

OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

## POLICE ACCOUNTABILITY BOARD SPECIAL MEETING

Wednesday, August 4, 2021  
6:30 P.M.

### Board Members:

KITTY CALAVITA  
MICHAEL CHANG  
REGINA HARRIS

JULIE LEFTWICH  
DEBORAH LEVINE  
NATHAN MIZELL

JOHN MOORE III  
CHERYL OWENS  
ISMAIL RAMSEY, TEMP. CHAIR

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

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

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/88280336960>. 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 **882 8033 6960**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized.

### **AGENDA**

1. **CALL TO ORDER & ROLL CALL** (5 minutes)
2. **APPROVAL OF AGENDA** (5 minutes)
3. **PUBLIC COMMENT** (TBD)

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)*

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

1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955  
Website: [www.cityofberkeley.info/dpa/](http://www.cityofberkeley.info/dpa/) Email: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

4. **APPROVAL OF MINUTES** (2 minutes)  
Special meeting of July 7, 2021.
5. **CHAIR'S REPORT** (5 minutes)  
Update from Board member Mizell on Reimagining Public Safety Task Force
6. **DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT** (5 minutes)  
Introduction of alternate board member; status of complaints; stipends; NACOLE Conference; other items.
7. **CHIEF OF POLICE'S REPORT** (10 minutes)  
Staffing, budget, crime, training updates, other items.
8. **OLD BUSINESS (discussion and action)**
  - a. Establish regular meeting schedule for the remainder of 2021. (10 minutes)
  - b. Consider forming subcommittee for outreach activities. (5 minutes)
9. **ELECTION OF BOARD CHAIRPERSON AND VICE-CHAIRPERSON (discussion and action)** (10 minutes)
10. **NEW BUSINESS (discussion and action)**
  - a. Review scope of work for recruiting team conducting search for permanent Director of Police Accountability, including presentation from Human Resources Director LaTanya Bellow. (20 minutes)  
From: David White, Deputy City Manager and LaTanya Bellow, HR Director
  - b. Training: Quasi-judicial duties and obligations of the Board. (30 minutes)  
*(Additional materials to be delivered)*  
From: Interim Director
  - c. i.) Approve Interim Regulations for handling complaints against sworn members of the Police Department; and ii) Approve proposed memo to City Attorney for advice on revising complaint procedures to correct imbalances. (30 minutes)  
From: Regulations Subcommittee
  - d. Consider forming subcommittee to monitor the Police Department's implementation of recommendations related to fair and impartial policing. (10 minutes)  
From: Board member Calavita
  - e. Status of COVID-19 vaccinations and related policies for Police Department employees, and possible recommendation that the Department follow state guidelines. (15 minutes)  
From: Board member Ramsey

## 11. PUBLIC COMMENT (TBD)

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

### Closed Session

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

## 12. CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2487 (20 minutes)

### End of Closed Session

## 13. ANNOUNCEMENT OF CLOSED SESSION ACTION

## 14. ADJOURNMENT

### 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 Director of the Police Accountability Board, located at 1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA.

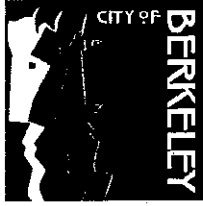
Contact the Director of Police Accountability (Board Secretary) at [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)



**POLICE ACCOUNTABILITY BOARD (PAB)  
SPECIAL MEETING ATTACHMENTS  
AUGUST 4, 2021**

<b><u>MINUTES</u></b>	
July 7, 2021 Special Meeting Draft Minutes.	Page 7
<b><u>AGENDA-RELATED</u></b>	
<b>Item 8.a.</b> Proposed PAB schedule of meetings July – December 2021.	Page 11
<b>Item 10.a.</b> – Scope of Services for Director of Police Accountability.	Page 13
<b>Item 10.b.</b> – Flowchart – Investigation of complaints filed with Director of Police Accountability (DPA) under Charter Section 125(18).	Page 19
<b>Item 10.b.</b> – Investigation and Discipline Timelines for Complaints filed with the Director of Police Accountability.	Page 21
<b>Item 10.b.</b> – Flowchart – Complainant files with Berkeley Police Department and contests decision without a sustained finding to Director of Police Accountability (DPA) (Charter Sec. 125(19)).	Page 23
<b>Item 10.b.</b> – Investigation and Discipline Timelines for External Complaints filed with the Berkeley Police Department.	Page 25
<b>Item 10.c.</b> – Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II).	Page 27
<b>Item 10.c.</b> – Proposed Memo from PAB Chair to City Attorney Farimah Brown Re Police Accountability Board Complaint Proceedings.	Page 47
<b>Item 10.d.</b> – Annotated Agenda of February 23, 2021 City Council meeting – Report and Recommendations from Mayor’s Fair & Impartial Policing Working Group.	Page 51
<b>Item 10.d.</b> – June 15, 2021 Information Calendar from City Manager to the Mayor and Councilmembers re Update on the Implementation of FIP Task Force Recommendations.	Page 57
<b>Item 10.e.</b> – Article from <a href="http://www.latimes.com">www.latimes.com</a> re LAPD examines whether it could make COVID-19 vaccine mandatory for cops.	Page 65

<b>Item 10.e.</b> – Article from <a href="http://www.sfgate.com">www.sfgate.com</a> re California is first state to push de facto COVID-19 vaccine mandates for public employees.	Page 67
<b><u>COMMUNICATIONS</u></b>	
Police Accountability Board Temporary Standing Rules.	Page 69
News from the City of Berkeley: Register a National Night Out gathering in your neighborhood.	Page 71
From the National Association for Civilian Oversight of Law Enforcement (NACOLE): Report Recommends Standards for Effective Civilian Oversight of Law Enforcement.	Page 73
7-26-21 email from Charles Clarke re Pandemic Year Crime in Berkeley.	Page 75
7-26-21 email from Charles Clarke re Berkeley Crime Statistics 1985-2020.	Page 83



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

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**POLICE ACCOUNTABILITY BOARD  
SPECIAL MEETING MINUTES**

**Wednesday, July 7, 2021, 7:00 P.M.**

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

**1. CALL TO ORDER & ROLL CALL BY KATHERINE LEE AT 7:03 P.M.**

Present: Board Member Kitty Calavita  
Board Member Michael Chang  
Board Member Regina Harris  
Board Member Juliet Leftwich  
Board Member Deborah Levine  
Board Member Nathan Mizell  
Board Member John Moore  
Board Member Cheryl Owens  
Board Member Ismail Ramsey

Absent: None

ODPA Staff: Katherine Lee, Interim Director of Police Accountability; Byron Norris, DPA Investigator; Maritza Martinez, administrative support

BPD Staff: Interim Chief Jen Louis, Lt. Robert Rittenhouse, Sgt. Rashawn Cummings, Sgt. Darren Kacalek (BPA), Ofc. Matthew Valle (BPA)

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda.**

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

**3. ELECTION OF TEMPORARY CHAIRPERSON (discussion and action)**

**Motion to nominate Izzy Ramsey as temporary chairperson**

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

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

Noes: None

Abstain: None

Absent: None

**4. MAYOR'S WELCOME**

Mayor Jesse Arreguin gave welcoming remarks.

**Motion to suspend the rules to allow Councilmember Harrison to speak.**

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

Councilmember Kate Harrison gave welcoming remarks.

**5. PUBLIC COMMENT**

There were 4 speakers.

**6. INTRODUCTIONS**

-- Police Accountability Board Members

Board members Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens and Ramsey introduced themselves.

-- Staff of the Office of the Director of Police Accountability

Ms. Lee, Mr. Norris, and Ms. Martinez introduced themselves.

-- Chief of Police and other Police Department staff

Interim Chief Louis, Internal Affairs Sgt. Cummings, and Lt. Rittenhouse introduced themselves.

-- Berkeley Police Association representatives

Sgt. Valle and BPA President Sgt. Kacalek introduced themselves.

**7. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT**

Interim Director of Police Accountability Lee reported:

-- She and staff have been working, and continue to work, on the transition from the Police Review Commission to the Police Accountability Board and Office of the Director of Police Accountability.

-- City issued news release about the transition on Friday [July 2].

-- Council still needs to appoint an alternate Board member, to serve whenever a Board member is on a leave of absence. On Council's July 13 agenda.

-- In the budget the Council adopted on June 29, is an extra \$35,000 that the Mayor added for the PAB to conduct outreach activities.

-- Complaints: Still have three pending from the PRC; two of those are on hold pending resolution of related criminal cases. Two complaints were filed with the ODPA today.

-- A priority for the Board is getting interim guidelines adopted, pending adoption of permanent regulations governing the handling of complaints; formation of Regulations Subcommittee agendaized for this reason.

-- Another priority is doing Outreach work, so formation of Outreach Subcommittee is on tonight's agenda.



- Procedurally, temporary Standing Rules needed.
  - Policy work upcoming: Board has some responsibilities in monitoring the Police Dept's implementation of recommendations related to Fair & Impartial Policing. Council referred to the BPD, PAB, and other departments a plan for Hate Crimes Reporting and Response.
  - Three referrals from PRC: Improving the complaint process for complainants; Outreach ideas; two Lexipol policies. Interim Director explained conversion of BPD's General Orders into the Lexipol system.
  - Charter amendment requires Board to establish a commendation program, to recognize sworn employees for outstanding service.
  - Training: Charter amendment requires Board members and Director to have 40 hours within the first 6 months of appointment in specified. Many topics about BPD operations, which the Police Department has already begun working on. Interim Director working with City Attorney's Office, City Clerk, and HR on other trainings. Trainings could occur during regular Board meetings but may need to schedule special meetings.
  - NACOLE (National Association for Civilian Oversight of Law Enforcement) annual conference both virtual and in-person this year. Board members should review virtual schedule and let Director know what sessions they'd like to attend. In-person conference is Dec. 12 – 16 in Tuscon, AZ; in past, PRC Officer, Investigator and one commissioner budgeted to attend. This year, Interim Director is part of a panel on "Reforming Existing Oversight Agencies" put together by former PRC Commissioner George Perezvelez.
  - Confidentiality Agreement: Board members to sign and return.
- The Interim Director answered questions from Board members.

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

- a. Establish temporary standing rules for the Board's conduct of business

**Motion to adopt the temporary standing rules as proposed.**

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

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

Noes: None

Abstain: None

Absent: None

- b. Establish regular meeting schedule for the remainder of 2021

Discussed; postponed to next meeting.

- c. Consider forming subcommittee to draft regulations for handling complaints

**By general consent, a Regulations Subcommittee was formed.**

Chair Ramsey appointed Board members Calavita, Leftwich, Owens, and Chang to this subcommittee. Public member Saginor was appointed after expressing her interest and providing her qualifications.

- d. Consider forming subcommittee for outreach activities  
Postponed to the next meeting

**9. FUTURE AGENDA TOPICS (discussion and action)**

Discussion of items to be placed on future agendas

Board member Calavita asked to agendize a Subcommittee to oversee implementation of the recommendations related to fair and impartial policing.

**10. ELECTION OF BOARD CHAIRPERSON AND VICE-CHAIRPERSON (discussion and action)**

- a. Establish procedures for elections

(No action needed; procedure established by adoption of temporary standing rules.)

- b. Conduct election of Chairperson and Vice-chairperson

**Motion to nominate Board member Ramsey**

Moved/Second (Calavita/Leftwich)

The Board postponed further action to the next meeting

**11. PUBLIC COMMENT**

There was 1 speaker.

**12. ADJOURNMENT**

**Motion to adjourn the meeting.**

Moved/Second (Mizell/Leftwich) **By general consent, the meeting was adjourned at 9:10 p.m.**

# July – December 2021

July							August							September						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3	1	2	3	4	5	6	7	1	2	3	4	5	6	7
4	5	6	7	8	9	10	8	9	10	11	12	13	14	8	9	10	11	12	13	14
11	12	13	14	15	16	17	15	16	17	18	19	20	21	12	13	14	15	16	17	18
18	19	20	21	22	23	24	22	23	24	25	26	27	28	19	20	21	22	23	24	25
25	26	27	28	29	30	31	29	30	31					26	27	28	29	30		

October							November							December						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2	1	2	3	4	5	6	1	2	3	4	5	6		
3	4	5	6	7	8	9	7	8	9	10	11	12	13	5	6	7	8	9	10	11
10	11	12	13	14	15	16	14	15	16	17	18	19	20	12	13	14	15	16	17	18
17	18	19	20	21	22	23	21	22	23	24	25	26	27	19	20	21	22	23	24	25
24	25	26	27	28	29	30	28	29	30					26	27	28	29	30	31	
31																				

PROPOSED PAB    
  Council Meetings    
  City Holiday    
  VTO





**THE BYERS GROUP**  
EXECUTIVE SEARCH AND C-SUITE CONSULTING

**CITY OF BERKELEY**  
**DIRECTOR OF POLICE ACCOUNTABILITY EXECUTIVE SEARCH**

**SCOPE OF SERVICES**

Search assignments follow our well-defined six-step process:

**PHASE 1 RECRUITMENT PLAN:** *This is the foundation phase and includes a recruitment and position analysis, client meetings and stakeholder engagement; profile development and placing advertisements; preliminary research associated with the position; and finalizing search timeline.*

**1. DEVELOP A THOROUGH UNDERSTANDING AND ASSESSMENT OF THE CLIENT**

This involves meeting with the Mayor and City Council, Police Accountability Board and staff of the Office of the Director of Police Accountability and key executives to ascertain the Office's vision, charge, personality, and philosophy. During this phase, a review of organizational structures, backgrounds of executives, official and unofficial lines of authority and responsibility, are conducted. The Office of the Director of Police Accountability plans and programs, perceived strengths and weaknesses, and the political climate are discussed. The status of potential internal candidates will also be reviewed. Perceptions about the Office's stature and attractiveness to potential candidates are crucial to developing a good organizational profile. Advantages and negative factors regarding the City of Berkeley and the Office, which may aid or hinder recruitment, will be thoroughly assessed. This initial phase becomes the foundation for developing a strong partnership and effective working relationship between the client organization and *The Byers Group*.

**2. DEVELOP A COMPREHENSIVE UNDERSTANDING OF THE POSITION**

In discussions with the Mayor and City Council, key executives and various stakeholders, personal and professional attributes, required skills, core competencies, qualifications, experience, and priorities for the Director of Police Accountability are established. During this phase, a formal and comprehensive community engagement process will be conducted to obtain additional input relative to attributes and priorities for the position to be filled. The community engagement process includes facilitating up to two (2) community/stakeholder meetings; and deploying at least one online survey to seek feedback from the community and/or staff. After all the stakeholder engagements are completed, *The Byers Group* will develop a draft recruitment profile that includes a clear description of the position duties and responsibilities, skills, competencies, key challenges, recruitment criteria, information regarding the City of Berkeley and procedures for applying. It is imperative that this position profile consists of realistic requirements and experience levels because it is the standard

against which potential candidates are recruited and evaluated. We will work with the client to develop an outreach strategy (advertisements, postings, and mailings) to ensure that the opening is well publicized and that interested individuals are able to apply. We will also finalize the recruitment timeline.

**PHASE 2 CANDIDATE DEVELOPMENT:** *This is the marketing phase of the search. The information gathered in phase 1 is used to formulate our candidate solicitation strategy. We are pro-active in our recruitment, and we aggressively seek out best in class candidates for our clients. Once the candidate pool is established, we conduct preliminary screenings and prepare a comprehensive candidate recruitment report.*

### **3. DEVELOP SEARCH STRATEGY AIMED AT ATTRACTING THE MOST QUALIFIED CANDIDATES**

Since individuals with the desired qualities are not usually actively looking to make a change, they must be recruited. An effective strategy is crucial to a successful recruitment, and *The Byers Group* works closely with the client in developing the search strategy.

During this phase, the objective is to accumulate a strong pool of candidates. *The Byers Group* will use various candidate solicitation methods, including direct sourcing based upon industry research that includes social media, internet searches, contacts with key professional leaders in the field, peer to peer referrals, our candidate data bank, and contacts with appropriate professional associations.

### **4. CANDIDATE RECRUITMENT AND SCREENING**

In addition to the formal advertising, website postings and mailings, *The Byers Group* uses a private sector-direct sourcing approach in locating and directly contacting candidates who meet the position specifications and have established specific patterns of accomplishments and success. Potential candidates and sources of candidates, identified through the above methods, are actively recruited to become candidates, and/or solicited as referral sources. We review and acknowledge all resumes received. Once the candidate pool is established, all qualified candidates, both internal and external, are evaluated using a candidate rating instrument which is based on the job requirements for the position. Reports are prepared and reviewed with the client to select the most appropriate candidates for further consideration.

**PHASE 3 CANDIDATE PRESENTATION:** *Candidate interviews and evaluations; background investigations and verifications; preparation of final candidate reports; coordinating client candidate interviews; and facilitation of selection process and search closing activities.*

## **5. EVALUATION AND PRESENTATION OF FINAL CANDIDATES**

During this phase, the top 6-10 candidates are selected for additional consideration. *The Byers Group* conducts in-depth interviews, usually in person, to ascertain a comprehensive understanding of each potential final candidate's strengths and limitations, and to determine their overall suitability as a member of the client's management team. The goal is to formulate a comprehensive understanding of their background, i.e., qualifications, pertinent accomplishments, experience, ability to meet special needs of the position and their interest in being considered.

It is our policy to conduct preliminary professional 360-degree reference checks, to include job performance, qualifications, and personal history. The 360-degree reference/background investigation includes not only people supplied by the candidate, but individuals identified, by the consultant, who are able to give candid non-bias impressions. We also conduct thorough internet and media searches, and other sources to ascertain career accomplishments/awards or controversies/problems that will impact the candidate's performance. Background investigations include criminal, civil and driving records as well as degree verifications and professional certifications are checked on all final candidates through an independent employment screening firm.

The most qualified candidates are selected for presentation to the client. We will prepare a recruitment report which will detail each candidate's background, experience, education, and accomplishments. Reference summaries and *The Byers Group's* professional appraisals are also provided.

*The Byers Group* works closely with the client and final candidates to arrange personal interviews. If requested, suggested interview questions and rating forms are provided. Additional selection processes such as assessment centers, psychological evaluations, and interview boards are available options.

While the hiring decision is always the client's, we are prepared to assist with negotiations relative to terms and conditions of employment.

## **6. CANDIDATE AND CLIENT FOLLOW-UP**

After the executive is hired, *The Byers Group* meets with the client to evaluate the overall executive recruiting strategy. Our strengths and the level of client satisfaction are assessed, along with those areas needing improvement. In addition, we periodically communicate with the hired executive to identify any areas of concern and to ensure a lasting relationship.

*Throughout the search process, The Byers Group maintains a close Client-Consultant working relationship which includes weekly progress reports.*

## **STAKEHOLDER/COMMUNITY ENGAGEMENT**

It is imperative for us to develop a comprehensive understanding of the position, the community and stakeholder expectations of the newly established Police Board and Director of Police Accountability. To gather feedback, we will launch a comprehensive community engagement process which includes facilitating up to two (2) community/stakeholder meetings; and deploying at least one online survey to seek feedback from the community and/or staff. Coupled with meeting the Mayor, City Council and the Police Accountability Board, the key position priorities, personal and professional attributes, and core competencies for the position are established. After all the stakeholder engagements are completed, we will work with the Mayor and City Council to prioritize the ideal candidate qualities to include in the recruitment profile.

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**CITY OF BERKELEY  
 DIRECTOR OF POLICE ACCOUNTABILITY**

**EXECUTIVE SEARCH TIMELINE**

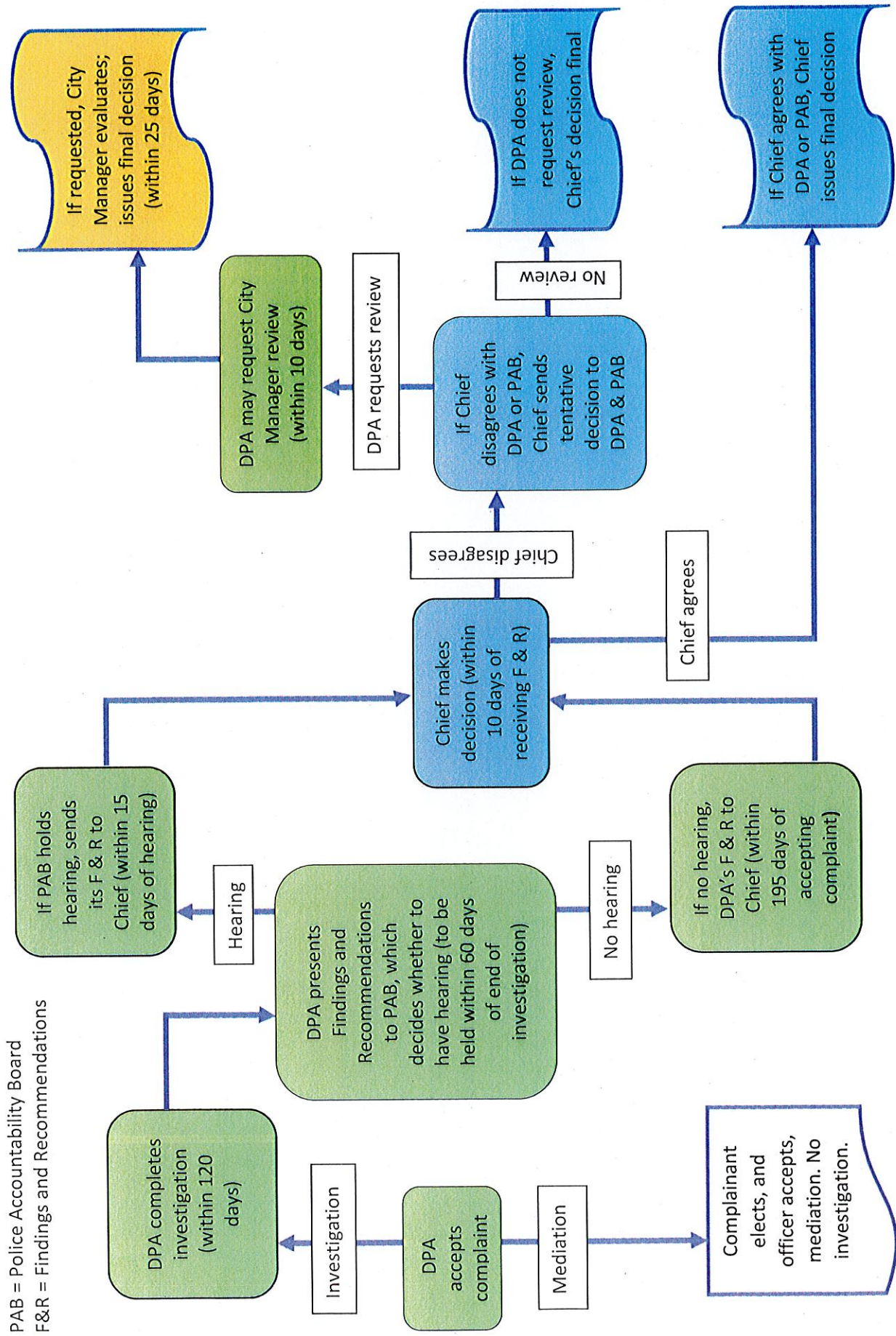
*Overview of Proposed Work Plan and Timeline*

	<b>Proposed Work Plan</b>	<b>Proposed Timeline</b>
1.	Initial meeting with client (Mayor and City Council and City Staff) and search consultants. Discuss core competencies and recruitment parameters for the position.	<b>Week 1</b>
2.	Interview key stakeholders including one on one meetings with Mayor/Council/Police Accountability Board Chair, City Manager.	<b>Week 1-3</b>
3.	Community Meetings & Survey	<b>Week 3-5</b>
4.	Present summary of stakeholder engagements and draft of recruitment profile to Mayor and City Council.	<b>Week 6-7</b>
5.	Finalize edits to recruitment profile and place advertisements.	<b>Week 7</b>
6.	Candidate research and recruitment by search consultants. (usually 6 weeks)	<b>Week 8-14</b>
6.	Candidate (6-10 shortlisted) evaluations by search consultants.	<b>Week 15-17</b>
7.	Presentation of report on shortlisted candidates. Client selects candidates for site interviews.	<b>Week 18</b>
7.	Top candidates participate in final interviews with Mayor & City Council. Final candidate selected for salary negotiation, and final referencing.	<b>TBD</b>

*Adjustments May Be Made To This Timeline As Needed*



Flowchart – Investigation of complaints filed with Director of Police Accountability (DPA) under Charter Section 125(18)





## Investigation and Discipline Timelines for Complaints filed with the Director of Police Accountability

DPA completes its investigation

Within 120 days of complaint filing/discovery

DPA submits and presents investigative findings & disciplinary recommendations [F&R] to PAB; PAB decides whether to hold hearing

Within 60 days (includes holding hearing, if warranted)

### IF NO HEARING

DPA sends F&R to Chief

Within 195 days of complaint filing/discovery

If Chief agrees with DPA, Chief issues final decision

Within 10 days of receiving DPA F&R

If Chief *disagrees* with DPA, Chief issues tentative decision to the PAB and DPA

same as above

- DPA may request Chief to submit decision to CM for final decision

Within 10 days of receipt of tentative decision

- CM issues final decision to PAB, DPA, and Chief

Within 25 days of DPA request

- If no contest from DPA to CM, Chief issues final decision

### IF HEARING

PAB may affirm or modify/reject DPA's F&R

Within 60 days of completion of investigation

- If PAB *agrees* with DPA, DPA submits F&R to Chief

Within 15 days of hearing

- If PAB *modifies/rejects* DPA findings, PAB issues explanation to Chief

same as above

If Chief agrees with PAB or DPA, Chief issues final decision

Within 10 days of receiving DPA or PAB F&R

If Chief *disagrees* with PAB or DPA, Chief issues tentative decision to the PAB and DPA

same as above

- DPA may request Chief to submit decision to CM for final decision

Within 10 days of receipt of tentative decision

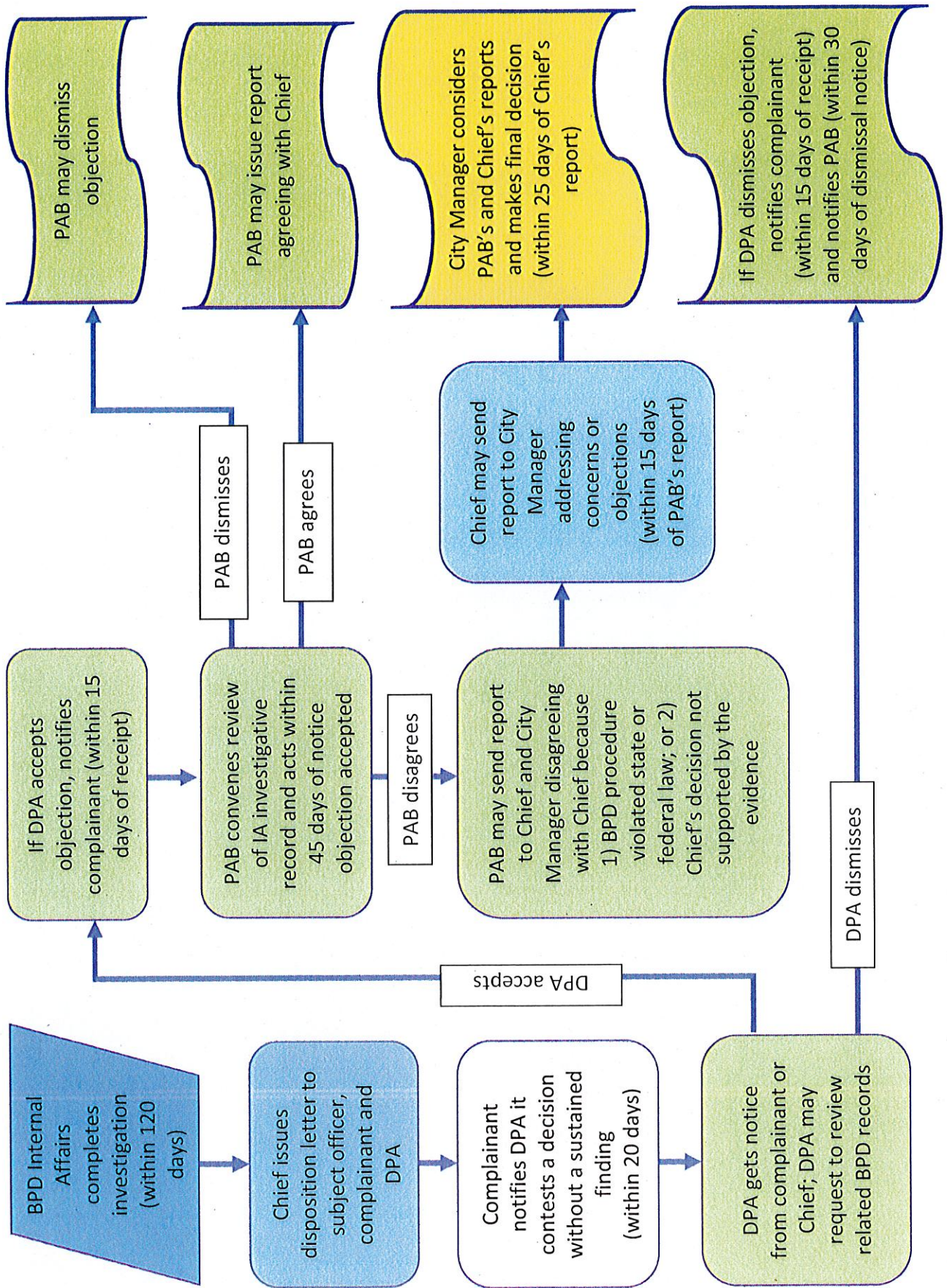
- CM makes and issues final decision to PAB, DPA, and Chief

Within 25 days of DPA request

- If no contest from DPA to CM, Chief issues final decision



Flowchart – Complainant files with Berkeley Police Department and contests decision without a sustained finding to Director of Police Accountability (DPA) (Charter Sec. 125(19))  
 PAB = Police Accountability Board



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## Investigation and Discipline Timelines for External Complaints filed with the Berkeley Police Department

BPD Internal Affairs completes its investigation

Within **120** days of complaint filing/discovery

Chief issues disposition letter to subject officer, complainant, and DPA

Upon completion of investigation

Complainant may contest Chief's decision to DPA on cases with no sustained finding

Within **20** days of Chief's disposition notice

DPA receives notice of complainant objection from complainant or Chief; DPA may request to review all related BPD records

### IF DPA DISMISSES OBJECTION

DPA notifies complainant that objection is dismissed; and

Within **15** days of receiving objection

DPA notifies PAB of dismissal

Within **30** days of dismissal notice to complainant

### IF DPA ACCEPTS OBJECTION

DPA notifies complainant that objection accepted and PAB will convene to conduct a review based on the IA investigative record.

Within **15** days of receiving objection

Following review, PAB may:

- dismiss objection; or
  - issue report *agreeing* with Chief; or
  - issue report *disagreeing* with Chief because BPD procedure violated state or federal law or Chief's decision is unsupported by the evidence, and send to City Manager and Chief
    - Chief may issue report to City Manager addressing concerns/objections
    - Chief may issue report to complainant accepting objection
    - Chief may issue report to City Manager addressing concerns/objections
    - City Manager considers reports from PAB and Chief and makes final determination with written explanation to DPA, PAB, and Chief
- Within **45** days of DPA notice to complainant accepting objection
- same as above
- same as above
- Within **15** days of receiving PAB report
- Within **25** days of Chief's report



**Police Accountability Board  
Office of the Director of Police Accountability**

**Interim Regulations for Handling Complaints Against Sworn Officers of the  
Police Department under City Charter Article XVIII, Section 125 (Measure II)**

**Preamble**

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

**I. GENERAL PROVISIONS**

**A. Definitions**

The following definitions shall apply in these interim regulations:

1. Administrative Closure: Closure of a complaint before a confidential personnel hearing is held.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.

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4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: ~~An aggrieved party~~ A member of the public who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODPA.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

## B. Confidentiality

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley Police Department personnel. ODPA staff will likewise have access to

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such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

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## II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

### A. Initiating a complaint

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. ~~Only an "aggrieved party"ies, as well as eyewitnesses to alleged police misconduct,~~ may file a complaint, ~~except that if no complainant is available to initiate a complaint, and in any case involving a death, 5 Board members may vote to authorize an investigation or take other such action they deem appropriate.~~ Complaints may also be initiated by the Board upon a vote of five Board members to authorize and investigation. (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within ~~180~~ 90 days of the alleged misconduct, except that the ~~180~~ 90 days shall be tolled if:
  - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
  - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.
 (PRC Reg. Sec. II.A.2.)
- ~~4. Late-filed complaints. Complaints filed between 91 and 180 days of the alleged misconduct must be reviewed by the Police Accountability Board in a closed session meeting. Six Board members must find good cause for the late filing, by clear and convincing evidence, to accept the complaint. A complaint filed after 180 days after the alleged misconduct will not be accepted. (PRC Reg. Sec. II.A.2.a)~~
- ~~5.4. Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be~~

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submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

- 6.5. Right to representation.** Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPa is notified that a complainant or subject officer is represented, then the ODPa shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

**B. Mediation**1. Election

- a. ODPa staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPa staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPa staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

**C. Complaint investigation**

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1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:
  - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPA shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPA shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).
  - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPA shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPA staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
  - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)



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- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
  - I. The original Communications Center tapes relevant to the complaint.
  - II. All police reports, records, and documentation, including body-worn camera video.
  - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act<sup>1</sup> ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

**D. Pre-hearing complaint disposition.**

## 1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. Request for closure by complainant.

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<sup>1</sup> Government Code Sec. 3300 et seq.

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- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODPA staff to timely complete its investigation, as set forth in Section II.C.1.

- b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a regularly-scheduled meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

- c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

## E. Initial submission and consideration of investigative findings and recommendations.

1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a confidential personnel hearing if the Board requests it. (Art. XVIII, Sec.

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125(18)(i).) This deadline may be extended as provided under Section II.O.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
  - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.” \*
  - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
  - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
  - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”(PRC Regs., Sec. VIII.B.)
4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
  - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.O.
  - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.(Art. XVIII, Sec. 125(18)(i).)

**F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.**

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPa has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)

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2. Scheduling hearing. ODPa staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)

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**G. Board member impartiality; recusals; challenges**1. Conduct.

- a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
- b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
- c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)3. Challenges to Hearing Panel member

- a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:
  - i. a familial relationship or close friendship with the complainant or subject officer;
  - ii. witnessing events material to the inquiry;
  - iii. a financial interest in the outcome of the inquiry;
  - iv. a bias for or against the complainant or subject officer.

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b. Procedure

- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
  - ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
  - iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
  - iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
  - v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.
- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.

(PRC Reg. Sec. VI.C., modified.)

**H. Continuance requests; other pre-hearing motions**

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODPa staff no later than 14 days before the scheduled hearing date, with an explanation as to why the evidence or

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witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation, expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

### I. Hearing procedures

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)
5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)

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~~6. Presentation of findings and recommendations. The Director shall, outside of the presence of the complainant, complainant's representative, and witnesses, present the investigative findings and a recommendation of discipline, if any; and the level of discipline in appropriate cases. (Derived from Art. XVIII, Sec. 125(18)(i).)~~

7.6. Taking testimony at the hearing.

- a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; ~~the subject officers and their representatives may be present during their testimony.~~ The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) The complainant or the complainant's representative may ask questions; b) Board members may ask questions; ~~b) the subject officer or his or her representative may ask questions;~~ c) ~~Board members may ask follow-up questions.~~ After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7.)
- b. The complainant and their representative, and civilian witnesses will each be excused from the hearing room after their testimony or representation is completed. (PRC Reg. Sec. VII.D.8.)
- c. The subject officers and any witness officers will be called into the hearing room to testify separately. Subject officer representatives may be present for all testimony of officers. Each subject officer may make a statement or choose to rely on the interview statements. Each subject officer will be questioned by their representative first, after which the officer may be questioned by 2 Board members, unless the officer waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.
- d. The subject officers and witness officers will each be excused from the hearing room after their testimony is completed. (PRC Reg. Sec. VII.D.9.)

~~8.7. Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)~~

9.8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)



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**J. Evidence**

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
  - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
  - b. Oral evidence shall be taken only under oath.
  - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
  - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODP staff will answer Board members' questions on the evidence, points of law, and procedure.
  - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression.
  - g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
  - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

**K. Deliberation and Findings**

1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPa staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.O. (Art. XVIII, Sec. 125(18)(m).)
4. Content of findings.
  - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
  - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
  - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation. (NEW)

**L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.**

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.G.5.a. above, or from the Hearing Panel under Section II.M.3.b. above, the Chief of Police shall take one of the following actions
  - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
  - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.

## Section II.L.

3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.O. (Art. XVIII, Sec. 125(18)(m).)

**M. Time limits; extensions.**

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. (Art. XVIII, Sec.(125)(18)(d).)
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. (Art. XVIII, Sec.125(18)(m).)

**III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.****A. Application**

1. This Section III applies to complaints that a member of the public files with the Police Department only.

**B. Procedure**

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)

## Section III.B.

3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
  - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
  - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.

(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)

4. If the Director decides that the Board will conduct a review, ODPa staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
  - a. At the meeting, only Review Panel members and ODPa staff will be present. A Duty Command Officer may be present.
  - b. The Review Panel shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
  - c. All action of the Review Panel must be by majority vote.

(NEW. Details not in Charter and no counterpart in PRC procedures.)

5. The Review Panel must, within 45 days of the date the Director accepts an objection:
  - a. Dismiss the complainant's objection; or
  - b. Issue a report agreeing with the Chief's determination; or
  - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)

6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)
7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief,

## Section III.B.

and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)

8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).)

#### IV. INFORMAL COMPLAINTS

- A. An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B. ODPa staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C. Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).
- D. The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

#### V. AVAILABILITY AND AMENDMENT OF REGULATIONS

- A. These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPa staff shall furnish them to any person requesting a copy.
- B. Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)



To: City Attorney Farimah Brown  
Re: Police Accountability Board Complaint Proceedings  
Cc: Deputy City Attorney Samuel Harvey  
Date: XXX, 2021

The Police Accountability Board Subcommittee on Regulations met for the first time on July 28, 2021, to consider the interim PAB regulations that Interim PAB Director Kathy Lee and staff drafted. Drafting of those regulations was a herculean feat and the Subcommittee expressed extensive appreciation for a job so well done in such a limited time.

The Subcommittee unanimously voted to make a few key modifications to these regulations while passing the rest of the interim regulations as drafted. One of these changes the Subcommittee voted unanimously to forward to the whole Board at its meeting on Wednesday, August 4, concerns what has long been considered an unfair and lopsided aspect of complaint hearings: the ability of the subject officer and their representative to remain in the hearing room when the complainant is questioned, and to then themselves question the complainant, while the complainant must leave the room when the officer is questioned (Sec II.1.7 of Draft Interim Regulations, attached). This has been singled out as unfair by many members of the public, including those who have filed complaints.

The Subcommittee discussed at some length the role of the Peace Officers' Procedural Bill of Rights (POBRA), as well as the 2008 decision in *Berkeley Police Association v. City of Berkeley*, in the exclusion of complainants from the hearing room when officers are questioned. As is well-known, the latter decision stipulated that hearings must be closed to the "public". We understand that a previous City Attorney interpreted this to mean that complainants could not be present for officers' testimony. However, perhaps there might be room for a different interpretation since the complainant is present for all other aspects of this closed hearing and is therefore not considered a member of the "public" for most other purposes.

Members of the Subcommittee also proposed that if this exclusion of the complainant must hold, then an equitable solution to this thorny problem could be to exclude the officer and their representative

when the complainant is questioned. Nothing in POBRA nor in case law seems to preclude this possibility. BPD representative at the meeting, Lt. Dan Montgomery, suggested that this could be a violation of the officer's due process since in these hearings the subject officer is effectively the accused. The Subcommittee took this very seriously, as it is understood that these hearings must be fair to all. It was pointed out, however, that the complaint hearing is not comparable to a formal legal proceeding; among many other differences, the evidentiary process does not proceed according to technical rules of evidence (Sec. II.J.1.). Further, it was argued, if we were to consider this hearing strictly akin to a formal legal proceeding, we would have to allow the complainant's representative to cross-examine the accused, as well as vice versa.

Members of the Subcommittee cited a recent Appellate Court decision in *Oakland Police Officers' Association v. City of Oakland* (April 2021). This was a case about whether officers charged with misconduct could demand all reports and complaint documents before they are questioned. While not exactly comparable to our misconduct hearing context (the Oakland system for processing complaints differs somewhat from that of Berkeley), the Court finding may have some relevance to the present issue. The Appellate Court explained that such mandatory access to what complainants said "before any subsequent interrogation of an officer suspected of misconduct is inconsistent with the plain language of the statute [POBRA] and undermines a core objective under POBRA—maintaining the public's confidence in the effectiveness and integrity of law enforcement by ensuring that investigations into officer misconduct are conducted promptly, thoroughly and fairly." And later, the Appellate Court noted that the Supreme Court in its early interpretation of POBRA explained: "To keep the peace and enforce the law, a police department needs the confidence and cooperation of the community it serves." This recent Appellate Court decision found that proceedings that are perceived to be unfair undermine that confidence.

The Subcommittee therefore seeks your legal opinion on several key issues:

1. Might the complainant in a misconduct hearing be present during officer questioning, given that for all other purposes the complainant is considered a participant, and not "the public." Could the confidentiality issue be remedied by requiring that all parties sign a pledge of confidentiality, as Board members currently do?



2. If the exclusion of the complainant is required, could equity be achieved by excluding the officer and their representative when the complainant is questioned? What is your interpretation of the relevance of *Oakland Police Officers' Association v. City of Oakland*, cited above?
3. On a related issue, if a solution can be found to this problem, would it trigger a "meet and confer" or "meet and discuss," and what are the meaningful distinctions between these two types of sessions?

This aspect of Berkeley police misconduct complaint hearings has long been of concern to many, and the subcommittee sincerely hopes we can find a solution that provides meaningful and equitable participation to all. As the new Police Accountability Board establishes itself, it is critical that its practices be seen by the BPD and the public as fair and legitimate.

We so appreciate the work you do for the City and look forward to your feedback. We hope to be able to share it with the full Board on August 4.

Respectfully,

**DRAFT**



**ANNOTATED AGENDA  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL**

**Tuesday, February 23, 2021**

**4:00 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – RIGEL ROBINSON  
DISTRICT 8 – LORI DROSTE

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

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

*Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81676274736>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 816 7627 4736. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

**Roll Call:** 4:06 p.m.

**Present:** Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani

Councilmember Kesarwani present at 4:13 p.m.

**Action:** M/S/C (Arreguin/Wengraf) to adopt a special rule for this meeting to limit public comment to one minute per speaker, with the option to yield time up to a total of four minutes.

**Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent - Kesarwani

## Action Calendar – New Business

### 1. Report and Recommendations From Mayor’s Fair and Impartial Policing Working Group

**From:** Mayor Arreguin (Author), Councilmember Harrison (Author)

**Recommendation:**

1. Accept and acknowledge the report from the Fair and Impartial Working Group (Attachment 1).
2. Direct the City Manager to implement the following recommendations summarized below and detailed in full in Attachment 1, with at minimum, quarterly progress updates to the Police Accountability Board (PAB) and/or the Working Group.
  - Focus traffic stops on safety
  - Use a clear, evidence-based definition for stops of criminal suspects
  - Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
  - Eliminate stops for low-level offenses
  - Implement an Early Intervention System (EIS) and a risk-management structure
  - Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group
  - Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole
  - Require written consent for all consent searches
  - Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)
  - Fire racist police officers identified through social media and other media screens
  - Address Profiling by Proxy (Council develop & pass CAREN policy)
  - Require regular analysis of BPD stop, search, and use of force data
  - Make resources on police-civilian encounters more publicly available such as RAHEEM.org
  - Adopt Compliance and Accountability Mechanisms; -Hire consultant to develop implementation plan
  - For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complaint process with PAB
3. Refer the following recommendations summarized below and detailed in full in Attachment 1 to be included in the process to reimagine public safety:

## Action Calendar – New Business

-Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins

-Conduct a baseline community survey

4. Refer the following recommendations summarized below and detailed in full in Attachment 1 to the Police Review Commission, to be taken up by the Police Accountability Board when it is established

-Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4

-Require enhanced annual implicit bias training for police

-Accelerate Crisis Intervention Team (CIT) activity

5. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway:

-Fund and implement a specialized care unit for mental health crises

-Conduct a Capacity Study of police calls and responses and use of officer time outside of case work

6. Refer \$50,000 to the FY 2022 budget process for a consultant to develop an implementation plan as described in Attachment 1 and other minor costs the Department may confer

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

**Action:** 40 speakers. M/S/C (Arreguin/Harrison) to:

1. Accept and acknowledge the report from the Mayor's Fair and Impartial Policing Working Group;
2. Acknowledge and appreciate the work already completed or underway by the City Manager's Office and Police Department to implement policing reforms including:
  - Adoption and implementation of Policy 401, Fair and Impartial Policing
  - Public reporting of stop data on the BPD Open Data Portal
  - Initiation of the Center for Policing Equity study
  - Implementation of the Body Worn Camera Program
  - Early adoption of Racial and Identity Profiling Act (RIPA) data collection and reporting
  - Updates to the Use of Force Policy, Policy 300
  - Development and passage of Measure II to create a new Police Accountability Board
  - Launching of the Public Safety Reimagining process
3. Refer to the City Manager to implement the following recommendations summarized below, with quarterly progress updates to the City Council and Police Review Commission/Police Accountability Board (when established):

**Implement a new evidence-based Traffic Enforcement Model**

  - Focusing the basis for traffic stops on safety and not low-level offenses;
  - Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects;
  - Reaffirming and clarifying that the Berkeley Police Department will use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
  - Minimize or de-emphasize as a lowest priority stops for low-level offenses.

## Action Calendar – New Business

### Implement Procedural Justice Reforms

- Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops;
- Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback;
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole;
- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training);
- Fire racist police officers identified through social media and other media screens;
- Require regular analysis of BPD stop, search, and use of force data;
- Make resources on police-civilian encounters publicly available such as through RAHEEM.org;
- For any individual detained, BPD officers shall provide a business card with info on the commendation and complaint process with PAB and Berkeley Police Department.

Request that the City Manager report back at a Council Work Session in three months with budget estimates for implementation (to be considered along with the FY 22 budget process), information on legal and operational considerations, and a short-term action plan of recommendations which can be implemented without the hiring of a consultant, and those that will require the assistance of a consultant and additional resources.

### Compliance and Accountability Mechanisms

- The City Manager will create an implementation plan with the assistance of a consultant that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
  - The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
4. Refer the following recommendations summarized below to the Reimagine Public Safety process:
    - Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins
    - Conduct a baseline community survey.
  5. Refer the following training recommendations summarized below to the Police Review Commission, to be taken up by the Police Accountability Board when it is established, and consider the resources required to implement this expanded training:
    - Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4
    - Require enhanced annual implicit bias training for police
    - Accelerate Crisis Intervention Team (CIT) activity

## Action Calendar – New Business

- Refer to the PRC/PAB to consider a departmental policy on requiring written consent for person searches and report back in 6 months.
6. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway and have been completed:
- BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;
  - Fund and implement a specialized care unit for mental health crises;
  - Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.
7. Refer \$50,000 to the FY 2022 budget process for a consultant to assist the City Manager/Police Department in the implementation of these recommendations and other minor costs the Department may confer; and also refer to the FY 2022 budget process a line item for police training for the new evidence-based stop program (costs to be determined by BPD).

**Vote:** All Ayes.

## Adjournment

**Action:** M/S/C (Robinson/Taplin) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 7:07 p.m.

## Communications

- None

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

**Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group**

1. Elizabeth Ferguson

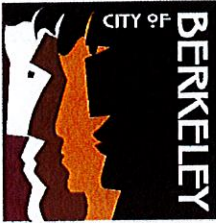
## Supplemental Communications and Reports 3

**Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group**

2. Material, submitted by Mayor Arreguin
3. Presentation, submitted by the Police Department
4. Janice Schroeder
5. Thomas Luce
6. Ben Gerhardstein, on behalf of Walk Bike Berkeley
7. Diana Bohn
8. Sivan Orr
9. Ali Lafferty

- 10. Allegra Mayer
- 11. Chimey Lee
- 12. Moni Law





Office of the City Manager

INFORMATION CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Update on the Implementation of FIP Task Force Recommendations

INTRODUCTION

The Berkeley City Council referred the recommendations from the Mayor's Fair and Impartial Policing (FIP) Task Force to the Berkeley Police Department for implementation.

CURRENT SITUATION AND ITS EFFECTS

This report provides the first quarterly update on the implementation of the Task Force recommendations from the February 23<sup>rd</sup>, 2021 City Council Special meeting. The Police Department was asked to implement the recommendations provided by the FIP Task Force.

On May 13, 2021 the City Manager and I met with the Mayor, Councilmember Harrison, additional staff and many of the FIP Task Force members. The current progress towards implementation described below was shared and discussed at this meeting. BPD is committed to continued collaboration with, and feedback from, the Task Force as we move towards full implementation.

The implementation of the FIP Task Force recommendations is a priority of the Berkeley Police Department. Lieutenant McGee of the Community Services Bureau and Sergeants Ledoux and Lee of the Professional Standards Bureau have been assigned to oversee the project of implementing the recommendations. The following outlines the Task Force recommendations and the respective progress:

Implement a New Evidence-Base Traffic Enforcement Model

- Focusing the basis for traffic stops on safety and not just low-level offenses &
- Minimize or de-emphasize as a lowest priority, stops for low-level offenses

*A working group has been established comprising of employees working in every division of the Berkeley Police Department and a representative of the Berkeley Police Association leadership. The working group is tasked with identifying what low-level offenses are applicable while balancing the necessity of traffic safety and the Berkeley Vision Zero initiative. Additionally, the working group will look to identify any mitigating*

*factors such as grant eligibility, or conflicts with existing MOUs. The working group will meet minimally biweekly and will present recommended policy language as well as analysis of risk or unintended outcomes of implementation no later than the next quarterly update to Council in Fall of 2021.*

Status: In progress

- Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects.

*The Police Department is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety.*

*Data driven-tools that enables close to real-time dashboard tracking of calls for service demands have been provided to the Community Services Bureau and Patrol Watch Commanders. This tool provides crucial data that assist Area Coordinators and Watch Commanders explore different deployment strategies.*

*The Police Department is working to provide data-driven tools to patrol officers to incorporate into their daily briefings and to train officers to collect data in a comprehensive manner. The goal is to have data-driven approaches to violence prevention programs and real time crime and call analysis for patrol deployment strategies.*

Status: In Progress

- Reaffirming and clarifying that the Berkeley Police Department will only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.

*Penal code 13519.4 is existing California law that prohibits racial profiling. Policy 401 (Fair and Impartial Policing) also prohibits racial profiling.*

*Section 401.2 explicitly states, "Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities..."*

*The above policies were reviewed in light of the task force recommendations and found to affirm and clarify police officer responsibilities in stops.*

Status: Completed

Implement Procedural Justice Reforms

- Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops;  
*Existing Berkeley Police general order E-13 (Early Warning System) is being amended and a draft of new language is being crafted by a working group comprised of several employees. Anticipated completion date: August 2021*

Status: In progress

- Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback;  
*Policy 311 (Search and Seizure) will be amended to create a section requiring written consent for searches. A revised written consent form has been drafted and is pending further review. Anticipated completion date: August 2021*

Status: In progress

- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole;  
*Refer to Policy 311. On 02/10/21 sections 311.5 and 311.6 were modified to reflect the above limitations to warrantless searches. The above policies were reviewed and modified in line with the task force recommendations.*

Status: Completed

- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training);  
*The Communications Center Operation Manual has been amended to address, in writing, profiling by proxy. All dispatchers have reviewed the amended manual and are instructed to be cognizant and screen for profiling by proxy calls. BPD intends to continue to educate and train dispatchers, officers and all departmental employees on how to identify and address biased based reporting.*

Status: Completed

- Fire racist police officers identified through social media and other media screens;  
*The following existing policies dictate procedures for investigating employees in this area; these policies adhere to due process and Government Section 3300:*

*Policy 1029 (Employee Speech, Expression and Social Networking) provides accountability to employee personal social media posts. Section 1029.4(b) states "Speech or expression that, while not made pursuant to an official duty, is significantly link to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, or reputation of professionalism of the Berkeley police Department or its employee.*

*PR 232 (Controversial Discussion), PR 235 (Acts –Statements-By employees), PR 238 (Organizational Membership), and PR 250 (enforcement of Law, Impartiality) are also policies that provide accountability for any racist behaviors.*

*The above policies were reviewed in light of the task force recommendations found to provide necessary authority to investigate allegations of racism. Departmental policy clearly identifies discrimination based upon a person's race as misconduct, and requires reporting and prompt investigating of any allegation of racism. Any employee who becomes aware of or observes any discrimination on the basis of a protected class is required to notify a supervisor by the end of their shift or within 24 hours if they are off duty.*

Status: Completed, however the BPD is committed to continuing to explore additional methods to identify and address potentially racist behaviors or actions by our members.

- Require regular analysis of BPD stop, search, and use of force data;  
*The Open Data Portal (ODP) is a public facing website that gives the public access to police data and is accessible through the City's website. This allows for open and independent analysis and review to foster police accountability and transparency.*

*ODP is operational and the data is updated approximately every 60 days. The data that is provided to ODP includes calls for service, arrests, bookings, and stop data (RIPA) which is updated monthly.*

*The Police Department is in the process of expanding the call for service dataset to include all types of calls and eliminate the 180 day time range that currently exist to allow for searches several years into the past. Anticipated completion date is dependent on the technological needs and contract process as this dataset is updated, but work is anticipated to be completed within six months.*

*Amendments to Berkeley Police general order E-13 (Early Warning System) will further address this recommendation.*

Status: Partially completed

- Make resources on police-civilian encounters more publicly available such as through RAHEEM.org;
- For any individual detained, BPD officers shall provide a business card with information on the commendation and complaint process with the Police Accountability Board and the Berkeley Police Department, Internal Affairs Bureau.

*A new business card has been drafted with information on the commendation and complaint process that includes a QR code to the Police Department Internal Affairs website. This business card is pending review.*

*Pending the approval and arrival of new business cards, the Berkeley Police Department has printed approximately 3000 labels for officers to affix on the backside of existing business cards containing the phone numbers to Internal Affairs and the Police Review Commission. The label also contains a QR code to the Berkeley Police Department's website containing information on how to file a complaint through Internal Affairs and PRC as well as a link to resources on police-civilian encounters. This website will be designed to ensure broad accessibility and ease of use for all members of our community, including those whose primary language may not be English.*

*Officers are being instructed to provide business cards to all detained individuals, and these instructions will be memorialized in Policy in the near future. All future BPD business cards will have the aforementioned printed on the backside of cards.*

*Berkeley Police Department is ready to modify the labels to include the link for the survey that's being created by the Reimagine Public Safety Task Force, and once completed BPD can quickly print new labels for officers to hand out as outlined in this recommendation. Anticipated completion date: June 2021*

Status: Partially completed

Refer the following recommendations summarized below to the Reimagine Public Safety process

- Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized

with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins.

*Lieutenant McGee's work on the Reimagine Public Safety Task Force is on-going and no formalized systems are in place at this time.*

Status: In Progress

- Conduct a baseline community survey  
*A community survey from the Reimagine Task Force is imminent. The City has contracted with the National Institute for Criminal Justice Reform (NICJR) to devise, disseminate, and subsequently analyze the survey. An additional community survey is being prepared specifically tailored to the Specialized Care Unit and covering topics around law enforcement engagement with mental health related calls.*

Status: In progress

Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway

- BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;  
*The police department released the data in December of 2020*

Status: Completed

- Fund and implement a specialized care unit for mental health crises;  
*The City has contracted with a consulting firm who has already started work on this project.*

Status: In progress

- Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.  
*The City's Auditor's report was recently released which analyzed Computer Aided Dispatch data.*

Status: Partially completed

Refer the following training recommendations summarized below to the Police Review Commission, to be taken up by the Police Accountability Board when it is established, and consider the resources required to implement this expanded training

- Refer to the Police Review Commission

Refer \$50,000 to the FY 2022 budget process for a consultant to assist the City Manager/Police Department in the implementation of these recommendations and other minor costs the Department may confer; and also refer to the FY 2022 budget process a line item for police training for the new evidence-based stop program (costs to be determined by BPD).

- The Police Department will be collaborating with the City Manager to determine the best use for the budget allocation in aiding our implementation process of these recommendations
- Refer to the Budget Office/City Manager

#### BACKGROUND

On February 23, 2021 the Berkeley City Council voted unanimously to implement of the recommendations from the Mayor's Fair and Impartial Policing Task Force. The Police Department has begun implementing the recommendations. The Police Department has committed to quarterly progress updates on the movement towards the implementation of the recommendations.

Sgt. Lee and Sgt. Ledoux have been assigned to coordinate and track the implementation of the recommendations. Both sergeants have established a working group that consists of employee from every division/unit and a representative from the Berkeley Police Association leadership. Lt. McGee is participating on the Reimagine Public Safety Task Force. Meetings with the Reimagine Public Safety and working group will continue to further implement the remaining recommendations.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### POSSIBLE FUTURE ACTION

The Police Department will continue to work toward the full implementation of the Task Force recommendations.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Staff time and additional training time to be determined at a later date.

#### CONTACT PERSON

Jennifer Louis, Interim Chief of Police, (510) 981-5700

Attachments:

1: Berkeley Police Policy 401

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3 -  
\\_General/401%20Fair and Impartial Policing\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/401%20Fair_and_Impartial_Policing(1).pdf)

2: Berkeley Police Policy 311

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3 -  
\\_General/Search and Seizure.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Search_and_Seizure.pdf)

3: California Legislative Information

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sect  
ionNum=13519.4.](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=13519.4)

4. Berkeley Police Policy 1029

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3 -  
\\_General/1029%20Employee Speech Expression and Social Networking.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1029%20Employee_Speech_Expression_and_Social_Networking.pdf)

5. Berkeley Police Regulation Chapter 2

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3 -  
\\_General/PR%20Ch2\\_08Mar17.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/PR%20Ch2_08Mar17.pdf)



<https://www.latimes.com/california/story/2021-06-22/police-commission-requests-report-on-legality-of-a-covid-19-vaccine-mandate-for-lapd>

## LAPD examines whether it could make COVID-19 vaccine mandatory for cops

BY KEVIN RECTOR STAFF WRITER

JUNE 22, 2021 UPDATED 4:43 PM PT

The Los Angeles Police Commission on Tuesday requested the LAPD report back to it on the possibility and legality of a COVID-19 vaccination mandate for officers and the work assignments of its unvaccinated personnel — who represent nearly half the department.

The commission's civilian members requested the information during their weekly virtual meeting after citing [reporting in The Times over the weekend that showed that vaccination rates in public safety agencies in L.A. and across California lag behind those of the state's overall population.](#)

Only about 52% of LAPD officers are at least partially vaccinated, compared with 64% of Los Angeles residents 16 and older and about 72% of adult Californians, The Times reported. Only about 51% of city firefighters are at least partially vaccinated.

Commissioner William Briggs said the low rate of vaccination among officers, combined with the fact that not all officers wear masks, raised concerns for him, particularly given the city's obligation to keep its own employees and members of the public safe.

If the department is not requiring vaccinations and failing to ensure that all officers are wearing masks, "one could argue that we're endangering the public," Briggs said.

"The only option I see is for us to possibly mandate vaccination for the department," Briggs said. "I would like to see some sort of study done as to whether or not this can happen."

Commissioner Lou Calanche said she would like information about the assignments and job duties of those LAPD employees who are not vaccinated, "just so we know where they fall in the department."

LAPD Chief Michel Moore said top LAPD commanders and police union officials are continuing to urge vaccination among officers and are committed to following city personnel guidelines and state and federal workplace guidelines related to COVID-19.

He said that 65% of LAPD personnel have either been partially or fully vaccinated or are believed to have some natural antibodies from having previously contracted COVID-19. To date, more than 2,700 LAPD personnel have been infected and nine have died in a staff of more than 12,000.

Moore said that while the department's once-large weekly infection rate has dropped to zero in the last two weeks, he remains concerned about the threat of the coronavirus and new variants of it — particularly given that a third of the department has no vaccination or natural protection and remains at high risk.

“That is a significant number to me and troublesome,” Moore said.

At the same time, Moore said he has been in touch with the city and department personnel officials and the city attorney's office, and has been told that mandating that officers get the vaccine “is beyond our reach at this point” legally.

He said he would incorporate that advice, and the information on unvaccinated officers' assignments, into a formal report to the commission.

The city attorney's office said any advice it provided to Moore on the topic is confidential.

In The Times' [story](#) on Sunday, Capt. Stacy Spell, an LAPD spokesman, said any discussion about a mandate before the COVID-19 vaccines get full authorization from the U.S. Food and Drug Administration, rather than the emergency authorization they currently have, is “premature.”

The International Assn. of Chiefs of Police, a respected national police leadership organization, has said police agencies may mandate vaccines under federal law, but may need to make religious or medical exceptions. It noted police agencies already require officers to get immunized against other medical threats such as tetanus and hepatitis.

The board of the Los Angeles Police Protective League, the union that represents rank-and-file officers, said it would generally oppose a vaccine mandate, but will continue to urge officers to get vaccinated and talk to their doctors about any concerns they have.

Police Commission President Eileen Decker asked the commission's staff to work with Moore to produce the report, but did not set a deadline for the response.

<https://www.sfgate.com/coronavirus/article/California-COVID-19-vaccine-mandate-employees-news-16340378.php>

[News//COVID-19](#)

## California is first state to push de facto COVID-19 vaccine mandates for public employees

[Amy Graff](#), [Eric Ting](#), SFGATE

July 26, 2021 Updated: July 26, 2021 11:29 a.m.

California became the first state in the nation Monday to effectively mandate vaccines for state employees by implementing a vaccine verification policy that requires employees of the state to either get vaccinated or wear masks and undergo regular testing for COVID-19.

The Health and Human Services Department is also requiring all health care providers — both public and private — to implement a similar vaccine verification process and is strongly encouraging all other employers across the state to do the same.

No other state has implemented this policy for state employees or health care providers. On Monday, [New York City implemented a near-identical policy](#) that would require all municipal employees to either get vaccinated or undergo weekly testing, but the state has not moved forward with such a policy.

"We are encouraging local governments and businesses to do the same," Gov. Gavin Newsom said. "Vaccines are safe — they protect our family, those who truly can't get vaccinated, our children and our economy. Vaccines are the way we end this pandemic."

In addition to health care providers, other "high-risk congregate settings" including senior residential facilities, homeless shelters and jails will be subject to the state requirement. The state did not specify how the requirement would be enforced.

While some counties in California issued mask recommendations and requirements in July amid an uptick in cases and hospitalizations driven by the delta variant, the state said it's focusing on getting Californians vaccinated.

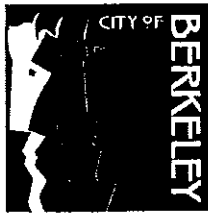
"It's a choice to live with this virus, and with all due respect, you don't have the choice to go out and drink and drive and put everybody else's lives at risk," Newsom said. "That's the equivalent of this moment with the deadliness and efficiency of the delta virus. You're putting innocent people's lives at risk. You're putting businesses at risk.

"You're putting at risk the ability to educate our kids by getting them back in person full time for in-person instruction. No more Zoom schools. We want to keep our economy moving. We want small businesses on their feet. Your choice not to get vaccinated and to listen to these pundits that are profiteering off misinformation, intentionally misinforming, comes at a real societal cost and we need to be clear about that, and we need to call that out."

The state's seven-day daily case rate was 11.2 new cases per 100,000 on Monday, compared with 2.4 new cases per 100,000 on May 25, according to the [state dashboard](#).

The delta variant accounts for more than 80% of cases that are sequenced in the state, officials from the Health and Human Services Department said. The variant is across the state and causing outbreaks mainly among unvaccinated people.

The state's test positivity rate has climbed from 0.07% earlier in the summer to 5.3% this week, and state officials said the case uptick is driven by unvaccinated Californians.



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

**Police Accountability Board**  
**Temporary Standing Rules**  
(Adopted July 7, 2021)

***A. AMENDMENTS AND REVISIONS***

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

***B. AGENDA ITEMS – REGULAR MEETINGS***

Individual Board members shall submit agenda items to the Board secretary by 12:00 noon one week before the meeting date

***C. COMMUNICATIONS***

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

***D. MEETING PROCEDURES***

1. Items shall be introduced by the Board member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing Board members in rotation to ensure that each Board member has the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of two minutes to speak each time they are given the floor.
2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize Board members in rotation, giving each Board member the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the maker of the motion an additional minute to speak before putting the matter to a vote.
3. A pending motion may be modified by a "friendly amendment"; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.

5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert's Rules of Order.

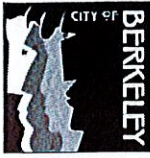
#### *E. PUBLIC COMMENT*

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

#### *F. ELECTIONS*

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

###



SERVICES. RESOURCES. COMMUNITY.

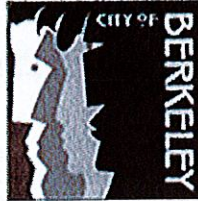
# News *from the* City of Berkeley

**Register a National Night Out gathering in your neighborhood**

*City of Berkeley sent this bulletin at 07/12/2021 05:07 PM PDT*

**July 12, 2021**

[View this message as a webpage](#)



SERVICES. RESOURCES. COMMUNITY.

## News from the City of Berkeley

### **Register a National Night Out gathering in your neighborhood**

*Annual community-building event returns August 3, 2021*

Help build a stronger, more resilient Berkeley by organizing a National Night Out block party in your neighborhood. After being canceled in 2020 due to COVID-19, this treasured annual event returns on Tuesday, August 3.

Each August, Berkeley neighbors come together for an evening of block parties, BBQs, and ice cream socials. Staff from Police, Fire, and other departments visit events throughout the city to say hello, as do Berkeley's elected officials.

#### **Register your event by July 30**

To host a National Night Out party in your neighborhood, [register your event online](#). All registered events will be listed on an interactive map at [cityofberkeley.info/nationalnightout](http://cityofberkeley.info/nationalnightout).

Plan your gathering for anytime between 5pm and 9pm on Tuesday, August 3. No event is too small. Event sizes may range from just a few neighbors to 100 people or more. Gather for a potluck, cookout, or just a meet and greet.

#### **Block party permits required for street closures**

If you want to close your street for a National Night Out gathering, you'll need to get a [block party permit](#) from the City's Transportation Division. There is no fee for National Night Out block parties.

[Download the application](#) and submit it by email to [transportation@cityofberkeley.info](mailto:transportation@cityofberkeley.info).

## **About National Night Out**

National Night Out is a nationwide effort to make communities safer by building and strengthening relationships among neighbors. Strong neighborhoods help us become more resilient and improve our ability to recover after a disaster.

National Night Out gatherings are just one of many City efforts supporting our Strategic Plan goal to create a resilient, safe, connected, and prepared city. Other steps you can take to get prepared include:

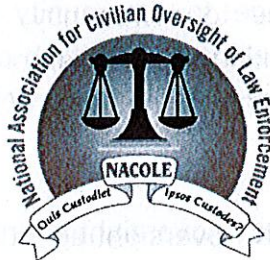
- Sign up to receive [AC Alert emergency notifications](#)
- [Create a household disaster plan](#)
- Subscribe to the [Community Emergency Response Team \(CERT\) email list](#) to be notified of free disaster preparedness trainings

Berkeley's National Night Out program is organized by the Berkeley Police Department Community Services Bureau.

## **Links**

- [National Night Out event registration](#)
- [Video feature: Berkeley National Night Out 2018](#)
- [Block party permit information](#)
- [Block party permit application](#)





**FOR IMMEDIATE RELEASE**

July 13, 2021

**Media Contact:**

Cameron McElhiney

(317) 721-8133

[mcellhiney@nacole.org](mailto:mcellhiney@nacole.org)

[www.nacole.org](http://www.nacole.org)

## **Report Recommends Standards for Effective Civilian Oversight of Law Enforcement**

Today, the National Association for Civilian Oversight of Law Enforcement (NACOLE) released a first-of-its-kind report detailing a set of evidence-based practices to ensure oversight of law enforcement is effective and sustainable. In the midst of a national movement for police accountability, transparency, and systemic reform, NACOLE's report, *Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices*, will serve as a critical resource for communities across the nation considering establishing or strengthening civilian oversight of police, jails, and prisons.

Funded by a 2016 grant from the U.S. Department of Justice, NACOLE's groundbreaking study examines the history and evolution of civilian oversight in the United States, describes different models of oversight agencies, focusing in particular on agencies in nine cities (Atlanta, GA; Cambridge, MA; Denver, CO; Indianapolis, IN; Los Angeles, CA; Miami, FL; New Orleans, LA; Philadelphia, PA; and Washington, DC), and provides recommendations for developing, implementing, and improving civilian oversight entities. Access to all associated reports can be found at [www.NACOLE.org/recent\\_reports](http://www.NACOLE.org/recent_reports). The grant also funded the creation of a comprehensive database of United States civilian oversight agencies, available online at [www.NACOLE.org/COAD](http://www.NACOLE.org/COAD).

NACOLE President Susan Hutson said, "By detailing what works and what does not, this report will lead to development of more effective civilian oversight

agencies. It provides guidance to community members, law enforcement, elected officials, and others seeking to establish or strengthen civilian oversight mechanisms, which are essential to the task of building public trust in law enforcement.”

Key recommendations for effective oversight agencies include:

- Political independence
- Clearly defined and sufficient authority and jurisdiction
- Adequate funding, staffing, and operational resources
- Unfettered access to law enforcement records
- Mandated cooperation of law enforcement personnel
- Required reporting to bring transparency to complaint, investigative, and disciplinary processes and operations of both civilian oversight and law enforcement agencies
- Inclusion of diverse stakeholders throughout the process of creating or strengthening civilian oversight agencies

*Established in 1995, NACOLE is the nation's only nonprofit organization that supports and promotes independent, civilian oversight of law enforcement. NACOLE's mission is to create a community of support for independent civilian oversight entities that seek to make their local law enforcement agencies more transparent, accountable, and responsive to the communities they serve. NACOLE's membership consists of the leading experts in the civilian oversight of law enforcement field and its training events bring together the growing community of civilian oversight practitioners, law enforcement officials, community advocates, and other accountability experts to exchange information and ideas regarding issues confronting civilian oversight agencies and law enforcement. More information and resources can be found at [NACOLE.org](http://NACOLE.org).*



**Lee, Katherine**

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**From:** Charles Clarke <cfclarke@att.net>  
**Sent:** Monday, July 26, 2021 11:59 AM  
**To:** Arreguin, Jesse L.; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Harrison, Kate; Hahn, Sophie; Wengraf, Susan; Robinson, Rigel; Droste, Lori  
**Cc:** Wong, Jenny; Williams-Ridley, Dee; Louis, Jennifer A.; Lee, Katherine  
**Subject:** Pandemic Year Crime in Berkeley  
**Attachments:** Clarke Ltr Pandemic Year Crime in Berkeley 07.26.2021.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear City Officials,

Attached is a letter presenting a cursory analysis of crime categories in Berkeley during the pandemic year of 2020.

I counsel caution against over-interpreting one-year blips but repeat a point I have made elsewhere: to retain or even enhance the Berkeley Police Department's investigative capability.

Sincerely,

Charles Clarke  
Resident, City Council District 6



Berkeley, California  
July 26, 2021

To: Mayor Jesse Arreguín and City Councilmembers  
Rashi Kesarwani Terry Taplin Ben Bartlett Kate Harrison  
Sophie Hahn Susan Wengraf Rigel Robinson Lori Droste  
Cc: City Manager Dee Williams-Ridley City Auditor Jenny Wong  
Interim Police Chief Jennifer Louis  
Interim Director of Police Accountability Katherine Lee

Subject: Pandemic Year 2020 Crime in Berkeley

Dear Mayor Arreguín and City Councilmembers,

A recent *San Francisco Chronicle* story<sup>1</sup> noted that Berkeley (like other jurisdictions) during the pandemic year 2020 had seen decreased occurrences of robbery and larceny (theft) but increased motor vehicle theft. The story was essentially correct as far as it went but a more detailed decomposition of major crime categories in Berkeley leads to observations worth your attention:

**1. Homicide, Rape, and Criminal Investigation.** The six reported homicides in Berkeley in 2020 (versus none in 2019) paralleled a nationwide surge<sup>2</sup> that seems not to have obeyed any particular pattern or narrative:

- January 20: morning hit-and-run by suspect fleeing from another crime causing death of woman on Sixth Street near University Avenue;<sup>3</sup>
- March 20: afternoon road-rage shooting death of man at Chestnut Street & University Avenue;<sup>4</sup>
- June 15: late-night shooting death of man walking on Dwight Way near Valley Street;<sup>5</sup>
- October 21: early evening shooting death of woman in parked car on Prince Street near Ellis Street;<sup>6</sup> and
- Two other homicides undocumented in City news releases.

The suspension of on-campus instruction at the University of California campus and the concomitant departure of practically the entire student population for most of 2020,

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<sup>1</sup> Susie Neilson and Dan Kopf, "Want to understand Bay Area crime trends? Look to car theft and larceny," *San Francisco Chronicle*, July 17, 2021, <https://www.sfchronicle.com/crime/article/Want-to-understand-recent-Bay-Area-crime-trends-16317698.php>

<sup>2</sup> German Lopez, "Murders are up. Crime is not. What's going on?" *Vox*, July 21, 2021, <https://www.vox.com/22578430/murder-crime-2020-2021-covid-19-pandemic>

<sup>3</sup> Berkeley Police News, "Suspect Arrested in Connection with Recent Fatal Hit and Run Collision," January 31, 2020, <https://www.cityofberkeley.info/PoliceNews.aspx?id=151117>

<sup>4</sup> Berkeley Police News, "Suspects Charged in Connection with Recent Homicide," March 27, 2020, <https://www.cityofberkeley.info/PoliceNews.aspx?id=152374>

<sup>5</sup> Berkeley Police News, "Suspect Charged with the Murder of Seth Smith," August 24, 2020, <https://www.cityofberkeley.info/PoliceNews.aspx?id=155525>

<sup>6</sup> Berkeley Police News, "\$50K Reward Offered for Information About Suspects in Sereinat'e Henderson's Murder," October 23, 2020, <https://www.cityofberkeley.info/PoliceNews.aspx?id=156858>

coupled with the closure of venues (and reasons to be out in public) citywide, was associated with a decline in reported rapes (including reported attempted rapes, compared to the preceding 5 years). Despite this decline only 3 rapes were “cleared” in 2020 (versus 47 reported). This finding is particularly disturbing because rape is a remarkably underreported crime, with one survey finding 65% of rapes go unreported.<sup>7</sup>

The Berkeley Police Department owns the duty to solve these crimes, which it has successfully done in the first three homicides (all pending trial) but less successfully with rapes.

*Recommendation:* Resources for BPD’s continued progress in investigations should be maintained or even enhanced in view of the uncertain path that homicide and rape may take in our city as the pandemic recedes and customary activity resumes.

**2. Robbery, Aggravated Assault, and Firearms.** The combined effect of a year of Shelter In Place or Stay At Home orders manifested in a halving of highway robbery, offset partially by a doubling of convenience-store robbery.

Overall robberies declined, particularly those committed with firearms (from 74 in 2019 to 45 in 2020), offset only a little by increased aggravated assaults using firearms (from 9 in 2019 to 15 in 2020). Firearms –the weapon of choice for homicides – remain a challenge to public safety in Berkeley.

*Recommendation:* The one-year decline in reported criminal use of firearms may have been an artifact of the broad cessation of social interaction during the pandemic. The BerkDOT initiative to curtail BPD’s capability to interdict firearms should take account of this caution.

**3. Theft Shifted Away from Contents of Cars, Pockets, and Purses Toward Cars Themselves and Accessories Thereof.** The count of reported thefts in Berkeley declined about 20% across all value thresholds (e.g. over and under \$400). Fewer car break-ins and “personal” thefts such as pickpocketing or purse-snatching accounted for this decline.

But rather than break into cars it appears that thieves stole whole vehicles or made off with “accessories” – most likely catalytic converters, external to the vehicle.<sup>8</sup> The overall decline in theft was also partly offset by an uptick in shoplifting, a harbinger of the increase in convenience-store robbery noted in #2 above.

As Chief Greenwood told the Police Review Commission last autumn, “The basic problem in Berkeley policing is: *This town is wracked by larceny.* Thousands and thousands of reported cases, and I am sure there are hundreds if not thousands of non-

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<sup>7</sup> U.S. Department of Justice – Bureau of Justice Statistics, *Victimizations Not Reported to the Police, 2006-2010*, NCJ 238536, August 2012, p. 4, <https://bjs.ojp.gov/content/pub/pdf/vnrrp0610.pdf>

<sup>8</sup> Berkeley Police News, “Catalytic Converter Thefts,” February 25, 2021, <https://www.cityofberkeley.info/PoliceNews.aspx?id=159717>

reported cases – of bike theft, catalytic converter theft, mail theft, Amazon package theft, shoplifting.”<sup>9</sup>

One year does not make a trend. The force of Shelter In Place orders that kept many parking lots (e.g. BART, Center Street) and retail areas (e.g. Fourth Street) empty will abate. Car break-ins could resume while other larcenies (e.g. laptop and smartphone theft) could continue or even increase. The trend that Chief Greenwood described could manifest itself once again.

*Recommendation:* Survey evidence indicates the leading reason for non-report of theft was “police would not or could not help.”<sup>10</sup> A helpful long-term measure could be the Police Department’s encouraging residents to report thefts, not only by press release words but by investigative deeds – another reason to support BPD’s investigative capability, advocated in #1 above. More consistent reporting especially of bicycle theft could help illuminate the inexplicable mounds of bicycle carcasses on display around the city.

**4. Arson Went Up (In Flames).** Arson of all types of property spiked in 2020:  
- structural (residential, storage, commercial, public, etc.) quadrupled,  
- mobile (autos, RVs, trailers, etc.) tripled, and  
- “other” (property outside structures, such as trash cans and signs) almost doubled.

One year does not make a trend. But the danger that fire poses throughout the entire city, especially to the wooded hills and to critical infrastructure (e.g. electric power distribution lines, highway overpasses), makes this particular crime worth understanding better.

*Recommendation:* The Fire Department’s characterization of arsons in 2020 (e.g., location within the city, type of structure or property burned, propensity to spread, difficulty to suppress) might be useful to qualitatively assess this particular crime category beyond the Police Department’s reported quantitative increase in its occurrence.

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<sup>9</sup> Report of Berkeley Police Department Chief Andrew Greenwood to Police Review Commission, September 23, 2020.

<sup>10</sup> U.S. Department of Justice, *supra* n. 7, p. 4

**Conclusion.** The *Chronicle* story was based on research by the California Policy Lab (CPL) that summarized crime rates in 70 cities in California (including Berkeley) and in large cities nationally.<sup>11</sup> This letter has focused solely on Berkeley, which exhibited some of the same pandemic-era trends that the CPL authors found in other cities in 2020:

- Increased homicides,
- Increased auto theft,
- Decreased robbery and larceny (theft).

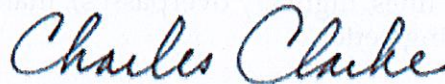
But within these general trends there has been some variation in Berkeley:

- Increased shoplifting that has drifted into increased robbery of convenience stores, and
- Increased arson.

My main recommendations are *caution* and *investigation*:

1. Resist interpreting pandemic-year blips as a change in trend until convinced that the forces behind the blip have become permanent.
2. One of the Berkeley Police Department's comparative advantages is the investigation of crime. Preserve and enhance that advantage.

Sincerely,



Charles Clarke  
Resident, District 6

Table: Crimes Reported to Berkeley Police Department, 2011-2020

Source: California Department of Justice, Crimes and Clearances,

<https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>

Qualitatively significant changes in Pandemic Year 2020 have been assigned by this author's comparison of the 2020 report vs. 2019 report and 2011-2019 trend.

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<sup>11</sup> Mia Bird, Johanna Laco, Molly Pickard, and Steven Raphael, "What Has Happened to Crime Rates in California over the Course of the Pandemic?" California Policy Lab working paper, June 23, 2021, [http://www.clrc.ca.gov/CRPC/Pub/Panelist\\_Materials/PM-20210623-Raphael.pdf](http://www.clrc.ca.gov/CRPC/Pub/Panelist_Materials/PM-20210623-Raphael.pdf)



Crimes Reported to Berkeley Police Department, 2011-2020  
and Significant Changes During Pandemic Year 2020

Offense	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Pandemic Change
<b>Homicide</b>	1	5	4	3	1	2	1	1	0	6	↑↑↑
<b>Aggravated Assault</b>	122	108	122	130	155	185	218	167	175	210	
<i>Weapon</i>											
Firearm	5	20	7	9	8	25	13	16	9	15	↑
Knife or Cutting Instrument	12	22	26	15	21	23	24	27	15	14	
Hands, Fist, Feet	50	21	38	32	47	57	58	49	65	60	
Other Weapon	55	45	51	74	79	80	123	75	86	121	↑
<b>Rape</b>	19	39	26	35	44	54	83	65	74	47	
Rape (Forcible Rape before 2014)	12	28	22	27	41	40	75	57	67	42	↓
Attempted Rape	7	11	4	8	3	14	8	8	7	5	
<b>Robbery</b>	340	335	410	263	330	361	364	353	369	274	
<i>Location</i>											
Bank	3	2	7	0	4	1	3	5	2	6	↑
Commerical House	30	46	33	24	49	53	64	54	67	56	
Convenience Store	2	14	6	7	14	9	16	31	22	46	↑
Gas Station	0	1	5	6	3	5	4	9	3	3	
Highway	89	63	124	83	109	121	116	84	100	46	↓
Residence	15	12	18	8	6	10	20	10	10	11	
Miscellaneous	201	197	217	135	145	162	141	160	165	106	↓
<i>Weapon</i>											
Firearm	125	125	153	71	90	103	98	78	74	45	↓↓
Knife or Cutting Instrument	17	21	16	20	14	14	18	26	22	24	
Strong-Arm	180	179	220	150	215	222	234	230	248	188	↓
Other Weapon	18	10	21	22	11	22	14	19	25	17	
<b>Motor Vehicle Theft</b>	628	641	664	555	717	650	621	548	492	805	
Autos	590	607	618	510	645	578	546	478	440	696	↑↑
Trucks	6	3	16	12	15	16	24	23	24	28	
Other	32	31	30	33	57	56	51	47	28	81	↑↑
<b>Burglary</b>	976	971	1055	932	1090	805	843	829	771	797	
<i>Means of Entry</i>											
Forcible Entry	553	567	594	498	663	444	468	446	436	482	
No Force	423	404	461	434	427	361	375	383	335	315	
<i>Non-Residence</i>	190	291	285	362	329	211	288	264	299	300	
Day	53	76	91	113	75	43	76	56	67	67	
Night	98	143	154	206	204	115	168	163	188	175	
Unknown	39	72	40	43	50	53	44	45	44	58	
<i>Residence</i>	786	680	770	570	761	594	555	565	472	497	
Day	477	350	401	265	380	274	216	207	148	158	
Night	204	192	258	191	242	223	220	240	203	239	↑
Unknown	105	138	111	114	139	97	119	118	121	100	↓
<b>Larceny (Theft)</b>	3,460	4,084	3,658	3,615	4,099	3,965	4,556	4,004	4,993	3,933	
<i>Value</i>											
Over \$400	1,190	1,642	1,403	1,514	1,829	1,726	2,110	1,776	2,318	1,810	↓
\$200 to \$400	640	636	622	589	620	635	622	604	646	459	↓
\$50 to \$199	762	826	764	730	813	764	826	729	777	642	↓
Under \$50	868	980	869	782	837	840	998	895	1,252	1,022	↓
<i>Type</i>											
Bicycles	411	385	443	554	535	410	366	358	287	269	
Coin Operated Machines	4	8	4	3	4	2	7	4	9	1	
From Building	385	554	558	594	467	420	401	343	341	304	↓
From Motor Vehicle	1445	1808	1529	1452	1809	1817	2129	1740	2586	1497	↓↓
Motor Vehicle Accessories	342	223	112	85	99	102	133	133	231	410	↑↑
Pocket-Picking	39	59	79	104	84	75	84	79	74	20	↓↓
Purse-Snatching	30	33	42	41	57	44	52	50	61	17	↓↓
Shoplifting	183	190	137	125	215	233	359	321	406	591	↑
All Others	621	824	754	657	829	862	1025	976	998	824	
<b>Arson</b>	25	15	16	15	22	24	30	31	17	52	
Structural Property	12	6	7	7	13	13	9	14	6	28	↑↑
Mobile Property	6	3	3	2	4	4	5	6	4	13	↑↑
Other Property	7	6	6	6	5	7	16	11	7	11	↑

Sources: California Department of Justice, Crimes and Clearances, [openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances](https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances)  
Pandemic Change arrow ratings assigned by Charles Clarke, a resident of Berkeley.



## Lee, Katherine

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**From:** Charles Clarke <cfclarke@att.net>  
**Sent:** Monday, July 26, 2021 11:56 AM  
**To:** Berkeley Mayor's Office; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Harrison, Kate; Hahn, Sophie; Wengraf, Susan; Robinson, Rigel; Droste, Lori  
**Cc:** Auditor; Williams-Ridley, Dee; Louis, Jennifer A.; Lee, Katherine  
**Subject:** Berkeley Crime Statistics 1985-2020  
**Attachments:** Clarke Ltr Berkeley Crime Statistics 1985-2020 07.26.2021.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear City Officials,

Attached is a letter to the City Council presenting data on reported major crimes in the City of Berkeley from 1985 to 2020.

My main recommendation is for the City Council to support the investigative capability of the Berkeley Police Department throughout and beyond the Reimagining Public Safety process.

Sincerely,

Charles Clarke  
Resident, City Council District 6



Berkeley, California  
July 26, 2021

To: Mayor Jesse Arreguín and City of Berkeley Councilmembers  
Rashi Kesarwani Terry Taplin Ben Bartlett Kate Harrison  
Sophie Hahn Susan Wengraf Rigel Robinson Lori Droste  
Cc: City Manager Dee Williams-Ridley City Auditor Jenny Wong  
Interim Police Chief Jennifer Louis  
Interim Director of Police Accountability Katherine Lee

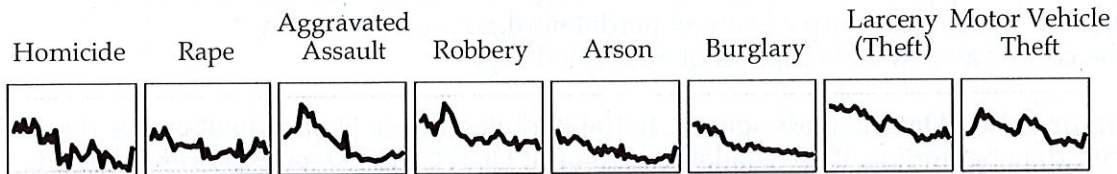
Subject: Berkeley Crime Statistics, 1985-2020

Dear Mayor Arreguín and City Councilmembers,

This letter updates my October 9, 2020, letter to this Council<sup>1</sup> about **long-term crime trends in Berkeley** with full-year data for 2020. I seek to set forth a common factual baseline about crime in Berkeley.

The most noticeable long-term trend is much lower reported crime in all categories in the last 10 years relative to the more distant 1985-2000 period, as depicted below.

#### Crimes Reported to Berkeley Police Department, 1985-2020



Sources: FBI Uniform Crime Reports, 1985-2019; California DOJ, 2020.

The 2020 spikes in homicides (6 in 2020 vs. zero in 2019), arson, and theft of motor vehicles (see table, p. 4) indicate ongoing challenges to public safety in Berkeley and warrant this Council's support for their investigation and clearance. As in my October letter I repeat my insistence that **the mission-critical investigative capability of the Berkeley Police Department be supported** throughout the Reimagining Public Safety process now underway.

Sincerely,

Charles Clarke  
Resident, District 6

<sup>1</sup> Charles Clarke letter to Berkeley City Council, October 9, 2020, in Supplemental Communications and Reports 2, October 13, 2020 6:00 PM meeting, pp. 66-79,  
<https://www.cityofberkeley.info/recordsonline/api/Document/AQwcOLuMSjpsDFÁ5L2HbjÁw2UED0m8swZ3bQwzggAUVvpVKz8gKWzmcsd474HEk1u8jUqRK2ozLj4DnÁelZirU%3D/>

## About Uniform Crime Reporting (UCR) Data

**Major Crimes.** The Federal Bureau of Investigation (FBI) publishes Uniform Crime Reporting (UCR) statistics for eight major (“Part I”) offenses:

- Homicide (murder and non-negligent manslaughter),
- Rape (for which the definition was revised starting 2013, more below),
- Aggravated assault,
- Robbery,
- Arson,
- Burglary,
- Larceny (theft), and
- Motor vehicle theft.

The first four are collectively known as Violent Crime; the latter four, Property Crime. These statistics are generally available at

<https://www.ucrdatatool.gov>

and at the California Department of Justice at

<https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>

*Definition of Rape.* Starting with 2013, the definition of *rape* was expanded from its “legacy” meaning of “forcible” carnal knowledge to the current “revised” meaning of “penetration, no matter how slight...without consent.” See UCR Offense Definitions, <https://www.ucrdatatool.gov/offenses.cfm>  
The counts also include reports of attempted rape.

**Major Crime Data.** Trends specific to the Berkeley Police Department can be discerned with data beginning 1985, available at the FBI UCR Crime Data Explorer (CDE) at:

<https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime>

Observations for 2020 were obtained from

<https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>

**Caution Against Comparing Jurisdictions.** “The FBI cautions and, in fact, strongly discourages data users against using rankings to evaluate locales or the effectiveness of their law enforcement agencies.” See “Uniform Crime Reporting Statistics: Their Proper Use,” <https://ucr.fbi.gov/ucr-statistics-their-proper-use>

The FBI issues this caution due to crime’s being “a sociological phenomenon influenced by a variety of factors.” See “Avoid rankings and comparisons,” <https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime>

**Reported Crime, not All Crime.** The FBI notes: “The data found on the Crime Data Explorer represents reported crime, and is not an exhaustive report of all crime that occurs.” See “Data considerations,”

<https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime>

**Clearance Rates.** The CDE data also present the count of cases *cleared* (solved) of each crime category. A crime’s clearance may not occur in the same year it was reported. To compute a year-by-year clearance rate would impart unnecessary volatility, hence inaccuracy, to interpretation. However, over a 36-year period (1985-2020), a measure of

the central tendency of the *long-run clearance rate* can be gained by dividing the sum of cleared cases by the sum of reported cases.

Note that interpreting this “long-run clearance rate” depends critically on the clearances’ being reported faithfully over time. This fidelity is not known, so the following rates are shown only to suggest the relative success of clearing various crime categories. The Department may possess more updated, faithful, information than the CDE source provides.

Crime Category	Long-run Clearance Rate (1985-2020)
Homicide	52%
Rape	25%
Aggravated Assault	61%
Robbery	25%
Arson	17%
Burglary	10%
Larceny (theft)	9%
Motor Vehicle Theft	10%

Source: Crimes Reported To/By Berkeley Police Department 1985-2020, below

Tables and charts have been updated since October 2020 with full-year 2020 data.

- Summary table, Crimes Reported To/By Berkeley Police Department 1985-2020
- Summary charts, Crimes Reported To Berkeley Police Department, 1985-2020
  - Homicide/Murder
  - Rape
  - Aggravated Assault
  - Robbery
  - Arson
  - Burglary
  - Larceny/Theft
  - Motor Vehicle Theft

Crimes Reported to/by Berkeley Police Department 1985-2020

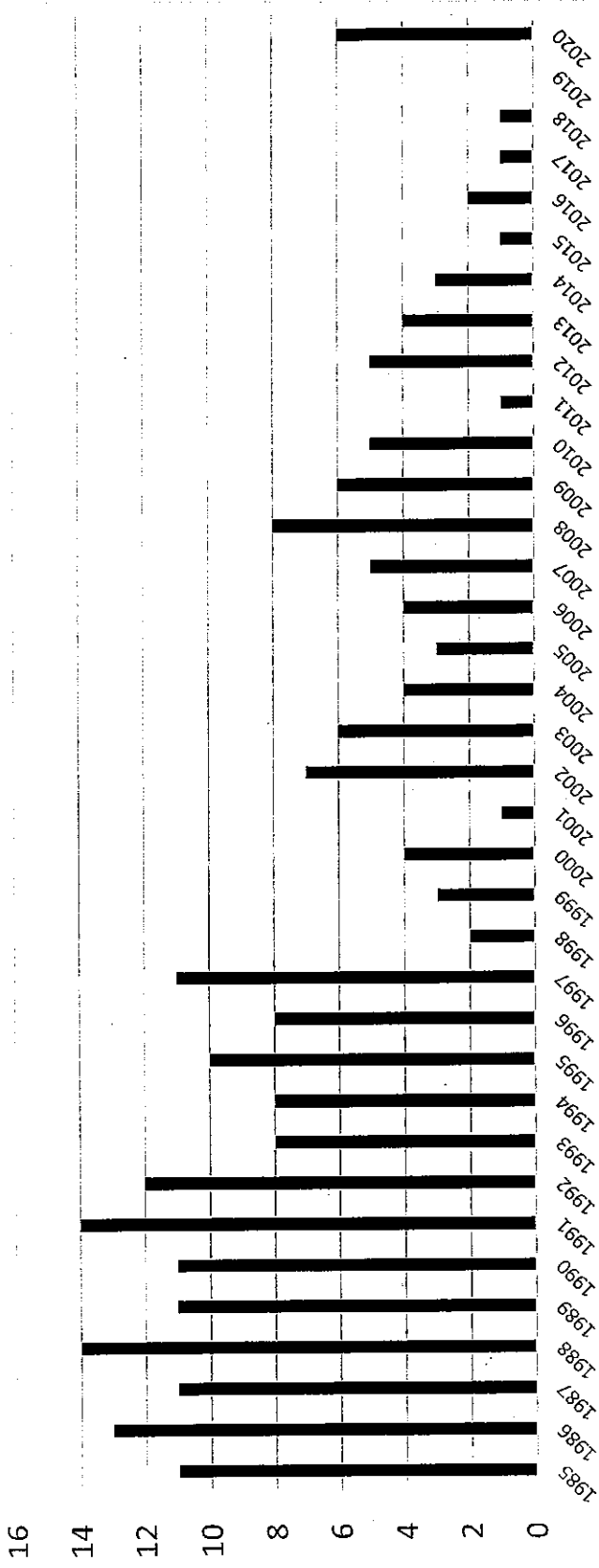
Updated July 2021

Crime: Year	Homicide		Rape		Aggravated Assault		Robbery		Arson		Burglary		Larceny		Motor Vehicle Theft	
	Reported	Cleared	Reported	Cleared	Reported	Cleared	Reported	Cleared	Reported	Cleared	Reported	Cleared	Reported	Cleared	Reported	Cleared
1985	11	4	86	32	450	325	660	198	100	20	2,930	397	8,236	1,380	869	177
1986	13	10	110	37	494	334	717	171	71	20	2,977	411	8,111	1,167	900	175
1987	11	8	90	32	538	402	580	168	80	32	2,442	357	7,823	1,033	1,045	276
1988	14	8	88	37	524	366	613	180	67	20	2,840	471	8,280	1,164	1,302	329
1989	11	7	114	46	593	340	476	170	76	15	2,788	261	7,739	1,009	1,523	314
1990	11	5	96	39	881	636	618	177	84	12	2,262	223	7,564	1,008	1,289	328
1991	14	11	80	28	834	578	663	186	81	8	2,663	237	7,594	1,002	1,379	267
1992	12	4	56	15	733	504	882	182	73	4	2,406	194	8,142	899	1,303	235
1993	8	4	70	22	773	498	815	278	64	6	2,383	257	7,915	979	1,161	217
1994	8	8	72	27	605	390	745	258	70	7	1,740	155	6,998	851	1,140	174
1995	10	5	66	21	591	430	619	169	51	3	1,538	177	7,541	809	1,075	159
1996	8	4	64	21	555	399	492	177	41	6	1,502	99	6,683	736	1,061	138
1997	11	6	62	23	476	337	447	168	52	5	1,260	225	6,612	845	959	103
1998	2	1	66	15	472	326	431	128	36	0	1,443	179	5,922	749	971	68
1999	3	2	64	18	416	268	391	129	58	0	1,197	271	5,459	604	845	67
2000	4	2	82	17	377	241	332	91	43	2	1,124	186	4,889	578	921	79
2001	1	0	34	0	326	0	398	0	51	8	1,453	0	6,054	0	1,221	0
2002	7	2	56	17	287	171	407	80	48	4	1,514	98	6,687	329	1,341	35
2003	6	1	32	7	502	292	402	84	32	1	1,245	114	6,217	406	1,233	27
2004	4	1	34	6	181	90	355	72	59	15	1,382	58	6,101	399	1,128	27
2005	3	3	36	2	195	72	354	51	25	1	1,229	60	5,503	279	1,244	22
2006	4	1	44	4	206	71	414	68	36	4	1,152	57	5,096	275	1,075	28
2007	5	1	48	12	179	78	431	94	29	6	1,172	56	4,949	288	995	21
2008	8	2	50	2	123	62	496	94	28	11	1,095	70	4,790	225	952	10
2009	6	3	54	7	138	61	444	85	21	3	1,079	65	4,661	221	727	4
2010	5	2	46	11	140	70	365	95	25	8	1,088	77	4,240	176	615	17
2011	1	0	38	7	122	62	340	68	25	5	976	54	3,460	126	628	8
2012	5	2	78	3	108	51	335	68	15	3	971	59	4,084	153	641	7
2013	4	3	26	6	122	54	410	97	16	5	1,055	87	3,658	173	664	14
2014	3	3	35	8	130	59	263	72	15	2	932	74	3,615	160	555	8
2015	1	1	44	7	155	66	330	86	22	5	1,090	66	4,099	166	717	11
2016	2	0	54	5	185	67	361	61	24	5	805	64	3,965	184	650	12
2017	1	1	83	14	218	86	364	85	30	5	843	80	4,556	200	621	23
2018	1	0	65	9	167	69	353	84	31	12	829	87	4,004	232	548	26
2019	0	0	74	4	175	68	369	74	17	4	771	119	4,993	266	492	23
2020	6	2	47	3	210	78	274	57	52	8	797	90	3,933	268	805	30
Long-run Clearance Rate	52%		25%		61%		25%		17%		10%		9%		10%	

Sources: FBI Crime Data Explorer, Berkeley Police Department, 1985-2019  
<https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime>  
 California Department of Justice, Crimes & Clearances, Berkeley, 2020  
<https://openjustice.doi.ca.gov/exploration/crime-statistics/crimes-clearances>

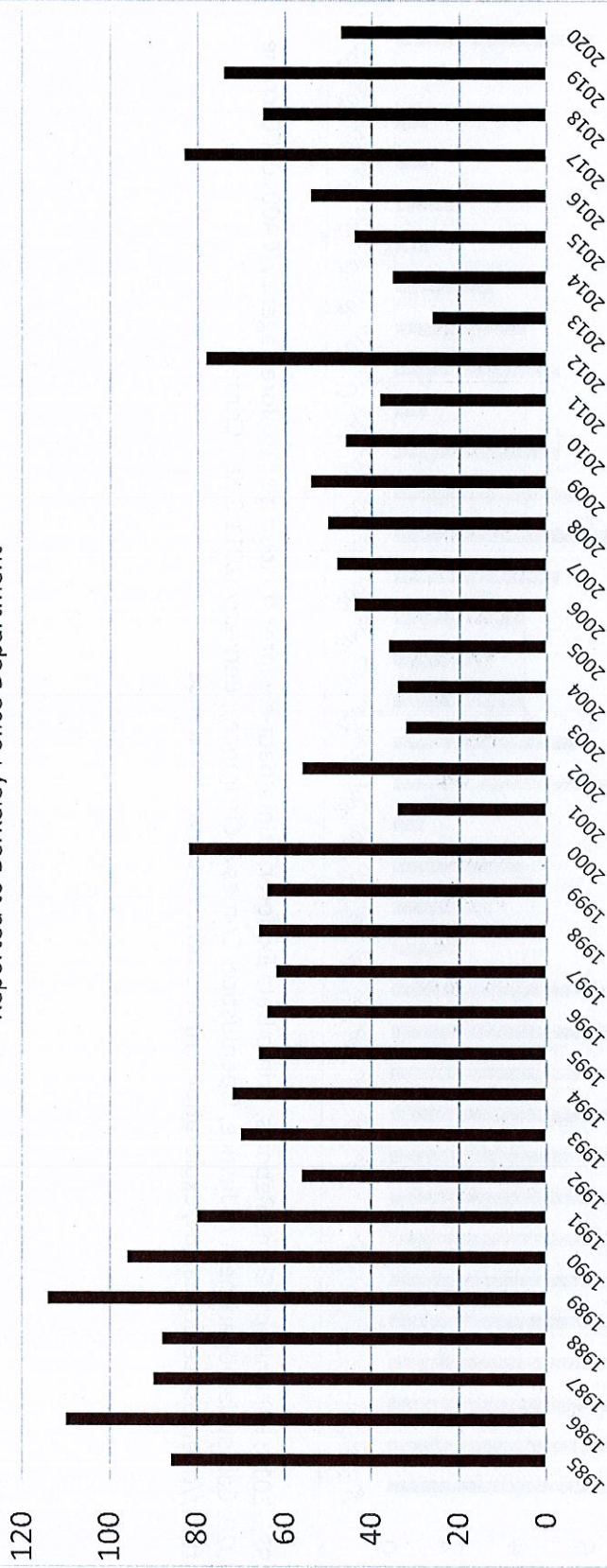


### Homicide/Murder Reported to Berkeley Police Department



1985-2019: FBI Uniform Crime Reports, Crime Data Explorer, [crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime](https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime)  
2020: California Department of Justice, OpenJustice, Crimes & Clearances, Berkeley, 2011-2020, Crimes, <https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>

### Rape Reported to Berkeley Police Department



1985-2019: FBI Uniform Crime Reports, Crime Data Explorer, [crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime](https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime)  
2020: California Department of Justice, OpenJustice, Crimes & Clearances, Berkeley, 2011-2020, Crimes, <https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>

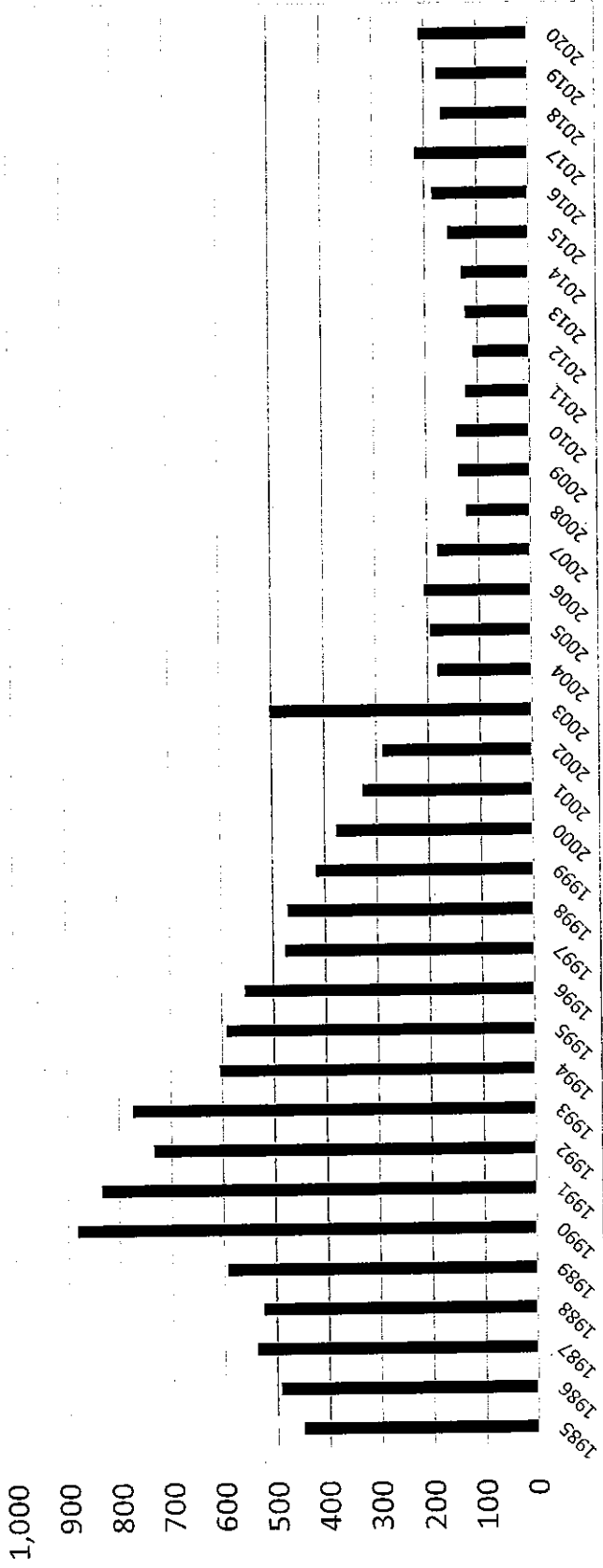
#### Definitions of rape

1985-2013 – “Legacy” definition, “carnal knowledge...forcibly and against her will.”

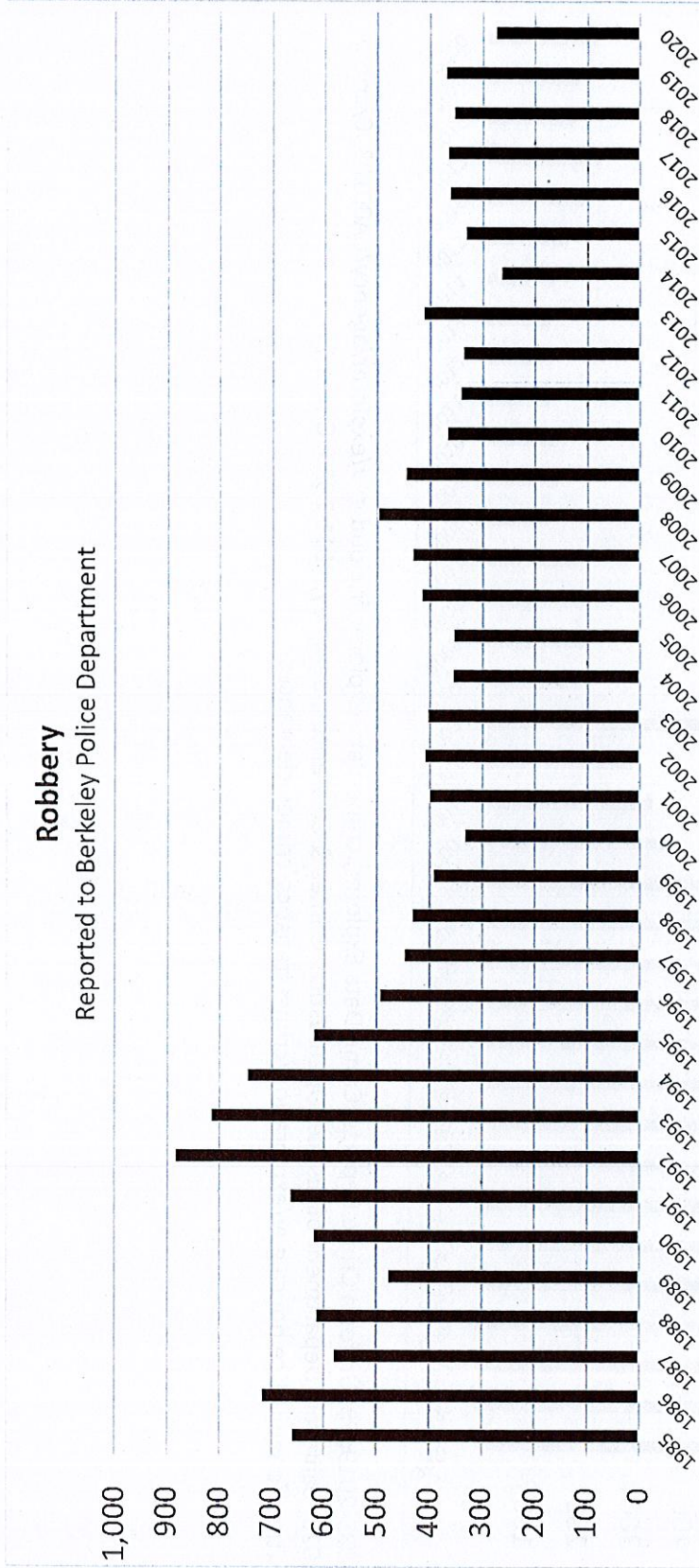
2014-present – “Revised” definition, “penetration, no matter how slight...without consent.”

FBI: UCR, “Crime in the United States 2013 – Uniform Crime Reporting Program Changes Definition of Rape,” [ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/rape-addendum/rape\\_addendum\\_final](https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/rape-addendum/rape_addendum_final)

### Aggravated Assault Reported to Berkeley Police Department

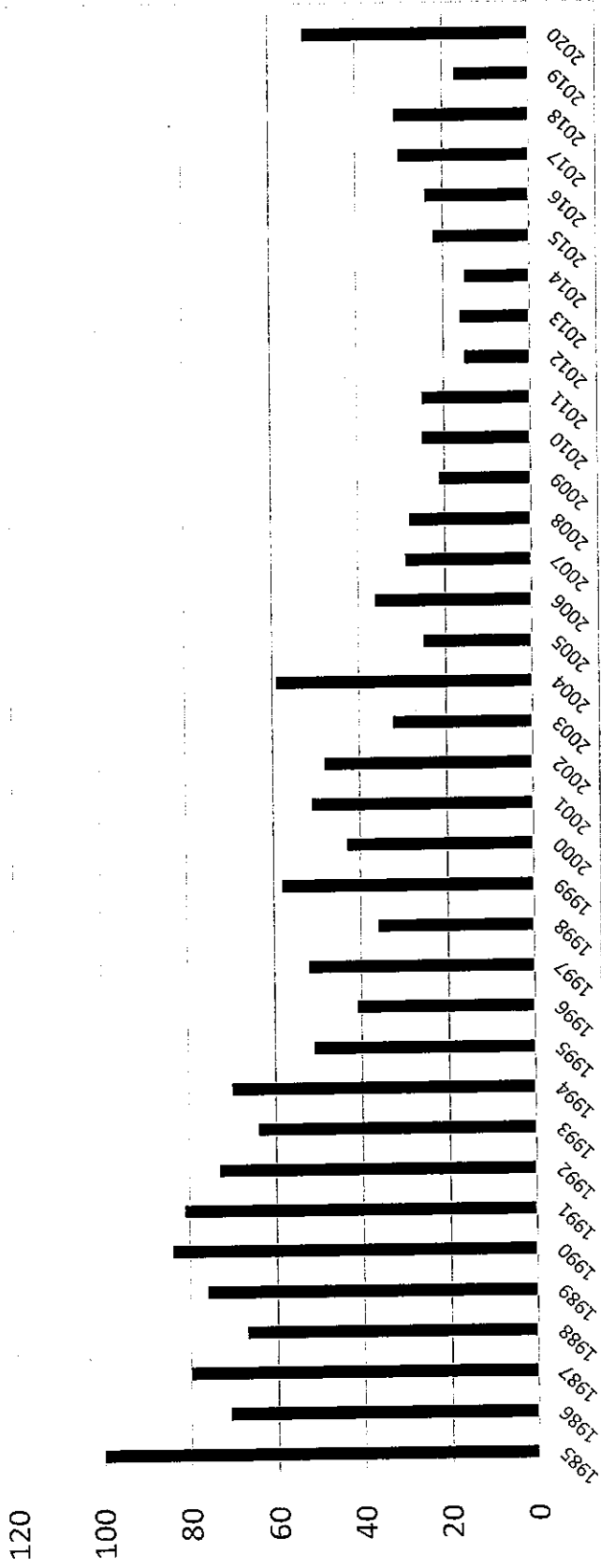


1985-2019: FBI Uniform Crime Reports, Crime Data Explorer, [crime-data-explorer.fbi.cloud.gov/explorer/agency/CA0010300/crime](https://explorer.fbi.cloud.gov/explorer/agency/CA0010300/crime)  
2020: California Department of Justice, OpenJustice, Crimes & Clearances, Berkeley, 2011-2020, Crimes, <https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>

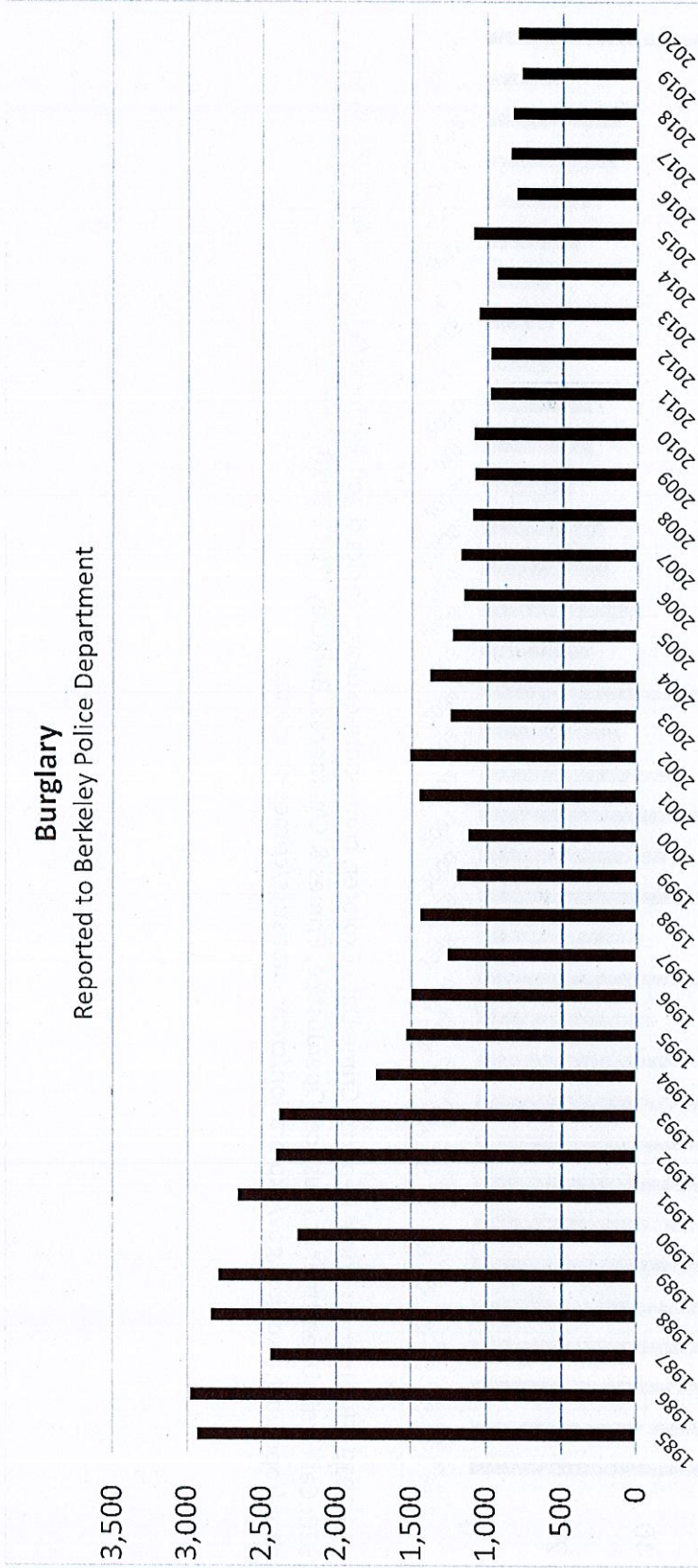


1985-2019: FBI Uniform Crime Reports, Crime Data Explorer, [crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime](https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime)  
2020: California Department of Justice, OpenJustice, Crimes & Clearances, Berkeley, 2011-2020, Crimes, <https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>

**Arson**  
Reported to Berkeley Police Department



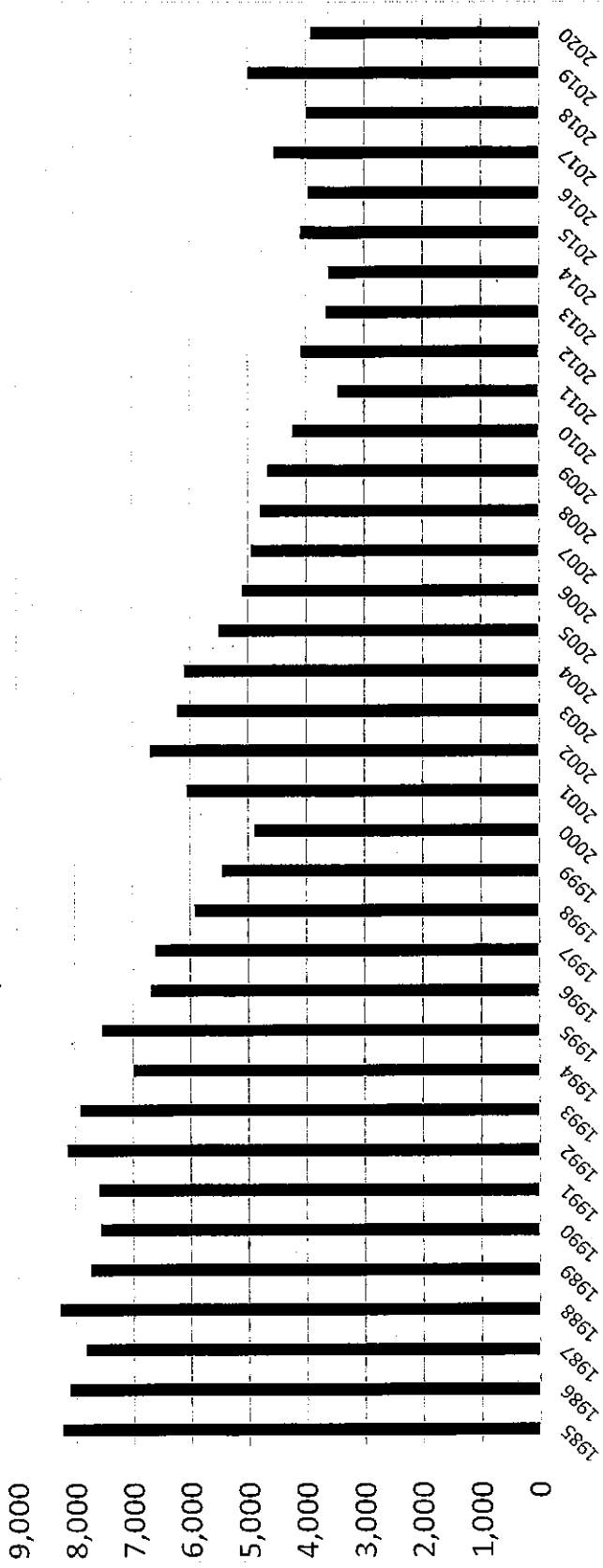
1985-2019: FBI Uniform Crime Reports, Crime Data Explorer, [crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime](https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime)  
2020: California Department of Justice, OpenJustice, Crimes & Clearances, Berkeley, 2011-2020, Crimes, <https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>



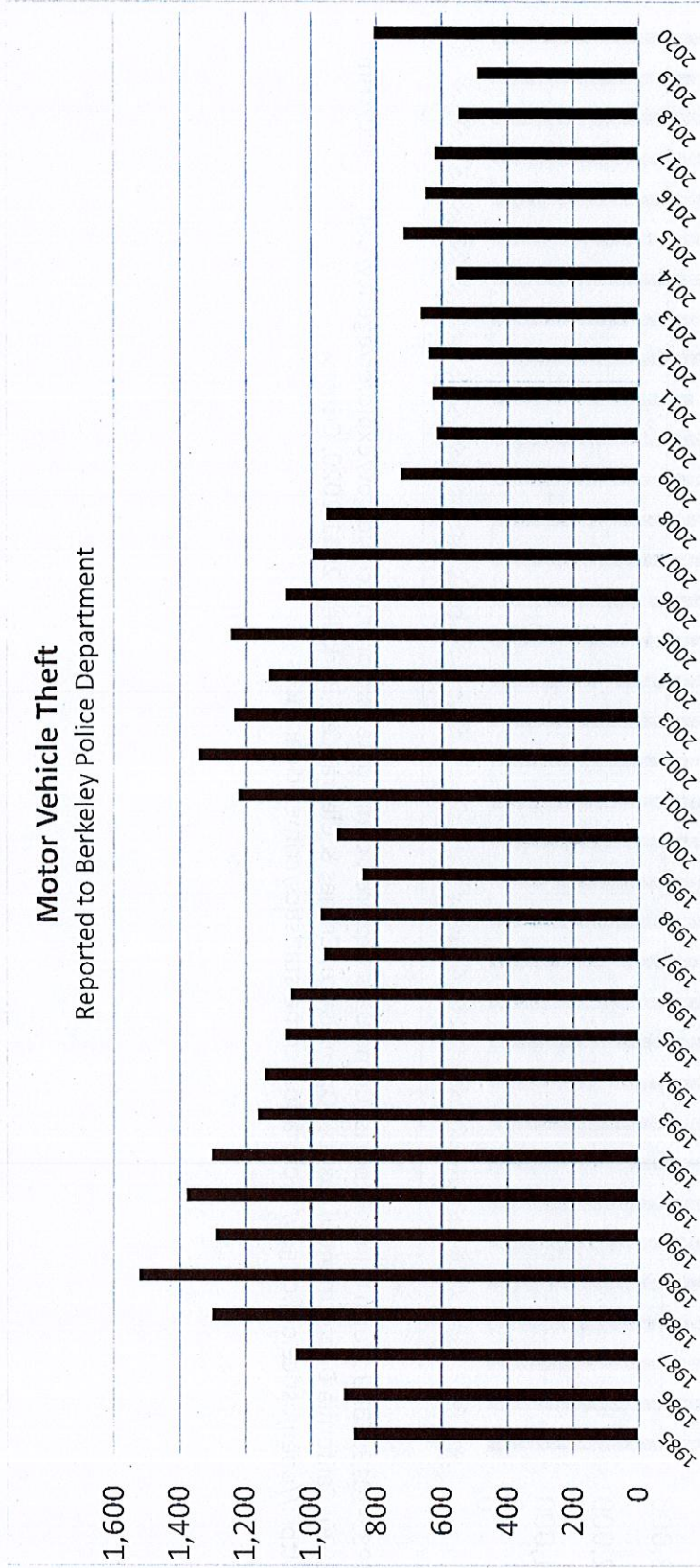
1985-2019: FBI Uniform Crime Reports, Crime Data Explorer, [crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime](https://crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime)  
2020: California Department of Justice, OpenJustice, Crimes & Clearances, Berkeley, 2011-2020, Crimes, <https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>

### Larceny/Theft

Reported to Berkeley Police Department



1985-2019: FBI Uniform Crime Reports, Crime Data Explorer, crime-data-explorer.fr.cloud.gov/explorer/agency/CA0010300/crime  
2020: California Department of Justice, OpenJustice, Crimes & Clearances, Berkeley, 2011-2020, Crimes, <https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>



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2020: California Department of Justice, OpenJustice, Crimes & Clearances, Berkeley, 2011-2020, Crimes, <https://openjustice.doj.ca.gov/exploration/crime-statistics/crimes-clearances>