



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

*Katherine J. Lee*

**POLICE ACCOUNTABILITY BOARD**  
REGULAR MEETING  
**MINUTES**  
*(approved)*

**Wednesday, June 8, 2022, 7:00 P.M.**

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

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

Present: Board Member Michael Chang (Chair)  
Board Member Nathan Mizell (Vice-Chair)  
Board Member Kitty Calavita  
Board Member Regina Harris  
Board Member Juliet Leftwich  
Board Member Deborah Levine  
Board Member John Moore  
Board Member Cheryl Owens  
Board Member Elisa Batista (alternate)

Absent: Board Member Ismail Ramsey

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability  
Beneba Thomas, DPA Investigator

BPD Staff: Lt. Robert Rittenhouse

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda as modified to hear Item #10.c. after Item #7.  
Moved/Second (Leftwich/Calavita) Motion Carried by general consent.**

**3. PUBLIC COMMENT**

6 speakers.

**4. APPROVAL OF MINUTES**

**Motion to approve Regular Meeting Minutes of May 25, 2022**

Moved/Second (Harris/Leftwich) **Motion Carried by general consent, with Board members Batista and Mizell abstaining.**

**5. CHAIR AND BOARD MEMBERS' REPORTS**

No reports.

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

The Interim Director reported:

- 1 new complaint filed since the last meeting; complainant requested mediation.
- Interim Director attended and spoke at San Leandro celebration of their recent establishment of civilian oversight.
- Interim Director will be extending her contract [with Council's approval] by one month through the end of July, working reduced hours that month.

Questions about status of investigations were answered.

- Shifts for staffing PAB table at Juneteenth Festival were confirmed.
- Scheduling another Regulations Subcommittee meeting and a possible special Board meeting discussed.

**7. CHIEF OF POLICE'S REPORT**

Lt. Rittenhouse reported on behalf of Interim Chief Louis:

- BPD responded on May 13 to Alcatraz & California for reports of gunfire; following an investigation, a suspect was arrested.
- Information provided on the student suspect in a mass shooting suspect. BPD has no evidence to suggest there remains a threat at BHS.
- Currently 152 sworn officers; 5 will start academy on July 5. Recruitment and retention remain a challenge.

*(Item #10.c. heard next.)*

**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. Fair & Impartial Policing Implementation – Chair Calavita: met this afternoon. Working on BPD 3-pronged approach to traffic enforcement. Chief scheduled to report on Fair & Impartial Policing implementation at June 14 Council meeting.
- b. Director Search – See Item #10.a. below.
- c. Controlled Equipment – met May 31; see Item #10.b below.

**9. OLD BUSINESS (discussion and action)**

- a. Consider forming Outreach Subcommittee.

Postponed.

- b. Consider forming Lexipol Policies Subcommittee.  
Postponed.

#### 10. NEW BUSINESS (discussion and action)

- a. Approve possible communication to City Manager regarding the PAB's role in selecting the permanent Director of Police Accountability.

**Motion to have the Board, through Vice-Chair Mizell, send a letter to the relevant parties, which include the City Manager, Deputy City Manager Bellow, Mayor and Council to get clarification about questions regarding the selection process at this stage, such as, the composition of the interview panels, and getting information about the candidates before the day of the interviews; and why it's important to get this information answered in advance; also, to authorize the Director Search Subcommittee to draft this letter.**

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

Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Moore, and Batista.

Noes: Owens                      Abstain: No                      Absent: Ramsey

- b. Proposed Equipment Impact Statements, Use Policies, Military Equipment Policy, and Annual Use Report: Review and affirm or revise Subcommittee's proposals on how to proceed, and on substantive recommendations to City

**Main motion (Calavita/Leftwich):**

**The Board recommends provisional approval of the Impact Statements and Use Policies, only on the condition that within 90 days the Police Department makes the following critical modifications:**

**1. The "Impact" sections for each type of equipment in the Impact Statements need to describe potential adverse impacts in accord with the Ordinance.**

**2. The "Uses" sections of the Impact Statements for chemical agents and kinetic impact projectiles need to reflect and be made consistent with Berkeley policy and state law;**

**3. The policies attached in the Appendix, such as Policy 303 on Control Devices and Techniques, must be updated to conform to State law.**

**The Board preferred to reject the Impact Statements and Use Policies, given the clear omissions and inconsistencies with law and policy. However, in light of the impending deadline, the Board offers this conditional approval.**

**Substitute motion (Mizell/Moore):**

**Recommend that the Council:**

1) reject the Impact Statements based on the descriptions in category (4), "Impact", because the language for many pieces of equipment fails to adequately describe the full impacts of the equipment's use. BMC Section 2.100.020 (C)(4) requires identification of potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public. While the Board does not take issue with much of the existing language, it believes more information is needed regarding potential negative effects;

2) reject the Impact Statements pertaining to chemical agents and kinetic impact projectiles because they fail to fully delineate the City's policies on such weapons as well as the restrictions imposed by AB 48. This implicates the Impact Statements for the Penn Arms, Milkor, and FN 303 launchers; and Oleoresin Capsicum Spray (pepper spray), Chlorobenzylidene Malononitrile (CS gas, or tear gas) and OC in canister form; and

3) recommend that members of the Police Accountability Board, Berkeley Police Department, and City Attorney's Office meet to discuss the discrepancies in interpreting the requirements of the Ordinance, with the goal of streamlining the process going forward for future reviews.

**Substitute Motion Failed**

Ayes: Harris, Mizell, Moore, Batista

Noes: Calavita, Chang, Owens, Leftwich

Abstain: Levine                      Absent: Ramsey

**Main Motion Failed**

Ayes: Calavita, Chang, Leftwich, Owens

Noes: Harris, Mizell, Moore, Batista

Abstain: Levine                      Absent: Ramsey

**Motion to communicate to the Council that the Board agreed on a list of problems that exist regarding the Impact Statements and Use Policies. Two votes were taken, one to reject, and one to approve, the Impact Statements and Use Policies, but each motion failed on a 4-4-1-1 vote. The Board unanimously agreed, however, that it had significant concerns with the serious flaws it identified in the Impact Statements and Use Policies, in that the following omissions and inconsistencies need to be corrected:**

1. The "Impact" sections for each type of equipment in the Impact Statements need to describe potential adverse impacts in accord with the Ordinance.
2. The "Uses" sections of the Impact Statements for chemical agents and kinetic impact projectiles need to reflect and be made consistent with Berkeley policy and state law.

**3. The policies attached in the Appendix, such as Policy 303 on Control Devices and Techniques, must be updated to be conform to state law.**

**The Board struggled with the challenges posed by the complexity of the task and time pressures. There was a great deal of ambivalence because many Board members did not want to reject the Equipment Statements and Use Policies in light of the impending deadlines, while other Board members did not want to approve the documents because of the serious deficiencies.**

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

**Ayes: Calavita, Chang, Harris, Leftwich, Levine, Moore, Owens, and Batista.**

**Noes: None**

**Abstain: Mizell**

**Absent: Ramsey**

- c. Receive update from Police Department regarding arrest of suspect in mass shooting plot.

*(Heard following Item #7)*

Lt. Rittenhouse provided an update and answered questions.

## **11. PUBLIC COMMENT**

2 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):

## **12. PRESENTATION OF ADMINISTRATIVE CLOSURE OF COMPLAINT #22**

**Motion to administratively close Complaint #22.**

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

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

**Noes: None**

**Abstain: None**

**Absent: Ramsey**

### **End of Closed Session**

## **13. ANNOUNCEMENT OF CLOSED SESSION ACTION**

The decision to administrative close Complaint #22 was announced.

## **14. ADJOURNMENT**

**Motion to adjourn the meeting.**

**Moved/Second (Leftwich/Moore) By general consent, the meeting was adjourned at 10:59 p.m.**