

Revised Pursuant to Board Action on
July 12, 2018

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

~~CITIZEN-CIVILIAN~~ OVERSIGHT MODEL

Purpose: To provide an effective independent ~~citizen-civilian~~ oversight system that promotes integrity and encourages systemic change and improvement in the police services that the San Francisco Bay Area Rapid Transit District (BART) provides to the public by ensuring that internal police accountability system functions properly; that behavioral, procedural, and policy deficiencies are identified and appropriately addressed, including racial profiling and allegations of racially abusive treatment; and, that complaints are investigated through an objective and fair process for all parties involved. The system will analyze allegations of misconduct; utilize data to identify trends, including disciplinary outcomes and trends; recommend corrective action and or training; maintain confidentiality; make policy recommendations; and report regularly to the BART Board of Directors and the public. The essential community involvement component of the system shall be accomplished through the inclusion of a ~~BART Police Citizen Review Board~~ (~~BART Police Civilian Review Board~~).

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Chapter 1-01 OFFICE OF THE INDEPENDENT POLICE AUDITOR

Pursuant to California Public Utilities Code Section 28767.8, the Office of the Independent Police Auditor (OIPA) shall be established by the Board of Directors (Board) in keeping with the Core Principles for an Effective Police Auditor’s Office.¹

Chapter 1-02 APPOINTMENT OF THE INDEPENDENT POLICE AUDITOR

The Independent Police Auditor (IPA) shall be appointed by and report directly to the Board. OIPA staffing shall include a Deputy Independent Police Auditor.

Chapter 1-03 SCOPE

OIPA shall have the authority to exercise its duties and responsibilities as outlined below, regarding any and all law enforcement and police activities or sworn personnel operating under the authority of the BART Police Department (BPD). OIPA shall be authorized to investigate any complaints alleging sworn police officer misconduct that implicate the policies of the BPD. OIPA shall be committed to the prompt, timely, and efficient resolution of all complaints, including, but not limited to, adherence to all applicable statutory requirements. OIPA’s scope of authority shall not extend beyond the BPD.

ALTERNATIVELY:

OIPA shall have the authority to exercise its duties and responsibilities as outlined below, regarding any and all law enforcement and police activities or any personnel operating under the authority of the BART Police Department (BPD). OIPA shall be authorized to investigate any complaints alleging police officer~~BPD employee~~ misconduct that implicate the policies of the BPD. OIPA shall be committed to the prompt, timely, and efficient resolution of all complaints, including, but not limited to, adherence to all applicable statutory requirements. OIPA’s scope of authority shall not extend beyond the BPD.

Chapter 1-04 DUTIES AND RESPONSIBILITIES

- A. Complaints Received from Members of the Public

Any person may file a complaint or allegation of wrongdoing with the OIPA against any sworn BPD employee. Upon receipt of a complaint or allegation, OIPA shall:

 - i) Ensure that a timely, thorough, complete, objective, and fair investigation into the complaint is conducted by OIPA or BPD.
 - ii) Provide the complainant and all other officers who are the subject(s) of the investigation with timely updates on the progress of all investigations conducted by OIPA, unless the specific facts of the investigation would prohibit such notification.
 - iii) Reach an independent finding as to the facts of an investigation.
 - iv) The OIPA shall assess the conduct of the sworn BPD employee considering the facts discovered through investigation, the law, the policies, and training of the BPD.
- B. Recommendations for Corrective Action

¹ Report of the First National Police Auditors Conference, March 26-27, 2003, Prepared by Samuel Walker

Commented [OJ1]:

OIPA Recommendation: Add a Deputy Independent Police Auditor (DIPA) position to the OIPA.
The addition of a Deputy Independent Police Auditor (Deputy IPA) is recommended to support the IPA in managing complex investigations and oversight activities.

Commented [RB2R1]:

All OIPA redline suggestions remain subject to review by OGC to determine whether the Board has the authority to implement the language.

Commented [OJ3]:

BPOA/BPMA Rejects Modification: Based on current workload and the upcoming fiscal impact to the District.

Commented [OJ4]: The GM and BPOA/ BPMA Accepts Modification: The additional language clearly defines the scope of the OIPA investigations.

Commented [OJ5]: The GM and BPOA/ BPMA Rejects Modification: Non-sworn staff is outside the scope of the OIPA.

Commented [OJ6]:

OIPA Recommendation: The Model should specify that OIPA is not authorized to investigate allegations of misconduct lodged against civilian employees of BPD or the Model should be revised to authorize such investigations.

Commented [RB7R6]:

This implicates language in both Ch. 1-03 (Scope) and Ch. 1-04 (Duties and Responsibilities)

Commented [OJ8]: The GM and BPOA/ BPMA Accepts Modification: The additional language clearly defines the scope of the OIPA investigations.

- i) Independent investigative findings of “Sustained” made by OIPA shall include recommendations for corrective/punitive action, up to and including termination where warranted, and shall include prior complaints and their disposition. When the evidence does not support the allegations of misconduct, the IPA shall recommend a finding of Unfounded, Exonerated, or Not Sustained.
- ii) In a confidential personnel meeting, the IPA shall submit his/her investigative findings and recommendations to the BART Police ~~Citizen-Civilian~~ Review Board (BPCRB) for review. Should the BPCRB agree by simple majority with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action. The Chief of Police shall implement the recommended action, absent appeal.
- iii) The BPCRB shall announce each member’s vote regarding its acceptance of the OIPA findings and recommendations for discipline in open session, and in cases in which a non-unanimous majority agrees with the OIPA findings and recommendations, the dissenting members should generate a memorandum including the rationale for diverging from the majority opinion without divulging privileged or confidential information and evidence.
- iv) Should the Chief of Police disagree with the findings and recommendations of OIPA and the BPCRB, the Chief of Police may appeal to the General Manager (GM) within 45 calendar days of the issuance of the findings and recommendations. The Chief of Police will submit his/her appeal in a writing setting forth his/her disagreements with the findings and provide recommendations to the IPA, the BPCRB, and the GM. After receipt of the appeal, the GM shall convene a confidential personnel meeting to include the Chief of Police, the IPA, and a representative of the BPCRB. After receiving input from the Chief of Police, the IPA, and the BPCRB representative, the GM shall rule and submit his/her decision in writing to the Chief of Police, the IPA and the BPCRB. The Chief of Police shall implement the GM’s decision.
- v) Should the BPCRB disagree with the OIPA findings by simple majority, in a confidential personnel meeting, the IPA and the BPCRB shall attempt to come to a consensus. If the BPCRB and the IPA fail to come to a consensus, by simple majority, the BPCRB may appeal. The efforts made to achieve consensus shall be documented by the BPCRB and shall be forwarded to the GM as a part of the appeal. All appeals regarding findings and recommendations for corrective/punitive action or dismissal, between the BPCRB and the IPA will be appealed to the GM, in a confidential personnel meeting to include the Chief of Police. At the confidential personnel meeting, The BPCRB Chair and the IPA will submit their disagreements and recommendations to the GM. The GM shall rule on the matter and make his/her decision known to the Chief of Police, the BPCRB and the IPA. The decision by the GM shall be limited to acceptance or rejection of the Chief’s proposed determination. The Chief of Police shall implement the GM’s decision, which will be final.
- vi) Discipline recommended pursuant to these processes shall be subject to an administrative hearing prior to implementation in a manner consistent with addressing the due process rights of public employees, when applicable. Any final determinations that modify or rescind initial dispositions and arbitration determinations shall be evaluated by the IPA to identify any systemic issues and/or potential for the serious erosion of accountability related to such modifications, and shall be included in a public IPA report. The IPA shall work with BPD to remedy any such issues identified by the evaluation.

Commented [OJ9]: The GM and BPOA/ BPMA Rejects Modification.

Recommendation: This is a procedural change for the settlement of disagreement between OIPA and BPCRB. The GM shall not give the Chief of Police a decision, prior to the Chief of Police reviewing. The Chief of Police has to have an opportunity to review the settled agreement between OIPA and BPCRB to make a determination whether to accept or reject.

Note: If accepted, language should be in iv.

C. Review Legal Claims, Lawsuits, and Settlements

- i) OIPA shall be authorized to review any legal claims and/or lawsuits against BART that relate to the conduct of BPD personnel to ensure that all allegations of misconduct are thoroughly investigated by OIPA and/or BPD, and to identify any systemic issues regarding BPD practices and/or policies.
- ii) OIPA shall be authorized to review any significant settlements and adverse judgments involving BPD.
- iii) OIPA shall work with BPD to develop corrective action intended to remediate any systemic issues identified through review of any significant settlements or adverse judgments involving the BPD.
- iv) OIPA shall publicly report its involvement in the review of legal claims, lawsuits and settlements in a manner consistent with all applicable confidentiality requirements.

D. Review Investigations Conducted by BPD

- i) OIPA shall be authorized to review BPD Internal Affairs Bureau (IA) investigations to determine whether the investigations are complete, thorough, objective, and fair.
- ii) The OIPA shall, subject to his or her discretion, have authority to monitor or require follow-up investigation into any citizen complaint or allegation that is investigated by BPD.
- iii) OIPA should provide recommendations to the BPD regarding investigative quality and/or appropriateness of disciplinary recommendations prior to the finalization of the investigative report and notification of disposition to subject officers and complainants.
- iv) OIPA is authorized to publicly report any resistance by the BPD to conduct reasonable additional investigative tasks, including by way of notification to the Board, the BPCRB, and the GM.

E. Review Uses of Force by BPD Officers

- i) OIPA shall have the authority and responsibility to review all Use of Force (UOF) incidents by BPD officers to determine whether the UOF should be the subject of an IA investigation and/or whether other issues are implicated for the individual officer or for BPD, including but not limited to training, equipment, supervision, and policy.
- ii) OIPA shall be authorized to regularly participate in the BPD UOF Review Board process by attending meetings and/or reviewing determinations made by the BPD UOF Review Board.
- iii) OIPA shall report publicly on its involvement in the BPD UOF review process including determinations made by BPD UOF reviewers in a manner consistent with all applicable confidentiality requirements.

F. BPD Early Intervention Systems

- i) OIPA shall be involved in the review and evaluation of data, alerts, and reports related to the BPD Early Intervention System (EIS).
- ii) The OIPA may use the EIS data to determine whether conduct or disciplinary issues regarding BPD or individual officers exist.
- iii) OIPA shall regularly report on the status and effectiveness of the BPD EIS in a manner consistent with all applicable confidentiality requirements.

G. Auditing

Commented [OJ10]:

OIPA Recommendation: Revise requirements re OIPA review of settlement agreements. OIPA should be authorized and empowered to review any and all settlements and adverse judgments related to BPD employee conduct. OIPA is currently authorized to review any significant settlements and adverse judgments involving BPD.

Commented [OJ11]: BPOA/

BPMA Rejects Modification: A non-significant settlement is not an omission of wrongdoing.

- i) OIPA shall have the necessary access and authority to review BPD data, records, and staffing information, including background investigation reports, for the purpose of conducting systemic audits of BPD functions that impact the quality of the Department and the services provided by BPD to the public.
- ii) OIPA shall have the necessary access and authority to monitor any audits conducted by the BPD regarding BPD functions that impact the quality of the Department and the services provided by the BPD to the public.
- iii) OIPA shall be authorized to publicly report on the results of any audits or monitored audits as described in this section in a manner consistent with all applicable confidentiality requirements.

H. Mediation

OIPA shall develop a voluntary alternative dispute resolution (ADR) process for resolving complaints which involve conduct that may most appropriately be corrected or modified through alternative means. OIPA shall review a draft of the voluntary ADR process with the BPCR and BART Police Associations and secure their concurrence prior to implementation.

I. Appeal of IA Findings

Any complainant may file an appeal of an internal investigation conducted by BPD with the OIPA. Upon receipt of an appeal, OIPA shall:

- i) Review the completed BPD investigation.
- ii) Determine whether further investigation is warranted and, if necessary, ensure that a timely, thorough, complete, objective and fair follow-up investigation into the complaint or allegation is conducted. A follow-up investigation may, at the discretion of the IPA, be conducted by the OIPA, the BPD or any other competent investigative agency.
- iii) Provide timely updates on the progress of the review and any follow-up investigation to the complainant and the BPD employee who was the subject of the original investigation, to the extent permitted by law unless the specific facts of the investigation would prohibit such notification.
- iv) Based on the review of the original investigation and, where appropriate, the results of any follow-up investigation, OIPA shall reach an independent finding as to the facts of the underlying allegation or complaint.
- v) Independent investigative findings of "Sustained" made by OIPA shall include recommendations for corrective/punitive action, up to and including termination where warranted. When the evidence does not support the allegations of misconduct, the IPA shall recommend a finding of Unfounded, Exonerated, or Not Sustained.
- vi) All BPD investigative findings that are appealed to OIPA shall be subject to the procedures defined in Chapter 1-04(B).

J. Critical Incidents

- i) The IPA shall be notified immediately by BPD personnel to respond to the investigative scene(s) of any BPD officer-involved shooting, use of force resulting in life threatening injury, use of force resulting in bodily injury requiring transportation and admittance to a hospital, or in-custody death.

Commented [OJ12]:

OIPA Recommendation: OIPA should be granted the authority to audit BPD background investigations and review all settlement agreements related to BPD employee conduct, thereby ensuring that the mandates of the oversight model are fulfilled

Commented [OJ13]: The GM and BPOA/

BPMA Rejects Modification: BPD data records and staffing are not confidential, whereas background investigation reports are some of the most confidential information that the department keeps. There are legal issues by the legal representation of OA/MA, as well as compromise investigations, negatively impact recruitment and retention, and will create and adverse working relationship with background contractors. Additionally, our current background process meets and exceeds POST and CALEA standards. There are numerous quality controls that include command staff, executive staff, Chief of Police, and POST Auditor.

- ii) The BPD officer in charge at the investigative scene(s) shall provide the IPA and OIPA staff with access to the investigative scene(s) equivalent to BPD Internal Affairs Investigators upon their arrival at the investigative scene.
 - iii) The OIPA shall have the authority to monitor all aspects of the ensuing investigation that the BPD Internal Affairs investigators have authority to monitor while the investigation is in progress. The BPD will grant the OIPA access equivalent to BPD Internal Affairs investigators to the site(s) of all interviews related to a critical incident involving BPD personnel.
 - iv) The IPA may observe interviews of employees, public complainants, and witnesses that are conducted by BPD Internal Affairs Investigators and may submit questions to the interviewer to be asked by the interviewer in accordance with state and federal law.
- K. Recommendations on Procedures, Practices and Training
- i) OIPA shall develop specific recommendations concerning policies, procedures, practices, and training of BPD personnel. The goal of the above OIPA recommendations, shall be improving the professionalism, safety record, effectiveness, and accountability of BPD employees. OIPA shall consult with the Chief of Police and other stakeholders and shall present its recommendations to the BPCRB for review and comment.
 - ii) Should BPD reject policy recommendations submitted by OIPA, the IPA may forward the recommendations to the GM and/or the Board for further consideration.
 - iii) OIPA shall have the authority and responsibility to provide input to the BPD during the development of any significant BPD-initiated policy creation or revision.
 - iv) OIPA shall publicly report on its involvement in the development and revision of BPD policies and shall report annually regarding any outstanding recommendations and the degree to which they were endorsed by the BPCRB and accepted by BPD.
- L. BART Police Associations
- i) The IPA shall meet periodically with and seek input from the BART Police Managers Association (BPMA) and the BART Police Officers Association (BPOA) regarding the work of OIPA.
 - ii) OIPA shall report annually on whether meetings with BPMA and BPOA occurred.
- M. Community Outreach
- OIPA shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public in the BART service area. The OIPA community outreach program shall set out to educate the public regarding the responsibilities and services of OIPA and the functions of the BPCRB.
- N. Reporting
- The IPA shall prepare annual reports to the Board and the public in a manner consistent with all applicable confidentiality requirements, which prior to being finalized shall be reviewed, in draft form, by the BPCRB. To the extent permitted by law, reports shall include the number and types of cases filed, number of open cases, the disposition of and any action taken on cases including recommendations for corrective/punitive action, and the number of cases being appealed; findings of trends and patterns analyses; and

recommendations to change BPD policy and procedures, as appropriate. The reports shall include all complaints regarding police officers received by OIPA, BPD, BART District Secretary (DSO), and other District departments.

O. Public Statements

The IPA shall be authorized to make public statements regarding any aspect of BPD policies and practices, the ~~Citizen-Civilian~~ Oversight Model, and in conjunction with any public report or findings in a manner consistent with all applicable confidentiality requirements.

Chapter 1-05 RELATIONSHIP BETWEEN OIPA AND THE BPCRB

- A. OIPA and the BPCRB shall be established and operated as separate, complementary entities with different roles that are and shall remain independent of one another.
- B. On a no less than monthly basis, the BPCRB shall receive reports from OIPA in a manner consistent with all applicable confidentiality requirements, including the number and types of cases filed, number of open cases, the disposition of and any action taken on cases, recommendations for corrective/punitive action, including discipline and dismissals, and the number of independent investigations concluded by OIPA. The report shall also include the number and outcome of cases being appealed either to OIPA by members of the public, the BPCRB or the Chief of Police pursuant to the appeals process described in Chapter 1-04(B), above.
 - i) Reports shall include all complaints received by OIPA, BPD, BPCRB, DSO, and other District departments.
 - ii) For tracking and timeliness purposes, this report shall include the number of days that have elapsed between the date of the complaint and the date of the written report to the BPCRB.
- C. OIPA may present reports related to OIPA-monitored BPD investigations to the BPCRB in closed session for its input and feedback. BPD personnel may be present during the closed session to respond to any BPCRB inquiries regarding the investigation and/or related investigative processes.
- D. OIPA shall, for informational purposes, promptly notify the Chair of the BPCRB whenever the IPA is informed of a critical incident as described in Chapter 1-04(J).
- E. The BPCRB and OIPA will coordinate community outreach activities and communication with the public.

Chapter 1-06 RELATIONSHIP BETWEEN OIPA, BPD, DSO, AND OTHER DISTRICT DEPARTMENTS

- A. The Chief of Police, DSO and other Executive Managers with employees that routinely receive comments/complaints from the public shall each, jointly with the IPA, develop standard operating procedures to govern the relationship and flow of communication regarding complaints involving police officers between OIPA and each of their respective departments.
- B. OIPA and the Chief of Police shall provide each other with timely notification of complaints, investigations, appeals and findings and with such information and cooperation as is appropriate and necessary.

Commented [OJ14]:

OIPA Recommendation: The Board should increase OIPA's annual budget to keep pace with increases in the BPD budget and policing activity.

The OIPA budget should be established and controlled by the Board of Directors, independent of the General Manager (GM). This includes increasing the OIPA's annual budget to 1.5% of the BPD budget and granting the IPA authority to approve all budget expenditures without GM approval. These changes are crucial for maintaining the independence of the OIPA and ensuring it can operate effectively without conflicts of interest.

This proposal would increase the current OIPA annual budget, currently equivalent to ~1.07% of the BPD budget, by 0.47% or about \$537,339 for FY2025.

Commented [OJ15]:

OIPA Recommendation: The OIPA budget, spending, and staffing should not be controlled by the General Manager (GM).

- C. [The Board and the GM shall set the OIPA budget at an amount equal to 1.5% of the BPD budget.](#)
- D. [OIPA budget spending, once allocated, shall not be subject to approval by the GM or the GM's direct reports.](#)
 - a. [OIPA spending shall be subject to review and audit by the BART CFO, The Board, the BART Internal Audit Department, and the public.](#)

Chapter 1-07 COOPERATION WITH OIPA

- A. OIPA shall have unfettered access to police reports and police personnel records. All parties who have access to confidential information shall comply with all confidentiality requirements of the BPD, the District, and all state and federal laws.
- B. During an investigation, all involved BPD personnel shall be compelled to meet and cooperate with OIPA in accordance with Government Code Section 3300-3313.
- C. No person shall directly or indirectly force, or by any threats to person or property, or in any manner willfully intimidate, influence, impede, deter, threaten, harass, obstruct or prevent, another person, including a child, from freely and truthfully cooperating with OIPA.

Chapter 1-08 INDEPENDENCE OF OIPA

- A. The IPA and any employee of the OIPA shall, at all times, be totally independent. All investigations, findings, recommendations, and requests made by OIPA shall reflect the views of OIPA alone.
- B. No District employee or Director shall attempt to unduly influence or undermine the independence of the IPA or any employee of the OIPA in the performance of his or her duties and responsibilities set forth herein.
- C. DSO staff shall perform administrative and organizational tasks for the BPCRB, which will be intended to clarify, strengthen, and maintain the delineation and separation of the BPCRB and OIPA.

Chapter 1-09 CONFIDENTIALITY OF RECORDS AND INFORMATION

OIPA shall comply with all state and federal laws requiring confidentiality of law enforcement records, information, and confidential personnel records, and respect the privacy of all individuals involved.

Chapter 1-10 CODE OF ETHICS

The employees of OIPA shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

Chapter 1-11 TIMELINESS

Nothing in this Model is intended to delay or interfere with the timely investigation and disposition of internal affairs investigations of alleged police misconduct. OIPA and the BPCRB shall jointly develop a timeline for completion of the disciplinary process that will be concluded within 365 days from the time of discovery by BPD Internal Affairs, BPD supervisory level personnel, the OIPA, or the BPCRB.

Chapter 2-01 BART POLICE ~~CITIZEN-CIVILIAN~~ REVIEW BOARD

A ~~BART Police Citizen Review Board~~ (BART Police Civilian Review Board) shall be established by the Board of Directors to increase visibility for the public into the delivery of BART police services, to provide community participation in the review and establishment of BPD policies, procedures, practices and initiatives, and to receive citizen complaints and allegations of misconduct by BPD employees. Results of investigations into allegations of misconduct by BPD employees and recommendations for corrective/punitive action, including discipline, will be reviewed by the BPCRB. The members of the BPCRB shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics and comply with all applicable state and federal laws regarding confidentiality.

Chapter 2-02 APPOINTMENT OF BPCRB MEMBERS

- A. The BPCRB shall report directly to the Board.
- B. The BPCRB shall consist of eleven (11) members appointed as follows:
 - i) Each BART Director shall appoint one (1) member.
 - ii) The BPMA and BPOA shall jointly appoint one (1) member.
 - iii) There shall be one (1) Public-at-Large member to be appointed by the Board.
 - iv) All appointments or re-appointments to the BART Police ~~Citizen-Civilian~~ Review Board shall be for two-year terms. Those members appointed by Directors representing odd numbered Districts, as well as the Public-at-Large member shall have their terms expire on June 30th of the respective even numbered year. Those members appointed by Directors from even numbered Districts, as well as the BART Police Associations' member, shall have their terms expire on June 30th of the respective odd numbered year.
 - v) Service on the BPCRB shall be voluntary.
 - vi) A newly-elected Director may replace the seated BPCRB appointee representing their District within ninety (90) calendar days of taking office, otherwise the seated BPCRB member will continue to serve until expiration of the applicable term, unless otherwise disqualified as described herein

Chapter 2-03 BPCRB MEMBER QUALIFICATIONS AND RESTRICTIONS

- A. Members of the BART Police ~~Citizen-Civilian~~ Review Board must reside within Alameda, San Francisco, Contra Costa, or San Mateo County.
- B. BPCRB members shall agree to adhere to the Code of Ethics described in Chapter 2-10.
- C. BPCRB members must be fair-minded and objective with a demonstrated commitment to community service.

- D. No person currently employed in a law enforcement capacity, either sworn or non-sworn, shall be eligible for appointment to the BPCRB.
- E. No current or former BPD employee shall serve on the BPCRB, and no relative of any current or former BPD employee shall serve on the BPCRB.²
- F. All appointees to the BPCRB shall be subject to background checks.
- G. No person convicted of a felony shall serve on the BPCRB.
- H. Members serving on the BPCRB are not required to be U.S. citizens.

Chapter 2-04 BPCRB MEMBER MEETING ATTENDANCE

- A. BPCRB members may not miss three regularly scheduled meetings per year.
 - ~~i) The appointment of any BPCRB member who has been absent from three (3) regular meetings during the fiscal year, shall automatically expire effective on the date that such absence is reported by the OIPA to the DSO, except in the case of an approved absence or leave of absence as described herein.~~
 - ~~ii) The appointment of any BPCRB member who has been absent from three (3) consecutive regular meetings or four (4) meetings in total during the fiscal year, shall automatically expire effective on the date that such absence is reported by the BPCRB to the DSO, except in the case of an approved absence or leave of absences described herein.~~
 - iii) The DSO shall notify any BPCRB member whose appointment has automatically terminated, and report to the Board and the BART Police Associations that a vacancy exists on the BPCRB. The vacancy shall then be filled in accordance with Chapter 2-06.
- B. Excused Absences from Regularly Scheduled Meetings
 - i) A BPCRB Member may request an excused absence from their appointing Director, and that excuse shall be transmitted to the DSO. Such excused absences shall be granted by the Board President regarding the Public-at-Large appointee, or from the Police Associations regarding the Police Associations' appointee. Such excused absences will not count against the member's absence limitations.
 - ii) BPCRB members may be granted a leave of absence by their appointing Director not to exceed three (3) months. When such a leave of absence is granted, the seat may be filled for the period of such leave and may be filled in accordance with the procedure described herein, subject to ratification by the Board. Such leaves of absence shall be granted by the Board President regarding the Public-at-Large appointee, or from the Police Associations regarding the Police Associations' appointee.

Commented [OJ16]: The GM and BPOA/ BPMA Accepts Modification: Supports the recommendations made by the BPCRB.

Chapter 2-05 BPCRB VACANCIES

- A. Vacancies on the BPCRB shall be filled for the unexpired portion of the term, subject to ratification by the Board.
- B. A vacancy in a seat representing one of the nine BART Districts shall be filled by the Director whose appointee has ceased to serve.
- C. A vacancy in the seat that represents the BART Police Associations shall be filled by the BART Police Associations.

² Relatives include spouse, domestic partner, child, parent, brother, sister, grandparent, step-parent, step-child, legal guardian, father-in-law and mother-in-law.

- D. A vacancy in the seat representing the Public-at-Large shall be filled by the Board from the pool of qualified applications submitted during the most recent application period for the Public-at-Large seat. If no qualified Public-at-Large applicants are available or willing to serve, the Board shall solicit new applications.
- E. The IPA may provide input to the Board regarding the performance of any BPCR member who seeks reappointment.
- F. The Board should consider a BPCR member's annual outreach activity when deciding whether to reappoint a member to the BPCR.

Chapter 2-06 SCOPE

The BPCR shall have the authority to exercise its duties and responsibilities as outlined below, regarding law enforcement and police activities or personnel operating under authority of BART.

Chapter 2-07 DUTIES AND RESPONSIBILITIES

- A. **Complaints Received from Members of the Public**
Any person may file a complaint or allegation of wrongdoing against any BPD employee with the BPCR. Upon receipt of a complaint or allegation, the BPCR shall immediately turn the complaint or allegation over to the OIPA, and OIPA shall proceed according to Chapter 1-04 above.
- B. **Recommendations for Corrective Action**
 - i) The IPA shall submit his/her investigative findings and recommendations to the BPCR for review in a confidential personnel meeting, where the processes described in Chapter 1-04(B)(ii-vi) including, but not limited to, appeal procedures shall apply.
 - ii) The BPCR shall announce each member's vote regarding its acceptance or rejection of the OIPA findings and recommendations for discipline in open session, and in cases in which a non-unanimous majority agrees with the OIPA findings and recommendations, the dissenting members should generate a memorandum including the rationale for diverging from the majority opinion without divulging privileged, protected, or confidential information and evidence.
- C. **Closed Session Process**
 - i) ~~When the BPCR reports out the votes from the closed session, the voting will be announced by the vote on each count.~~
 - ii) ~~Any BART PD policy violations referred to in an OIPA report must have a copy of the policy attached for the BPCR to serve as a reference in closed session.~~
 - iii) ~~For all OIPA cases and findings, the BPCR are expected to review all of the evidence presented. This includes written information, photos, and videos. If a BPCR member has not reviewed all of the evidence for a sustained finding, the member MUST abstain from voting.~~
 - iv) ~~The BPCR may choose to bifurcate allegations and findings as necessary per Sturgis rules of parliamentary procedure. When this parliamentary procedure is utilized, BART subject Police officer(s) may be separated for an individual up and down vote per the~~

recommended OIPA finding(s) and allegation(s). Each of the OIPA findings will then be listed in a numerical order and referred to as "officer one, officer 2, finding one, finding two, allegation one, allegation 2" etcetera, etcetera. When the BPCRb reports out the votes from the closed session, the voting will be announced by the vote on the agreement or disagreement with the OIPA recommendations in totality or with exceptions.

iv) Any BPCRb members who vote to not accept an OIPA finding may write a dissenting memo. A draft of any dissenting memos must be reviewed by an attorney assigned by the BART Legal Department to ensure no confidential information is divulged. Once the BART legal department deems the memo to be in compliance, the memo must be distributed and a copy sent to the BART General Manager, the BART Chief of Police, and the BPCRb Chairperson. If there are multiple dissenting members, they may collaborate and submit one dissenting memo.

D. BPCRb Legal Support

The BPCRb will be assigned an attorney from the BART Legal Department to be available to assist the BPCRb with any and all legal issues.

E. Recommendations on Policies, Procedures, Practices and Training

- i) The BPCRb shall develop and review recommendations as to the policies, procedures, and practices of BPD in consultation with the IPA.
- ii) The goal of BPCRb recommendations shall be to improve the professionalism, safety record, effectiveness, and accountability of BPD employees.
- iii) The BPCRb may make recommendations to the Chief of Police, GM, and Board, as appropriate.
- iv) The BPCRb shall review and comment on all additions and changes to policy, procedures and practices as well as all new initiatives (including training and equipment) proposed by BPD or OIPA and make recommendations to the Board. For purposes of this section, changes or additions to equipment does not include items that are functionally the same or similar to existing equipment issued by the Department such as a supplier change of equipment with the same design and functionality as existing equipment. The BPCRb may agendaize in a subsequent meeting for discussion and action any proposed changes. Further actions may include but are not limited to language or timeline proposals and the creation of a subcommittee for further discussion, review, and recommendations.
- v) The BPCRb may agendaize in a subsequent meeting for discussion and action any proposed changes. Further actions may include but are not limited to language or timeline proposals and the creation of a subcommittee for further discussion, review, and recommendations.
- vi) The Chief of Police retains the authority to implement changes to policy, training, and/or equipment at any time as required for the effective functioning of the BART Police Department. The BPCRb and OIPA shall be notified by the BPD in writing, inclusive of redlines, 14 days prior to any changes in policies or procedures as well as all new initiatives (inclusive of training and equipment). The updated policy, training, and/or equipment should be placed on the Chief's agenda for the next available BPCRb meeting for discussion.

vii) In instances where a change to policy, training, and/or equipment is implemented with less than 14-days' notice to the BPCRB, OIPA, the Chief of Police shall provide written notification to the BART General Manager, OIPA and BPCRB of the change and the reason for the change. The updated policy, training, and/or equipment should be placed on the Chief's agenda for the next available BPCRB meeting for discussion.

F. Disagreements Regarding Proposed Policies, Procedures, Practices, and Training
The Board shall review and resolve all disagreements regarding proposed policies, procedures, practices, and training that may arise between the BPCRB and the Chief of Police, IPA, or GM. The Board shall make the final determination in all such instances.

G. BART Police Associations
The BPCRB shall meet periodically with and seek input from the BPMA and BPOA on issues of interest to the parties. The BPCRB shall report annually on whether meetings with the BPMA and the BPOA occurred.

H. Community Outreach
The BPCRB shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public in the BART service area. The BPCRB community outreach program shall seek to educate the public about the responsibilities and services of OIPA and functions of the BPCRB.

- i) The DSO will provide staff support to and facilitate training for the BPCRB.
- ii) The BPCRB should endeavor to conduct meetings in varying locales, where feasible to increase exposure of its work to a wider array of community members.

I. Reporting
The BPCRB shall file quarterly reports of its activities with the DSO for distribution to the Board and shall prepare an annual report on its accomplishments and activities (including recommendations to improve BPD services) for presentation to the Board and the public.

J. Monitor Study Recommendations
The BPCRB shall report on the accomplishments and progress made by BPD in implementing recommendations resulting from periodic studies that may be conducted to look at departmental policies, procedures, practices, and training.

K. Public Statements
The Chair of the BPCRB shall be authorized to make public statements on behalf of the BPCRB regarding the role and processes of the BPCRB when an exigency to respond to an inquiry is presented.

L. Selection of the Chief of Police
The BPCRB (as well as the BART Police Associations) shall participate in an advisory role in the selection of the Chief of Police by interviewing finalist candidates.

The BPCRB Chair and Vice Chair, or their designee's, shall participate in an advisory role composed of BPCRB members only, in the selection of the Chief of Police by being given

Commented [OJ17]:
The GM Accepts Modification: The GM supports this language.

Commented [OJ18]: The GM and BPOA/
BPMA Rejects Modification: The selection process for the Chief of Police is under the exclusive authority of the GM and the proposed language interferes with this authority.

sufficient time to review resumes, give input on the questionnaires and interviewing finalist candidates.

Additionally, the BPCRB shall be given sufficient time to review credentials, interview notes and deliberate before their recommendations are submitted to the General Manager in writing.

The office of the OIPA as well as all BART Police Associations shall have their own independent and separate advisory role in the selection of the Chief of Police.

No provision in this section shall undermine the authority or preclude the General Manager from appointing the Chief of Police.

In any emergency or exigent circumstances, the General Manager retains the authority to appoint the Chief of Police.

M. Staff Support for the BPCRB

The ~~DSO~~ District will provide staff support to the BPCRB including but not limited to the following:

- i) ~~Facilitation of training for the BPCRB. Preparation and maintenance of records of meetings of the BPCRB.~~
- ii) ~~Preparation and maintenance of records of meetings of the BPCRB. Distribution of reports by the BPCRB to the Board and the public.~~
- iii) ~~Distribution of reports by the BPCRB to the Board and the public. Facilitation of the application process for appointment to the BPCRB and coordination of the selection and ratification processes with the Board.~~
- iv) ~~Facilitation of the application process for appointment to the BPCRB and coordination of the selection and ratification processes with the Board. Provision of training including scheduling and maintenance of a curriculum designed for newly-appointed BPCRB as well as an ongoing in-service training program.~~
- v) ~~Provision of training including a curriculum designed for newly-appointed BPCRB members. Implementation with the assistance of the BPCRB and OIPA, of an onboarding and orientation program for all new BPCRB members~~
- vi) ~~Provision and maintenance of an ongoing in-service training program. Assist the BPCRB with all community outreach efforts.~~
- vii) ~~Monitor email and field calls from members of the public in regard to the work of the BPCRB and report on all calls and communications on a monthly basis.~~
- viii) ~~May attend seminars, webinars, conferences and/or oversight training, budget permitting, in order to fully assist the BPCRB in its oversight functions.~~
- ix) ~~Provision of attendance to and record keeping of all closed sessions meetings and votes~~

Commented [OJ19]: BPOA/ BPMA Rejects Modification: It is important for OA/MA to be involved as much as possible in the hiring process in advisory to the GM.

Commented [OJ20]: BPCRB Added Modification - Language added.

Commented [OJ21]: The GM and DSO Support this Modification.

- A. No less than monthly, the BPCRB shall receive reports from the IPA including the number and types of cases filed, number of open cases, the disposition of and any action taken on cases, recommendations for corrective/punitive action, including discipline and dismissals, and the number of independent investigations concluded by OIPA.
 - i) The report shall also include the number of cases being appealed either to OIPA by members of the public or by the BPCRB pursuant to the appeals process described in Chapter 1-04(B), above.
 - ii) OIPA reports to the BPCRB shall include all complaints received by OIPA, BPD, the BPCRB, DSO, and other District departments.
 - iii) ~~This report shall also include the number of days that have elapsed between the date of the complaint and the report to the BPCRB.~~
 - iv) ~~iii) OIPA reports shall include the degree to which OIPA and BPCRB disciplinary recommendations were implemented by BPD.~~
- B. The Chair of the BPCRB shall, for informational purposes, be promptly informed by the OIPA of all critical incidents involving BPD.
- C. The BPCRB may report to the Board of Directors' Personnel Committee on the performance and effectiveness of OIPA.
- D. The BPCRB (as well as the BART Police Associations) shall participate in an advisory role in the process of selecting all successors to the first IPA.
- E. The BPCRB will participate in a regular program of community outreach and communication with the public, in conjunction with OIPA.
- F. The BPCRB shall make forms available at BPCRB meetings to accept complaints and allegations of police misconduct from the public and shall forward any received complaints to OIPA for appropriate action.

Chapter 2-09 CONFIDENTIALITY OF RECORDS AND INFORMATION

Members of the BPCRB shall comply with all state and federal laws requiring confidentiality of law enforcement records, information, and confidential personnel records, and shall respect the privacy of all individuals involved.

Chapter 2-10 CODE OF ETHICS

The members of the BPCRB shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

Chapter 3-01 OVERSIGHT SYSTEM EVALUATION

The Board, with input from the BPCRB, IPA, BART Police Associations, GM, DSO, complainants, and the public will evaluate the BART Police ~~citizen-civilian~~ oversight structure every 3 years to determine whether the need exists to make changes and/or otherwise make adjustments to the system to improve its continued performance. These evaluations shall in no way be intended to eliminate the BART Police ~~citizen-civilian~~ oversight structure.

Commented [OJ22]:

OIPA Recommendation: Remove elapsed time monthly reporting requirement. This requirement should be removed because the data point is not particularly relevant and does not provide significant insight or transparency, while creating additional work in connection with preparation of required reports. The number of elapsed days is dependent on the date of the applicable BPCRB meeting and is not tied to any statutory requirement.

Commented [OJ23]: The GM and BPOA/BPMA Rejects Modification: This reporting is an important data point for transparency.

Chapter 3-02 BUDGETARY CONSIDERATIONS

To ensure training and increase the legitimacy of the BPCRB as an independent oversight entity, the Board of Directors shall review during the yearly District budget process any a budgetary allocation pertinent to the funding of administrative support, training, and development as well as, organizational memberships and attendance to relevant subject matter webinars and conferences like NACOLE.