

TO: Boulder City Clerk
FROM: Jane Hummer
RE: Complaint under B.R.C. 2-7-10(b)(2)

February 7, 2023

Dear Boulder City Clerk,

Armed Police Officer Complaint

This Code of Conduct Complaint is brought pursuant to B.R.C. § 2-7-10(b)(2) against several Boulder police officers identified at this time as John and Jane Does because their true identities are not yet known. All of the John/Jane Doe personnel are employees of the City of Boulder and sworn officers of the City of Boulder police department. Each of the John/Jane Doe personnel engaged in an inappropriate show of force at a meeting of the Boulder city council on January 19, 2023, in an effort to intimidate the city council and the community members present. They did so to stop the city council from appointing certain members to the Police Oversight Panel who would provide robust oversight with regard to police misconduct. When faced with this show of force, Boulder's city council did indeed refrain from taking action to appoint panelists to the Police Oversight Panel that evening. I request assistance from the City Attorney or her designee in identifying the true names of John/Jane Does as part of the investigation of this Complaint.

BACKGROUND

When armed police officers entered the city council chamber on January 19, 2023, in a show of force objecting to the actions of city council, to denounce the NAACP of Boulder County and El Centro Amistad, and to argue against the autonomy of the Police Oversight Panel, the city's community engagement goals were immediately rendered unachievable.

As part of a comprehensive effort to ensure meaningful community conversations and productive atmospheres, the City of Boulder has engaged in an in-depth strategy to solicit feedback from traditionally excluded groups and to co-create paths to public participation that allow and encourage all members of our community to share their thoughts with city council in a safe and intentional environment.

A uniformed and armed police officer appearing for the purpose of stopping official government action from moving forward has an immediate chilling effect. The members of Boulder's police department, and the department itself, surely understood and intended for the uniform and weapons to have this effect. A police officer's uniform is one of the many tools at that officer's disposal, and the gun, handcuffs, and taser that are worn with the uniform are other, more deadly tools.

US law enforcement killed at least 1,176 people in 2022, the deadliest year on record for police violence, making the threat of violence when police appear armed and in uniform for political purposes particularly acute. In a time where police violence is ever-present on the minds of many, and constantly present in the thoughts of those who are most often its targets, these officers appearing in uniform to protest appointments to an oversight panel portended harm, not safety.

As city council has heard from multiple community members, the community engagement process during the 1/19/2023 city council meeting did not feel safe. These concerns were presented by various members of the community in the newspaper, on social media, on media reporting sites, and by open comment speakers during the 2/2/2023 City Council open comment period.

If we cannot provide our community members with spaces that are safe from the implied threat of violence we cannot meaningfully engage the public in our community forums. Armed and uniformed police officers protesting city council and members of the public present an unsafe and unwelcoming environment to people across Boulder and chills the city's stated goals of increasing and enhancing public engagement, as well as the goal of being a welcoming and inclusive city. What's more, it violates the City's Code of Conduct.

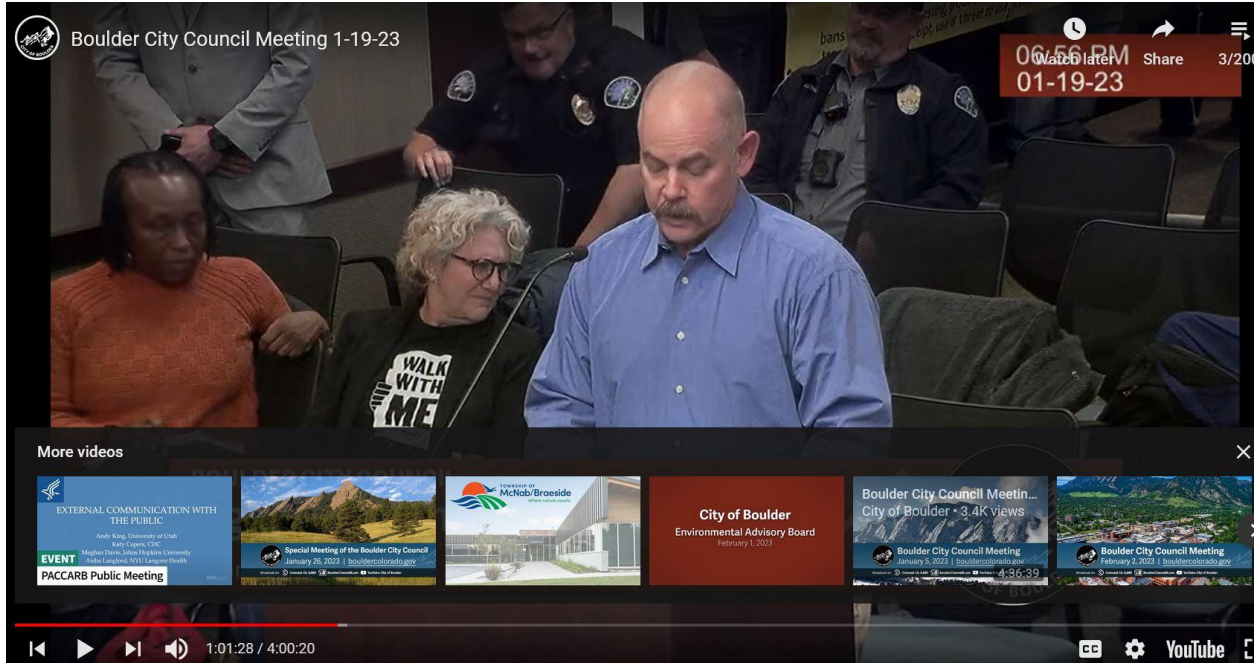
COMPLAINT

Complaint 1: Attending city council to advocate for policy position while in uniform and off-duty.

On January 19, 2023, Boulder Police Officer Daniel Bergh attended the Boulder City Council meeting and spoke during open comment, speaking on behalf of the Boulder Police Officers Association (BPOA). Behind him, on information and belief, were at least two Boulder police officers, John Doe #s 1 and 2.

At the beginning of his public comment, Officer Bergh stated the BPOA represents sworn members of the Boulder Police Department (BPD), and recognized other members of the BPOA present "on their own time in support of our collective position regarding the recent police oversight panel selection subcommittee's blatant non-compliance with B.R.C. section 2-11-6."

John Doe #1 and #2, off-duty according to Bergh, are visible in the recording of the meeting, wearing their BPD uniforms, as seen in the image below, just prior to their standing up in support of Bergh's comments to City Council:



Once standing, at least one of the officers can be seen to be wearing weapons, presumably his BPD issued firearm and Taser:



A third BPD officer, Jane Doe #1 was photographed outside Council Chambers shortly after the end of public comment, also armed and, on information and belief, having also attended the meeting and having stood in support of Bergh's statement on behalf of the BPOA:



Officers are prohibited from wearing their uniforms while off-duty at any time other than while traveling to and from work, according to Boulder Police Department Policies and Procedures (BPDPP), effective Sep. 28, 2017, General Order 105-10.

In addition to violating General Order 105-10, such off-duty and in-uniform appearance at the meeting violates B.R.C. § 2-7-8(e)(9), which states “[a] public . . . employee shall . . . [u]se city . . . equipment only for city purposes, except for reasonable incidental personal use that does not interfere with city business.” It also, on information and belief, violates §§ 2-7-8(e)(1)(serve best interests of city despite personal interest); 2-7-8(e)(2) (perform duties with care, professionalism and impartiality); 2-7-8(e)(5) (act within the boundaries of their authority); 2-7-8(e)(6) (treat colleagues and members of the public with courtesy); 2-7-8(f)(1) (support any action or activity that violates a regulatory requirement); 2-7-8(f)(2) (use of position for personal benefit); and 2-7-8(f)(17) (use of the name “City of Boulder”, here, on a uniform, for personal advantage).

All three officers, Jane Doe #1, and John Doe #1 and #2, thus violated the city Code of Conduct. Any other officers discovered, through this Code of Conduct complaint, to have also been present, in uniform while off-duty, are also covered under this complaint.

Complaint 2: BPD officers attending city council in uniform identified themselves as affiliated with the BPD and endorsed, supported, opposed, or contradicted a social issue or cause being discussed at the meeting, contrary to police policy and the Code of Conduct.

BPD Officers Jane Doe #1 and John Doe #1 and #2 violated BPDPP 150-4(B) when they “identif[ied] themselves as being affiliated with the Boulder Police Department in order to . . . [e]ndorse, support, oppose or contradict any social issue, [or] cause” The presence of armed, in-uniform, off-duty police officers who rose behind Bergh when he began to speak out against the selection committee and its process of recommending new POP candidates was an inappropriate expression of endorsement and support of a position of the BPOA’s opposition to a social issue: selection of candidates for the POP. This intimidation of both public officials and the public at the City Council meeting while blatantly expressing affiliation with the BPD went beyond any right Bergh and the BPOA may have to speak on such a matter.

One may consider whether these officers standing up while in uniform can be considered speech. As an initial matter, rising to stand, in uniform, behind BPOA’s Bergh as he began to speak about the topic of the POP selection process met the element of “identifying themselves as being affiliated with the” BPD and met the second element of endorsing the BPOA’s position on a social issue. As to whether the conduct of the officers was speech, expressive conduct such as theirs is indeed considered speech.¹ The timing with which the officers stood up to endorse Bergh’s public comment was indeed conduct “sufficiently imbued with the elements of communication” that would be characterized as “expressive conduct.”

Such prohibited activity was an especially egregious act that compromised the reputation and professionalism of BPD because these officers undermined the legitimacy of the very body, the POP, empowered by the city to perform community oversight of police and established due to a BPD officer’s deplorable acts while detaining Zayd Atkinson without probable cause or reasonable suspicion.

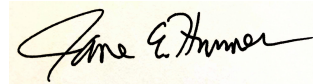
Such acts of endorsement affiliated with BPD violate B.R.C. §§ 2-7-8(e)(1), (2), (6). The officers did not “serve the best interests of the city regardless of . . . [their] personal interest,” rather, they spoke about a topic and in a manner that served their personal interest. They did not “[p]erform duties with honesty, care, diligence, professionalism, impartiality and integrity,” rather, they impugned BPD by intimidating community members to present a position that was far from impartial and in a manner that lacked integrity. And they especially did not “[t]reat colleagues and members of the public professionally and with courtesy” by wearing their uniforms, including weapons, while they challenged the integrity of the selection committee for members of a panel who will be reviewing community complaints of police misconduct and appear to have done so to also intimidate City Council members.

¹ See *Nat’l Ass’n for Advancement of Colored People v. City of Myrtle Beach*, 476 F. Supp. 3d 308, 320 (D.S.C. 2020) (“Conduct may be expressive, and, therefore, protected as “speech” for purposes of the First Amendment, if the conduct in question is “sufficiently imbued with the elements of communication.” *Spence v. State of Wash.*, [418 U.S. 405, 409](#), [94 S.Ct. 2727](#), [41 L.Ed.2d 842](#) (1974).”); *Dempsey v. Alston*, 405 N.J. Super. 499, 514 (App. Div. 2009) (“The protections afforded under the First Amendment not only protect verbal speech but also non-verbal speech, characterized as “expressive conduct.” *R.A.V. v. St. Paul*, [505 U.S. 377, 382](#), [112 S.Ct. 2538, 2542](#), [120 L.Ed.2d 305, 317](#) (1992).”).

By standing up behind BPOA's Daniel Bergh, who recognized the officers when he stated they were there "on their own time **in support of our collective position regarding** the recent **police oversight** panel selection subcommittee's blatant non-compliance with B.R.C. section 2-11-6," Officers Jane Doe #1, and John Doe #1 and #2 violated the code of conduct, as well as BPDPP General Orders 150-4(B).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: February 7, 2023

A handwritten signature in black ink on a light yellow background. The signature reads "Jane E. Hummer" in a cursive script.

Jane Hummer