

Accountability and Oversight Subcommittee Recommendations

Mission Statement:

The APD Community Accountability and Oversight Committee, working together with those affected most by policing in Alameda and other community stakeholders, to foster an atmosphere of dignity, respect, and trust; seeks to listen, discover and report patterns of systemic racism and other forms of marginalization in police behavior by: developing recommendations for the creation of systems of oversight, ensure accessible complaint processes, increase transparency, deter police misconduct, promote thorough/fair investigations, identify patterns and opportunities for harm prevention and/or restorative justice, and manage adaptability to adjust to changing community needs over time.

Our subcommittee was tasked with determining what kind of accountability and oversight was needed of the Alameda Police Department. We come from various backgrounds and opinions about policing in Alameda. We approached this charge from the city council and the steering committee with open minds and a desire to learn how we could better Alameda for all residents. We researched existing oversight models in other cities, read police policy manuals and current research on oversight and accountability for law enforcement from a variety of sources, spoke with members of the community and experts who had established similar civilian oversight boards in their communities. Some of the community feedback we reviewed is at the end of this document.

In our research, we realized that a police department without community accountability is a financial risk to the city. The actions of Alameda police officers have cost the city substantial amounts of money: \$250,000 in 2020 for an excessive-force incident that killed a Navy veteran and \$450,000 in 2015 for permanently disabling a man during an arrest as just two examples. Litigation reports also show smaller settlements such as \$50,000 in a false arrest and excessive force claim following a suicide prevention welfare check in 2018. We do not have a full accounting of the city's settlement costs.

In addition to this research, we also received data from the police department which our subcommittee analyzed and used to calculate "Relative Risk" for residents of Alameda. Relative Risk (also called Risk Ratio or abbreviated RR) is a calculation that compares the likelihood that a negative outcome will occur for a person in one group to the likelihood that the same outcome will occur for a person outside of that group. This is calculated by taking the percentage of people within a group who experience a particular outcome and dividing that by the percentage of people outside of the group who experience the same outcome. The resulting number tells us how much more likely a person in one group is to experience a negative outcome than a person outside of that group. If the relative risk is less than one, that means that a person in the

group of interest is less likely to experience the outcome in question than a person outside of that group.

For example, if you wanted to know whether a Black person in your community is statistically more likely to be subjected to a pedestrian stop than a non-Black person, you could calculate the relative risk as follows:

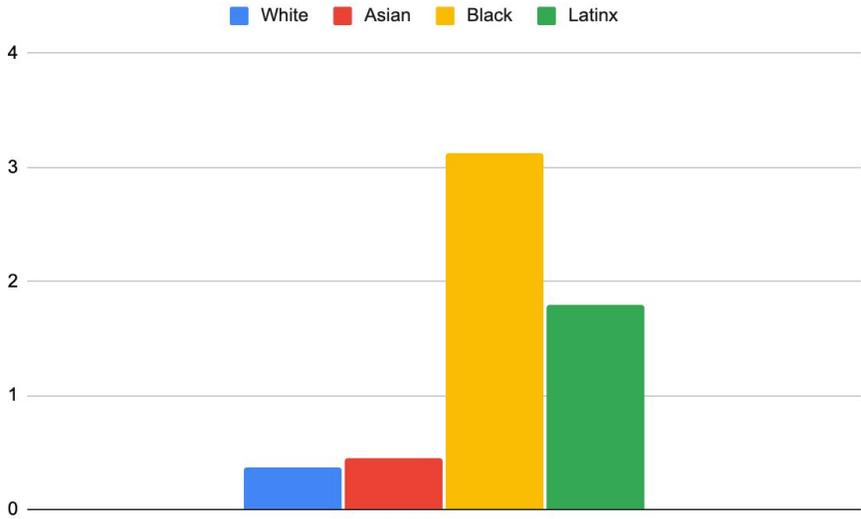
$$\frac{\text{BLACK RESIDENTS STOPPED}}{\text{TOTAL BLACK RESIDENTS}} \div \frac{\text{NONBLACK RESIDENTS STOPPED}}{\text{TOTAL NONBLACK RESIDENTS}} \\ = \text{BLACK RESIDENT'S RELATIVE RISK OF BEING STOPPED}$$

Relative risk allows you to compare risk in two groups even when one group is much larger or smaller than the other.

There are some limitations to this method of looking at risk. Relative risk does not measure statistical significance, so it can't tell you on its own whether the results you are seeing may be a product of random chance.

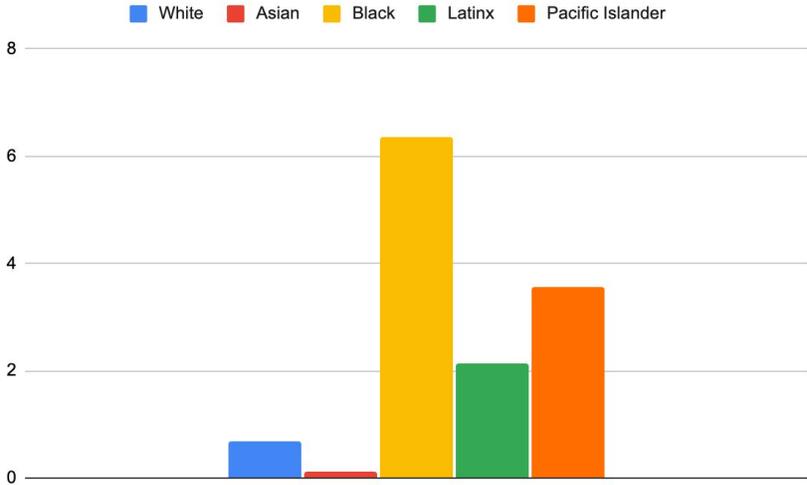
At the November Police Forums the Alameda Police Department shared its intention to consult with the Center for Policing Equity. The following charts were created using some of the methods outlined in the Center for Policing Equity's community toolkit. We recommend continued use of the toolkit as a bridge to the broader goal of regular public data analysis from within the Alameda Police Department.

Relative Risk of Citations by Race



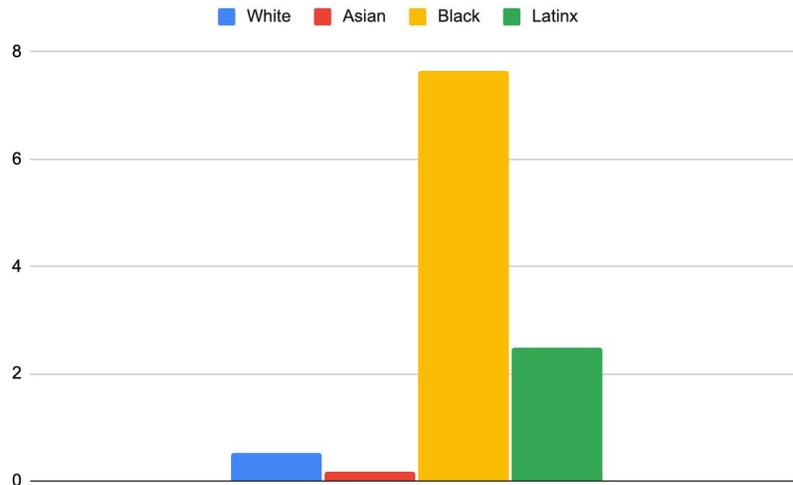
Data Sources:
Alameda Police Department
January 2018 - September 2020
Alameda City Census Data 2010

Relative Risk of Use of Force by Race



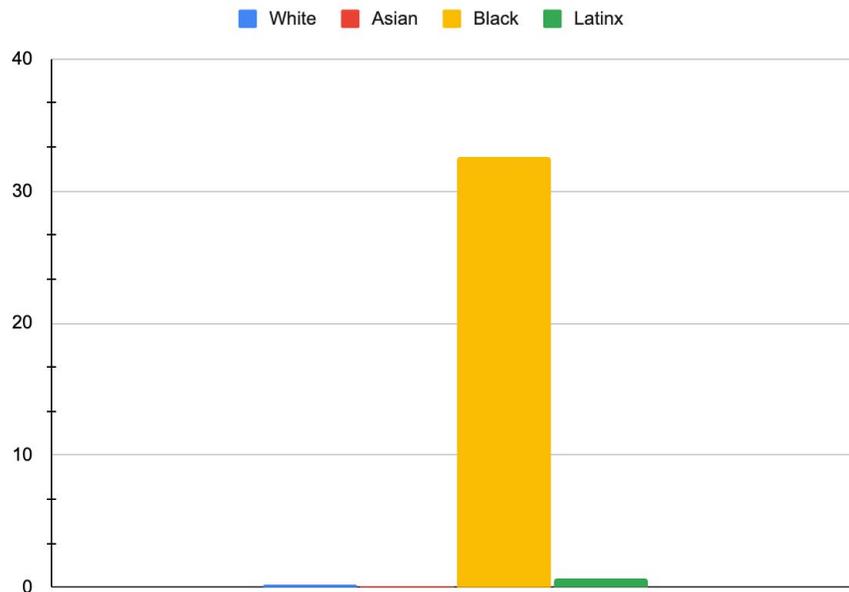
Data Sources:
Alameda Police Department 2014 - 2019
Alameda City Census Data 2010

Relative Risk of Adult Arrests by Race



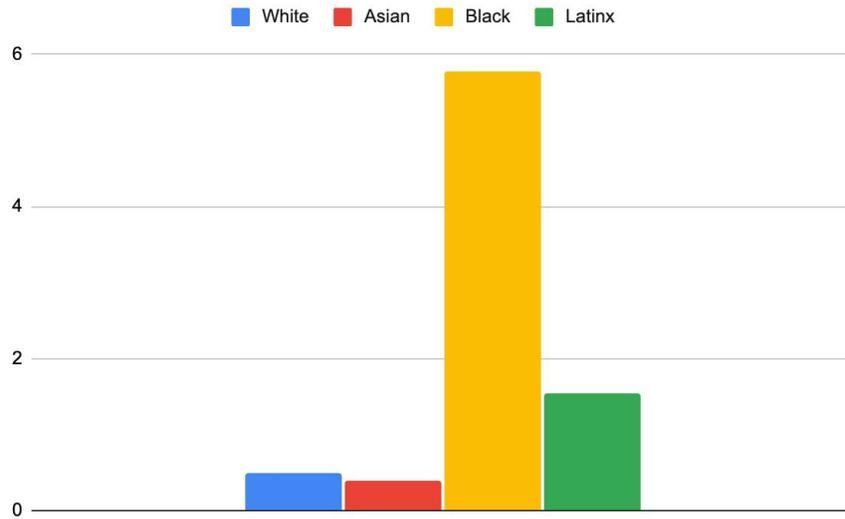
Data Sources:
Alameda Police Department
January 2018 - September 2020
Alameda City Census Data 2010

Relative Risk of Juvenile Arrests by Race



Data Sources:
Alameda Police Department
January 2018 - September 2020
Alameda City Census Data 2010

Relative Risk of Traffic Warnings by Race



Data Sources:
Alameda Police Department
January 2018 - September 2020
Alameda City Census Data 2010

From this Relative Risk assessment and the [Alameda Police Scorecard](#) we see a clear disparity between our Black residents' experience with the APD and that of everyone else in Alameda.

After listening to the public and reading the many comments from them, we have a number of specific recommendations for how to better provide police accountability to the public in Alameda that fall into four overall categories.

Top Four Recommendations

1. Create an effective, thoughtful, charter-strength oversight board
2. Create processes that support justice for all
3. Look at data collected with the goal of equity
4. Value people for their work and expertise

1. Create an effective, thoughtful, charter-strength oversight board

We believe there is sufficient evidence to warrant an oversight board. Below are some of the qualities that we feel are important to any civilian oversight board that might be created.

- **Core powers established by City Charter**

The city should hold an election to amend the city charter to establish a civilian oversight board for the police department.

In other cities where civilian oversight was not written into the charter, it was in short order made largely ineffective by political erosion of rights and powers. If we are to have accountability it must be effective. A charter-strength oversight board can only be diluted or removed through further charter amendment, a very public process that requires the public to affirm that oversight should be removed.

- **Independent and apolitical**

The civilian oversight board should be independent of the police department, with the power to adopt its own rules for operating procedures. It should not be co-located at the police department.

In no way should getting onto the board be a political process. We recommend the board be appointed to avoid the need for campaigning and fundraising.

Both independence and the appearance of independence are important for assuring the public of the objectivity of the oversight board. Civilian oversight has proven to be a critical tool to address police performance, and should be independent of the police department to ensure impartiality. This includes not sharing space with the police department, which would give the appearance of bias and would suppress involvement by those who are from communities that suffer from being overpoliced.

- **Strongly community driven**

The board should aim to meet the accountability needs of the community, including those who are rarely represented at the city governmental level.

Currently we have an unbalanced system, where the public is held accountable by the police, but not vice versa. Public service must include an element of public accountability. This applies to the civilian oversight board, as well. The board should be accountable to the public, as much as it holds the police accountable. They should

produce an annual report to the public on board work, including an evaluation of the board's effectiveness and follow-up surveying on participant experience. They should also be active participants in NACOLE (National Association for Civilian Oversight of Law Enforcement).

- **Made up of members of the community**

This should be a civilian-only board

We recommend the board be made up of civilians who are not sworn officers or members of the police union, employees of the city, or employees of the police department. Independence has been demonstrated as an essential element in gaining community confidence in the oversight process.

All residents of Alameda should be represented

As with other city positions, the members of this board should be made up of people who reside in Alameda, including those with permanent homes, those who face housing insecurities, and those without permanent housing. The board should determine criteria for establishing whether a recently evicted or homeless person is a resident of Alameda, including last known permanent address and social/familial ties to the city.

We recommend the board have an odd number of members between seven and thirteen in order to provide representation to as many impacted communities as possible, and also to ensure that there are always a sufficient number of board members available for investigations and hearings.

The police department internal accountability mechanisms remain important including their specialized knowledge of the mechanics of policing. However, Internal Affairs processes are not visible to the average citizen who has a grievance with the department, and the concerns of the police will not always match those of the community at large. Public Accountability is in addition to and not a replacement for internal command and management.

Members of the civilian oversight board should be chosen to represent a wide range of demographic groups in Alameda. In order to preserve the impartiality of the board and make it truly a civilian board, it should be made up of members of the community rather than law enforcement, police employees, or city employees.

Because the homeless population is significantly overpoliced in many places, and residency requirements often hinge upon having a permanent address in a city, representation for those without permanent housing or who face housing insecurities would help the board have a broader perspective on the real lives of the community, and help the board to improve the interactions of the police with the broader community.

Finally, boards established in the Alameda City Charter currently have between five and seven members. We feel that a larger number of members for this board is necessary in order to get representation from as many impacted communities as possible. In addition, a larger number of board members allows for the work of reviewing police policies and practises to be broken up into manageable amounts (the Alameda Police Policy Manual alone is 755 pages long).

- **Clearly stated rules around the function of the board and membership**

The civilian oversight board should have clearly stated rules about term length, term limits, removal from the board, filling vacancies, and chairship. We recommend members of the board serve two-year terms, with a two-term limit, with terms arranged so that only half expire in a given year. Board vacancies should be filled promptly by the city manager rather than being left open until the next term for that position begins.

The board should make provisions for removal of board members, if necessary, including setting rules about how to conduct a review of membership on the board when a member's circumstances change (such as being sworn in as a police officer, taking a job with the city, deciding to run for office, or moving out of Alameda). In addition, there should be a process for removing members of the board who do not or cannot fulfill the goals of the board (we recommend that this be by a supermajority vote of $\frac{3}{4}$ of all other members). In order to prevent lengthy attempts at removal for political reasons, the board should establish a cooldown period between failed removal actions.

As in all other charter-established boards, the chair should be chosen by a vote of the board on the charter-designated date.

Clearly stated rules around membership on the board and chairship will give clarity when conflict about the rules arises, so the board's time is not taken up with having to determine how to act around things like a change in circumstances for a member, or non-performance. To the greatest extent possible, the board should set rules for its operation that address these potential areas of conflict in advance.

Prompt filling of openings means the board will always have enough members to reach quorum, and more importantly enough members to provide fair investigation and hearings around complaints. Shorter terms and term limits ensure a wider range of voices can be heard, giving more communities the opportunity to have a say in how policing is done in the city. Lapping terms over each other allows for transfer of knowledge between outgoing members and newer members. In addition, staff will have the role of carrying institutional knowledge for members.

- **Clearly defined complaint procedure**

The board should create a clear process for filing a complaint, including deciding who can file a complaint, and who they can file a complaint against. There should be special accommodations for complaints in litigation or where criminal charges are being pressed. Standards for when an investigation starts, how long the investigation may take, and how soon a hearing should be scheduled should be established. Information on this process in plain, easy-to-understand language should be published by the board for the public.

The board should establish who can file a complaint, including making allowances for complaints that may at least initially be anonymous. They should establish protections for complainants and witnesses, including whistleblower protections for officers or employees of the police department who make complaints about others, and anti-retaliation protections for all. Because the existence of criminal charges pending may affect the ability of a person to make a complaint, there should be special provisions

for such a complaint allowing the investigation and hearing to be conducted after criminal proceedings are complete.

Where the complaint is about an agency outside of the Alameda Police Department (Alameda County Sheriff, East Bay Regional Park Police, etc.), the board should make a referral policy, and also a follow-up policy to confirm that complaints to those agencies are being addressed.

- **Broad investigative powers**

The board should have a broad set of powers to investigate where appropriate. These powers include:

1. *Power to receive complaints against the police*
Ideally, complaints directed to the police should automatically be sent to the board without being reviewed by the police first. Minimally, the board should be empowered to receive complaints directly from the public rather than having to wait to have them referred or assigned by another body.
2. *Power to receive complaints against non-sworn personnel of the police department*
Not all employees of the police department are sworn officers, but the public perception is that they are all “the police.” In addition to providing accountability for sworn officers, the board should be empowered to receive and handle complaints against all employees of the police department.
3. *Authority to investigate complaints*
The board should have the authority to investigate complaints, and additional powers that will enable that investigation to be thorough and fair. The authority to conduct an investigation allows the board to obtain information and evidence beyond what the original complainant can provide. A complainant may not be able to prove an incident happened without body camera or vehicle camera footage, or without testimony from eyewitnesses.
4. *Ability to monitor police internal investigation*
Where a parallel Internal Affairs investigation is being carried out, the board should have the responsibility to monitor that investigation and its findings in order to ensure that it is being conducted fairly, and that evidence both in favor of and against the officer involved is being reviewed.
5. *Power to review internal affairs file*
The Internal Affairs file may contain information not specifically requested by the board which sheds light on the incident in a complaint. The board should have the right to review that file, but not to make it public.
6. *Power to re-open closed investigations*
The board should have a limited power to reopen some investigations and pursue resolution and justice in cases of fraud, or other exceptional circumstances.
7. *Complaints about the police filed with any department must be forwarded to the board*

When complaints against the police are filed with any department or agency in the city, those complaints must be forwarded to the board whether the receiving department has reviewed and responded to the complaint or not.

8. *Subpoena power with advice from the city attorney*

In order to properly conduct an investigation, the board may need to obtain documents such as security camera footage from private businesses or residences, cameraphone video from individuals, or other evidence. The ability to subpoena those documents will substantially improve the power of the board to hold a fair hearing. Further advice from the city attorney's office is recommended here.

9. *Rules for obtaining police evidence*

The board should have broad powers to get evidence from the police department. This includes clear, fast access to complete video evidence (such as from body cameras and vehicle cameras), as well as provisions for interviewing officers. The board should make clear policy about confidentiality of evidence. In addition, there should be penalties for failing to turn over evidence, failing to appear for hearings, or ignoring the proceedings of the board.

10. *Timeliness*

Justice delayed is justice denied, so we recommend the general requirement that an investigation into the matters of the complaint be substantially complete within 90 days of commencement. But also because some cases are more complex and require more work, we make the provision that the board may vote to extend the deadline for completion.

● **Hearing procedures focused on fairness and restorative justice**

Hearings should be held promptly. We recommend that a hearing be scheduled within 14 days of the completion of the investigation. Provisions should be clearly established for postponement requests.

Board operating procedures should:

- Address rules of evidence
- Address right to cross examine
- Provision for continuances
- Require witness testimony to be under oath
- Set a standard for the burden of proof
- Provide for designating documents as public or confidential

In order to maintain fairness, the board should set a recusal policy that errs on the side of removing those with the possibility of a conflict of interest from a position to judge. In addition to self-recusal, the policy should allow the complainant to request the recusal of a member of the board, providing reasons for that recusal.

2. Create processes that support justice for all

In order to make a more equitable society, the board should provide for models of investigation and hearing that are not modeled directly from criminal or civil legal proceedings. Recent innovations in police oversight through restorative justice and mediation find ways to hear community voices and make positive change in policing, rather than models of punishment and uneven power.

With community input, the board should create a strong, broad non-discrimination policy including race, nationality, religion, veteran status, sexual orientation, gender identity, HIV status, economic status, or housing status.

We recommend continued exploration of impacted communities including continued dialogue with a broad coalition of anti-discrimination organizations such as the Commission on Persons with Disabilities, the Alameda County Veterans Affairs Commission, the Alameda County, Alameda County Advisory Committee on Aging, Alameda County Community Corrections Partnership Community Advisory Board, Commission on the Status of Women, and the Human Relations Commission. We also recommend that the board review the city's Sanctuary City policy to determine how best to support immigrants' ability to come forward regardless of the status of their documentation.

Below are some suggestions that we believe would assist with this recommendation:

- **Actively encourage public participation**

One of the responsibilities of the board should be educating the public on their rights and the complaints process. Materials should include information on how to file a complaint and what the process will be like, and know-your-rights information for adults and youth. The board should make and carry out a plan for outreach to the most-affected communities, such as Black residents and the homeless.

Above all else, the board should promote transparency. Board materials must be available in multiple languages, including both languages spoken by residents of Alameda and languages spoken by those who work, visit, or worship here, and written in plain language rather than legalese.

- **Provide complainant support**

The board should provide for support for complainants during the investigation and hearing stages of this process. These supports should include:

- Right to have an attorney
- Right to have a non-attorney advocate
- Right to request mental health support at hearing/investigation
- Right to accessible access to hearing room and evidentiary materials

- Interpretation provided when needed at hearings
- Protections against retaliation for complainants and witnesses
- Whistleblower protections for police department employees

3. Look at data collected with the goal of equity

The overall goal of the Board should be to create equity within the Alamedan community. By collecting data and analyzing the statistics, the Board will be able to assess and see where changes may be needed. Below are some qualities that will support the goal of equity:

- **Track and share data on Police Performance**

Alameda will need to track (RIPA) Racial Identity Profiling Advisory data to be reviewed by the California Advisory Board and the Department of Justice. The legal mandate is for Alameda to begin collecting data beginning January 1, 2022 with a requirement to legally report it to the Department of Justice by April 1, 2023. Some of this data is already being collected by Alameda Police Department and more of it soon will be. The California RIPA annual report and the Center for Policing Equity both provide models of how that data can be analysed and made public. Alameda should not wait for the legal mandate but should calculate and provide this data to the public as early as possible. In addition, Alameda needs better, transparent tracking of use of restraints by type -- especially when follow-up medical attention is required -- as this data is separate from use-of-force statistics. In addition to quantitative data, the department should also be collecting qualitative data which can help to illuminate the experiences of marginalized communities such as persons with disabilities, religious minorities, or members of the LGBT community.

- **Power to make recommendations in response to data analysis or changing social environment**

Newer models of civilian oversight encourage proactive data-driven approaches to policing. In recent years, the many other cities have seen good results from putting police activity data into an Early Warning System. With these programs problematic patterns of police behavior can be spotted early and addressed proactively. Alameda does not currently use such software. This would be a valuable way to catch weaknesses in training or understanding of the role of police before they turn into major incidents.

The civilian oversight board is uniquely situated to offer insights into policing which may be missed by those inside the police department. With representatives from impacted communities on the board, they can offer recommendations which come from the very people who are most affected by the inequity.

-

- **Power to make policy recommendations**

The board should have the power to recommend changes to police policy.

At its heart, this is about not just accountability for the individual officer or officers involved, but a commitment by the department to police better based on evidence.

- **Power to make recommendations even in unsustained complaints**

Oftentimes in an investigation, an officer has not violated existing policy. However, when listening to the complainant an improvement to policy may emerge. Having this power encourages a learning-focused organization as opposed to a punishment-focused organization.

- **Influence on hiring decisions**

The goal of the board is not just accountability, but partnering with the police department to meet the policing needs of the community. To that end, the board should have an active role in oral boards for hiring officers, and input into the hiring process for the police chief.

The police need community trust and confidence to do their jobs. The board should cooperate with the police department to build a force that we can all feel proud of and have confidence in. It is better and easier to hire the best officers available.

Giving the people of Alameda a voice in hiring not only the chief of police but officers and employees at all levels will help build bridges between impacted communities and the department. It will help ensure that all voices in the community are heard. In addition, diversity in hiring gives any organization greater resiliency and flexibility. Voices from under-represented communities can bring new problem-solving skills to the department and help it do its job more effectively.

- **Power to advise on type of discipline, and to recommend dismissal/reassignment**

Current state laws, court decisions, and union contracts set limits on disciplinary actions against police officers. The board should have the power to advise the police department on appropriate discipline for offenses against which they find that there was improper behavior. In addition, the board should establish a policy for how subsequent complaints against the same personnel will be handled, in particular how they will be handled if the advised discipline was not carried out.

- **Proactive Accountability**

The board should, as part of its regular work, perform an annual review of the police department's Policy Manual and Procedures and determine which policies and procedures need revision or removal/replacement.

- **Ability to recommend trainings and training memos**

The board should have the ability to recommend either specific training or suggest subject areas for ongoing training for the department.

Often extra training chosen by police results in increased militarization. We believe it is important that steps are taken to ensure that police are trained to interact with the public in positive ways.

- **Systems of accountability for management staff**

While officers on the streets are more easily identified by the public when they overstep authority or worse, a system which does not see these problems as systematic will fail. Management staff should also be accountable for their actions and to a degree the actions of those they supervise.

4. Value people for their work and expertise

Participation in a civilian oversight board is hard work and takes a lot of time and dedication. As members of this temporary task force we were able to get a glimpse of how important, but also demanding of one's time it can be. In order to set up the Board members for success, we suggest the following:

- **Accommodations for member participation**

We don't believe participation in the oversight board should be limited by the ability to afford to take time off work without any compensation. With this in mind we recommend a sliding scale of compensation based on the needs of those involved in the board.

The Alameda City Charter specifically denies compensation to those serving on charter-established boards. This means that many people cannot participate in city boards because of the time commitment; if you are working multiple part-time jobs, you may not be able to afford to give up work to be able to regularly attend meetings and do the work required to prepare for those meetings, and especially the work required for participating in hearings about complaints. A board that pays members a stipend for their time will be a board that can have representation from all parts of the community, and without that representation, no accountability board will win the trust of all members of the community.

While the focus of our work is the oversight board, we encourage City Council to more broadly examine policies that prevent compensating board members on all City boards for their work.

- **Establish board staffing**

The board should have full-time support staff, including some administrative aides to help with the details of hearings, and at least one data analyst.

In other cities, there have been positive results from having a staff data analyst. This staff member determines what police activity data needs to be collected, and reviews that data to help guide policy, both on an ongoing basis and in response to complaints. We recommend that this person work for the accountability board. This role is intended to be a data analyst with a view to understanding and improving community outcomes and equity, rather than a crime analyst.

Administrative aides will handle such things as receiving and properly documenting complaints; scheduling rooms for meetings and hearings; assembling information packets; receiving, labeling, and filing documents for evidence; scheduling witness testimony; and submitting evidence requests.

Experiences described by impacted communities

As a committee we are aware of and find credible many stories from Alameda residents and professionals about thoughtful careful policing in the city. We also find credible stories where the police may have overreached or caused harm. These are some of the stories that lead us to recommend creating an independent and transparent community oversight system.

“As a younger man, my sister would always tell me to get out of Alameda before night, there is a good chance you will be pulled over... that kind of kept me from enjoying sunsets in Alameda... I started thinking about things we should be able to access, having a future where every space is safe and people are welcome.” – *Stephen B, Artist Creator of Crown Park Sunset.*

“That is the biggest no-no, In order to breathe, you have to also inhale. What happens in these cases, the cops are on people’s backs, they compress the chest, the person can’t inhale.” – *Attorney Ben Nisenbaum describing events on Buena Vista Ave, resulting in a wrongful death suit.*

“We don’t hit people because they do bad things.” – *Attorney Susan Kang Gordon describing the baton strikes from an Alameda Police Sergeant.*

“Proposal [for Police to add license plate readers] is fatally flawed... until another vendor is found and restrictions are in place. Vigilant should release its contract with ICE.” – *Matt Cagle American Civil Liberties Union at Feb 6 2018 Alameda City Council Meeting.*

“My name could have been on there, ... I was assaulted by four police officers. I cried and told the officers, I can’t breathe, you got to get off of me.” – *Alameda resident who violated local beach curfew, speaking at a Transgender Day of Remembrance event.*

“It’s time to make a new change, it’s time to do something different than this, we need to build a system that really cares.” – *Speaker at Alameda Dancing in the Street protest.*

“I know that every year Asians have been attacked especially during Lunar New Year because they carry money around as a form of goodluck. ...Racism against Asians has been normalized. ...If mental health professionals responded to mental health calls, it allows police to do their job to respond to crime.” – *Public Comment at Feb 16th Alameda City Council Meeting.*

“Once when I was buying chips and candy at a store for a party, This officer came and stopped me because he thought I had stolen it, I even showed him the receipt and he still called for backup for no reason.” – *Alameda High Student – shared during Black Lives Matter Assembly.*

“A Black mother was arrested and restrained in a WRAP device for a theft related incident in Alameda.” – *Reported several neighbors who heard her plea for help.*
