, trial
- d. Local Law Enforcement Agency
 - i. Organization, history, and cultural evolution of the law enforcement agency
 - 1. Role and responsibilities of patrol, custodial and specialized units
 - 2. Chain of command and supervisory responsibilities
 - 3. Written communication system and training procedures
 - ii. Patrol practices and procedures
 - 1. Duties of patrol officers, sergeants and managers
 - iii. Rules of conduct for officers
 - iv. Agency procedures re: detentions and searches of persons and vehicles
 - v. Booking, custody and prisoner transport procedures
 - 1. Medical screening
 - 2. Handling and processing of prisoner property
 - vi. Juvenile procedures
 - vii. Traffic stop procedures
 - viii. Use of force guidelines and procedures (lethal and non-lethal). For example,
 - 1. Defensive tactics
 - 2. Takedown and pain compliance holds and maneuvers
 - 3. Handcuffing techniques
 - 4. Baton use
 - 5. Use electronic control devices, OC spray, and restraint devices

- 6. Firearms
 - ix. Investigation and review of shootings and in-custody deaths
 - x. First amendment activities
 - xi. Training, resources and procedures for dealing with mentally disturbed individuals and individuals under the influence of drugs or alcohol
 - xii. Community and cultural awareness: Understanding the history, culture, and concerns of communities served by the law enforcement agency
 - xiii. Community relations and outreach
 - xiv. Biased based policing / racial profiling
 - xv. The complaint, investigative and disciplinary processes
 - xvi. Mediation of complaints
 - xvii. Evaluating credibility and reaching findings
 - xviii. Procedures and practices for misconduct investigations, including interviewing and report writing, collection and preservation of evidence, sources of information, and due diligence standards.
- e. Board Procedures
 - i. Intake Procedures
 - ii. Investigative Procedures and Practices
 - iii. Hearings / Meetings
 - iv. Case Review, Presentation, Findings
 - v. Communications
 - vi. Policy Recommendations
- 2. Potential Sources For Training
 - a. Civil Rights / Community / Public Interest Organizations
 - i. American Civil Liberties Union (ACLU)
 - ii. National Alliance on Mental Illness (NAMI)
 - iii. Homeless Advocacy Organizations
 - iv. Urban League
 - v. Mediation Centers
 - b. Government Organization Resources
 - i. Mayor / City Manager / County Supervisor / County Administrative Executive
 - ii. US Attorney / State Attorney General / County Counsel / City Attorney
 - iii. Public Defender's Office
 - iv. FBI (Color of Law Abuses by public officials)
 - v. Risk Management Department
 - vi. Presiding Judges

- c. Law Enforcement Academy
 - i. Recruit Training
 - ii. Menu Training
 - iii. In-Service Refresher Training
- d. Visits to Law Enforcement Facilities
 - i. Headquarters and Division Stations
 - ii. Communications / Dispatch / 911 Facilities
 - iii. Jail Detention Facilities
 - iv. Juvenile Detention Facilities
 - v. Crime Laboratories
 - vi. Medical Examiner Facilities
- e. Ridealongs
 - i. Patrol
 - 1. K-9
 - 2. Homeless Outreach
 - 3. Special Events (Sporting Events, Conventions, Conferences)
 - 4. Vice Squad
 - 5. Gang Suppression
 - ii. Special Units

Qualification Standards for Oversight Agencies

Qualification Standards For Oversight Investigators

1. Education
 1. A bachelor's or an equivalent degree, or a combination of education and relevant experience. Competent oversight investigators must possess sophisticated analytical and written communication skills, and must become proficient in a wide variety of subject areas, from case law on search and seizure, to cultural awareness to the latest research on perception and recollection. A college degree is an excellent indicator of likely proficiency in these areas.
2. Preferred Experience
 1. Three (3) years' experience conducting civil, criminal or factual investigations that involved gathering, analyzing and evaluating evidence, conducting interviews with friendly and adverse witnesses and documenting information in written form. Applicable experience would include: criminal investigations conducted for a law enforcement or a prosecuting agency; criminal defense investigations in the public or private sector; investigating allegations of misconduct or ethical violations

(especially involving public officials or police officers); investigations conducted in connection with litigation or hearings conducted by a government agency; personnel investigations; civil rights investigations and investigations of human rights abuses; investigations and audits of fraud or abuse.

3. Required Knowledge, Skills, and Ability

1. Knowledge of investigative techniques and procedures.
2. Ability to conduct detailed factual interviews with aggrieved individuals filing complaints, with friendly, neutral and adverse witnesses, with police officers and managers, and with experts such as medical practitioners, law enforcement trainers, crime lab personnel, etc.
3. Ability to write clear, concise, well-organized and thorough investigative reports.
4. Ability to communicate professionally and courteously with individuals from a wide variety of cultural and socio-economic backgrounds, to develop sensitivity to a variety of communication styles, to elicit information from reluctant individuals and to provide information in a clear and articulate manner.
5. Ability to plan investigations and to prioritize multiple tasks and meet required deadlines, and to conduct investigations of a highly confidential and sensitive nature.
6. Ability to organize and present information using matrices, timelines and relational database software.
7. Ability to analyze and apply relevant laws, regulations and orders to the facts of the case being investigated.
8. Ability to use initiative, ingenuity, resourcefulness and sound judgment in collecting and developing facts and other pertinent data.
9. Knowledge of evidence handling and preservation procedures, of skip-tracing techniques to locate witnesses and of legal and criminal justice procedures.
10. Ability to conduct investigations in an objective and independent manner and to adhere to high standards of ethical conduct and to evaluate evidence and make findings without bias or concern for personal interest.

Suggested Standards For Supervisory Investigators:

1. Education

1. A bachelor's or an equivalent degree.

2. Experience

1. Five (5) years' experience conducting civil, criminal or factual investigations that involved gathering, analyzing and evaluating evidence, conducting interviews with friendly and adverse witnesses and documenting information in written form. Applicable experience would include: criminal investigations conducted for a law enforcement or a prosecuting agency; criminal defense investigations in the public or private sector; investigating allegations of misconduct or ethical violations (especially involving public officials or police officers); investigations conducted in connection with litigation or hearings conducted by a government agency; personnel investigations; civil rights investigations and investigations of human rights abuses; investigations and audits of fraud or abuse.

3. Required Knowledge, Skills & Abilities

In addition to the skills and knowledge required for investigators, the following should be required.

1. Ability to plan, conduct and supervise complex and difficult investigations, including those involving serious allegations of misconduct (such as officer-involved shootings and in-custody deaths), investigations involving a large number of complainants, witnesses or officers, high-profile investigations and those involving multiple law enforcement agencies or significant policy issues.
2. Ability to train, advise, motivate, and mentor new and veteran investigators on an individual level and through a formal and ongoing training program.
3. Ability to implement investigative procedures and standards consistent with best practices for civilian oversight agencies.
4. Ability to review the work of investigators to ensure that the investigation is thorough and the factual findings and analyses are sound.
5. Ability to set an example of professionalism, ethical conduct and commitment to a quality work product.

6. Commitment to civilian oversight.
7. Knowledge of criminal justice procedures, investigative techniques and issues involving police and civilian oversight practices and police-community relations.
8. Ability to effectively communicate, both orally and in writing, with agency staff, members of the law enforcement agency, government managers and members of the diverse communities served by the law enforcement and the civilian oversight agency.
9. Ability to edit reports and other written materials prepared by investigative staff for clarity and style.
10. Ability to establish investigative procedures and standards consistent with best practices for civilian oversight agencies

Suggested Standards For Oversight Executives: Directors, Auditors, and Monitors

1. Qualifications For Civilian Oversight Executives

1. Education
 1. A bachelor's or an equivalent degree. Master's degree, Juris Doctorate, or Ph.D. is highly desirable.
2. Experience
 1. At least four (4) years of experience in the field of public or private administration or in the practice of law.
 2. Prior managerial or supervisory experience.
3. Required Knowledge, Skills & Abilities
 1. Creative, innovative and outgoing leader with recognized judgment, objectivity and integrity with a commitment to achieving solutions and results
 2. Strong passion for community relations and outreach with the ability to build strong, yet independent working relationships with a wide array of constituents and community representatives particularly, experience working with multicultural/ethnic communities

3. Ability to bridge community and institutional concerns around fairness and justice issues and knowledge of social problems, community attitudes, organization and subcultures
4. Work effectively within the framework of governmental and judicial structures
5. Exceptional analytical, verbal and written communication skills
6. The ability to manage people
7. Knowledge of organization and management practices and methods, including goal setting, program development and implementation, employee supervision, personnel management, employee relations, team building, budget development and financial management
8. High level of resiliency and the ability not to personalize adversity
9. The ability to interact and operate effectively with various stakeholders, e.g., elected and appointed officials, law enforcement officers and administrators, community groups, and others
10. The ability to work independently, fairly and objectively
11. Effective facilitation, negotiation and diplomacy skills
12. A willingness to make a long-term commitment to the organization
13. Knowledge of general legal principals and statutory law including knowledge of employer-employee hearing and administrative procedures
14. Knowledge of principles, practice and procedures related to conducting investigations and administrative hearings including rules of evidence and due process
15. Knowledge of police administration and organization, and the rules, laws and regulations thereof

PAB TRAINING OUTLINE

Session and Topic	Hours	Instructor(s)	Notes
Session 1 Organizational History and Background	2.5		Covers Topics 1a – c <ul style="list-style-type: none"> • Organizational history • Role and responsibilities of Divisions and staff • Chain of Command • Written communication System (training covered under UOF)
Session 2 Patrol Practices Procedures Duties	1-2	FTO Lieutenant or Sergeant	Covers topic 2 <ul style="list-style-type: none"> • General Patrol responsibilities • FTO program and topics
Session 3 Detentions Searches	3		Covers Topics 3, A6 and A7 <ul style="list-style-type: none"> • Constitutional and case law related to search, detention and arrest • Related policies and procedures
Session 4 Traffic Stop Procedures	2	Traffic Sergeant	Covers topic 6 Includes overview of Vehicle code, Practices associated with standard and high risk stops
Session 5 Custody	2	Jail Sergeant	Covers Topic 4 <ul style="list-style-type: none"> • Transport • Booking • Prisoner Screening and Property management
Session 6 Juvenile Procedures	2	YSD / SRO	Covers topic 5 <ul style="list-style-type: none"> • SRO work • YSD Work and focus • Differences between juvenile and adult justice systems
Session 7 Biased Based Policing	2	Principled Policing Staff	Covers topic 11 Related to racial profiling and biased based policing issues <ul style="list-style-type: none"> • Laws • Policy • Training
Session 8 Mental Health Crisis Response	2	MH / CIT Officer(s)	Covers topic 10 Related to Crisis response <ul style="list-style-type: none"> • Concepts of CIT Training and Response • Resource Support
Session 9 Use of Force	5	FTU / DTU	Covers Topic 7 a-c <ul style="list-style-type: none"> • Use of Force Policy • Demonstrations • Scenarios

Session 10 OIS In-custody Death investigations	2	Homicide	Covers Topic 8 <ul style="list-style-type: none"> • Investigative process • Parallel investigations • Review Process
Session 10 First Amendment Activities	2	Ops	Covers Topic 9 <ul style="list-style-type: none"> • Planning process • Response
Ride Alongs	8	OPS / Com Center	Four hour ride along Four hour sit along

Chapter 2.99

ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

Sections:

- 2.99.010 Purposes.**
- 2.99.020 Definitions.**
- 2.99.030 City Council Approval Requirement.**
- 2.99.040 Temporary Acquisition and Use of Surveillance Equipment.**
- 2.99.050 Compliance for Existing Surveillance Technology.**
- 2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns.**
- 2.99.070 Oversight Following City Council Approval.**
- 2.99.080 Public Access to Surveillance Technology Contracts.**
- 2.99.090 Enforcement.**
- 2.99.100 Whistleblower Protections.**
- 2.99.110 Severability.**

2.99.010 Purposes.

- A. Through the enactment of this Chapter, the City seeks to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City's interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.
- B. Transparency is essential when the City is considering procurement and use of Surveillance Technology.
- C. Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk.
- D. Decisions relating to Surveillance Technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.
- E. Surveillance Technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any Surveillance Technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.
- F. Decisions regarding whether and how Surveillance Technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.

G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures, are important in the protection of civil rights and civil liberties.

H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed. (Ord. 7592-NS § 2 (part), 2018)

2.99.020 Definitions.

The following definitions apply to this Chapter:

1. "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.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in Section 1 (above):

- a. Routine office hardware, such as televisions, computers and printers, that is in widespread public use and will not be used for any surveillance functions;
- b. Handheld Parking Citation Devices, that do not automatically read license plates;
- c. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;
- d. Devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;
- e. Manually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and city-issued cell phones;
- f. Municipal agency databases;
- g. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;

- h. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity;
 - i. Stationary security cameras affixed to City property or facilities.
 - j. Personal communication device, which means a cellular telephone, a personal digital assistant, a wireless capable tablet or similar wireless two-way communications and/or portable Internet accessing device, that has not been modified beyond stock manufacturer capabilities, whether procured or subsidized by a City entity or personally owned, that is used in the regular course of conducting City business.
2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:
- a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing;
 - b. Geographic Deployment: Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically;
 - c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;
 - d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;
 - e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;
 - f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;
 - g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.

3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:

- a. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;
- b. Purpose: Information on the proposed purpose(s) for the Surveillance Technology;

- c. Location: The general location(s) it may be deployed and reasons for deployment;
 - d. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;
 - e. Mitigation: Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in subsection (d);
 - f. Data Types and Sources: A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;
 - g. Data Security: Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;
 - h. Fiscal Cost: The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;
 - i. Third Party Dependence and Access: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;
 - j. Alternatives: A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology; and
 - k. Experience of Other Entities: To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities;
4. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:
- a. Purpose: The specific purpose(s) that the Surveillance Technology is intended to advance;
 - b. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;
 - c. Data Collection: Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including "open source" data;
 - d. Data Access: A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the information, and a description of any and all of the vendor's rights to access and use, sell or otherwise share information for any purpose;

e. **Data Protection:** A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;

f. **Civil Liberties and Rights Protection:** A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;

g. **Data Retention:** The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;

h. **Public Access:** How collected information may be accessed or used by members of the public;

i. **Third Party Data Sharing:** If and how other City or non-City Entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;

j. **Training:** Training required for any employee authorized to use the Surveillance Technology or to access information collected;

k. **Auditing and Oversight:** Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and

l. **Maintenance:** The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.

5. "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.

6. "Face Recognition Technology" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face. (Ord. 7676-NS § 1, 2019; Ord. 7592-NS § 2 (part), 2018)

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)

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 they 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. (Ord. 7592-NS § 2 (part), 2018)

2.99.050 Compliance for Existing Surveillance Technology.

The City Manager shall submit to the Action Calendar for the first City Council meeting in November of 2018 a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each Surveillance Technology possessed or used prior to the effective date of the ordinance codified in this Chapter. (Ord. 7592-NS § 2 (part), 2018)

2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns.

The City Council shall only approve any action described in Section 2.99.030, 2.99.040, or Section 2.99.050 of this Chapter after making a determination that the benefits to the community of the Surveillance Technology, used according to its Surveillance Use Policy, outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights to the maximum extent possible while serving its intended purposes; and that, in the City Council's judgment, no feasible alternative with similar utility and a lesser impact on civil rights or civil liberties could be implemented. (Ord. 7592-NS § 2 (part), 2018)

2.99.070 Oversight Following City Council Approval.

The City Manager must submit to the Council Action Calendar a written Surveillance Technology Report, covering all of the City's Surveillance Technologies, annually at the first regular Council meeting in November. After review of the Surveillance Technology Report, Council may make modifications to Surveillance Use Policies. (Ord. 7592-NS § 2 (part), 2018)

2.99.080 Public Access to Surveillance Technology Contracts.

To the extent permitted by law, the City shall continue to make available to the public all of its surveillance-related contracts, including related non-disclosure agreements, if any. (Ord. 7592-NS § 2 (part), 2018)

2.99.090 Enforcement.

This Chapter does not confer any rights upon any person or entity other than the City Council to cancel or suspend a contract for a Surveillance Technology. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees. (Ord. 7592-NS § 2 (part), 2018)

2.99.100 Whistleblower Protections.

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016 and including any updates or replacements thereto, shall apply. (Ord. 7592-NS § 2 (part), 2018)

2.99.110 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance, is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional. (Ord. 7592-NS § 2 (part), 2018)

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

Code Publishing Company

**POLICE ACCOUNTABILITY BOARD
STANDING RULES**

Section G. Policy Complaints and Review

1. A request for the Board to review a BPD policy, practice, or procedure may be initiated by a member of the public by filing a policy complaint on a form provided by the Office of the Director of Police Accountability, and is considered a "policy complaint."
 - a) Policy complaints should be reviewed by staff and 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 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. The Board may initiate a review of a BPD policy, practice, or procedure upon a majority vote.
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 a whole Board, assigning a Board member to research the issue, asking staff to investigate or research the issue, 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.



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:

January 27, 2023

DPA Case # 2023-PR-0001

1

Name of Complainant: Rahman Shereen
Last First Middle

Mailing Address: _____
Street City State Zip

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

E-mail address: _____

Occupation: _____ Gender: Male Age: 78

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

2

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

See attached.

3

Location of Incident (if applicable) _____

Date & Time of Incident (if applicable) _____

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

See attached.

4

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

See attached.

5

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

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

6

CERTIFICATION

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

Sheroon Rahman
Signature of Complainant

1/25/23
Date

7

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

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

RESPONSE TO QUESTION 2:

I am asking the PAB to review Art. II § M of their own regulations and Art. XVIII § 125(18)(d)-(e) and (i) of the Berkeley City Charter. These sections of the regulations and the charter establish the required timeline for ODPA investigations and PAB hearings.

- Charter § 125(18)(d) and Regulation Art. II § M (1) establish that the time limit for investigations and notification of discipline is 240 days from “the date of the City’s discovery of alleged misconduct unless a Government Code section 3304(d) exception applies.”
- Regulation Art. II § M (3) establishes that the time limit may be tolled for any office unavailability due to a leave of absence longer than 14 days.

RESPONSE TO QUESTION 3:

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

Because those officers treated me so poorly when I needed help, I turned to the police accountability process for help. By no fault of my own, the investigation of my complaint took so long that the PAB was unable to schedule a hearing within the prescribed time. The reasons I have been given for the delay include the change in leadership of ODPA, scarce officer availability, and the PAB’s inability to fully staff a hearing within the statutorily required time. As a result, I was unable to access the administrative procedure that ostensibly exists to provide a form of justice for those who are mistreated by BPD officers.

RESPONSE TO QUESTION 4:

I propose that the PAB create the following exceptions for the prescribed timeline:

- (1) An exception for error or undue delay on the part of the ODPA;
- (2) An exception for officer unavailability that does not require that the officer is on a leave of absence lasting longer than 14 days; and
- (3) An exception for PAB member unavailability to attend a scheduled hearing such delay exists