

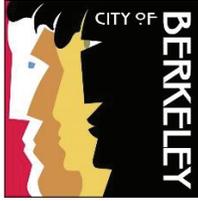
# POLICY REVIEW REPORT

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## **Prepared by:**

Office of the Director of  
Police Accountability

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## Executive Summary:

This report provides an assessment of the Complainant's request for a policy review regarding officer unavailability during scheduled Police Accountability Board (PAB) hearings. The evaluation includes a thorough review of the Berkeley City Charter, Berkeley Police Department (BPD) Policies 1010 and 1034, PAB Interim Regulations, and the Berkeley Workload Organizational Study, as well as relevant civilian oversight literature, to ensure that the assessment is consistent with established policy and procedural guidelines.

The findings indicate that the delays in Complainant's case were primarily due to operational challenges rather than policy deficiencies. However, this report notes that BPD Policy 1010 lacks provisions requiring officers to prioritize participation in PAB hearings, which could potentially contribute to scheduling conflicts and delays in the complaint resolution process. Additionally, BPD Policy 1034, which governs internal review mechanisms, is not fully aligned with external oversight procedures, further complicating the coordination between the internal Complaint Review Board and the PAB.

The report also highlights the resource constraints faced by both the Office of the Director of Police Accountability (ODPA) and the PAB, which have been exacerbated by the transition from the Police Review Commission (PRC) to the current civilian oversight structure under Measure II. While some progress has been made, such as securing funding for an additional investigator, the workload continues to strain available resources, leading to delays in scheduling hearings and processing complaints.

To address these challenges, the report recommends amending the Berkeley City Charter to extend the investigation and discipline timeframe to 365 days, consistent with the California Government Code and other oversight agencies. This would require a Charter amendment and a meet and confer process with the Berkeley Police Association (BPA) to update the existing Memorandum of Understanding (MOU). Additionally, improving scheduling protocols, enhancing communication tools, and increasing resource allocation for the ODPA and PAB are critical steps to streamline operations and ensure timely resolutions of complaints.

By implementing these recommendations, the City of Berkeley can strengthen its police oversight mechanisms, ensuring that both officers and complainants receive fair and timely outcomes, while restoring public confidence in the accountability process.

## Introduction

### Background

Complainant's original complaint stems from an incident where she alleged mistreatment by Berkeley Police Department (BPD) officers, which led her to seek recourse through ODPA and the Police Accountability Board (PAB). However, due to a series of delays—both within the PAB and BPD—the case was not heard in time, and the statutory deadline expired.

On February 14, 2023<sup>i</sup>, Complainant filed a policy complaint (see Appendix A- Amended Policy Complaint) after the PAB failed to schedule a hearing within the statutory limits due to officer unavailability and staffing changes. This report evaluates the complaint within the framework of BPD Policies 1010 and 1034, the PAB's interim regulations, and relevant Berkeley Charter sections.

## Objectives

Section 125(17)(A) of the Berkeley City Charter states that the PAB “may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against a police officer.”<sup>1</sup>

The objectives of this policy review are:

1. To assess the procedural inefficiencies in Complainant’s case.
2. To evaluate BPD policies and PAB procedures.
3. To recommend amendments that enhance officer availability and prevent future delays.

## Methodology

This report included a content review of the following regulations:

- Review of BPD Policies 1010 and 1034
- Review of the Police Accountability Board's Interim Regulations.
- Evaluation of relevant documents including the Berkeley Charter, Berkeley Police Workload Organizational Study, NACOLE civilian oversight reports, and California Government Code Section 3304.
- Analysis of policy gaps related to officer availability and complaint resolution timelines.

Additionally, it was complemented by literature review on topics of relevance to include:

- Police accountability,
- BPD workload study report, and
- National standards and guidelines on effective police practices

## Literature Review: from local to national

### Berkeley experience

Since the restructuring of the civilian oversight system from the Police Review Commission (PRC) to the PAB and the ODPa through Measure II, the workload and complexity of oversight tasks have increased significantly. The new structure aims to strengthen accountability mechanisms, but it has also created substantial operational challenges. The expanded scope of responsibilities for both the ODPa and the PAB necessitates more resources to effectively manage complaints, conduct investigations, and schedule oversight hearings in a timely manner.

Over the past two years, the ODPa has consistently requested to the Berkeley City Council additional resources to support its work, and while some requests have been met, more is still required. For example, since the filing of the current complaint, the ODPa has secured additional funding to hire an investigator, which has alleviated some of the pressure on the investigative unit. This additional capacity allows for a more manageable workload, ensuring that investigations

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<sup>1</sup> Berkeley City Charter Section 125(17)(A): [https://berkeley.municipal.codes/Charter/125\(17\)\(a\)](https://berkeley.municipal.codes/Charter/125(17)(a))

proceed without undue delay. However, despite this progress, the increased volume of complaints and the complexity of the cases that the PAB must address continue to strain the available resources (ODPA Memo- Budget Requests for ODPAPAB Operations for FY 2025-2026).

One logistical challenge that has exacerbated delays is the lack of tolling provisions during the transition from the previous oversight model to the current one. There was no pause or freeze on the cases during the organizational restructuring, which led to backlogs and delays in case processing. Furthermore, during the pendency of some investigations, the ODPAPAB investigator was on leave, and without applicable tolling provisions, investigations were further delayed. These gaps in the oversight framework highlight the need for additional administrative and operational support to ensure that complaints and investigations are handled efficiently and fairly (ODPA Memo- Budget Requests for ODPAPAB Operations for FY 2025-2026).

To address these ongoing challenges, the ODPAPAB has submitted a request for additional resources to the Berkeley City Council, including increased personnel and operational support. This includes funding for more administrative staff to handle the workload and streamline the investigative processes, as well as technology enhancements to support case management and scheduling. These measures are essential to improving the responsiveness of the PAB and ODPAPAB, ensuring that they can meet their mandate to provide timely oversight of the BPD while maintaining public trust in the process (ODPA Memo- Budget Requests for ODPAPAB Operations for FY 2025-2026).

The Citygate Berkeley Police Department Workload Organizational Study (2024) primarily analyzes resource allocation and workload distribution within the BPD. The report underscores the need for more administrative support, particularly for handling the department's workload related to coordination with oversight bodies like the PAB and the ODPAPAB. While the report does not mention oversight hearings specifically, it points out the strain on administrative resources when managing complex external engagements and the general workload of the department (Citygate Associates, 2024).

The Citygate report emphasizes the need to streamline administrative tasks to allow officers to focus on operational responsibilities. By alleviating some of the administrative burdens related to external oversight and complaint processes, the department can ensure more timely responses to civilian complaints. This is particularly relevant in contexts where officer availability is crucial, as delays in internal processes may impact the speed at which investigations and responses are coordinated between BPD and oversight bodies.

Additionally, Citygate recommends the use of technology-based solutions, such as automated systems, to improve coordination across BPD's various functions. This recommendation, although focused on internal efficiency, could also help with the logistical coordination between officers and oversight bodies, reducing delays in processes where officer participation is required (Citygate Associates, 2024).

### California experience

Across California, civilian oversight agencies operate with diverse policies regarding investigation timeframes, many of which adhere to the California Government Code Section 3304, part of the Public Safety Officers Procedural Bill of Rights (POBR). This law mandates a 365-day investigation period for resolving complaints against law enforcement officers, providing sufficient time for thorough investigations while balancing officers' procedural rights.

Several major oversight bodies in California, including the Los Angeles Board of Police Commissioners and San Francisco Department of Police Accountability, follow the 365-day

timeframe established in the Government Code. These agencies have structured their procedures to comply with state standards, ensuring consistency in how investigations and discipline are administered across jurisdictions. The alignment with this one-year period facilitates effective oversight while also safeguarding public trust by preventing prolonged delays in the investigative process. However, investigation timeframes across the state can vary, with some oversight bodies adopting unique timelines. For example, Oakland's Community Police Review Agency (CPRA) generally follows the 365-day standard but incorporates tolling provisions for complex cases where delays are unavoidable due to external factors, such as officer unavailability.

In addition to these varied timeframes, access to police department records significantly impacts the investigative process. Some jurisdictions, such as Los Angeles, Oakland and San Francisco, have more direct access to police department records, including body-worn camera footage and internal reports, which facilitates timely investigations. On the other hand, agencies like ODPB may encounter delays due to limited access to such records. The complexity of obtaining essential information, combined with resource constraints and procedural bottlenecks, can hinder the ability to meet investigation deadlines, even when a 365-day standard is in place.

### National landscape

#### National Association for Civilian Oversight of Law Enforcement (NACOLE)

The NACOLE Report on Civilian Oversight (2020) focuses on how civilian oversight agencies function and the challenges they face in maintaining transparency and fairness. One key finding is the effect of workload imbalances on the efficiency of oversight bodies. NACOLE points out that when oversight agencies are understaffed or overloaded, the timely processing of complaints and investigations is compromised. Although this report does not explicitly discuss officer unavailability, it suggests that issues such as delayed hearings or investigations stem from a lack of administrative capacity and resources within oversight agencies (De Angelis, Rosenthal, & Buchner, 2020).

The report also emphasizes the importance of having dedicated administrative liaisons who can facilitate communication between oversight bodies and police departments, ensuring smoother collaboration and reducing delays in officer participation during investigations. NACOLE advocates for flexible scheduling options, including virtual hearings, to address conflicts arising from officer workloads and operational duties. This flexibility, the report argues, is essential to maintaining the integrity of the oversight process without overwhelming police departments or delaying investigations unnecessarily (De Angelis et al., 2020).

Moreover, NACOLE stresses the critical role of public transparency in oversight processes. Agencies like the PAB must ensure that their complaint processes are not only efficient but also open to public scrutiny. The report warns that excessive delays in the resolution of complaints can damage public trust and undermine the purpose of civilian oversight. As such, the report advocates for improved procedural efficiency to prevent delays, including administrative reforms that allow oversight agencies to process complaints more swiftly and ensure officers are available to participate in the required procedures (De Angelis et al., 2020).

#### International Association of Chiefs of Police (IACP)

The International Association of Chiefs of Police (IACP) document on internal affairs emphasizes the importance of accountability and transparency in handling internal investigations. The document does not discuss oversight hearings directly but focuses on ensuring that internal

affairs investigations are conducted efficiently, with an emphasis on reducing delays that can undermine the effectiveness of the process (IACP, 2019).

According to the IACP, police departments must establish clear internal policies that prioritize timely investigations. These policies should ensure that officers are available for internal investigations and that any delays are properly managed. The report suggests that adopting automated case management systems could help police departments track investigations more effectively, preventing administrative bottlenecks and ensuring that cases are completed in a timely manner.

Furthermore, the IACP stresses the importance of procedural fairness in internal investigations. By maintaining transparency and ensuring that investigations are resolved within reasonable timeframes, police departments can build public trust and enhance their internal accountability systems. Although the IACP does not specifically address officer unavailability, its emphasis on clear timelines and the use of technology to streamline investigations is relevant to improving the efficiency of police departments when responding to oversight processes (IACP, 2019).

### U.S. Department of Justice (DOJ)

The Department of Justice (DOJ) Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice (2009) primarily addresses the internal investigative processes within law enforcement agencies. The report emphasizes the importance of timeliness and thoroughness in conducting internal investigations to maintain public trust and the credibility of the accountability process. Although the document does not discuss external oversight or civilian oversight boards like the PAB, its recommendations on ensuring effective internal affairs processes are relevant to managing officer accountability (DOJ, 2009).

The DOJ stresses the need for law enforcement agencies to establish clear timelines for completing internal investigations and to ensure timely officer participation in these processes. It recommends the use of technology solutions, such as automated tracking systems, to prevent delays and manage complex investigative timelines efficiently. While this guidance is tailored to internal affairs, the emphasis on timeliness and the use of technology to avoid delays can be applied to external oversight processes as well.

The report also underscores the importance of proactive communication throughout the investigation. Departments must keep all involved parties informed of key dates and procedural requirements to minimize delays caused by miscommunication or scheduling conflicts. Although focused on internal investigations, these best practices could help improve the efficiency of external oversight processes by ensuring that officers and other parties remain informed and engaged throughout the investigation (DOJ, 2009).

## Policy Overview

### California Government Code

The California Government Code Section 3304 outlines the procedural rights afforded to law enforcement officers during administrative investigations, commonly referred to as part of the Public Safety Officers Procedural Bill of Rights. This statute requires compliance with specific procedural safeguards, such as providing notice of investigations and granting officers the right to representation. While these protections are essential for ensuring officers' due process, they can

also lead to delays in the oversight process when hearings must be rescheduled to accommodate officer requests (California Government Code, 2023).

The statute underscores the need for oversight bodies to develop procedural flexibility in handling officer availability while still meeting the statutory timelines for resolving civilian complaints. By creating a system that respects the rights of officers while ensuring that investigations proceed in a timely manner, the potential for delays caused by Section 3304's provisions can be minimized.

### **Berkeley Charter Section 125:**

Berkeley Charter Section 125 establishes the authority of the PAB to investigate complaints and conduct hearings. However, while it outlines the PAB's powers, this section does not provide specific procedures for managing officer unavailability during investigations or hearings. The lack of clear directives here mirrors the gaps seen in other procedural documents governing oversight and accountability.

This section confers broad investigative powers to the PAB, but the absence of procedures for handling officer unavailability can result in delayed hearings and unresolved complaints. Since the charter grants the PAB investigative authority, it must also address the practical challenges of coordinating officer participation. Without such guidelines, the effectiveness of the PAB's mandate is compromised.

The inclusion of specific provisions within Section 125 to manage scheduling conflicts could significantly improve the efficiency of the PAB's investigations. By providing clear expectations for officer participation and outlining the steps to be taken when officers are unavailable, the PAB can better fulfill its mandate of holding officers accountable in a timely manner.

### **PAB and ODPa Interim Regulations:**

The PAB Interim Regulations establish a 240-day timeline for investigating complaints and conducting oversight hearings, emphasizing the importance of maintaining procedural efficiency and fairness. Section F.2 of the regulations governs the scheduling of hearings, ensuring that all parties are given the opportunity to participate within the set timeframe. While the regulations themselves do not explicitly address how to manage officer unavailability, they are designed to allow flexibility in scheduling without extending the investigation period unnecessarily.

Additionally, under the California Government Code, certain tolling provisions apply when officers are unavailable for specific reasons, such as being on medical leave or under criminal investigation. These tolling provisions allow for the temporary suspension of the investigation timeline in certain situations, thus preventing the 240-day window from closing prematurely. The PAB Interim Regulations do not explicitly incorporate these provisions, but they are relevant in cases where officer unavailability may impact the investigation or hearing schedule.

Since the filing of this complaint, the ODPa has taken steps to systematize its screening for applicable tolling provisions under the Government Code. This ensures that when such provisions apply—whether due to officer unavailability, medical leave, or other legal scenarios—the investigation timeline can be adjusted appropriately. This recent improvement allows the ODPa to more effectively manage its caseload while ensuring that all investigations and hearings are completed within statutory guidelines, with appropriate adjustments made for extenuating

circumstances. This systematization further supports procedural fairness and the timely resolution of complaints.

### **Berkeley Police Association (BPA) Memorandum of Understanding (MOU):**

The Memorandum of Understanding (MOU) between the City of Berkeley and the Berkeley Police Association (BPA) (2023-2026) outlines key provisions related to officers' work conditions, compensation, and procedural rights. The MOU contains detailed agreements regarding time off, overtime, and shift trade allowances, which are aimed at ensuring officers' operational readiness and work-life balance. However, it does not specifically address officers' participation in PAB hearings or other civilian oversight processes.

The MOU provides flexibility for officers to swap shifts and utilize overtime or compensatory time off, but these provisions are focused on managing general work schedules and duties within the BPD. There are no explicit references in the MOU regarding officer unavailability for oversight hearings or other external review mechanisms. As such, while these provisions ensure officers have avenues for managing their workloads, they do not provide guidance on how these benefits may intersect with the scheduling needs of oversight processes.

The absence of language addressing PAB hearings highlights the potential need for further collaboration between the BPD, the BPA, and oversight bodies like the PAB to establish protocols for officer participation in external hearings. These protocols would ensure that the rights and responsibilities outlined in the MOU are balanced with the requirements for timely and transparent participation in civilian oversight processes.

### **BPD Policies**

#### **1010 "Personnel Complaints":**

BPD Policy 1010 addresses the handling of personnel complaints, but its provisions are focused largely on internal procedures rather than external civilian oversight hearings such as those conducted by the PAB. While the policy mentions the role of the Internal Affairs Bureau (IAB) in investigating both internal and external complaints, it does not provide explicit guidelines or requirements for officer availability in PAB hearings. This creates a potential gap in ensuring timely officer participation in external oversight processes.

Furthermore, Policy 1010 includes procedures related to the Board of Review, which handles internal complaints following investigations by IAB. This internal mechanism, however, is separate from the PAB's public hearings, which are intended to provide external civilian oversight. The absence of a policy mandate for officers to prioritize attendance at PAB hearings can lead to delays, particularly when officers invoke operational duties or scheduling conflicts to postpone their participation.

To address this gap, Policy 1010 should be updated to specifically require officers to make themselves available for PAB hearings. This would align the department's internal procedures with the external oversight process, ensuring that complaints brought before the PAB are resolved efficiently without unnecessary delays caused by officer unavailability.

#### **1034 "Complaint Review Board":**

BPD Policy 10134 establishes the Complaint Review Board, also referred to as the Board of Review, which is responsible for examining investigations conducted by IAB. This Board handles internal reviews of personnel complaints, including those initiated by external sources

such as the PAB. However, the Complaint Review Board focuses on internal accountability processes, distinct from the public-facing hearings conducted by the PAB.

The Complaint Review Board includes several key figures from within the department, such as the Deputy Chief, an IAB Sergeant, and representatives from the subject officer's labor group. This internal composition contrasts with the more public and independent nature of PAB hearings. The Board of Review has the authority to make findings and recommendations to the Chief of Police, but these recommendations remain within the internal review structure of the department.

While Policy 1034 governs internal complaint resolution, it does not address the coordination or alignment with PAB hearings. This presents a gap in ensuring that officers are equally accountable in both internal and external processes. Updating Policy 1034 to clarify the relationship between the Board of Review and the PAB could improve the department's overall approach to complaint resolution, ensuring that officers are available for both internal and external reviews in a timely manner.

## Findings

### Officer Unavailability:

One critical issue identified in this review is the absence of provisions in BPD Policy 1010.7.3 ensuring that officers make themselves available for PAB hearings. The policy outlines general responsibilities for officers during investigations but does not specifically address their participation in external oversight processes like PAB hearings. This lack of clear guidelines contributed to significant delays in Complainant's case, as officers were not required to prioritize availability for PAB-related proceedings. The gap in Policy 1010 creates procedural inefficiencies, impacting the timely resolution of complaints.

### Board of Review and BPD Policy 1034:

BPD Policy 1034, which governs the Complaint Review Board (also referred to as the Board of Review), is another key policy that lacks integration with PAB procedures. While Policy 1034 details internal procedures for reviewing complaints after investigations, it does not address the coordination between internal review processes and external civilian oversight through the PAB. This has created a disconnect between the Complaint Review Board's internal reviews and the PAB's external hearings. Revising Policy 1034 to ensure alignment between internal and external accountability processes could address inefficiencies, ensuring that officers are available for both internal and external hearings as required.

### Workload and Resource Constraints (BPD, ODP, and PAB):

The Berkeley Workload Organizational Study (2024) highlights the workload challenges within the BPD, but these issues extend to the ODP and the PAB as well. The transition from the PRC to the PAB and ODP, prompted by Measure II, has increased the complexity and volume of work required from these oversight bodies. The ODP has requested additional resources to meet the growing demands of its work, and while some support has been granted, such as the addition of a new investigator, the office remains under-resourced.

The ODP and the PAB face ongoing resource constraints that can affect their ability to conduct timely investigations and hearings. The complexity of cases, coupled with the lack of

sufficient staffing and administrative support, has led to delays in the complaint resolution process. Since the filing of Complainant's complaint, the ODPa has secured funding for an additional investigator, which has alleviated some of the strain on the investigative unit, but this is not enough to address the broader workload issues facing the office and the board. Additional administrative and operational support is needed to ensure that investigations can be handled more efficiently, and to allow the PAB to function effectively without overburdening its limited resources.

### Procedural Timelines:

The PAB Interim Regulations establish a 240-day timeline for the completion of investigations and the scheduling of hearings. However, meeting this timeline has proven challenging due to scheduling conflicts and officer availability. According to the regulations, the timeline is only tolled if officers are on leave for more than 14 days, which does not account for other valid reasons for officer unavailability during the investigation process. The limited flexibility of the tolling provisions can result in delays when officers are unavailable for shorter periods, further complicating the ability of the PAB to complete investigations within the required timeframe.

### Government Code and Tolling Provisions:

The California Government Code provides tolling provisions for officer unavailability in specific scenarios, such as medical leave or criminal investigations. Since the filing of this complaint, the ODPa has improved its internal processes to screen for applicable tolling provisions more systematically. These tolling provisions help ensure that investigations and hearings are not unfairly delayed when certain extenuating circumstances apply. However, these measures were not in place at the time of Complainant's case, contributing to the delays experienced. Systematizing these tolling procedures has since improved the timeliness and fairness of ODPa investigations.

### Analysis

Complainant's policy complaint reveals significant procedural gaps in the management of PAB hearings and officer availability. One of the primary issues identified is the lack of provisions in BPD Policy 1010 that ensure officers make themselves available for PAB hearings. Although BPD Policy 1010 outlines general responsibilities for officers during investigations, it does not address officer participation in external oversight processes, leaving a critical gap in ensuring timely and mandatory attendance at PAB hearings. This gap contributed to delays in Complainant's case, illustrating the need for policy updates that mandate officer availability for civilian oversight hearings.

The PAB Interim Regulations set a 240-day timeline for completing investigations and scheduling hearings, but these regulations offer limited flexibility in accommodating officer availability. While the Government Code provides tolling provisions for certain scenarios, such as medical leave, these provisions were not fully systematized by the ODPa at the time of Complainant's case. This further compounded the delays, as the investigation timeline was not adjusted appropriately. However, since then, the ODPa has improved its internal processes to screen for applicable tolling provisions, ensuring that investigations are not unnecessarily delayed by legitimate officer unavailability. Despite these improvements, the limited flexibility of the interim regulations still poses a challenge for meeting procedural deadlines when officers are unavailable for other reasons.

The Berkeley Workload Organizational Study (2024) underscores the impact of resource constraints on both the BPD and the ODPa. The report highlights how the restructuring of Berkeley’s civilian oversight system, prompted by Measure II, has increased the complexity and volume of work for the PAB and ODPa. While the ODPa has received additional funding to hire an investigator, the overall resource allocation remains insufficient to handle the growing caseload effectively. Delays in Complainant’s case were partly due to these workload and resource constraints, which continue to impact the ability of both BPD and the ODPa to manage complaints and investigations in a timely manner.

Furthermore, NACOLE’s report on civilian oversight emphasizes the importance of maintaining timely, accessible, and fair complaint processes. The lack of clear scheduling policies in BPD Policy 1010 and the PAB Interim Regulations undermines public trust in the accountability process by allowing procedural delays to occur. Delays in resolving complaints can erode public confidence, as the perception of inefficiency weakens the effectiveness of oversight bodies like the PAB. Without additional resources and clear scheduling policies, both BPD and ODPa will continue to struggle with managing the increasing workload, resulting in further delays in the complaint process.

In conclusion, Complainant’s complaint highlights the need for policy revisions and additional resources to support timely and efficient oversight. BPD Policy 1010 should be updated to ensure officers prioritize attendance at PAB hearings, and the PAB Interim Regulations should be reviewed to provide greater flexibility for managing officer availability. Addressing these procedural gaps, along with securing adequate resources for the ODPa and PAB, is essential for maintaining public trust and ensuring the fairness and effectiveness of Berkeley’s police accountability system.

## Recommendations:

### Amend BPD Policy 1010.7.3 “Investigation Within the Division”:

BPD Policy 1010.7.3 should be amended to explicitly require officers to make good faith efforts to participate in PAB hearings. This includes establishing clear guidelines that prioritize officer attendance at PAB hearings, even during work hours, with provisions allowing for time off when necessary. By addressing the current gap in officer participation, BPD can ensure that external oversight by the PAB is not delayed by unavailability, leading to more timely complaint resolutions and increased public trust in the oversight process.

### Revise BPD Policy 1034 “Complaint Review Board”:

BPD Policy 1034, which governs the Complaint Review Board, should be revised to better align internal review processes with external oversight conducted by the PAB. Currently, Policy 1034 is focused solely on internal accountability, with no coordination with external civilian oversight bodies like the PAB. Updating Policy 1034 to ensure that the internal Complaint Review Board and PAB hearings are integrated would help streamline the accountability process, ensuring that officers are available for both internal and external reviews without causing unnecessary delays. This alignment would also ensure that both internal and external oversight processes are synchronized, reducing duplication and inefficiencies.

### Amend Berkeley City Charter for Investigation and Discipline Timeframe:

The Berkeley City Charter should be amended to extend the investigation and discipline timeframe to 365 days (one year) in order to align with the California Government Code and other

oversight agencies across the state. This change would ensure that the timeframe for completing investigations and imposing discipline is consistent with state standards, providing adequate time for thorough investigations and reducing the likelihood of procedural delays.

Implementing this adjustment would require a charter amendment rather than changes to the PAB Interim Regulations. Additionally, this process would necessitate a meet and confer with the BPA to update the existing MOU. The meet and confer process would address any concerns related to extending the timeframe and ensure that both parties agree to the new discipline and investigation period. Aligning the Charter with the Government Code would equip the PAB to manage investigations more effectively while maintaining fairness and timeliness in the oversight process

### **Improve Communication Protocols:**

Introducing automated communication tools between the ODPa, PAB, and BPD would streamline the scheduling and notification process. These tools would enable real-time updates about officer availability, hearing dates, and other key milestones in the investigation process, reducing the risk of miscommunication or scheduling conflicts. By automating these processes, the ODPa and PAB can more efficiently manage hearings and investigations, avoiding the types of delays encountered in Complainant's case.

### **Increase ODPa and PAB Resources:**

Given the continued resource constraints affecting both the ODPa and PAB, it is imperative to allocate additional staffing and administrative support to handle the increased workload from the restructuring under Measure II. While the addition of an investigator has helped alleviate some pressure, the office still requires more resources to ensure investigations are completed in a timely and efficient manner. Additional support staff and technological enhancements for case management and scheduling will further enable both the ODPa and PAB to meet their obligations without compromising the quality of oversight.

## **Conclusion**

This inquiry has demonstrated that the delays and inefficiencies in Complainant's case were not primarily due to policy deficiencies but rather to significant operational challenges that hindered the timely resolution of her complaint. The lack of alignment between internal policies, like BPD Policies 1010 and 1034, and external oversight processes, along with the insufficient resources within the ODPa and the PAB, contributed to these delays. These operational gaps, exacerbated by workload constraints and resource limitations, highlight the need for structural improvements in both policy and practice.

A key area for improvement lies in reducing or streamlining the administrative workload to alleviate pressure on both BPD and ODPa staff. Currently, the resource limitations and the lack of dedicated support personnel make it difficult for officers to prioritize participation in oversight hearings. Additionally, the scheduling of hearings within the 240-day timeframe, while mandated by the PAB Interim Regulations, has proven difficult to meet under the current operational setup. By adopting technological solutions—such as automated scheduling systems and real-time communication tools—the department can improve coordination between the PAB, ODPa, and BPD, ultimately reducing delays and minimizing procedural bottlenecks.

Moreover, the broader structural issues identified, such as the need for a Charter amendment to extend the investigation and discipline timeframe to 365 days, further underscore the complexity of the current oversight process. The integration of Government Code standards and improved coordination between internal review mechanisms, as outlined in BPD Policy 1034, and the PAB hearings is critical for achieving a more efficient and transparent accountability system.

In conclusion, addressing these operational inefficiencies through a combination of policy revisions, technological enhancements, and resource allocation will significantly improve the department's responsiveness and procedural effectiveness. These changes will ensure that both internal and external oversight processes function more seamlessly, restoring public confidence in the accountability mechanisms and ensuring that complainants like Complainant receive timely and just outcomes.

### Next Steps

To address the challenges identified in this review and implement the recommendations, the following next steps are proposed:

1. Consider exploring an amendment to the Berkeley City Charter: Initiate the process to amend the Berkeley City Charter to extend the investigation and discipline timeframe from 240 days to 365 days. This amendment will align Berkeley's oversight practices with the California Government Code and other oversight agencies across the state, ensuring a more consistent and manageable timeline for investigations and disciplinary actions. This will require collaboration with the City Council to introduce and pass the amendment.
2. Consider revising BPD Policies 1010 and 1034: Amend BPD Policy 1010 to explicitly require officers to prioritize participation in PAB hearings, ensuring their availability without causing unnecessary delays in the oversight process. Additionally, BPD Policy 1034 should be revised to better integrate the internal Complaint Review Board with the external PAB process, aligning internal and external accountability mechanisms.
3. Improve Scheduling and Communication Protocols: Develop and implement automated scheduling systems and communication tools to streamline the coordination of PAB hearings and officer participation. These systems will reduce administrative bottlenecks and prevent delays caused by miscommunication or scheduling conflicts, ensuring that hearings are conducted within the required timeframe.
4. Seek an allocation of Additional Resources to the ODPa and PAB: Secure additional funding and staffing for the ODPa and the PAB to alleviate the current resource constraints. This includes hiring more administrative and investigative personnel to handle the increased workload and reduce delays in processing complaints and scheduling hearings.
5. Monitor and Adjust Tolling Procedures: Continue to monitor and apply the tolling provisions to ensure that investigations are not unfairly delayed when officers are unavailable for legitimate reasons. Regular reviews of these procedures will help maintain the balance between procedural fairness and timely case resolution.
6. Public Engagement and Communication: Increase public transparency by communicating these changes and improvements to the broader community. This will include public updates on the progress of Charter amendments, policy revisions, and operational

improvements, ensuring that the community remains informed and confident in the effectiveness of the accountability processes.

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Police Accountability Board and Office of the Director of Police Accountability Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department

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## Appendices

### Appendix A- Amended Policy Complaint



# POLICY COMPLAINT FORM

## Office of the Director of Police Accountability (DPA)

1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 Web: [www.cityofberkeley.info/dpa](http://www.cityofberkeley.info/dpa)  
 E-mail: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)  
 Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received: \_\_\_\_\_

DPA Case # \_\_\_\_\_

1

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

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

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

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

Occupation: Retired Gender: F Age: 78

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

2

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

See attached.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3

Location of Incident (if applicable) \_\_\_\_\_

Date & Time of Incident (if applicable) \_\_\_\_\_

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

See attached.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4

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

See attached.

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

5

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

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

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

6

CERTIFICATION

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

[Redacted Signature]

Signature of Complainant

2/14/23

Date

7

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

- Internet
Berkeley Police Dept.
Newspaper:
Referred by:
Other: (checked)

## I. BPD POLICIES AT ISSUE

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

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

### 1010.7.3 COMPLAINTS TO THE POLICE ACCOUNTABILITY BOARD

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

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

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

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

## II. STATEMENT OF FACTS

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

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

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

### III. PROPOSED CHANGES TO BPD POLICIES

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

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

Appendix B- Original Policy Complaint



**POLICY COMPLAINT FORM**  
**Office of the Director of Police Accountability (DPA)**  
1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
Web: [www.cityofberkeley.info/dpa](http://www.cityofberkeley.info/dpa)  
E-mail: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)  
Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received:  
January 27, 2023

DPA Case # 2023-PR-0001

1

Name of Complainant: [Redacted]  
Last First Middle  
Mailing Address: [Redacted]  
Street City State Zip  
Primary Phone: ( ) [Redacted] Alt Phone: ( ) [Redacted]  
E-mail address: [Redacted]  
Occupation: Retired Gender: F Age: 78  
Ethnicity:  Asian  Black/African-American  Caucasian  
 Latino/Hispanic  Multiethnic: \_\_\_\_\_  Other: Bengaladeshi

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.

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**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.

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**6**

**CERTIFICATION**

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

  
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

Appendix C- Memorandum by Maddie Driscoll, Berkeley Law Police Review Project

## Memorandum

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

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

DATE: February 14, 2023

RE: Regulations pertaining to the timeline for complaints

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### I. Purpose

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

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

### II. PAB Regulation Article II § M

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

#### **Time limits; extensions; tolling.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## V. CONCLUSION

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

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

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<sup>1</sup> The ODPa and PAB take all complaints seriously and strive to conduct thorough and accurate reviews within a reasonable time frame. However, the completion of this particular policy review was delayed due to unforeseen challenges, including vacancies on the Police Accountability Board and personnel shortages within the Office of the Director of Police Accountability. These staffing limitations hindered the timely completion of the review process, despite the ODPa's ongoing commitment to upholding accountability and ensuring a thorough investigation. Efforts to address these resource constraints are ongoing to prevent future delays and to ensure that all complaints are handled in a timely and efficient manner.