

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING**

**Wednesday, December 7, 2022
7:00 P.M.**

Board Members:

JOHN MOORE III. CHAIR
KITTY CALAVITA

REGINA HARRIS
JULIE LEFTWICH
DEBORAH LEVINE

CHERYL OWENS
ISMAIL RAMSEY

PUBLIC ADVISORY

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

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

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82237902987>. 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 **822 3790 2987**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

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

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

LAND ACKNOWLEDGEMENT

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

AGENDA

1. **CALL TO ORDER & ROLL CALL** (2 minutes)
2. **APPROVAL OF AGENDA** (5 MINUTES)
3. **PUBLIC COMMENT** (TBD)
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)
4. **APPROVAL OF MINUTES** (5 MINUTES)
Minutes for...
 - The Regular Meeting of November 9, 2022
 - The Special Meeting of November 15, 2022
 - The Special Meeting of November 21, 2022
5. **ODPA STAFF REPORT** (5 MINUTES)
Announcements, updates, and other items.
6. **CHAIR AND BOARD MEMBERS' REPORTS** (5 MINUTES)
Announcements, updates and other items.
7. **Chief of police's report** (10 minutes)
Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

8. **SUBCOMMITTEE REPORTS (discussion and action) (10 min)**
 Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:
 - a. Controlled Equipment Subcommittee. (Welcome more Board members to join.) (Chair: Moore)
 - b. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
 - i. Update on 11/29/2022 Subcommittee Meeting.
 - ii. Update regarding inclusion of members of the public.
 - c. Police Chief Process (ad hoc) Subcommittee

9. **NEW BUSINESS (discussion and action) (30 min)**
 - a. Discussion on the proposed regular meeting schedule for 2023 and other important dates (ODPA Staff)
 - b. Discussion on a proposed Board retreat meeting for the planning of next year & the potential for an annual PAB retreat (Leftwich/ODPA Staff)
 - c. Discussion regarding future access to BPD Internal Affairs Bureau Reports and information. (Calavita)

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

CLOSED SESSION

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

11. PRESENTATION OF RECOMMENDATION(S) REGARDING COMPLAINT #21 (15 MIN)

END OF CLOSED SESSION

12. **ANNOUNCEMENT OF CLOSED SESSION ACTION (TBD)**

13. **ADJOURNMENT (1 minute)**

Communications Disclaimer

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



Communication Access Information (A.R. 1.12)

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

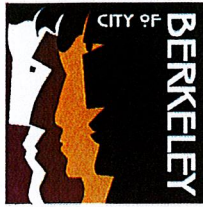
SB 343 Disclaimer

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

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

**POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
NOVEMBER 9, 2022**

<u>MINUTES</u>	
November 9, 2022 Regular Meeting Draft Minutes	Page 7
November 15, 2022 Special Meeting Draft Minutes	Page 13
November 21, 2022 Special Meeting Draft Minutes	Page 17
<u>AGENDA-RELATED</u>	
Item 8. – 12-01-2022 PAB Subcommittee List.	Page 19
Item 9.a. – PROPOSED Police Accountability Board 2023 Regular Meeting Schedule	Page 21
<u>COMMUNICATIONS</u>	
1 Communication	Page 23



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, November 9, 2022, 7:00 P.M.

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

LAND ACKNOWLEDGEMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchyun (Hooch-yoon)), the ancestral and unceded land of the Chochochenyo (Chochochen-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.

1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 7:00 P.M.

- Present: Board Member John Moore (Chair)
Board Member Nathan Mizell (Vice-Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens
Board Member Ismail Ramsey
- Absent: Board Member Regina Harris
- ODPA Staff: Hansel Aguilar Director of Police Accountability
Beneba Thomas, DPA Investigator
Jose Murillo, Associate Management Analyst

BPD Staff: Cpt. Michael Durbin
Lt. Jen Tate

2. APPROVAL OF AGENDA

Motion to approve the agenda with changes.

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

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

Noes: None

Abstain: None

Absent: Harris

Changes: *Item 11.a tabled.*

3. PUBLIC COMMENT

5 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of October 25, 2022 with revisions.

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

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

Noes: None

Abstain: None

Absent: Harris

Changes: *Typographical errors on items 4, 11.d., and 15. Changes to wording on item 11.d.*

5. ODPa STAFF REPORT

ODPA staff reported: Staff continues to work on the items mentioned in their last report, there are no major updates at this time. Staff also notes a new procedure for closed session that will allow members of the public to remain in the webinar.

6. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore makes note that some of the current board members may be leaving soon. He asks that the PAB, especially those who may depart soon, help in the recruitment efforts by bringing their status to the attention of their respective councilmember. This is important in order to ensure that we can fill vacancies in a timely manner.

Chair Moore also reports that on November 14th, he will participate in the "Shining the Light on The Militarization of Police Departments" forum.

Board member Leftwich provides an update as to the previously proposed social event.

7. CHIEF OF POLICE'S REPORT

- Captain Durbin provided an updated-on BPD's last report regarding the presence of drones at the September 10th, 2022 Solano Stroll event. He shared that new information found that drones were not flown over Berkeley airspace and that the Alameda County Sheriff's Office (ASCO) was there with the drones on a standby basis. The drones were used for two calls of service but they were not within Berkeley airspace. In recognition that BPD may want to use drones in the future, he notified the PAB that a policy will be coming to the Board for feedback in the coming weeks.
- Captain Durbin provided an update on the policies that are still to be converted to the Lexipol format and other policies of interest to the PAB.
- Captain Durbin reported that there is one new officer and one new communication manager at BPD. There is a draft proposal for a recruitment and incentive program pending review by the city manager.
- Updates on the arrest regarding the October 8th shooting near UC Berkeley and a shooting during a catalytic converter theft. There are also updates regarding firearms recovered within the city through a variety of methods.

8. SUBCOMMITTEE REPORTS (discussion and action)

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

- a. Controlled Equipment Subcommittee. (Welcome more Board members to join.)
No significant updates.
- b. Police Chief Process (ad hoc) Subcommittee
Subcommittee will remain in place until the Police Chief is formally appointed.

9. OLD BUSINESS (discussion and action)

- a. Finalize review of draft proposed permanent regulations for Handling Investigations and Complaints.

Board members addressed and revisited comments and suggestion made during previous conversations regarding the permanent regulations. The PAB will reconvene at a later special meeting to vote of the final draft of the regulations. The following motion was made as part of their discussion:

Motion to add the concept of "Informal Complaints" to the permanent regulations as Section IV.

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

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

10. NEW BUSINESS (discussion and action)

- a. Discussion on the review and recommendation process for the upcoming Surveillance Technology Ordinance and Drone Use Policy and Acquisition Report.

Motion to establish a subcommittee regarding the upcoming Surveillance Technology Ordinance and Drone Use Policy and Acquisition Report.

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

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

Noes: None

Abstain: None

Absent: Harris

- b. Discussion regarding the Berkeley Law Police Review Project Agreement.

Brief discussion regarding the Berkeley Law Police Review Project and its relationship with the PAB and ODP. ODP staff will plan a meeting with Berkeley Law faculty and students to discuss relevant topics.

11. ANNOUNCEMENT BY VICE-CHAIR MIZELL

- a. A brief announcement by Vice-Chair Mizell.

Tabled to a future meeting.

12. PUBLIC COMMENT

3 speakers.

CLOSED SESSION

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

13. PRESENTATION OF RECOMMENDATION(S) REGARDING COMPLAINT #20

Motion to set a hearing for Complaint #20.

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

Ayes: Calavita, Leftwich, Moore, and Owens

Noes: None Abstain: Levine, Ramsey Absent: Harris, Mizell

END OF CLOSED SESSION

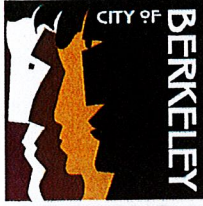
14. ANNOUNCEMENT OF CLOSED SESSION ACTION

The Board voted to set a hearing for Complaint #20.

15. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens, Levine) **By general consent, the meeting was adjourned at 11:14 p.m.**



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING
MINUTES
(draft)

Tuesday, November 15, 2022, 2:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 2:03 P.M.

Present: Board Member John Moore (Chair) (left at 3:30 p.m.)
Board Member Nathan Mizell (Vice-Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens
Board Member Ismail Ramsey (left at 3:30 p.m.)

Absent: Board Member Regina Harris

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Beneba Thomas, DPA Investigator

City Attorney: Farimah Brown (arrived at 2:44 p.m.)

2. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Calavita/Levine) **Motion Carried by general consent**

3. PUBLIC COMMENT

23 speakers.

4. RELEASE OF FORMER BPD OFFICER (COREY SHEDOUDY'S) EMAILS AND TEXT MESSAGES REGARDING BPD DOWNTOWN TASK FORCE BIKE PATROL

A. SECURE ANY AND ALL COMMUNICATIONS REGARDING THIS MATTER VIA:

- I. PUBLIC RECORDS REQUEST
- II. PAB ISSUED SUBPOENAS - DECIDE WHETHER THE POLICE ACCOUNTABILITY BOARD SHOULD ISSUE A SUBPOENA FOR RECORDS

Motion to initiate a policy review and establish a subcommittee to review BPD Policy 401 and any other applicable policies.

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

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

Noes: None

Abstain: None

Absent: Harris

The following PAB members requested to be on the BPD Policy 401 Subcommittee: Cheryl Owens, Kitty Calavita, John Moore

City Attorney Farimah Brown agreed to prepare a Legal Memorandum for the PAB answering the following questions: (1) What is the scope and breath of the PAB's power to investigate, and (2) Where in the Charter Amendment are those powers articulated? City Attorney Brown stated that preparing the requested memorandum is of her highest priority and it will take approximately 3 weeks to complete the memorandum.

Motion to formally request the preservation of all records that are in anyway applicable or related to the Downtown BPD Bike Unit or otherwise mentioned in the alleged text messages.

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

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

Noes: None

Abstain: None

Absent: Harris

B. VOTE TO RECOMMEND POSTPONEMENT OF THE CITY COUNCIL'S CONFIRMATION OF INTERIM CHIEF JENNIFER LOUIS AS PERMANENT POLICE CHIEF UNTIL THE ALLEGATIONS ARE INVESTIGATED.

Motion for Chair Moore to draft a brief letter from the Police Accountability Board to the Berkeley City Council recommending that the City Council postpone the confirmation of Jennifer Louis as the Berkeley Police Chief until the allegations are investigated.

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

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

Noes: None

Abstain: None

Absent: Harris

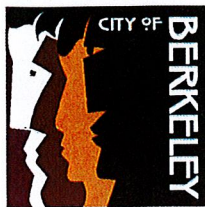
5. PUBLIC COMMENT

10 Speakers.

6. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens/Calavita) **By general consent, the meeting was adjourned at 3:43 p.m.**



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING
MINUTES
(draft)

Monday, November 21, 2022, 3:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR MIZELL AT 3:05 P.M.

Present: Board Member Nathan Mizell (Vice-Chair)
Board Member Kitty Calavita
Board Member Regina Harris
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens
Board Member Ismail Ramsey

Absent: Board Member/s John Moore

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Beneba Thomas, DPA Investigator
Jose Murillo, Associate Management Analyst

BPD Staff: Captain Montgomery

2. PUBLIC COMMENT

4 speakers.

3. NEW BUSINESS

- a. Finalize review of draft proposed permanent regulations for Handling Investigations and Complaints.

The Board reviewed the version of the proposed permanent regulations included as Supplement material packet number 2 which identifies pending items for review in

red ink. The Board went through the document accepted or changed any necessary items.

Motion to approve the permanent regulations and forward them to the City Attorney's office.

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

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

Noes: None

Abstain: None

Absent: Moore

4. PUBLIC COMMENT

3 speakers.

5. ADJOURNMENT

Vice-Chair Mizell delivers departing remarks before adjourning the meeting.

Motion to adjourn the meeting.

Moved/Second (Ramsey/Owens) **By general consent, the meeting was adjourned at 4:58 p.m.**

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
12-01-2022**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21 Renewed 6-22-22	Calavita Leftwich Owens <u>Public:</u> Kitt Saginor		Lt. Dan Montgomery
Fair & Impartial Policing Implementation Formed 8-4-21 Renewed 9-14-22	Calavita Moore Owens Ramsey <u>Public:</u> George Lippman Elliot Halpern	Calavita	Sgt. Peter Lee
Mental Health Response Formed 11-10-21 Scope expanded 3-9-22	Harris Levine <u>Public:</u> Elena Auerbach		Sgt. Joe LeDoux
Fixed Surveillance Cameras (Policy 351) Formed 2-9-22	Mizell Ramsey		
Controlled Equipment Use & Reporting Formed 5-11-22	Moore Ramsey	Moore	Sgt. Peter Lee Sgt. Joe LeDoux
Chief of Police Process Formed 9-30-22	Leftwich Levine Mizell Moore		
Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations Formed 11-15-22	Calavita Moore Owens	Owens	

DRAFT

Police Accountability Board 2023 Regular Meeting Schedule

2nd & 4th Wednesday of the Month Starting at 6:00 pm*

JANUARY**						
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- FEDERAL HOLIDAY**
- RELIGIOUS HOLIDAYS**
- REGULAR MEETING**
- MEETING DATE OPTION**

Notes:
 *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, Commissions and Boards, Council Policy Committees, Task Forces) on religious holidays that incorporate significant work restrictions.
 **Pursuant to Section I "Elections" of the PAB Standing rules, elections shall be held during the second January meeting of each year.
 ***Regular meetings for March will be held on the Third and Fifth Wednesday of the month to avoid conflict

Martinez, Maritza

From: Office of the Director of Public Accountability
Sent: Wednesday, November 23, 2022 12:19 PM
To: Aguilar, Hansel
Cc: Thomas, Beneba; Murillo, Jose; Martinez, Maritza
Subject: PAB/DPA Rules

Internal

From: Sean Ross <314raptor@gmail.com>
Sent: Tuesday, November 22, 2022 9:56 AM
To: Office of the Director of Public Accountability <OfficeoftheDirectorofPoliceAccountability@cityofberkeley.info>
Subject: PAB/DPA Rules

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.

Out of curiosity, why aren't your rules available on the website? Searching under Police Accountability Board and Director of Police Accountability doesn't yield anything. Your rules should be readily available to the public.

