



ACTION CALENDAR

September 30, 2025

To: Honorable Mayor and Members of the City Council

From: Hansel A. Aguilar, Director of Police Accountability

Submitted by: Hansel A. Aguilar, Director of Police Accountability

Subject: Resolution Directing the City Manager to Work with the City Attorney's Office to Establish a Communications Policy, Corresponding Training, and Compliance Mechanisms to Ensure Impartiality and Neutrality During the Pendency of an Active Personnel Investigation

RECOMMENDATION

Adopt a Resolution directing the City Manager to work with the City Attorney's Office to establish a communications policy, corresponding training, and compliance mechanisms to ensure impartiality and neutrality during the pendency of an active personnel investigation.

SUMMARY

The ODPa Companion Report (August 29, 2024) was prepared to supplement the Police Accountability Board's (PAB) independent investigation into the Berkeley Police Department's (BPD) texting scandal involving the Downtown Task Force and Bike Unit. The companion report identified not only issues of quotas and inappropriate communications, but also systemic gaps in how the City communicates during personnel investigations, particularly when high-ranking officials are implicated.

The report highlighted an incident in November 2022 when the former City Manager emailed the Mayor and Council about the allegations, affirming that they were "disturbing" but also stating she saw "no reason to pause" an item concerning the appointment of the Chief of Police. Specifically, the former City Manager stated that she did "*not see any reason to pause the upcoming item requesting the appointment of Jen Louis to Chief of Police.*" This statement was extremely concerning in the context of serious allegations that needed to be "fully investigated" and where the item dealt with the potential subject of an investigation to be undertaken. Additionally, the City Manager added that her "*initial inquiry affirmed that she [Chief Louis] had no knowledge of the allegations or text messages provided by Former Officer Shedoudy.*" It was unclear to the Board what the depth and scope of the "initial inquiry" had been, but if at that time the City Manager had not independently corroborated the lack of knowledge of the allegations by Chief Louis through independent witnesses who may have had knowledge about this, or through an administrative review of the Chief's emails and text messages, it was difficult to

ACTION CALENDAR  
September 30, 2025

understand how an “initial inquiry” could have affirmed that information. If at that time the “initial inquiry” merely included a discussion with Chief Louis about the matter, that information, in and of itself, would have been insufficient by a preponderance of the evidence to “affirm” that the Chief had no knowledge about these allegations. At most, the Chief’s denial of having knowledge could have “suggested” that the allegations lacked or possessed questionable merit.

To address this problem, the ODPa recommends that the City Council direct the City Manager, in consultation with the City Attorney’s Office, to establish a communications policy, paired with training and compliance mechanisms, to safeguard impartiality and neutrality during ongoing investigations.

FISCAL IMPACTS OF RECOMMENDATION

The development of the policy and training will primarily require staff time within the City Manager’s Office, the City Attorney’s Office, and ODPa. Additional fiscal impacts may arise from implementing compliance training, but these can be absorbed within existing resources.

CURRENT SITUATION AND ITS EFFECTS

Civilian oversight systems rely on impartial processes that inspire confidence from both the public and department employees. When senior City officials make public or semi-public statements suggesting the outcome of an investigation before it is complete, this risk:

- Prejudicing the investigation and undermining its integrity.
- Eroding public confidence in the fairness and neutrality of the process.
- Creating potential legal challenges or due process concerns for the subject(s) of the investigation.

The Companion Report identified that the City Manager’s early statements about the Chief of Police’s knowledge of texting allegations risked creating the appearance of bias. Without clear policy guidance and training, such missteps could recur, undermining both oversight and public trust.

This recommendation is consistent with best practices identified in:

- The State Bar of California’s Rules of Professional Conduct (Rule 3.6, Trial Publicity), which caution against extrajudicial statements that may materially prejudice adjudicative proceedings.
- The U.S. Department of Justice’s “Standards and Guidelines for Internal Affairs”, which emphasize neutrality and impartiality in communications during pending investigations.

ACTION CALENDAR  
September 30, 2025

By implementing a communications policy rooted in these principles, Berkeley can set clear standards for how officials handle sensitive information during personnel investigations.

BACKGROUND

In accordance with City Charter Section 125(17)(a), the City of Berkeley Police Accountability Board's Subcommittee on Policy and Practices conducted an examination of policies, practices, and procedures within the Berkeley Police Department (BPD) concerning the Downtown Task Force (DTF) and Bike Unit allegations.

A Special Meeting of the PAB was convened on November 15, 2022, where the Board voted to establish a subcommittee to review all policies and practices related to the allegations made by former BPD Officer Corey Shedoudy, which had been made public on November 10, 2022. The subcommittee, initially chaired by former Board Member Cheryl Owens and later by Board Member Kitty Calavita following Owens' resignation, also included PAB Chair John (Chip) Moore. The allegations involved racist text messages, bias against the unhoused, and pressure to meet arrest quotas, with the Sergeant of the DTF implicated.

This report aimed not only to highlight deficiencies in BPD policies and practices but also to offer concrete recommendations for addressing these issues. Achieving these goals required the collective efforts of the PAB, BPD leadership, the City Manager, and the City Council. Through this report, the PAB reaffirmed its commitment to collaboration, justice, fairness, trust, and community safety.

In support of these objectives, the ODPa submitted a complementary report to provide additional information related to the PAB's findings, in accordance with Chapter VI, Section C.1. of the City of Berkeley's Commissioner's Manual.

In summary:

- On November 10, 2022, former BPD Officer Corey Shedoudy disclosed a series of text messages alleging arrest quotas and misconduct within the Downtown Task Force.
- On November 11, 2022, the City Manager emailed the Mayor and Council, classifying the allegations as "disturbing" but affirming there was "no reason to pause" the pending appointment of the Chief of Police.
- The ODPa Companion Report (Aug. 29, 2024) analyzed this incident and concluded that such statements, absent an independent inquiry, risk undermining impartiality in investigations.
- Since the incident, the City currently does not have a policy to guide these communications.

ACTION CALENDAR

September 30, 2025

This context demonstrates the urgent need for formal guidance on communications during investigations to prevent prejudicial or biased statements and maintain the integrity of City processes.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental sustainability or climate impacts were identified in connection with this recommendation.

RATIONALE FOR RECOMMENDATION

Adopting this resolution will:

- Codify best practices for impartial communications during active investigations.
- Provide training to ensure City officials understand the boundaries of appropriate communication.
- Establish compliance mechanisms that protect investigative integrity and public trust.

CONTACT PERSON

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Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

DIRECTING THE CITY MANAGER TO WORK WITH THE CITY ATTORNEY'S OFFICE TO ESTABLISH A COMMUNICATIONS POLICY, CORRESPONDING TRAINING, AND COMPLIANCE MECHANISMS TO ENSURE IMPARTIALITY AND NEUTRALITY DURING THE PENDENCY OF AN ACTIVE PERSONNEL INVESTIGATION

WHEREAS, on November 10, 2022, allegations of misconduct involving the Berkeley Police Department's Downtown Task Force and Bike Unit were brought forward by a former officer, leading to independent and external investigations into the existence of arrest quotas and inappropriate communications; and

WHEREAS, during the pendency of those investigations, the City Manager issued communications to the Mayor and City Council that, while acknowledging the allegations as "disturbing," also prematurely expressed confidence in the subject of the investigation, thereby raising concerns of bias and prejudice; and

WHEREAS, the Office of the Director of Police Accountability (ODPA) submitted a Companion Report to the Police Accountability Board's Independent Investigation on August 29, 2024, which identified this communication as an example of how the absence of clear guidelines may undermine impartiality, investigative integrity, and public trust; and

WHEREAS, impartiality and neutrality are essential to maintaining the integrity of active personnel investigations, and best practices — including the State Bar of California's Rules of Professional Conduct, Rule 3.6 (Trial Publicity) and the U.S. Department of Justice's "Standards and Guidelines for Internal Affairs" — underscore the need for caution in public communications that could prejudice investigative outcomes; and

WHEREAS, the City of Berkeley is committed to ensuring its investigative and oversight systems operate with the highest standards of fairness, transparency, and accountability.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that:

1. The City Manager is directed to work with the City Attorney's Office to establish a communications policy that provides clear guidelines for how City officials communicate during the pendency of an active personnel investigation.
2. The City Manager is further directed to develop and implement corresponding training for City officials on this policy to ensure compliance and understanding of their obligations.
3. The policy shall include compliance mechanisms designed to safeguard impartiality and neutrality, preserve investigative integrity, and protect public confidence in the City's processes.
4. The City Manager shall return to Council with the proposed communications policy for review and approval.

