



POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA PACKET
Wednesday, October 9, 2024
6:30 P.M.

Board Members

John Moore III (Chair)
 Kitty Calavita
 Brent Blackaby
 Alexander Mozes

Leah Wilson (Vice-Chair)
 Juliet Leftwich
 Joshua Cayetano
 David Williams

MEETING LOCATION

North Berkeley Senior Center
 1901 Hearst Avenue
 Berkeley, CA 94709
[\(Click here for Directions\)](#)

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HEALTH AND SAFETY PROTOCOLS FOR IN-PERSON MEETINGS OF
BERKELEY BOARDS AND COMMISSIONS

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

The policy below applies to in-person meetings of Berkeley Boards and Commissioners held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

Issued By: City Manager's Office

Date: February 14, 2023

I. Vaccination Status

All attendees are encouraged to be fully up to date on their vaccinations, including any boosters for which they are eligible.

II. Health Status Precautions

For members of the public who are feeling sick, including but not limited to cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, it is recommended that they do not attend the meeting in-person as a public health precaution. In these cases, the public may submit comments in writing in lieu of attending in-person.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to wear a well-fitting mask (N95s, KN95s, KF94s are best), test for COVID-19 3-5 days from last exposure, and consider submitting comments in writing in lieu of attending in-person.

Close contact is defined as someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane, etc., for a cumulative total of 15 minutes or more over a 24-hour period within 2 days before symptoms of the infected person appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign-in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

Members of City Commissions are encouraged to take a rapid COVID-19 test on the day of the meeting.

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are encouraged for all commissioners, staff, and attendees at an in-person City Commission meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of Commissions, city staff, and the public are encouraged to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium, although masking is encouraged even when speaking.

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. Capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons that need to distance for personal health reasons.

Distancing will be implemented for the dais as space allows.

V. Protocols for Teleconference Participation by Commissioners

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for Commissioners participating remotely due to an approved ADA accommodation. For Commissioners participating remotely, the agenda must be posted at the remote location, the remote location must be accessible to the public, and the public must be able to participate and give public comment from the remote location.

- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

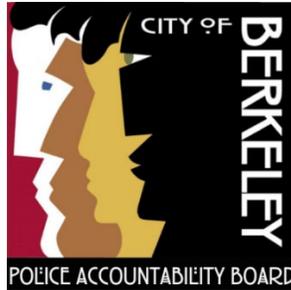
Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

Air filtration devices are used at all meeting locations. Window ventilation may be used if weather conditions allow.

ITEM 2

OCTOBER 9, 2024 PAB REGULAR MEETING AGENDA



POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
WEDNESDAY, OCTOBER 9, 2024
6:30 P.M.

Board Members

John Moore III (Chair)
Kitty Calavita
Brent Blackaby
Alexander Mozes

Leah Wilson (Vice-Chair)
Juliet Leftwich
Joshua Cayetano
David Williams

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

PUBLIC NOTICE

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82653396072>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on “rename” to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **826 5339 6072**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

LAND ACKNOWLEDGMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

AGENDA

- 1. CALL TO ORDER AND ROLL CALL (2 MINUTES)**
- 2. APPROVAL OF AGENDA (2 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, except confidential personnel matters.

- 4. APPROVAL OF MINUTES (5 MINUTES)**
 - a. Minutes for the Regular Meeting of September 25, 2024
- 5. ODPa STAFF REPORT (10 MINUTES)**

Announcements, updates, and other items.

- 6. CHAIR AND BOARD MEMBERS' REPORTS (10 MINUTES)**

Announcements, updates, and other items.

- 7. CHIEF OF POLICE'S REPORT (10 MINUTES)**

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

8. SUBCOMMITTEE REPORTS (10 MINUTES)

Report of activities and meeting schedule for all subcommittees, possible appointment or reassignment of members to subcommittees, and additional discussion and action as warranted for the subcommittees listed on the PAB's Subcommittee List included in the agenda packet.

9. OLD BUSINESS (20 MINUTES)

- a. Discussion and action regarding the Citygate Associates, LLC Workload Organizational Study of the Berkeley Police Department and the PAB's potential response to the report (ODPA) – (15 Minutes)
- b. Discussion and action on appointing members to the subcommittee established to review Berkeley Police Department Policies 1010 and 1034 (ODPA) - (5 Minutes)

10. NEW BUSINESS (1 HOUR 10 MINUTES)

- a. Discussion and action regarding the presentation of ODPAs Police Reviews (ODPA) – (30 Minutes)
 - i. 2023-PR-0005 (15 Minutes)
 - ii. Use of Force Review (15 Minutes)
- b. Discussion and action on Chair Moore's proposal to the PAB to initiate a policy review on social media usage by law enforcement (10 Minutes)
- c. Discussion and action on appointing a liaison to assist with drafting the annual report. (5 Minutes)
- d. Discussion and action on the PAB's 2025 Regular Meeting Calendar (5 Minutes)
- e. Discussion and action on Policy Reviews (20 Minutes):
 - i. PRC 2487
 - ii. PRC 2488
 - iii. ODPAs 17
 - iv. ODPAs 19

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 any matter within the Board's jurisdiction at this time, except confidential personnel matters.

12. CLOSED SESSION

CLOSED SESSION ITEMS

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

a. Case Updates and Recommendations Regarding Complaints Received by the ODPa:

- | | | | |
|------|--------------|-----|--------------|
| i. | 2023-CI-0016 | iv. | 2024-CI-0010 |
| ii. | 2024-CI-0003 | v. | 2024-CI-0012 |
| iii. | 2024-CI-0004 | vi. | 2024-CI-0025 |

END OF CLOSED SESSION

13. ANNOUNCEMENT OF CLOSED SESSION ACTIONS (1 MINUTE)

14. ADJOURNMENT (1 MINUTE)

Off Agenda Reports

1. Legislative Updates Relevant to the PAB's Work

Communications Disclaimer

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

Communication Access Information (A.R. 1.12)

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

SB 343 Disclaimer

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

Contact the Director of Police Accountability (Board Secretary) at:

1947 Center Street, 5th Floor, Berkeley, CA 94704

TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955

Website: <https://berkeleyca.gov/safety-health/police-accountability>

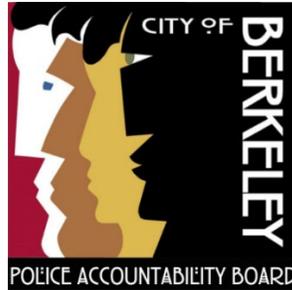
Email: dpa@berkeleyca.gov

NOTICE OF TEMPORARY LOCATION

Please note that the ODPa is currently operating from a temporary location at **2020 Milvia Street, Suite 250, Berkeley, CA**. For in-person visits, appointments are strongly encouraged and can be made by calling our main line. Mail can still be received at 1947 Center Street.

ITEM 4

MINUTES FOR THE REGULAR MEETING OF SEPTEMBER 25, 2024



POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
WEDNESDAY, SEPTEMBER 25, 2024
6:30 P.M.

Board Members

John Moore III (Chair)
Kitty Calavita
Brent Blackaby
Alexander Mozes

Leah Wilson (Vice-Chair)
Juliet Leftwich
Joshua Cayetano
David Williams

MEETING LOCATION

2020 Milvia Street, Suite 250
Berkeley, CA 94704

MINUTES

1. CALL TO ORDER AND ROLL CALL AT 6:38 PM

- Present:** Board Member John Moore (Chair)
Board Member Brent Blackaby
Board Member Kitty Calavita
Board Member Joshua Cayetano
Board Member Juliet Leftwich
Board Member Alexander Mozes
- Absent:** Board Member Leah Wilson (Vice-Chair)
Board Member David Williams
- ODPA Staff:** Hansel Aguilar, Director of Police Accountability
Jose Murillo, Policy Analyst
Jayson Wechter, Investigator
Keegan Horton, Investigator
- BPD Staff:** Deputy Chief Tate
Lt. Montgomery
Detective Morales

Officer Michalczyk
CAO Staff: DCA Chang
CMO Staff: Dr. Carianna Arredondo, Assistant to the City Manager
Rex Brown, DEI Officer

2. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Calavita /Leftwich) Motion carried.

Ayes: Blackaby, Calavita, Cayetano, Leftwich, Mozes, and Moore.

Noes: None. Abstain: None. Absent: Wilson and Williams.

3. PUBLIC COMMENT

0 Physical Present Speaker(s)

0 Virtually Present Speaker(s)

4. APPROVAL OF MINUTES

a. Minutes for the Regular Meeting of September 11, 2024

Motion to approve the minutes of the Regular Meeting on September 11, 2024, with a correction to the typo on page 13 of the packet in the Chief of Police's report.

Moved/Second (Calavita /Leftwich) Motion carried.

Ayes: Blackaby, Calavita, Cayetano, Leftwich, Mozes, and Moore.

Noes: None. Abstain: None. Absent: Wilson and Williams.

5. ODPa STAFF REPORT

Director Aguilar provided updates on National Hispanic Heritage Month and a City-hosted event, the onboarding of the ODPa Data Analyst, the office move timeline, the Use of Force Forums, his meeting with the new City Manager, subcommittee reports going to City Council, BART's Police Oversight campaign, his work with POST's criminal justice module, and the Board election for NACOLE representation. Investigator Wechter updated on the NACOLE 2024 Conference. Dr. Arredondo expressed gratitude to the PAB and ODPa for their commitment to Reimagining Public Safety and noted a dedicated RPS table at the Harvest Festival. DEI Officer Brown reported on National Hispanic Heritage Month celebration attendees and speakers.

6. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore congratulated Director Aguilar on his collaboration with POST, acknowledged the Berkeley delegation for NACOLE, and expressed his appreciation for the work that we do. Director Aguilar provided a short list of PAB/ODPA representation to NACOLE.

7. CHIEF OF POLICE'S REPORT

DC Tate reported on cases of interest and other items of interest, community engagement, training, and traffic safety, as well as provided updates on Board Member questions and other questions.

8. SUBCOMMITTEE REPORTS

Subcommittees report on their activities.

9. NEW BUSINESS

a. BPD Presentation on ABLE Training¹ (ODPA)

Detective Morales and Officer Michalczyk present to the PAB on ABLE Training. No actions were taken by the PAB.

b. Discussion and action regarding the presentation of ODPAs Police Reviews (ODPA)

i. 2023-PR-0001 (15 Minutes)

Motion to work with BPD to amend Policies 1010 and 1034 and forward a letter to Council with the ODPAs recommendations for the next budget cycle.

Moved/Second (Calavita/Mozes) Motion carried.

Ayes: Blackaby, Calavita, Cayetano, Leftwich, Mozes, and Moore.

Noes: None. Abstain: None. Absent: Wilson and Williams.

ii. 2023-PR-0002 (15 Minutes)

Motion to accept the ODPAs Policy Review Report for Policy Complaint 2023-PR-0002 as is and forward it to BPD.

Moved/Second (Mozes/Blackaby) Motion carried.

Ayes: Blackaby, Calavita, Cayetano, Leftwich, Mozes, and Moore.

Noes: None. Abstain: None. Absent: Wilson and Williams.

c. Discussion and action regarding the Citygate Associates, LLC Workload Organizational Study of the Berkeley Police Department and the PAB's potential response to the report (ODPA) – (15 Minutes)

No action taken by the PAB. The Board to continue discussion at their October 9, 2024 Regular Meeting.

d. Discussion and action on the Budget & Metrics Subcommittee's proposed PAB metrics (Blackaby & Wilson)

¹ <https://www.law.georgetown.edu/cics/able/agencies-initiatives/>

No action taken by the PAB. The PAB provides feedback to the Budget & Metrics Subcommittee.

- e. Discussion and action regarding the appointment of Board Members to present PAB reports to the City Council (ODPA)
 - i. “Berkeley Police Department Texting Offenses: An Independent Investigation by the Police Accountability Board” set for October 1, 2024
 - ii. “Police Accountability Board Report: Fair and Impartial Implementation” set for October 15, 2024

Motion to request that the “Berkeley Police Department Texting Offenses: An Independent Investigation by the Police Accountability Board” and “Police Accountability Board Report: Fair and Impartial Implementation” reports be withdrawn and presented at a later date.

Moved/Second (Leftwich/Calavita) Motion carried.

Ayes: Blackaby, Calavita, Cayetano, Leftwich, Mozes, and Moore.

Noes: None. Abstain: None. Absent: Wilson and Williams.

- f. Discussion and action on the proposal to relocate the PAB’s regular meetings back to the North Berkeley Senior Center (Leftwich) – (5 Minutes)

Motion to move the PAB's regular meetings back to the North Berkeley Senior Center until the ODPa's new office space is completed.

Moved/Second (Leftwich/Calavita) Motion carried.

Ayes: Blackaby, Calavita, Cayetano, Leftwich, Mozes, and Moore.

Noes: None. Abstain: None. Absent: Wilson and Williams.

- g. Assign a delegate for NACOLE 2024 Conference Elections (ODPA)

Motion to appoint Board Member Cayetano as the delegate for the NACOLE 2024 Conference Elections.

Moved/Second (Moore/Blackaby) Motion carried.

Ayes: Blackaby, Calavita, Cayetano, Leftwich, Mozes, and Moore.

Noes: None. Abstain: None. Absent: Wilson and Williams.

10. PUBLIC COMMENT (TBD)

0 Physical Present Speaker(s)

0 Virtually Present Speaker(s)

11. CLOSED SESSION

CLOSED SESSION ITEMS

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

a. Case Updates and Recommendations Regarding Complaints Received by the ODPA:

- | | | | |
|------|--------------|-----|--------------|
| i. | 2023-CI-0016 | iv. | 2024-CI-0010 |
| ii. | 2024-CI-0003 | v. | 2024-CI-0012 |
| iii. | 2024-CI-0004 | vi. | 2024-CI-0025 |

No action taken by the PAB. Director Aguilar provides case updates to the PAB.

END OF CLOSED SESSION

12. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

Chair Moore announces the closed session actions.

13. ADJOURNMENT

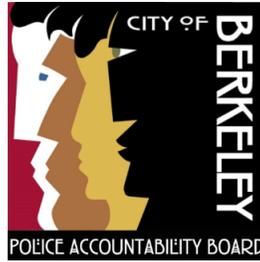
Motion to adjourn. Moved/Second (Mozes/Calavita) The meeting was adjourned at 9:30 PM by unanimous consent.

Minutes Approved on: _____

Hansel Aguilar, Commission Secretary: _____

ITEM 8

LIST OF PAB SUBCOMMITTEES



SUBCOMMITTEES LIST

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21 Renewed 6-7-2023	Calavita Leftwich <u>Public members:</u> Kitt Saginor	N/A	Lt. Dan Montgomery
Fair & Impartial Policing Implementation Formed 8-4-21 Renewed 6-7-2023	Calavita Wilson <u>Public members:</u> George Lippman	Calavita	Sgt. Peter Lee
Surveillance Technology Policy Formed 6-7-2023	Calavita Moore	N/A	N/A
Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations Formed 11-15-22	Calavita Moore	Calavita	N/A
Body-Worn Camera Policy Formed 03-15-23	Leftwich Cayetano	Leftwich	Cpt. Okies Lt. Cummings
Conflict of Interest Formed 03-29-23	Leftwich Wilson	Leftwich	N/A
Unnamed – Policy Complaint 2023-PR-0003 Formed June 21, 2023	Wilson [Vacant]	Wilson	N/A

Updated on 10/3/2024

Policy Reviews Formed 11-08-2023 Scope Expanded 03-02-2024 Formally "Lexipol Review"	Leftwich Cayetano Mozes <u>Public members:</u> Kitt Saginor	Leftwich	Deputy Chief Tate Sgt. Speelman
Budget & Metrics Formed 11-08-2023 Scope Expanded 03-02-2024	Wilson Blackaby	N/A	N/A
Outreach & Engagement Formed 11-08-2023 Scope Expanded 03-02-2024 Formally "Commendations"	Moore Blackaby	N/A	N/A
Off-Duty Conduct	Cayetano Leftwich	N/A	Lt. Rittenhouse
Operations & Processes Formed 03-02-2024	Wilson Mozes	TBD	TBD
Berkeley Police Department Policies 1010 and 1034 Review Formed 9-25-2024	TBD	TBD	TBD

LIAISON LIST¹

Liaison Name	Assignment
Cayetano	Represent the PAB in the EIS Request for Proposal Process

POLICY COMPLAINTS ASSIGNED TO INDIVIDUAL BOARD MEMBERS²

Policy Review Number	Assigned Board Member
2023-PR-0006	Chair Moore
2024-PR-0003	Chair Moore

¹ Liaison list does not include topics that were originally assigned to a Board Member but later assigned to a subcommittee.

² This list does not include policy complaints that were originally assigned to an individual Board Member but later assigned to a subcommittee.

Item 9.a.

Additional Materials to Follow

Item 9.b.

BPD Policies 1010 & 1034

Personnel Complaints

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Berkeley Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

The Berkeley Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.3 CATEGORIES

Employee Misconduct : The violation of Department rules, regulations, Orders, policies or procedures., the commission of a criminal offense; or anything falling into one or more of the following categories:

- (a) **Improper Use of Force:** All allegations concerning the improper use of force that goes beyond reasonable or lawful limits of physical power that may be used upon a person including:
 - (a) Improper use or display of a firearm;
 - (b) Improper use of any object; and/or
 - (c) Improper use of hands or feet.
- (b) **Discourtesy:** All allegations concerning a failure to be courteous and civil to the public. Complaints may include improper hand gestures or signs, and/or the failure of an employee to give a proper response or explanation to a citizen.
- (c) **Improper Stop/Street Detention/Search/Seizure/Arrest:** All allegations concerning police actions conducted without sufficient lawful reason, particularly as they relate to improper stops, street detentions, searches, seizures and arrests. This category does not include complaints about improperly issued traffic citations or improper police tows.
- (d) **Improper Detention Procedures** All allegations concerning a failure to follow proper procedures for arrest, booking, incarceration and release of prisoners. May include allegations concerning a failure to advise of the reasons for an arrest; failure to "Mirandize" a suspect; failure to utilize the proper citation release procedure; a failure to follow proper bail procedures; failure to follow proper juvenile processing

Berkeley Police Department

Law Enforcement Services Manual

Personnel Complaints

procedures; failure to allow phone calls and/or access to attorneys, and unnecessary delays in releasing prisoners.

- (e) **Inadequate Investigation or Improper Police Report**: All allegations concerning a failure to adequately and impartially investigate and to accurately provide a written account of an incident. May include the failure of an employee to take a report or to make a lawful arrest.
- (f) **Discrimination** All allegations concerning a favorable or unfavorable treatment or action by a police employee which exhibits partiality or prejudice based upon a person's race, color, religion, ancestry, national origin, age, sex, gender, sexual orientation, marital status, political affiliation, physical disability or medical condition, see also the Discriminatory Harassment policy.
- (g) **Harassment** Any allegation asserting a consistent, deliberate annoyance by police employees where the complainant can attest to repetitious contact over a period of time.
- (h) **Improper Police Procedures** Any allegation concerning a failure to follow approved Departmental policies, procedures, orders, or guidelines.
- (i) **Improper Traffic Citation or Police Tow** : All allegations of improperly issued traffic citations or improper towing by a police employee.
- (j) **Other** : All other allegations concerning police employee misconduct that do not fit into any of the other listed categories. These allegations may include, but are not limited to complaints concerning criminal misconduct, abuse of discretion, or failure of a police employee to properly identify self.

1010.4 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1010.4.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Internal Complaint - A complaint initiated by a Police Department employee against another Police Department employee.

Formal Complaint - A matter in which a supervisor determines that further action is warranted. Such complaints shall be referred to the Internal Affairs Bureau.

External Complaint - A complaint received by any other source.

Berkeley Police Department

Law Enforcement Services Manual

Personnel Complaints

1010.4.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1010.4.3 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1010.4.4 AVAILABILITY OF WRITTEN PROCEDURES

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

1010.5 PROHIBITED CONTACT

Employees involved in an Internal Affairs investigation or Police Accountability Board investigation shall not contact complainants or witnesses regarding the complaint. Employees may make contact with complainants or witnesses when necessary in the course of normal police business, conducting investigations, or responding to calls for service.

1010.6 INTERNAL AFFAIRS BUREAU (IAB)

The Internal Affairs Bureau (IAB) consists of two investigative sergeants who report directly to the Chief of Police. Their responsibilities include:

- (a) Investigating all externally received complaints alleging employee misconduct.
- (b) Investigating internally initiated complaints of misconduct as may be assigned by the Chief of Police.
- (c) Preparing investigations and reports on inquiries into employee conduct as may be required by the Chief of Police.
- (d) Preparing letters, documents and memoranda associated with the disciplinary process in complaint matters.
- (e) Preparing letters and correspondence on other matters as may be required by the Chief of Police.

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Personnel Complaints

- (f) Maintaining liaison with the District Attorney's office during investigations involving alleged criminal conduct on the part of an employee.
 - 1. Coordinating the Department's Complaint Review Board process
 - 2. Assisting the City Attorney's Office with the investigation of civil claims against BPD and/or its employees
 - 3. Assisting the City Attorney's Office in the preparation and presentation of Pitchess Motions
 - 4. Acting as liaison with the City Attorney, the Police Accountability Board and legal defense attorneys
 - 5. Advising the Chief of Police on matters relating to discipline, liability and training issues

1010.7 INTERNAL COMPLAINTS

An internal complaint may be initiated by any employee of the Police Department to his or her sworn or non-sworn supervisor or, in the absence of a supervisor, to their commanding officer or to a sergeant from IAB. Complaints will be documented in writing either by the employee making the complaint or by the supervisor or command officer receiving the complaint.

- (a) The complaint shall document the alleged violation(s) of Department rules, regulations, orders, policies, or procedures.
- (b) The complaint shall also include an explanation of the circumstances surrounding the alleged violation(s).

1010.7.1 CONFIDENTIALITY

Employees may make complaints confidentially and the matter shall be investigated without disclosure of the complainant's identity unless disclosure is necessary to provide the subject employee with their procedural due process rights or disclosure is required by law.

1010.7.2 TIMELINE

Once an employee is made aware of the alleged violation(s), an internal complaint should be made within 30 days. Questions as to the acceptability of a complaint shall be resolved by the Chief of Police.

The Chief of Police and the captain of the division to which the subject employee(s) is assigned shall be notified of the allegation(s) as soon as possible.

1010.7.3 INVESTIGATION WITHIN THE DIVISION

Primary responsibility for the investigation of an internal complaint shall rest with the captain of the division to which the subject employee is assigned.

- (a) Investigations handled within the involved division shall be conducted in a complete and thorough manner. The investigation shall be forwarded directly to the Chief of Police who may consult with the appropriate division captain(s) prior to making a disposition.

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- (b) If the division captain feels that the investigation should not be conducted within the division, a request may be made to the Chief of Police that the matter be investigated by IAB.

1010.7.4 INVESTIGATION BY INTERNAL AFFAIRS

If the internal complaint involves any of the following circumstances, the division captain shall make a request to the Chief of Police that the matter be investigated by IAB.

- (a) When the complaint involves employees assigned to different divisions and/or the alleged act(s) of misconduct encompasses more than one division.
- (b) When the complaint involves serious allegations, including but not limited to the following:
 1. Dishonesty
 2. Any act which may constitute the commission of a misdemeanor or felony crime
 3. Improper use of force
 4. Employee(s) under the influence of intoxicants
 5. Any discrimination or harassment on the basis of sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military and veteran status, and any other classifications protected by state or federal law

1010.7.5 COMPLETED INVESTIGATION

When an internal complaint has been investigated by IAB, the completed investigation shall be forwarded directly to the Chief of Police who may consult with the appropriate division captain(s) prior to making a disposition.

- (a) The subject employee shall be advised of the disposition to the complaint by the Chief of Police.
- (b) The complaining employee shall be advised of the disposition to the complaint by their division captain.

1010.7.6 PERSONAL RELATIONSHIPS

No supervisor or command officer shall conduct a complaint or administrative investigation of a subject employee who is a "near relative," as defined in City of Berkeley Administrative Regulation 2.12, or when the investigator and the subject employee have a personal relationship that could compromise objectivity.

When there is a question regarding what constitutes a "personal relationship that could compromise objectivity," the investigator shall inform their commanding officer or the Chief of Police of any such relationship, and the Chief shall determine if the investigation should be reassigned.

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The City's 2016 Administrative Regulation 2.12 defines "near relative" as an individual's spouse, parent, sibling, child, grandparent, aunt, uncle, niece, nephew, mother-in-law, father in law, sister in law, brother in law, son in law, daughter in law, stepparent, step-sibling, stepchild, grandchild, dependent or domestic partner or immediate family members of a domestic partner.

1010.8 EXTERNAL COMPLAINTS

1010.8.1 MAKING A COMPLAINT DURING BUSINESS HOURS

A person making a complaint in person or by telephone during business hours shall be referred directly to IAB.

- (a) A brochure is available to provide citizens with a description of the complaint investigation procedure. A supply of these brochures will be maintained in IAB and at the front counter of the Police Department to be available to citizens upon request.

1010.8.2 MAKING A COMPLAINT DURING NON-BUSINESS HOURS

When IAB is closed or its personnel are unavailable, individuals making a complaint in person or by telephone shall be interviewed by the Operations Division Watch Commander.

- (a) If the Watch Commander is not available, the complaint shall be referred to an appropriate sergeant or supervisor.
- (b) Complainants shall not be told to return or call back during IAB business hours to make their complaint.

An IAB "Complaint Investigation" form shall be completed by the supervisor or command officer receiving the complaint. If possible, the complainant should write a brief statement describing the complaint incident on the reverse side of the form. If for any reason that cannot be done, the supervisor or command officer receiving the complaint shall write or type the narrative account for the complainant. When possible, the complainant should sign the form. The completed complaint form shall be forwarded directly to IAB.

1010.8.3 COMPLAINTS TO THE POLICE ACCOUNTABILITY BOARD

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

- (a) As directed by the City Manager, the requirement to testify before the Police Accountability Board shall not apply to non-sworn Parking personnel affiliated with the Investigations Division.
 - 1. Personnel falling within the provisions of this exempted classification, however, shall fully cooperate with all aspects of external/internal personnel complaint investigations conducted by IAB and/or other designated Departmental staff.

1010.8.4 TIMELINE

An external complaint should be made within thirty days of the date of the incident upon which the complaint is based unless the complainant, for reasons beyond their control, is unable to do

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so (i.e., illness, injury, out of the immediate area, etc.). The decision as to the acceptability of a complaint shall be made by the Chief of Police.

- (a) Complaints filed with the Police Accountability Board beyond the thirty day limit and accepted for late filing by that body will be accepted for investigation by IAB.

1010.8.5 INTERNAL AFFAIRS

IAB will advise the Chief of Police, on a weekly basis, of all external complaints received, providing an update as to the status of each as it progresses through the investigative process towards disposition. However, the Chief of Police will be immediately notified of the receipt of external complaints of a sensitive or urgent nature.

1010.8.6 THE BOARD OF REVIEW

Following the investigation of each external complaint by a member of IAB (pertains only to sworn members), a Board of Review may be convened by the Chief of Police for the purpose of reviewing and making findings on the complaint (see the Review Boards Policy).

1010.9 EMPLOYEE RESPONSIBILITIES

When an employee, who is not a supervisor, becomes aware of or observes what he/she believes to be possible misconduct by another Department employee, he/she shall, by the end of the employee's current shift or, if off duty, within 24 hours, notify a supervisor, or in the absence of a supervisor, a command officer or IAB personnel. However, serious allegations, including but not limited to those listed below, shall be reported immediately.

- (a) Dishonesty
- (b) Any act which may constitute the commission of a misdemeanor or felony crime
- (c) Improper use of force
- (d) Employee(s) under the influence of intoxicants
- (e) Any discrimination or harassment on the basis of sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military and veteran status, and any other classifications protected by state or federal law

If required by the supervisor, command officer or IAB, a written report documenting the alleged misconduct shall be made by the reporting employee initiating the complaint.

1010.10 SUPERVISOR RESPONSIBILITIES

A supervisor or command officer with knowledge of, or who is made aware of alleged acts of misconduct, shall when practicable, take appropriate corrective action. A supervisor shall also immediately notify their command officer or the Duty Command Officer, who shall give direction as to the proper procedure for documenting the complaint. Generally, the procedures will follow the guidelines listed in this policy relating to either external or internal complaints.

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When the alleged act of misconduct is of a nature that the integrity of the investigation might be jeopardized by reducing the allegations to writing, the concerned Supervisor shall report orally to their command officer, or if he/she is unavailable, to the on-call Duty Command Officer who will notify the Chief of Police.

1010.11 DOCUMENTATION

Supervisors shall ensure that all formal complaints are documented on a complaint form.

1010.12 INTERNAL AFFAIRS ADMINISTRATIVE INVESTIGATIONS

- (a) Complainants will be notified in writing that their complaint has been received and will be investigated.
- (b) Allegations of misconduct made by complainants will be attached to the complaint as the initial basis for receipt and investigation of the complaint. The complainant shall be provided with a copy of his or her statement, if requested.
- (c) Employees who are designated as "subject" employees will be notified in writing as to the nature of the allegations made against them and their rights and responsibilities relative to the investigation.
- (d) To ensure that all possible allegations of apparent misconduct are brought forth and investigated, and that individual employee's rights to due process are protected, obvious or apparent violations of Departmental rules, regulations, orders, policies, procedures, directives and/or training guidelines noted by IAB during the investigation will be added to the complaint.

1010.12.1 ADMINISTRATIVE INVESTIGATION PROCEDURES

The following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Berkeley Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.

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- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - 1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 - 2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307). This shall not preclude IAB from administering such tests at the request of a "subject" member, following approval by the Chief of Police.
- (l) Members may be photographed for purposes of a complaint investigation. This is to include photographing for purposes of formation/presentation of a photo line-up by Internal Affairs investigators.
- (m) Members shall not be required to stand in a physical line-up for the purpose of complaint investigations.

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

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1010.12.2 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Summary - Provide a brief summary of the facts giving rise to the investigation.

Allegations - List the allegations separately, including applicable policy sections.

Statements - Comprehensive summaries of member and witness statements.

Investigator Notes - Other evidence related to the complaint should be detailed in this section.

Attachments - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1010.12.3 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1010.12.4 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation. Investigators or supervisor assigned to investigate these complaints should be mindful that the investigation, Board of Review, the Chief's initial decision, and employee notification should be completed within 240 days from the date of discovery by an individual authorized to initiate an investigation (BPA/COB MOU#37.4).

In the event that an investigation and subsequent processes cannot be completed within 240 days of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

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1010.12.5 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

1010.13 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

1010.13.1 DISCLOSURE OF FINANCIAL INFORMATION

Subject employees shall not be required to submit financial disclosure statements or other items of personal property records in connection with complaint investigations.

1010.14 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to paid administrative leave. Absent an emergency, the City Manager's authorization is needed to place an employee on administrative leave. If unable to contact the City Manager, and it's an emergency, the City Manager shall be notified as soon as practicable.

Unless otherwise directed or authorized, any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall refrain from engaging in work-related activity and/or exercising authority associated with their office.
- (c) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (d) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation.
- (e) Shall be required to report to their division captain every duty day for instructions.
- (f) Should remain at home during their assigned duty hours.

1010.15 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

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The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of their constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

The Berkeley Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1010.16 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a pre-disciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within 240 days (this time parameter only applies to sworn personnel) from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 - 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 - 2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed their response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1010.17 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified, within 30 days, of the final disposition (i.e., sustained, not sustained, exonerated, unfounded) of the

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complaint (Penal Code § 832.7(e)). The notification shall not include what discipline, if any, was imposed.

1010.18 DISCIPLINE

If the finding of a complaint is "Sustained," or "Preventable" a disciplinary disposition must be selected. Disciplinary actions that may be selected include:

- (a) Written Advice
- (b) Written Reprimand
- (c) Suspension (including forfeiture of compensatory or vacation time)
- (d) Dismissal
- (e) Dismissal with criminal charges pending

These dispositions are not all inclusive and may be modified or expanded upon at the discretion of the Chief of Police.

1010.19 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

1010.20 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

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1010.21 TERMINATIONS

When an employee terminates employment with the Department, their personnel complaint records shall be retained in accordance with the records management timetable set by the Department.

- (a) If an investigation of officer conduct results in a suspension or termination, the officer shall receive a statement citing the reason for suspension or termination and the effective date(s) as provided for by *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.
 1. If the misconduct results in termination, the employee should be referred to the following agencies for information concerning the status of fringe and retirement benefits:
 - Public Employees' Retirement System: City Auditor
 - Medical and Dental Benefits: Human Resources
 - Supplemental Retirement Income Program: Finance
- (b) The City of Berkeley Employee Transaction Form shall be completed by designated administrative staff and shall describe the specific reason for the suspension or termination. A copy of this form shall be provided to the employee.

1010.22 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

1010.23 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have

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acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

1010.24 POLICY COMPLAINTS

Policy complaints are generally received as a result of external complaints, Police Accountability Board complaints, or findings made by the Police Department's Board of Review (e.g., when an officer followed an existing policy that is in need of revision). These complaints will be investigated by either IAB or a designated command officer, as directed by the Chief of Police.

1010.25 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

1010.26 ANNUAL REPORTS

IAB is responsible for ensuring an annual report is completed. The report will provide statistical summaries which include the type and number of complaints received and investigated. The report should also compare statistics from previous years.

1010.27 TRAINING NEEDS

IAB is responsible for identifying areas of disciplinary concern where remedial/refresher training may be beneficial to one or more employees. After discussing the perceived training need with the Chief of Police and gaining their concurrence, IAB will work with the Policy & Training Sergeant to devise an appropriate training course to address the problem(s).

1010.28 REQUIRED REPORTING TO POST

The Chief of Police or the authorized designee shall notify POST on the appropriate POST form within 10 days of certain officer personnel events, including but not limited to (Penal Code § 13510.9):

- (a) Termination or separation from employment or appointment. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.
 - 1. A POST affidavit-of-separation form shall be executed and maintained by the Department and submitted to POST as required by Penal Code § 13510.9 and 11 CCR 1003.
- (b) Events that could affect an officer's POST certification, such as:
 - 1. Complaints, charges, or allegations of serious misconduct (as defined by Penal Code §13510.8).
 - 2. Findings of civilian review boards

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3. Final dispositions of any investigations
4. Civil judgments or court findings based on conduct, or settlement of a civil claim against an officer or the Berkeley Police Department based on allegations of conduct by an officer

The Chief of Police or the authorized designee shall be responsible for providing POST access to or duplication of investigation documentation (e.g., physical or documentary evidence, witness statements, analysis, conclusions) within the applicable timeframe provided in Penal Code § 13510.9.

1010.28.1 NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT

The Chief of Police or the authorized designee shall report allegations of serious misconduct by an officer to POST and the report shall include the following (11 CCR 1207):

- (a) Name of the Department
- (b) Administrative case number
- (c) Name, current address, and phone number of the complainant, if available
- (d) Name, POST ID, current address, and phone number of the involved officer
- (e) A summary of the alleged misconduct including:
 1. A narrative of the allegations
 2. Date and time of incidents
 3. Location of occurrence
 4. Any witness information, if available
 5. Summary of arrest or indictment of involved officer
- (f) A change in employment status of the involved officer (e.g., administrative leave, suspension, termination)
- (g) Name and contact information of the assigned investigator

The Chief of Police or the authorized designee shall provide updates of the investigation to POST every 90 days until the final disposition in the method designated by POST (11 CCR 1207).

Upon completion of the investigation, the Chief of Police or the authorized designee shall submit to POST the final disposition of the investigation as well as investigation materials and the officer's service record as provided by 11 CCR 1207.

1010.28.2 ADDITIONAL NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT

Additional notification shall be made to POST (11 CCR 1207):

- (a) If the imposed disciplinary action is pending appeal or other review through an administrative or judicial proceeding:
 1. The Department shall provide the name of the body conducting the proceeding.
 2. The status of the proceeding, if known.

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- (b) If criminal charges are pending:
1. The name of the court having jurisdiction over the criminal charges against the officer.
 2. The status of the criminal case, if known.

Complaint Review Board

1034.1 PURPOSE AND SCOPE

This policy establishes a process for the Berkeley Police Department to review complaints involving its employees.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the complaint.

1034.2 POLICY

A Review Board will objectively evaluate complaints involving its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

The Chief of Police has the sole authority to convene a Review Board.

1034.3 ESTABLISHED REVIEW BOARDS

The Chief of Police has established the following standing Review Boards:

- (a) Complaint Board of Review
- (b) Traffic Collision Board of Review (see the Traffic Collision Review Board Policy)
- (c) Use of Force Review Board (see the Use of Force Review Board Policy)
- (d) Use of Force Training Review Board (see the Use of Force Policy)

1034.4 RESPONSIBILITY

The Complaint Review Board aka "Board of Review" shall be responsible for the examination of Internal Affairs Bureau investigations of external personnel complaints and, if directed by the Chief of Police, policy complaints.

1034.5 INVESTIGATIVE REPORTS

IAB's investigative report is a confidential document that will not be released to the subject officer or their chosen representative prior to the time that copies are sent to members of the Board of Review and/or the Chief of Police.

- (a) In cases of great sensitivity, the Chief of Police may keep the report confidential until such time as required by law to release the information.

1034.6 COMPOSITION

The Complaint Review Board shall be composed of the following:

- (a) The Deputy Chief (Chair/Hearing Officer)
- (b) An Internal Affairs Sergeant
- (c) A designated on-duty patrol sergeant,

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- (d) The division captain of the subject employee,
- (e) A representative of the City Manager's Office, and
- (f) 2 representatives of the subject employee's labor group
- (g) The subject employee (optional)

All sworn participating members of the Board of Review must be of equal or higher rank than the subject officer in the complaint under consideration.

The Chief of Police shall consider the nature of the subject matter under inquiry and the relevant qualifications of the employees selected to serve as members.

1034.7 REPRESENTATION

As provided by law or as directed by the Chief of Police, the Board will allow a subject employee to have a representative (e.g., legal counsel, a collective bargaining unit representative, etc.) present during a Board proceeding in which they are participating.

1034.8 ATTENDANCE

The subject employee and their chosen representative are encouraged to attend the Board of Review hearing to present arguments or explanations and to answer questions which may be presented to them by Board members. Subject employees are not required to attend unless specifically ordered to do so by the Chief of Police.

1034.9 ADDITIONAL ATTENDEES

In addition to the Board, additional attendees may be needed/requested as follows:

- (a) The Chief of Police may invite other person(s) to sit with the Board as participating members as they deem appropriate.
- (b) Any Board member may select a qualified subject matter expert or resource person to provide relevant information to the Board.

1034.10 REVIEW BOARD PROCEDURES

The Complaint Board of Review shall examine the evidence thoroughly and may ask clarifying questions to the investigator and parties present.

Following the Board's review and discussion, each Board member will make a recommendation to the Chair relative to their finding(s). If the subject officer is in attendance, they shall be excused during this portion of the review. The Board will need to reach a majority decision in order to present the recommendation for disposition to the Chair.

Recommendations for disposition are as follows:

- **Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

Berkeley Police Department

Law Enforcement Services Manual

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- **Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful, within policy and/or proper.
- **Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.
- **Sustained** -When the investigation discloses that the alleged act occurred and is in violation of departmental policy.

The Chair will listen to the recommendations made by the other Board members but will have the responsibility for making the final disposition recommendation to the Chief of Police.

1034.11 FINAL REPORT TO THE CHIEF OF POLICE

Unless otherwise directed by the Chief of Police, the Chair shall submit a final report to the Chief of Police within ten business days of the hearing. The final report shall contain:

- (a) The findings of the Board
- (b) The concurring or non-concurring signatures of each member.
 1. Dissenting Board members may submit a minority report which shall be included with the final report.
- (c) Recommendations of the Board (when directed)
- (d) Documents, photographs, and related evidence used during the Board's examination shall be submitted with the final report.

The Chief of Police retains the right to agree or disagree with the final recommendations of the Board, and to limit or augment those recommendations.

Upon approval of the final report by the Chief of Police, the Board shall be deactivated.

1034.12 NOTIFICATION OF SUBJECT EMPLOYEE

The subject employee shall be notified of the Chief's decision as soon as possible (see Personnel Complaints Policy for further).

1034.13 FINAL REPORT FORMAT

The memorandum format below shall be used when preparing a final report:

EXEMPLAR

To: (Chief of Police)
From: (Name of Review Board)
Subject: (XXXXXXXXXXXXXXXXXXXX)

Composition of the Board:

The Chair and members of the Board will be identified.

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Summary of the Investigation:

This will be a statement in chronological sequence of the incident and the Board's examination.

Conclusion:

This will contain a statement of the Board's findings and recommendation(s) (e.g., Sustained or Exonerated).

Additional Observations:

This entry is optional and can be used to provide the Chief of Police with additional or independent information or observations.

Item 10.a.i.

Additional Materials to Follow

Item 10.a.ii.

Additional Materials to Follow

Item 10.b.

Memorandums regarding records pertinent
to the completion of Policy Reviews:

PRC 2487;

PRC 2488;

ODPA 17; and

ODPA 19



MEMORANDUM

Date: October 4, 2024
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability 
Keegan Horton, ODPa Investigator
Subject: Records pertinent to the completion of the policy review of PRC #17.

The purpose of this memorandum is to provide the Police Accountability Board (PAB) with information on the outstanding documents regarding the work being completed by the Office of the Director of Police Accountability (ODPA) in its policy review of PRC #17.

Background:

On January 31, 2023, the PAB elected to initiate police reviews PRC #17. On August 13, 2024, Investigator Horton sent a records requests to the Berkeley Police Department (BPD) for each of those reviews. BPD provided police reports, CAD reports, and the subject Lexipol policy for each.

Outstanding Records not yet reviewed

While the ODPA has reviewed the documents provided by the BPD, there are still relevant records that were requested but have not been produced. The table below summarized the documents and their utility for progressing the work of the ODPA and PAB.

RECORD	EVIDENTIARY VALUE FOR PAB
BPD Internal Affairs Records	Internal Affairs records would provide evidence of any personnel complaint investigation done in response to these incidents. This information would provide the ODPA with insight into the practices following the incidents.

Calls for service and radio transmissions	These recordings provide important context to what the officers knew going into the call. They also detail information sent and received by the officer during the call. It would provide the ODPa with an understanding of the officer's perspective when responding to the call.
Body worn camera footage	Body worn camera footage would allow the ODPa to review the incident as it happened. It would allow the ODPa to better focus their policy reviews on what actually occurred.

Next Steps:

Section 125(3)(a)(5) of the City Charter¹ grants the Police Accountability Board (PAB) the authority to "access records of City Departments, compel the attendance of sworn employees of the Police Department, and exercise subpoena powers as necessary to fulfill its duties". Given this impasse in records acquisition, it is pertinent for the Board to consider the possibility of exercising its subpoena power, as stipulated in the City Charter, to ensure access to the required documents. This approach is in line with the Board's mandate to oversee police operations thoroughly and effectively.

This consideration aligns with the Board's responsibilities and the overarching goal of promoting transparency and accountability within the Police Department, thereby upholding the public's trust and safety.

¹ [Art. XVIII Police Accountability Board and Director of Police Accountability | Berkeley Charter \(municipal. Codes\)](#)



MEMORANDUM

Date: October 4, 2024
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability *(Ha)*
Jayson Wechter, ODPa Investigator
Subject: Records pertinent to the completion of the policy review of PRC #19.

The purpose of this memorandum is to provide the Police Accountability Board (PAB) with information on the outstanding documents regarding the work being completed by the Office of the Director of Police Accountability (ODPA) in its policy review of PRC #19.

Background:

On January 31, 2023, the PAB elected to initiate police reviews PRC #19. On August 1, 2024, Investigator Wechter sent a records requests to the Berkeley Police Department (BPD) for each of those reviews. BPD provided police reports, CAD reports, and the subject Lexipol policy for each.

Outstanding Records not yet reviewed

While the ODPA has reviewed the documents provided by the BPD, there are still relevant records that were requested but have not been produced. The table below summarized the documents and their utility for progressing the work of the ODPA and PAB.

RECORD	EVIDENTIARY VALUE FOR PAB
BPD Internal Affairs Records	Internal Affairs records would provide evidence of any personnel complaint investigation done in response to these incidents. This information would provide the ODPA with insight into the practices following the incidents.

All relevant police and investigative reports	These reports provide detailed information from the officers at the time of the incident. The reports would provide the ODPa a detailed narrative of what happened during the incident.
Body worn camera footage	Body worn camera footage would allow the ODPa to review the incident as it happened. It would allow the ODPa to better focus their policy reviews on what actually occurred.
Calls for service and radio transmissions	These recordings provide important context to what the officers knew going into the call. They also detail information sent and received by the officer during the call. It would provide the ODPa with an understanding of the officer's perspective when responding to the call.
CCTV videos of BPD Jail and BPD Services Building	CCTV videos would allow the ODPa to view the incident within the BPD Jail and Services Building that may not have been recorded on officer's body worn camera or in reports.

Next Steps:

Section 125(3)(a)(5) of the City Charter¹ grants the Police Accountability Board (PAB) the authority to "access records of City Departments, compel the attendance of sworn employees of the Police Department, and exercise subpoena powers as necessary to fulfill its duties". Given this impasse in records acquisition, it is pertinent for the Board to consider the possibility of exercising its subpoena power, as stipulated in the City Charter, to ensure access to the required documents. This approach is in line with the Board's mandate to oversee police operations thoroughly and effectively.

This consideration aligns with the Board's responsibilities and the overarching goal of promoting transparency and accountability within the Police Department, thereby upholding the public's trust and safety.

¹ [Art. XVIII Police Accountability Board and Director of Police Accountability | Berkeley Charter \(municipal. Codes\)](#)



MEMORANDUM

Date: October 4, 2024
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability 
Jayson Wechter, ODPa Investigator
Subject: Records pertinent to the completion of the policy review of PRC #2487.

The purpose of this memorandum is to provide the Police Accountability Board (PAB) with information on the outstanding documents regarding the work being completed by the Office of the Director of Police Accountability (ODPA) in its policy review of PRC #2487.

Background:

On January 31, 2023, the PAB elected to initiate police reviews PRC #2488. On August 1, 2024, Investigator Wechter sent a records requests to the Berkeley Police Department (BPD) for each of those reviews. BPD provided police reports, CAD reports, and the subject Lexipol policy for each.

Outstanding Records not yet reviewed

While the ODPA has reviewed the documents provided by the BPD, there are still relevant records that were requested but have not been produced. The table below summarized the documents and their utility for progressing the work of the ODPA and PAB.

RECORD	EVIDENTIARY VALUE FOR PAB
BPD Internal Affairs Records	Internal Affairs records would provide evidence of any personnel complaint investigation done in response to these incidents. This information would provide the ODPA with insight into the practices following the incidents.

All relevant police and investigative reports	These reports provide detailed information from the officers at the time of the incident. The reports would provide the ODPa a detailed narrative of what happened during the incident.
Body worn camera footage	Body worn camera footage would allow the ODPa to review the incident as it happened. It would allow the ODPa to better focus their policy reviews on what actually occurred.

Next Steps:

Section 125(3)(a)(5) of the City Charter¹ grants the Police Accountability Board (PAB) the authority to "access records of City Departments, compel the attendance of sworn employees of the Police Department, and exercise subpoena powers as necessary to fulfill its duties". Given this impasse in records acquisition, it is pertinent for the Board to consider the possibility of exercising its subpoena power, as stipulated in the City Charter, to ensure access to the required documents. This approach is in line with the Board's mandate to oversee police operations thoroughly and effectively.

This consideration aligns with the Board's responsibilities and the overarching goal of promoting transparency and accountability within the Police Department, thereby upholding the public's trust and safety.

¹ [Art. XVIII Police Accountability Board and Director of Police Accountability | Berkeley Charter \(municipal. Codes\)](#)



MEMORANDUM

Date: October 4, 2024
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability *(Signature)*
Keegan Horton, ODPa Investigator
Subject: Records pertinent to the completion of the policy review of PRC #2488.

The purpose of this memorandum is to provide the Police Accountability Board (PAB) with information on the outstanding documents regarding the work being completed by the Office of the Director of Police Accountability (ODPA) in its policy review of PRC #2488.

Background:

On January 31, 2023, the PAB elected to initiate police reviews PRC #2488. On August 13, 2024, Investigator Horton sent a records requests to the Berkeley Police Department (BPD) for each of those reviews. BPD provided police reports, CAD reports, and the subject Lexipol policy for each.

Outstanding Records not yet reviewed

While the ODPA has reviewed the documents provided by the BPD, there are still relevant records that were requested but have not been produced. The table below summarized the documents and their utility for progressing the work of the ODPA and PAB.

RECORD	EVIDENTIARY VALUE FOR PAB
BPD Internal Affairs Records	Internal Affairs records would provide evidence of any personnel complaint investigation done in response to these incidents. This information would provide the ODPA with insight into the practices following the incidents.

Calls for service and radio transmissions	These recordings provide important context to what the officers knew going into the call. They also detail information sent and received by the officer during the call. It would provide the ODPa with an understanding of the officer's perspective when responding to the call.
Body worn camera footage	Body worn camera footage would allow the ODPa to review the incident as it happened. It would allow the ODPa to better focus their policy reviews on what actually occurred.

Next Steps:

Section 125(3)(a)(5) of the City Charter¹ grants the Police Accountability Board (PAB) the authority to "access records of City Departments, compel the attendance of sworn employees of the Police Department, and exercise subpoena powers as necessary to fulfill its duties". Given this impasse in records acquisition, it is pertinent for the Board to consider the possibility of exercising its subpoena power, as stipulated in the City Charter, to ensure access to the required documents. This approach is in line with the Board's mandate to oversee police operations thoroughly and effectively.

This consideration aligns with the Board's responsibilities and the overarching goal of promoting transparency and accountability within the Police Department, thereby upholding the public's trust and safety.

¹ [Art. XVIII Police Accountability Board and Director of Police Accountability | Berkeley Charter \(municipal. Codes\)](#)

Item 10.c.

Berkeley City Charter Section 125(16)

(a) The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.

(b) In the event the City Attorney has a prohibited conflict of interest under the California Rules of Professional Conduct with regard to a specified matter, the City Attorney shall provide the Director of Police Accountability with separate legal counsel. Pursuant to Section 14, when the City Attorney has determined that a conflict of interest exists, the Director of Police Accountability may engage legal counsel other than the City Attorney for legal advice regarding a specific case or matter.

(16) *Board reports.*

(a) All Board reports shall maintain the confidentiality of personnel file information and other confidential information as required by state and federal law.

(b) The Director of Police Accountability shall prepare an annual report to the public, including but not limited to the following:

(1) A description of the Board's activities during the year, including:

(i) A summary of the number, type, and disposition of complaints filed with the Board;

(ii) A summary of the number, type, and disposition of complaints filed with the Police Department by members of the public;

(iii) Policy complaints undertaken; and

(iv) Other such information that the Board or City Council has requested.

(2) The Department's and the Board's processes and procedures for investigating alleged misconduct, and for determining whether or not discipline is warranted and / or the level of discipline, for sustained findings of misconduct.

(3) Training and education, and any early warning system utilized by the Department.

(4) Training and/or policy issues that arise during the investigations of complaints by the Department, Director of Police Accountability, or Police Accountability Board.

(5) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department. Statistical data shall include the demographics of the complainant, reason for the stop, purpose of the stop and disposition, and location of stop, in compliance with policies, practices, and procedures of the City and Police Department, and the Police Department General Order on Fair and Impartial Policing.

(6) Trends and patterns regarding use of force and officer-involved shootings.

(c) This annual report shall be presented to the Board for approval. Upon adoption by the Board, it shall be presented to the Mayor and City Council, City Manager, and the Chief of Police at a City Council meeting, and

shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

(d) Prior to being made available to any member of the public, all Board reports shall be subject to the review of the City Attorney to ensure compliance with all applicable state and federal confidentiality laws.

(17) *Policy review and approval.*

(a) The Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. The Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.

(b) If the Police Department and the Board are unable to reconcile their differences about a policy within sixty (60) days from the date that the Chief of Police submits a policy to the Director of Police Accountability, the policy shall be sent to the City Manager for a final decision which shall be reported to the City Council. Nothing in this section shall limit the authority of the City Council under this Charter to enact legislation within its Charter authority or direct the City Manager to implement adopted City Council policy.

(18) *Complaints filed with the Director of Police Accountability.*

(a) The Director of Police Accountability and Board shall adopt regulations for handling complaints filed with the Director of Police Accountability by any member of the public alleging misconduct by sworn employees of the Police Department and undertake investigations of complaints as they deem warranted. The regulations shall include the following:

- (1) What constitutes a complaint; and
- (2) A provision for voluntary mediation of complaints in lieu of an investigation.

(b) The Police Accountability Board shall hear and decide findings on allegations of misconduct, at which subject sworn employees of the Police Department must appear to testify and answer questions consistent with their rights pursuant to state and federal law.

(c) In determining whether a sworn employee of the Police Department has committed misconduct, the standard of proof for the Board shall be "preponderance of the evidence". The investigation and decision on findings shall be fair, unbiased, and evidence based.

(d) The time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section [3304\(d\)](#) exception applies.

(e) Investigation of all complaints filed with the Director of Police Accountability shall begin immediately and proceed as expeditiously as possible. The time limit for completion of an investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section [3304\(d\)](#) exception applies.

Item 10.d.

Proposed Schedule for 2025 PAB Regular Meetings, 2025 Council Meeting
Schedule, and 2025 Religious Holidays



2025 PAB REGULAR MEETING CALENDAR

The Berkeley City Charter states, “the Board shall establish a regular meeting schedule consisting of at least eighteen (18) meetings. Special meetings may be called by the chairperson of the Board or by a majority of the Board.” (Section 125(13)(a)).

No.	DATE	TIME
1	January 8, 2024	6:30 PM
2	January 22, 2024	6:30 PM
3	February 5, 2024	6:30 PM
4	February 19, 2024	6:30 PM
5	March 5, 2024	6:30 PM
6	March 19, 2024	6:30 PM
7	April 9, 2024	6:30 PM
8	April 23, 2024	6:30 PM
9	May 7, 2024	6:30 PM
10	May 21, 2024	6:30 PM
11	June 11, 2024	6:30 PM
12	June 25, 2024	6:30 PM
13	July 9, 2024	6:30 PM
14	July 23, 2024	6:30 PM
15	September 3, 2024	6:30 PM
16	September 17, 2024	6:30 PM
17	October 8, 2024	6:30 PM
18	November 5, 2024	6:30 PM
19	December 10, 2024	6:30 PM

JAN

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28	29	30				

OCT

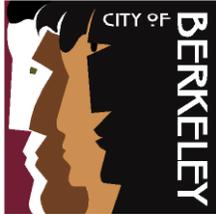
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28	29	30	31			



Office of the City Manager

CONSENT CALENDAR
September 24, 2024

To: Honorable Mayor and Members of the City Council
From: LaTanya Bellow, Interim City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Establish 2025 City Council Meeting Schedule

RECOMMENDATION

Adopt a Resolution establishing the City Council regular meeting schedule for 2025, with starting times of 6:00 p.m.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Pursuant to the Open Government Ordinance, the Council must adopt an annual regular meeting schedule with at least 24 regular meetings. The schedule generally consists of either two or three meetings per month and provides for Spring, Summer and Winter recess periods. Meetings have not been scheduled on City holidays, Election Day or days of major religious/cultural observances that have work restrictions for common observance in the United States pursuant to Council policy.

The Mayor or a majority of the Council may call special meetings as needed. The Council may also amend the regular meeting schedule when necessary.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

- 1: Resolution
Exhibit A: 2025 Council Calendar
- 2: List of Religious/Cultural Observances for 2025

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

ADOPTING THE CITY COUNCIL 2025 REGULAR MEETING SCHEDULE

WHEREAS, pursuant to the Open Government Ordinance, the Council must adopt an annual meeting schedule with at least 24 regular meetings; and

WHEREAS, the proposed schedule (Exhibit A) provides for regular meetings to occur with starting times of 6:00 p.m. on specified Tuesdays of each month with exceptions provided for recess periods or when a meeting would fall on a City, religious or cultural holiday with work restrictions or Election Day; and

WHEREAS, the Council desires to establish as part of their schedule a Winter, Spring and Summer recess period for 2025; and

WHEREAS, the Mayor or a majority of the Council may call special meetings or revise the regular meeting schedule when necessary.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council adopts the 2025 regular meeting schedule on specified Tuesdays at 6:00 p.m. as indicated:

Winter Recess: December 11, 2024 – January 20, 2025
January 21, 2025
February 11 and February 25, 2025
March 11, March 18 and March 25, 2025
Spring Recess: March 26 – April 14, 2025
April 15 and April 29, 2025
May 6 and May 20, 2025
June 3, June 17 and June 24, 2025
July 8, July 22 and July 29, 2025
Summer Recess: July 30 – September 8, 2025
September 9, September 16 and September 30, 2025
October 14 and October 28, 2025
November 4 and November 18, 2025
December 2, 2025
Winter Recess: December 3, 2025 – January 26, 2026

Exhibit A: 2025 Council Calendar

City Clerk Department 2025 Council Calendar

(Subject to change. For the latest information, please contact the City Clerk Department, 510-981-6900.)

Date	Time
January	
Winter Recess (Dec. 11, 2024 – Jan. 20, 2025)	
Jan 21	6:00 p.m.
February	
Feb 11	6:00 p.m.
Feb 25	6:00 p.m.
March	
Mar 11	6:00 p.m.
Mar 18	6:00 p.m.
Mar 25	6:00 p.m.
April	
Spring Recess (March 26 – April 14, 2025)	
April 15	6:00 p.m.
April 29	6:00 p.m.
May	
May 6	6:00 p.m.
May 20	6:00 p.m.
June	
June 3	6:00 p.m.
June 17	6:00 p.m.
June 24	6:00 p.m.
July	
July 8	6:00 p.m.
July 22	6:00 p.m.
July 29	6:00 p.m.
Summer Recess (July 30 – Sept. 8, 2025)	
September	
Sept 9	6:00 p.m.
Sept 16	6:00 p.m.
Sept 30	6:00 p.m.
October	
Oct 14	6:00 p.m.
Oct 28	6:00 p.m.
November	
Nov 4	6:00 p.m.
Nov 18	6:00 p.m.
December	
Dec 2	6:00 p.m.
Winter Recess (Dec. 3, 2025 – Jan. 26, 2026)	

City Policy Regarding the Scheduling of City Meetings on All Significant Religious Holidays

Pursuant to Resolution No. 70,066-N.S., it is the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Policy Committees, Commissions, Task Forces) on religious holidays that incorporate significant work restrictions for common observance in the United States. City legislative bodies must avoid scheduling meetings on the religious holidays listed below.

Religion	Holiday	2025 Date(s)
Shinto	New Year	1/1/2025 thru 1/3/2025
Hindu	Makar Sankranti	1/14/2025
Cultural	Chinese New Year (Eve, Day, Lantern Festival)	1/28, 1/29, 2/12
Islalm	Ramadan (Eve & First Night)	2/28/2024 thru 3/1/2025
Hindu	Holi	3/14/2025
Cultural	Nowruz*	3/20/2025
Islam	Eid al-Fitr	3/30/2025 thru 3/31/2025
Jewish	Passover Nights 1 & 2 (7*, 8*)	4/12 - 4/13 (4/19, 4/20)
Christian	Good Friday	4/18/2025
Christian	Easter Sunday	4/20/2025
Buddhist	Vesak	5/12/2025
Jewish	Shavuot*	6/1/2025 thru 6/3/2025
Islam	Eid al-Adha	6/6/2025 thru 6/7/2025
Shinto	Obon Ceremony*	8/13/2025 thru 8/15/2025
Jewish	Rosh Hashanah	9/22/2025 thru 9/24/2025
Jewish	Yom Kippur	10/1/2025 thru 10/2/2025
Hindu	Dussehra	10/2/2025
Jewish	Sukkot (1st Day)*	10/6/2025 thru 10/7/2025
Jewish	Shmini Atzeret/ Simchat Torah*	10/13/2025 thru 10/15/2025
Hindu	Diwali	10/20/2025
Baha'i Faith	Birth of Bab	10/22/2025
Baha'i Faith	Birth of Baha'u'llah	10/23/2025
Jewish	Chanukah (1st night)	12/14/2025
Christian	Christmas	12/25/2025
Cultural	Kwanzaa	12/26/2025 thru 1/1/2026
Jewish	Shabbat (Friday sunset to Saturday sunset)*	Weekly

* Meetings not prohibited, but avoid scheduling meetings if possible

Item 10.e.

Memo titled "Review of Policies and Practices Related to Berkeley Police Department (BPD) Policy 1029: "Employee Speech, Expression, and Social Networking""



MEMORANDUM

Date: October 4, 2024
To: Honorable Members of the Police Accountability Board
From: Hansel A. Aguilar, Director of Police Accountability on behalf of 
John "Chip" Moore, Chair of the Police Accountability Board
Subject: Review of Policies and Practices Related to Berkeley Police Department (BPD) Policy 1029: "Employee Speech, Expression, and Social Networking"

The purpose of this memorandum is to present the Police Accountability Board with a proposal from Chair John Moore for a policy review of BPD Policy 1029 "Employee Speech, Expression, and Social Networking" and related practices.

Background:

Berkeley Police Department (BPD) Policy 1029, titled "Employee Speech, Expression, and Social Networking," addresses issues related to employee use of social media. This policy provides guidelines for balancing employee speech and expression with the needs of the Department.

Importantly, this policy does not prohibit any communication or expression that is protected under law, including speech concerning matters of public concern, misconduct, or corruption as a private citizen or as part of a recognized bargaining unit.

BPD Policy 1029.4 "Prohibited Speech, Expression, and Conduct" specifies prohibited actions to maintain safety, performance, and public trust. Such prohibitions include:

- Speech or expression made pursuant to official duty that could damage the Department's mission or reputation.
- Speech linked to the Department that could negatively impact its function or professionalism.
- Disregard for the law or support for criminal activity.
- Sexually explicit content for compensation.
- Statements undermining employee credibility or safety.
- Use of departmental resources for personal gain or unauthorized disclosures.

- Posting department identifiers without Chief of Police authorization.

Furthermore, BPD Policy 1029.4.1 “Unauthorized Endorsements and Advertisements” stipulates that while employees may engage in activities as private citizens, they cannot represent the BPD or imply official representation in political, social, or commercial endorsements without specific authorization from the Chief of Police. Employees retain the right to vote and express their opinions while off-duty but cannot use their official authority for political interference.

Recommendation:

The Board may initiate a review of a BPD policy, practice, or procedure upon a majority vote of the Board.¹ It is recommended that the Board accept the policy review and assign it to Chair Moore.

Alternative Actions:

The PAB may choose not to pursue this policy review at this time.

¹ [Section G. "Policy Complaints and Reviews" of the PAB's Standing Rules](#)

LEGISLATIVE UPDATES



MEMORANDUM

Date: October 4, 2024
To: Honorable Members of the Police Accountability Board
From: Hansel Aguilar, Director of Police Accountability 
Keegan Horton, ODPa Investigator
Jose Murillo, ODPa Policy Analyst
Subject: Legislative Updates

The purpose of this memorandum is to provide a legislative update to the PAB, enabling them to stay informed about changes in local, state, and federal law.

State Legislative Updates¹

The ODPa has identified the following state legislation as relevant to the work of the PAB:

- **AB 2020 “Survivors of Human Trafficking Support Act”** The bill would require each law enforcement agency to adopt a written policy for interacting with survivors of human trafficking.
Status: Chaptered by Secretary of State - Chapter 615, Statutes of 2024.
- **AB 2215 “Criminal Procedure: Arrests”** This bill would authorize an arresting officer to release an arrested person from custody without bringing the person before a magistrate if the person is delivered or referred to a public health or social service organization, the organization agrees to accept the delivery or referral, and no further proceedings are desirable.
Status: Chaptered by Secretary of State - Chapter 954, Statutes of 2024.
- **AB 2541 “Police officer training: Wandering”** This bill would require the commission to develop guidelines addressing wandering associated with Alzheimer’s disease, autism, and dementia.
Status: Chaptered by Secretary of State - Chapter 333, Statutes of 2024.

¹ <https://post.ca.gov/Status-of-Current-Legislation>

Lexipol Policy Update

There are no updates to the BPD's Lexipol KMS system since the last PAB meeting.

City of Berkeley Council Meeting Update

The following items being considered by the City Council are relevant to the PAB:

[City Council October 1, 2024 Regular Meeting](#)

- No items relevant to the PAB's work.

[City Council October 15, 2024 Regular Meeting](#)

Action Calendar:

- **Item 25. - [Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters](#) (Reviewed by Public Safety Committee)
From: Councilmember Harrison (Author)
Recommendation:
Adopt a Resolution reaffirming the City of Berkeley's opposition to and condemning police brutality towards nonviolent protesters and discouraging use of "less-lethal" weapons for crowd control.
*Policy Committee Recommendation: No final action taken. Item is automatically returning to the Council agenda pursuant to the time limit for items referred to policy committees.***

Other Relevant Policy Updates

The following items are pertinent to the PAB's work:

- The City of Berkeley is soliciting written proposals from qualified firms or individuals for cloud-based Early Intervention System (EIS) platform subscription service. The link to the RFP can be found here: <https://berkeleyca.gov/doing-business/working-city/bid-proposal-opportunities/early-intervention-system-platform>

CORRESPONDENCE(S)

Murillo, Jose

From: Elana Auerbach <elanarobyn@gmail.com>
Sent: Thursday, October 3, 2024 6:01 PM
To: Kitty Calavita; John Moore III; Office of the Director of Police Accountability
Subject: Council Review of PAB Report

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.

Greetings~

I hope you're finding some joy in these scorching and shattering times.

Is there a date set for when the city Council is going to review the PAB report about the Bike force texts?

Thank you so much for your service to our community!

Elana