

Via email

March 19, 2019

Mayor Eric Garcetti  
200 N. Spring St.  
Los Angeles, CA 90012

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Councilmember Paul Krekorian  
Councilmember Bob Blumenfield  
Councilmember David E. Ryu  
Councilmember Paul Koretz  
Councilmember Nury Martinez  
Councilmember Monica Rodriguez  
Councilmember Marqueece Harris-Dawson  
Councilmember Curren D. Price, Jr.  
Councilmember Herb J. Wesson, Jr.  
Councilmember Mike Bonin  
Councilmember Mitchell Englander  
Councilmember Mitch O'Farrell  
Councilmember Jose Huizar  
Councilmember Joe Buscaino  
Los Angeles City Council  
200 N. Spring St.  
Los Angeles, CA 90012

Date: 3/20/19  
Submitted in ATPR Committee  
Council File No: 17-0071-S1  
Item No.: 1  
Deputy: Adam R. Lid

RE: The Los Angeles Police Department Board of Rights

Dear Mayor Garcetti and City Council Members:

We, the undersigned organizations represent diverse communities, constituencies and interests, but we all share the belief that police misconduct—whether it takes the form of violence against the public or breaches of the public’s trust—must cease. A necessary step toward ending police misconduct is ensuring that officers are meaningfully disciplined when they break the law or violate department rules. The Los Angeles Police Department (“LAPD”) relies on a flawed system to discipline its officers, and the cornerstone of that system is the Board of Rights. The City Council is in the midst of changing that process, but this is a serious task and should not be undertaken lightly. While there is a real opportunity to enact thoughtful policy changes that significantly reduce misconduct by making officers meaningfully accountable for their wrongdoing, there is also the risk that ill-considered changes will only further weaken the disciplinary system and the public’s faith in the LAPD’s ability to discipline itself.

That is why we endorse the Peoples’ Recommendations—a set of recommendations grounded in decades of research on the root causes of the failure of the LAPD disciplinary system. The foundation for these recommendations is a report jointly issued by the ACLU of Southern California, Black Lives Matter-Los Angeles, and Community Coalition, titled *Towards*

*Accountability: Overcoming LAPD's Flawed Disciplinary System*,<sup>1</sup> which synthesizes decades of research on the LAPD disciplinary process and the specific issues surrounding the Board of Rights. The issues identified in this report are not new. They have been observed at least since the Christopher Commission of the 1990s investigated the causes of unchecked police brutality, and have been re-affirmed within the last few years in reports authored by the Los Angeles Police Commission Office of Inspector General. And, crucially, some problems—like the Board of Rights' inherent undermining of the Chief's disciplinary decisions—are not flaws, but rather intentional features of the system from its inception.

The recommendations set forth below are grounded in this research, and include previously-identified solutions that have gone unheeded, as well as solutions developed for today's context in conversation with community groups and other experts who have worked on the issue of police misconduct. These recommendations are smart, and are created with the goal of developing a disciplinary system that meaningfully holds officers accountable for their misconduct—which should be the primary driver of the City Council's policy changes. They are also consistent with procedural justice principles to ensure greater faith and satisfaction in the system for both officers and the public at large.

The City Council was supposed to create a set of recommendations for reforming the LAPD disciplinary process after soliciting public input to better understand this issue. This has not been the case. Instead, the City Council has intentionally excluded the public from this process and instead pushed forward on proposals that neither address the actual issues underlying LAPD discipline nor respond to the public's previously-stated concerns about the consistent lack of accountability for LAPD officers. Since the People have largely been shut out of the discussion of Board of Rights reform through the existing process, the Peoples' Recommendations reflect our demands for the future of LAPD discipline.

### **City Council Should Adopt The Peoples' Recommendations**

The Peoples' Recommendations include all 16 of the recommendations set forth in *Towards Accountability*. Not all of those recommendations can be accomplished solely through action of the City Council—for instance some may require further charter amendments or they may simply require directing the Office of Inspector General to create specific reports. Nonetheless, we believe the City Council should endorse the recommendations in their entirety and take all steps possible to make them a reality.

The essence of the recommendations are as follows:

- ***Real civilians.*** The civilians on the Board of Rights must represent the diversity of Los Angeles and be selected through an open and transparent process within City Council. This includes making sure that people with past arrests are not excluded, and adhere to the common-sense understanding that “civilians” do not include retired police officers. Similar to Newark's civilian review board, members should be nominated by various community institutions across the City to ensure a representative and diverse pool of civilian members.

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<sup>1</sup> Available at <https://aclusocal.org/boardofrights>.

- ***Real oversight.*** Board of Rights outcomes and voting patterns should be reported regularly and hearings audited, so that the public knows what is happening behind closed doors. The City should adopt an ordinance requiring that all disciplinary records that are public under the 2018 Right to Know Act (SB 1421) should be posted by the department.
- ***Real advocacy.*** Trained attorneys should defend the department’s recommended discipline instead of using LAPD officers with no legal training to go up against seasoned defense attorneys.
- ***Real accountability.*** The department should standardize penalties and ensure violations against the public like excessive force or filing false police reports result in more significant penalties than they do currently.
- ***Real training.*** All Board of Rights panelists should have an accurate and unbiased understanding of issues the board routinely considers, such as excessive force and domestic violence, and training should include community-based experts.

These recommendations directly address previously-identified concerns with LAPD discipline and reflect an attempt to increase the likelihood that officers who are guilty of misconduct are identified and punished. This evidence-based approach to our recommendations is in stark contrast to the City Council, which has yet to engage in any meaningful examination of the existing inadequacies within LAPD discipline and how they should be addressed—despite pushing forward with ill-considered recommendations.

The undersigned strongly oppose the recommendation of the Ad Hoc Committee on Police Reform (“Police Reform Committee”), which has specifically floated the possibility of allowing retired officers to serve as “civilian” hearing examiners on the Board of Rights. There is no factual basis for believing that this recommendation would address any of the identified problems with the Board of Rights. To the contrary, an understanding of the system’s shortcomings makes it clear that this would only exacerbate existing problems.

As discussed more fully in *Towards Accountability*, allowing retired officers to serve as “civilian” hearing examiners would be disastrous for numerous reasons. First, from a procedural justice standpoint, officers’ dissatisfaction with the current Board of Rights—which was the impetus behind Charter Amendment C—is based on a *perception* that they are unable to fairly challenge the Chief’s discipline because the command staff who serve on the Board are biased against officers and the accused receive leniency based on personal connections and departmental status.<sup>2</sup> They hold this belief despite the fact that the Chief’s discipline is lessened or rejected in over half of the cases it considers, and the LAPD Inspector General’s recent analysis uncovered no apparent bias in outcomes based on officer rank. Thus this perception of bias comes from the mere structure of the system, not its actual outcomes. Allowing retired officers—who will be presumed to have personal connections to certain officers and subject to the same allegations of favoritism based on status—to serve as the “unaffiliated” civilian member of the Board would eliminate their supposed neutrality and further undermine officers’ belief in the fairness of the system.<sup>3</sup>

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<sup>2</sup> See *Towards Accountability* at Sec. II.2.

<sup>3</sup> See *Towards Accountability* at Sec. III.1.

From the perspective of the public, it originally endorsed the idea of including civilians on the Board of Rights in response to the well-documented observations by the Christopher Commission that the Department was incapable of disciplining itself, and was in need of an outside perspective to evaluate officer misconduct. Allowing former officers to serve as “civilians” is completely contrary to that goal and will only exacerbate the public’s distrust of LAPD’s disciplinary system because it has once again insulated itself from external criticism.

Second, in terms of substantive outcomes, neither officers nor civilians selected under the current criteria and selection process are effective at holding officers accountable for misconduct. The Board eliminates or reduces punishment in over 50 percent of the cases it considers. This is unacceptable. While any disciplinary appeals process for employees will result in some reductions of penalties it is unfathomable that the extensive internal investigative process afforded to accused LAPD officers and a disciplinary system that often does not even terminate officers whose actions cause the death of civilians would result in incorrect findings of guilt and excessive punishments over half of the time. Indeed, even officers who have been convicted of crimes—found guilty beyond a reasonable doubt in Superior Court—have been cleared of misconduct by the Board of Rights, which is supposed to apply a much lower standard for determining guilt. Allowing retired officers, who have already been unsuccessful at regularly holding their co-workers accountable to serve as “civilians” only ensures that officers will continue to escape serious consequences when they break the law or department rules.

That is why the Peoples’ Recommendations demand that the City Council reclaim its charter-mandated duty of overseeing the selection of civilians to serve on the Board, and that the process be open, transparent, and involve the community. It is not only the criteria that need to be changed, but the process through which individuals are selected to serve on the Board of Rights, if we wish to eliminate bias, hold officers accountable, and increase faith in the system.

### **City Council Has Excluded the Public from the Discussion on LAPD Discipline**

The need for The Peoples’ Recommendations is apparent from the Police Reform Committee’s refusal to meaningfully engage with the history of the Board of Rights, community members and organizations that have long-pursued effective police discipline, and experts who have studied the Board and its failings, before it adopts ill-thought-out proposals that will only further weaken LAPD discipline. The Police Reform Committee was tasked with overseeing the proposed changes to the LAPD disciplinary process with an explicit promise that it would engage the public to hear its concerns, take the time to understand the problems surrounding the existing disciplinary process, and craft appropriate solutions.<sup>4</sup> It has completely failed to live up to this promise.

After Charter Amendment C passed, mandating certain changes to the Board of Rights process, the Police Reform Committee held two meetings; neither of which allowed for any substantive discussion of the Board of Rights or the LAPD disciplinary process. A report on the Board of Rights by the Chief Legislative Analyst was agendaized for the first meeting, on the evening of March 27, 2018, but was continued at the request of Council President Wesson, so the public in attendance was unable to comment on that issue. The second and final meeting took

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<sup>4</sup> Editorial, *LAPD’s discipline process demands a true public airing, not a hollow road show*, L.A. Times, Oct. 29, 2018, available at <https://www.latimes.com/opinion/editorials/la-ed-police-discipline-20181029-story.html>

place on October 24, 2018 and appeared orchestrated to prevent meaningful public input. Despite promises to meet at times and locations that are convenient to the public, this special meeting was held at 8:30 in the morning, on less than 48 hours' notice. The public was also uncharacteristically required to give all comments *before* the speaker had presented or Council President Wesson introduced his proposed recommendations. Thus, as the City Council prepares to take its next steps with respect to the Board of Rights process, it has never meaningfully heard from the public as to what its concerns are or how it proposes that they be addressed. Unless and until the public is actually included in this process, these Peoples' Recommendations reflect the considered suggestions of the constituents that have been unfortunately shut out of this process.

The City Council should take immediate steps to enact real change to the LAPD disciplinary process by adopting the Peoples' Recommendations and engaging in further public process to identify other public concerns and potential solutions to the larger issues of LAPD misconduct that extend beyond the Board of Rights.

Sincerely,

ACLU of Southern California  
A New PATH  
Bend the Arc  
Black Community, Clergy and Labor Alliance  
Black-Jewish Justice Alliance  
Black Lives Matter-Los Angeles  
The Brotherhood Crusade  
Clergy and Laity United for Economic Justice (CLUE)  
Community Coalition  
Dignity and Power Now  
East Area Progressive Democrats  
Food is Power  
Ground Game  
Helping Others Prosper Economically (HOPE)  
L.A. County Public Defender's Union  
L.A. Forward  
L.A. Voice  
Los Angeles Community Action Network  
Our Gov L.A.  
SEIU Local 99  
SEIU Local 2015  
Southern Christian Leadership Conference – Southern California  
Unrig L.A.  
White People for Black Lives

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# TOWARDS ACCOUNTABILITY

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Overcoming LAPD's Flawed Disciplinary Process



ANALYSIS & RECOMMENDATIONS  
November 2018

**ACLU**  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
Southern California

This report, "Towards Accountability: Overcoming LAPD's Flawed Disciplinary Process," is published by the ACLU of Southern California, Black Lives Matter-Los Angeles, and Community Coalition.

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Special thanks to Julie Ly.



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## EXECUTIVE SUMMARY

How does a city effectively discipline its police? Los Angeles, home to one of the largest police forces in the nation, has struggled with this question for decades, and has yet to settle on an answer that regularly ensures that officers who commit serious misconduct receive serious discipline.

The Los Angeles Police Department gained notoriety for scandals that, at their core, were caused by its failure to properly discipline officers and take allegations of misconduct seriously. Perhaps its most significant scandal was the beating of Rodney King by three LAPD officers on March 3, 1991. Before the infamous amateur video of that beating surfaced, two separate witnesses contacted the LAPD and attempted to report the incident and file a complaint. The Department rebuffed both of their efforts. One of the witnesses—who had also captured the beating on tape—contacted a local news station, which expressed much more interest in the incident than the LAPD. The videotape was broadcast locally, then picked up in nationwide coverage, leading even then-president George Bush to comment on the incident and describe the officers' conduct "sickening."

The public outcry over the officers' conduct led then-L.A. Mayor Tom Bradley to create the Independent Commission on the Los Angeles Police Department, more popularly known as the Christopher Commission, to investigate excessive force within the LAPD. The Christopher Commission identified a number of causes for the pervasive use of excessive force within the Department, but the linchpin of this unchecked violence was its ineffective disciplinary process. And central to that disciplinary process was the Board of Rights—the disciplinary appeals board for the LAPD that has the ultimate say in officer discipline.

The disciplinary process for LAPD officers is long and complex, but for the most serious misconduct, the process ends with the Board of Rights. Any discipline starts with a complaint filed against an officer—either by the public or another LAPD employee—for violating LAPD policy. Internal affairs and the officer's supervisor investigate complaints. If the officer used deadly force, the Inspector General's Office and the LAPD Police Commission will also weigh in on whether it believes the officer's conduct violated Department police. If anyone during the review process determines that the facts don't support the allegation, or that the conduct only deserves a very minor penalty, the process stops. But when the internal process determines that the officer did violate policy and that he or she deserves a significant penalty, the case is referred up to the chief of police.

If the chief reviews the investigative file and agrees that the officer is not only guilty but deserves a lengthy suspension, demotion, or to be fired the officer gets to challenge this penalty with the Board of Rights—a three-person panel that currently includes two officers and one civilian. The Board of Rights is not bound to the Department's factual findings or disciplinary recommendations. Instead, the three members independently determine whether an LAPD officer should receive the chief's recommended punishment, or any punishment at all. The Board of Rights therefore has tremendous power in determining whether LAPD officers ultimately are held accountable for wrongdoing.

The Board of Rights also featured prominently in reports seeking to explain the Rampart Scandal—a corruption scandal involving widespread criminal activity among officers in the Rampart Division's gang unit, which became public in 1998. There were numerous reports issued in its wake, but the reports commissioned by both LAPD's civilian oversight body and the officers' union cited the Board of Rights as undermining effective discipline and limiting the chief's ability to remove problem officers.

While these large scandals have triggered blue ribbon commissions and in-depth examinations of the Department and its disciplinary processes, over the past decades critics from many other corners also have criticized its effectiveness, often focusing on the impact of the Board of Rights. This report re-

examines the analyses **presented in these** prior reports and draws **connections** across the data spanning almost thirty years. This report also supplements these previous analyses by providing context available from public discourse around the Board of Rights—including City Council actions—and with publicly-available disciplinary data. It concludes by highlighting recommendations that have gone unheeded, and, with input from community partners, supplements with additional recommendations directly in response to these identified needs.

This report comes at a moment of great opportunity for serious disciplinary reform within the LAPD. In March 2017, Los Angeles voters approved Charter Amendment C, which mandated that the City Council adopt an ordinance changing **the** existing Board of Rights system. Along with placing Charter Amendment C on the ballot, the City Council also created an Ad Hoc Committee on Policing, purportedly tasked with providing a public **process for** investigating the failings of the **current system** and informing other actions to be taken by the City Council to improve LAPD discipline. While the **City Council** is free at any time to make changes to the Board of Rights or other elements of the LAPD disciplinary system, it is explicitly tasked with doing so right now. This report and the series of recommendations it proposes, should inform the City Council's next steps towards meaningfully improving LAPD discipline.

As one of the post-Rampart reports, commissioned by the LAPD officers' union and authored by Prof. Erwin Chemerinsky recognized, "[t]here never will be public confidence in the Police Department until there are major reforms in the disciplinary system. Officer confidence in the system is equally important. There thus must be major reforms of every aspect of the disciplinary system to provide a fair and just system of receiving, investigating, and adjudicating complaints against officers." If the LAPD disciplinary system remains dependent on the Board of Rights to impose serious discipline, finally adopting these needed changes is a crucial part of this reformation process.

## **FINDINGS**

**This report identifies six concerns with the existing Board of Rights process:**

- 1. The Board of Rights undermines Department discipline through excessive leniency. The Board of Rights routinely reduces or eliminates the Department's recommended punishment, including reinstating officers that the Department sought to terminate in 51 percent of the cases it considered.**
- 2. Officers perceive the Board of Rights as biased. Despite the fact that the Board of Rights reverses the Department's recommended discipline around half of the time, officers still perceive that the Board of Rights is biased against them and does not provide a true opportunity to challenge their discipline. This belief impacts Department morale and contributes to a conviction that discipline is arbitrary rather than based on actual misconduct.**
- 3. The Board of Rights imposes inconsistent discipline. There are significant and unexplained disparities in outcomes involving similar misconduct, as well as a tendency to treat misconduct against the public less severely than violations of administrative Department rules.**
- 4. Board of Rights proceedings and outcomes lack transparency. Lack of access to Board of Rights hearings or outcomes fosters distrust by the public as well as among officers, and prevents any public oversight of this body.**
- 5. The Department's defense of its disciplinary decisions before the Board of Rights is inadequate. The Department relies on police officers to defend the chief's recommended discipline in Board of Rights hearings, but those officers are pitted against seasoned defense attorneys—often provided to the accused officer for free by the police officers' union—and their lack of legal knowledge and experience often contributes to the high rate of reversal.**
- 6. Board of Rights panels have insufficient training. Research has observed many procedural errors, such as imposing an unnecessarily high burden of proof or imposing not guilty verdicts that rely on facts that are directly contradicted by the evidence—all of which tend to accrue in favor of the accused officer.**

## RECOMMENDATIONS

To address these concerns, which substantially undermine the ability of the Department to meaningfully and consistently discipline officers who commit serious misconduct, the ACLU SoCal, Black Lives Matter-LA, and Community Coalition propose the following recommendations:

**1. Change the composition of Board of Rights panels to eliminate real and perceived bias.** Officers' perceptions of bias are largely just that—perceptions, not borne out by any records of Board of Rights outcomes. Nonetheless, the current structure of the Board of Rights, and proposals to amend the selection process that are currently being floated by the City Council, will maintain this false perception. Some proposals, like allowing retired officers to serve as “civilians” on the Board of Rights will also contribute to the public's perceptions of bias. Because officers and the public must perceive the disciplinary process to be unbiased, the best step towards that will be to change the structural elements that—regardless of outcome—contribute to perceptions of unfairness. The following specific proposals should be adopted to further perceptions of fairness by the public and by officers:

*1.1. Eliminate the option allowing accused officers to select between a panel comprised of two officers and one civilian or a panel comprised of three civilians.*

*1.2. Eliminate the option allowing officers to select individual members of the board from a pool of randomly selected participants, and require that any challenges to the participation of an individual panelist must be “for cause.”*

*1.3. City Council should participate in the selection of civilian hearing examiners through a transparent process that allows inclusion of civilians with diverse experiences and perspectives.*

*1.4. Eliminate criteria that civilian hearing examiners must have seven years' experience in mediation, arbitration, or similar work.*

*1.5. Prohibit individuals who are current or former employees of local law enforcement agencies from serving as civilian hearing examiners.*

**2. Increase oversight and transparency of Board of Rights proceedings to the maximum allowed under state law.** The lack of transparency in Board of Rights proceedings and disciplinary outcomes generally contribute to these perceptions of bias—particularly on the part of officers whose perceptions are directly contradicted by the available evidence. The opaque nature of the disciplinary process also insulates decision-makers from any possible oversight and precludes the Department, Office of Inspector General, City Council, or any other entity from taking corrective action to ensure that errors are corrected, if not in real-time then in future proceedings.

The following recommendations provide specific steps that can be taken to ensure that the disciplinary process is as transparent as possible under existing state law:

*2.1. Require the Office of Inspector General to audit the Board of Rights proceedings and report on whether the Board's findings are supported by the hearing record, and issue detailed quarterly reports on the outcomes of Board of Rights proceedings.*

*2.2. Materials relating to LAPD officer discipline, including applicable policies, any summaries or reports created internally, and raw data, should be provided to the public and made easily accessible on the Department's website.*

*2.3. Release Board of Rights' decisions to the full extent allowed under the law, including full disclosure of documents made public under Senate Bill 1421 (2018).*

*2.4. The mandatory report on the "effectiveness" of Charter Amendment C should examine whether the use of civilian-only panels have reduced bias and inconsistencies in Board of Rights decisions, increased the rate at which officers are punished for misconduct, and enhanced the public's faith in the LAPD disciplinary system.*

*2.5. City Council should reaffirm its support for transparency by resolving to support state legislation allowing for the disclosure of officers' disciplinary records and reopening Board of Rights proceedings.*

**3. Address inconsistencies in discipline between officers and between types of misconduct.** There is a need to ensure uniform discipline between officers who commit similar misconduct. The Department should also take an affirmative stance through its disciplinary process to punish acts of misconduct against the public—particularly violence and false statements in the course of criminal investigations and prosecutions—more seriously than mere violations of administrative rules with no criminal component. The following recommendations are necessary to achieve that goal:

*3.1. Reduce inconsistencies in discipline by adopting a more-detailed disciplinary matrix.*

*3.2. Adjust recommended discipline to impose more serious penalties for violence against the public.*

**4. Improve the quality of advocacy defending the Department's recommended punishment by employing Department Advocates who are experienced attorneys and whose remaining job functions do not depend upon maintaining the goodwill of LAPD officers.** Some of the difficulty in successfully defending the Department's recommended discipline is attributable to the asymmetry in the advocacy and legal skills between the paid attorneys that serve as the accused representatives, and the LAPD Sergeants that represent the Department. Legal questions often arise that the LAPD representatives are unable to effectively respond to and the absence of a professional advocate also places the Department at a disadvantage. City Council should ensure that the Department is also represented by trained legal counsel from an entity that is independent from the LAPD and whose job functions would not be impacted by an adversarial relationship to LAPD officers.

**5. Improve quality and consistency of adjudication in Board of Rights through improved and expanded training.** Entities have reported that Boards of Rights frequently commit technical errors such as applying the wrong burden of proof or factual errors in making findings that are contrary to the records before them. Many of these failures may be attributable to insufficient training in both the requirements for adjudicating these claims as well as the substantive issues that are being decided. The following specific recommendations are intended to improve the quality and accuracy of the adjudications by the Board of Rights:

*5.1. City Council should engage the services of an independent expert in police discipline and oversight to conduct a review and analysis of existing Board of Rights training material and create required training materials for all Board of Rights participants.*

*5.2. All Board of Rights participants should be required to receive the same training.*

*5.3. All Board of Rights training materials should be made public.*