

May 5, 2023

City Manager Dee Williams-Ridley
2180 Milvia Street, Berkeley, CA 94704
DWilliams-Ridley@cityofberkeley.info

Dear City Manager Williams-Ridley,

We write to you today with great concern that your office appears to intend to advance the appointment of Interim Chief Jennifer Louis to permanent Chief, without fulfilling the consultation process mandated by the City Charter. There is reason to believe that such an action, would violate Article XVIII, Section 125, Subdivision 4 & Article XVIII, Section 125, Subdivision 22 of the Berkeley City Charter.

We strongly support the Police Accountability Board's view that the appointment should remain paused, pending their investigation and public access to investigation-related documents (subject to applicable disclosure laws). Undoubtedly, the City Charter entrusts a significant amount of power and responsibility to your office. We recognize that the City Charter solely entrusts your office with the decision to appoint a Chief of Police. (Charter Art. VII § 28 (a).) Additionally, we recognize that the charter empowers you to investigate the affairs of the City. (Charter Art. VII § 28 (f).)

At the November 15th Regular City Council Meeting, you exercised your power to participate in City Council discussion when you stated, regarding the BPD Bike Unit/Downtown Task Force misconduct allegations. (Charter Art. VII § 28 (d).):

In consultation with our interim chief of police, I am requesting that we pull item number 2 [Appointment of the Chief of Police] from the action calendar. This is in light of the community concerns that we've heard tonight and we've heard over the last few days. We both feel that it's very very valuable and important that we listen to the community and that we try to do everything that we can to ensure public trust, especially in this appointment...We will return the item once an investigation has been completed...but I do believe that we want to listen to the community and return back when we have consistent information from the investigator.

In your November 15th statement, you invoked the very words that are foundational to the purpose of the Police Accountability Board, "promoting public trust". (Charter Art. XVIII § 125(1).) This is the only location where the phrase "public trust" appears in the City Charter. Based upon your Item "Appointment of the Police Chief" being currently scheduled for the May 9th City Council Meeting, we fear you may no longer wish to honor your commitment.

As you are aware, PAB voted unanimously to recommend the postponement of the consideration of Interim Chief Louis until the Board had concluded its investigation into the allegations. The City later retained an outside investigator, Swanson and McNamara, to conduct its own, separate investigation. The PAB has indicated that their investigation is ongoing and there has been no public announcement that the outside investigation has concluded. Only a few weeks ago, Captain Schofield indicated that the City would not disclose any records related to this administrative investigation, in part, because the investigation was ongoing. With the exception of the final arbitration decision regarding Former BPD Bike Team Officer Corey Shedoudy, there has been no public disclosure of documents from the PAB investigation or the City's outside investigator. While

we are supportive, to the extent allowable by law, of the sharing of information between the PAB and the outside investigator, the PAB remains the City's only Charter-based agency with investigatory powers over the Berkeley Police Department.

As it pertains to the policies, practices, and procedures of BPD, the potential findings, conclusions, and/or recommendations of the outside investigator cannot substitute or supplant the findings, conclusions, and/or recommendations of the PAB. The City Charter makes the PAB independent of the City Manager with authority distinctly separate from your office. (Charter Art. XVIII § 125 (4)(a).)

Section 125, subdivision (22) outlines the process as it pertains to a vacancy in the position of Chief of Police;

Notwithstanding Article VII, Section 28 of this Charter, upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Accountability Board (or subcommittee of the Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police. (Charter Art. XVIII § 125(22).)

Additionally, the language "notwithstanding Article VII, Section 28" appears in another clause of Article XVIII, specifically the clause regarding the PAB access to City Department records. (Charter Art. XVIII § 125(20).)

We do not believe your Office would attempt to assert legal authority to direct any department of the City to not cooperate with a PAB request or subpoena for documents related to the furtherance of its duties. Consequently, your Office cannot assert authority to schedule or direct any City employee to schedule the appointment of a Police Chief without completing the consultation process with the PAB.

Despite your significant powers under the Charter, the Charter specifically precludes you from advancing an appointment for the position of Chief of Police without first consulting with the PAB on the evaluation of any candidate. Unlike other areas of the Charter, there is no statutory deadline associated with this consultation process.

The PAB has clearly and publicly indicated that the consultation process has not ended as it regards Interim Chief Louis. To be clear, I believe the PAB would require additional time to offer advice on any candidate who was known to be a Captain and/or Interim Chief of a Police Department during a period of serious police misconduct allegations potentially implicating an entire unit of officers and multiple supervisors. Currently, it is not clear how long the alleged misconduct took place, nor how pervasive such alleged practices may be in the Department.

We use the phrase "consultation process" despite the absence of the word "process" from the charter because it emerges from the Charter itself. The word "consult" can most reasonably be construed as requiring your Office to seek the advice of the PAB. As the Charter indicates, advice from the PAB comes in the form of a formal recommendation. (Charter Art. XVIII § 125(3)(a)(1).) The PAB does not offer a recommendation based solely upon a mere whim or the findings of an external body. Any recommendations must be based upon the review it reasonably deems to be materially

related information. In this case, this review certainly includes the findings and conclusions of the PAB's independent investigation. The PAB's status as an independent agency confers power, in the absence of statutory deadlines, to take the requisite time and due diligence to understand the full breadth of information before offering any recommendation, especially one as important as the appointment of a Police Chief. The Charter may not fully define this process, but it certainly does not confer upon your office unilateral power to define the nature of the consultation process or to end the process at a juncture when the PAB cannot reasonably offer a recommendation. Any attempt to submit the appointment of Interim Chief Louis to the City Council for a confirmation vote without allowing this process certainly undermines the PAB's independent authority.

We recognize that your office may claim that your duty to consult has been met by the PAB's participation with the Byers group and the interview process. While it is true the PAB had some (though very limited) participation in the process, they have since voted to, in part, continue the consultation process, pending the conclusion of their independent investigation. The Board did not delay and launched an investigation within days of the discovery of the alleged misconduct. The PAB does not appear to be reexamining old information but is actively seeking to understand critical new information that was not known earlier in the consultation process. There is a rational basis for the Board to continue the consultation process to investigate allegations that, potentially, significantly affect its ability to "evaluate the candidates" and make a recommendation.

We believe we all agree it would have been better for the PAB (or the now-replaced PRC) to have learned about these serious allegations sooner, but ultimately, they only came to light because of a former BPD officer acting as a whistleblower. This, of course, was not an event the PAB could have reasonably foreseen earlier in the consultation process. The Charter makes no mention of a need to consider the personal preferences of any candidate, but mandates the City to promote public trust through "independent, objective, civilian oversight of the Berkeley Police Department" (Charter Art. XVIII § 125(1).)

As the Introduction to the City Charter succinctly states in regards to the Charter's limitation on powers (Charter Art. XVI § 115.):

"Since 1921, the Charter has been amended many times but at no time was a revision of the entire Charter attempted. Therefore, we find many provisions in the Charter that are unnecessary but if they are not limitations they do no harm. **If they are limitations they have been left alone because the people want the limitation.**"

In 2020, the people of Berkeley voted overwhelmingly to place specific limits on the powers of your office, limits we are legally bound to respect. The Charter does not grant the PAB the power to stop any appointment for Chief, it instead limits your ability to act unilaterally in a way inconsistent with the language and intent of the Charter. In our present day, the people of Berkeley advocated for and overwhelmingly voted for the creation of an independent Police Oversight agency with a specific and important role in the consideration of a new Police Chief. Let us not undermine our newest Charter agency, but instead adhere to both the letter and spirit of the Charter Amendment. In this regard, please honor the commitment you made to the people of Berkeley.

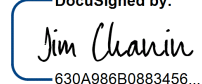
Sincerely,



Nathan Mizell
Elected Commissioner, Berkeley Rent Stabilization Board
Vice-Chair, Berkeley Police Accountability Board (Fmr.)



Brian Hofer
Executive Director, Secure Justice

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Jim Chanin,
Member, Mayor's Fair and Impartial Policing Working Group (Fmr.)