

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**January 13, 2016  
7:00 P.M.**

**South Berkeley Senior Center  
2939 Ellis Street, Berkeley**

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**  
*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)*
- 4. APPROVAL OF MINUTES**  
Regular Meeting of December 9, 2015
- 5. ELECTION OF 2016 CHAIR AND VICE-CHAIR (discussion and action)**
- 6. CHAIR'S REPORT**  
Including end-of-term remarks by former Chair Bernstein and former Vice-Chair Perezvelez.
- 7. CHIEF OF POLICE'S REPORT**  
Budget, staffing, training updates, and other items.
- 8. PRC OFFICER'S REPORT**  
Status of complaints; announcements.
- 9. OLD BUSINESS (discussion and action)**
  - a. Establish subcommittees for the following subjects, as identified at the prior meeting (*See also PRC Priority List, Attachment 1 to Minutes of December 9, 2015*):
    - Investigation into BPD response on December 7 & 8, 2014
    - Revision of General Orders C-64 (Crowd Control), U-2 (Use of Force), M-2 (Mutual Aid)

- Fair and Impartial Policing
- Media Credentialing Policy
- b. Status on revised General Order on the Right to Watch.
- c. PRC Regulations For Handling Complaints Against Members of the Police Department: Review proposed regulation changes; status of meet-and-confer between City and BPA on; possible implementation of some regulations pending that process; consider establishment of subcommittee.
- d. Request that BPD send copies of all Use-of-Force to the PRC within 21 days of the incident.
- e. Request for intelligence report from Chief Meehan, as required under General Order C-1, for the prior three years.
- f. Transgender General Order
  - i) Consider dissolution of Transgender G.O. Subcommittee
  - ii) Status report from Commissioner Perezvelez
- g. Further discussion and action regarding prioritization of, and method of proceeding on, items on PRC's priority list.

**10. NEW BUSINESS (discussion and action)**

- a. Whether to initiate a policy review based on the policy complaint filed by Eli Hurwitz.

**11. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion and action)**

- a. Body-Worn and Dash Cameras Subcommittee  
Update; schedule next meeting date

**12. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached.

**13. PUBLIC COMMENT**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)*

**Closed Session**

**14. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE**

Complaint #2382

**15. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE**

Complaint #2383

## 16. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

Complaint #2388

*End of Closed Session*

## 17. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

## 18. ADJOURNMENT

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### **SB 343 Disclaimer**

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Contact the Police Review Commission at (510) 981-4950 or [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info).



# COMMUNICATIONS FOR PRC REGULAR MEETING January 13, 2016

## MINUTES

December 9, 2015 *Regular Meeting* Page 7

## COMMUNICATIONS

**Communications #4372 and #1815** – Memo dated 1-7-16 from Commissioner Bernstein re Standard of Proof in BOI Hearings (Regulations Sec. VIII.C.) Page 13

**Communication #4160** – Policy Complaint #2389. Page 19

**Communication #4370** – 2016 PRC Meetings Schedule Page 31

**Communication #2301** – Memo dated 12-9-15 from the Peace & Justice Commission re Support of PRC Minority Report on Berkeley Police Department Response to 12-6-2014 Black Lives Matter Protests. Page 33

**Communication #4432 and #4433** Memo dated 12-9-15 from the Peace & Justice Commission re Statement to Council on NCRIC and UASI Agreements. Page 37

**Communications #1106** – Commendations of BPD employees – December 2014. Page 41

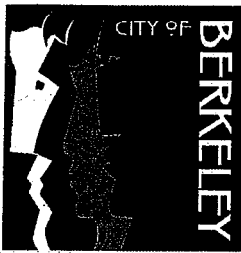
**Communications #4431** – Letter dated 1-5-16 to the BPD Chief from the PRC re Enforcement of new ordinance provisions. Page 43

**Communications #4272** – Commissioner Attendance Report for the period July 1 through December 31, 2015. Page 45

**Communications #1299** – BPD Training and Information Bulletin #220 (9-21-09) re Trespassing/Lodging on Private Property, Public Property, and Parks. Page 49

KJL:mgm





Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
MINUTES  
(unapproved)**

**December 9, 2015  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 7:05 P.M.**

Present: Commissioner Alison Bernstein (Chair)  
Commissioner Jerry Javier  
Commissioner George Lippman  
Commissioner George Perezvelez (Vice Chair)  
Commissioner Michael Sherman  
Commissioner Kad Smith  
Commissioner Ayelet Waldman  
Commissioner Ari Yampolsky

Absent: Commissioner Terry Roberts

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Michael Meehan (left 7:32 p.m.) Lt. Dan Montgomery, Sgt. Ben Cardoza, Ofc. David Bartalini (left 9:00 p.m.)

**2. APPROVAL OF AGENDA**

The agenda was approved by general consent.

**3. PUBLIC COMMENT**

There was one speaker. (Heard following Item #5.)

**4. APPROVAL OF MINUTES**

**a. Motion to approve Special Meeting minutes of October 21, 2015**

Moved/Seconded (Sherman/Perezvelez) Motion Carried

Ayes: Bernstein, Javier, Lippman, Perezvelez, Sherman, and Yampolsky.

Noes: None

Abstain: Smith, Waldman

Absent: Roberts

**b. Motion to approve Regular Meeting Minutes of November 18, 2015**

Moved/Seconded (Perezvelez/Sherman) Motion Carried

Ayes: Bernstein, Javier, Lippman, Perezvelez, and Sherman.

Noes: None Abstain: Smith, Waldman, Yampolsky Absent: Roberts

**5. CHIEF OF POLICE'S REPORT**

- Crime: rate still higher than last year, but lower than the first half of the year.
- Budget: over budget on overtime pay. Even though the dept. is at 95% of its authorized force, OT is needed to backfill. Hiring pool very low right now and other departments are hiring.
- Training: City is one of first in state to have formal credentialing system for training people to work in the Emergency Operations Center.
- PRC's list of work items: request to consider that BPD has a limited capacity for projects and prefer that the Commission focus on big picture items.
- The 5<sup>th</sup> annual MLK community breakfast will be Monday, January 18, 2016; the event is the largest MLK Day event in Berkeley.

**Questions:**

- Removal of people and property from Liberty City: frequency; authority; means of getting property returned?

The property has been picked up by Parks or Public Works, is stored, and can be claimed. Citations were issued for violations of Penal Code sec. 647(e), lodging on public property, following repeated warnings from the City Manager's office.

Dismantling of Liberty City led not by BPD but team of city workers, including HHCS, PW, Parks & Rec, and mental health professionals. Distinction bt. blocking the sidewalk and lodging on public property without consent.

- Overtime effect on budget?

Over budget on the line items, but closely balanced by salary unspent for unfilled positions.

- Implementation of beat plan: how is that going?

The number of officers and calls for service remain substantially the same and shouldn't affect response times. Lt. Montgomery responsible for analyzing; perhaps another 4 – 6 months.

- What big picture items were you referring to?

Use of force, de-escalation, community trust, and other issues critical to the community.

- When will we get data analysis from the Center for Policing Equity?

Don't know, but will ask.

- EBRCS (East Bay Regional Communications System) update?

Communicating with other agencies never the issue; problems were having an encrypted channel, which is still being worked on, and recording, which has been addressed.

- What constitutes blocking the sidewalk such that 647(e) violated?

Need to consult with City Attorney.



**6. OLD BUSINESS (DISCUSSION AND ACTION)**

- a. Create a workplan by prioritizing policy reviews and other postponed matters, and decide how to proceed, which may include forming subcommittees.  
(Referencing Attachment 1 to Agenda, PRC Priority List.)

By general consent, the Commissioners added the following items to the To-Do List: 21. Media credentialing, 22. Review of BPD budget, and 23. BPD preparedness and capacity to respond to terrorist threats; and then voted on their top ten list of priorities, as reflected in Attachment 1 to these minutes.

By general consent, the Commission formed a Subcommittee on Body-Worn and Dash Cameras.

Chair Bernstein appointed the following Commissioners to the Subcommittee: Lippman, Yampolsky, Javier, Roberts.

- b. Review commendations of BPD staff from August through December 2014, and identify those worthy of particular recognition.

By general consent, the Commissioners singled out the following officers and other BPD staff for special recognition; and asked the PRC to write a letter to the Chief informing him of such and to publish their names in the meeting minutes:

Ofc. Robin Fuentes

Det. Glenn Pon

Ofc. Stephanie Polizziani

Ofc. Stephen Burcham

Sgt. Mary Kusmiss

Ofc. Shan Johnson

Ofc. Nathan Patrick

Sgt. Emily Murphy

CSO Jess Schwarck

Ofc. Jitendra Singh (twice)

Res. Ofc. Kevin Fong

Ofc. Brian Mathis

Ofc. Victor Martinez (twice)

Ofc. Beau Hunt

Ofc. Christopher Waite

Ofc. Richard Marin

Ofc. Edward Galvan

- c. Establish 2016 Regular Meeting schedule.

By general consent, the Commissioners adopted the proposed meeting schedule for 2016.

**7. NEW BUSINESS (discussion and action)**

Request to review BPD's plans or orders for enforcing recently-enacted ordinances regarding conditions on sidewalks and other public places (Ordinance Nos. 7,448-N.S., 7,449-N.S., and 7,450-N.S.).

By general consent, the Commission asked the PRC Officer to write a letter to the Chief asking if the Department plans to issue a General Order, Training Bulletin, or Captain's instruction regarding enforcement of these Ordinances.

**8. CHAIR'S REPORT**

- The Chair attended the December 1, 2015 Council meeting, but the PRC's Investigative Report was not heard, and is now scheduled for the December 15 meeting.
- The PRC holiday gathering will be held on the afternoon of January 3, 2016.

**9. PRC OFFICER'S REPORT**

- The status of individual complaints was announced.
- Consideration of the BPD's Mutual Aid Pacts was also postponed from the Council's December 1 meeting to the December 15 meeting.
- A report on the 2015 NACOLE conference was given.
- There was a discussion about Caloca appeals and their relationship, if any, to the Internal Affairs discipline process. The PRC Officer will prepare a report on of sustained allegations in BOI hearings and resultant Caloca appeals.

**10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached.

**11. PUBLIC COMMENT**

There were two speakers.

***Closed Session***

**12. WHETHER TO ACCEPT LATE-FILED COMPLAINT**

Complaint #2387

**Motion to approve Late File as timely.**

Moved (Lippman) Motion **failed** for lack of second.

***End of Closed Session***

**13. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION**

The lack of a vote to accept the late-filed complaint was announced.

**14. ADJOURNMENT**

**Motion to adjourn the meeting was carried by general consent.**

Meeting was **adjourned** at 10:00 p.m.

**PRC Priority List**

As decided at the December 9, 2015 meeting

<b>Top Ten List (NOT in order of most votes)</b>	<b>Notes</b>
Investigation into BPD response on Dec. 7 & 8, 2014	Subcommittee to be formed
Revision of General Orders, incl. C-64, U-2, M-2	Subcommittee to be formed
Body worn and dash cameras (Note: report due to City Clerk by February 25)	Subcommittee formed. Members are Javier, Lippman, Roberts and Yampolsky.
Fair and Impartial Policing (includes racial profiling concerns and evaluation and review of recently-released stop data)	Subcommittee to be formed.
Policy review re Identification of race on traffic citations	Assign to F&I Policing Subcommittee
G.O. W-1: Right to Watch	Agendize
BPD acquisition of non-military armored vehicle	Agendize
Review of BOI procedures and underlying authority (Copley Press, PSOBRA, BPA v. COB, etc.)	Staff to prepare memo.
Review of pending regulation changes, and discussion of possible actions, including promulgation and implementation of agreed upon regulation changes and report to Council	Agendize
Media credentialing policy	Subcommittee to be formed.
<b>High priority; other action</b>	
General Order regarding treatment of Transgender Persons	Comm. Perezvelez to draft and submit proposed G.O. for PRC's consideration. (Subcommittee to be dissolved.)
<b>Additional items to be agendized</b>	
McKinley Ave. Staging – policy review	Staff to contact Capt. Greenwood to return for final report.
Propose all BPD Use of Force Reports be sent to PRC within 21 days	
Request for Intelligence report from Chief Meehan, as required under General Order C-1, for at least the last three years	
Commissioner training on law and police procedures	Begin Spring 2016.

**PRC Priority List**

As decided at the December 9, 2015 meeting

<b>Remaining items</b>	
Outreach – community awareness of who the PRC is and what it does	
Policy review re Smoking Control Ordinance	On 7-15-15, PRC authorized further action as memorialized in 8-7-15 letter from PRC Officer to Chief expressing concerns and making requests.
Policy review of Citations to bicyclists running red lights	(A. Bernstein would like to add "Idaho stop" issue)
How to read CAD reports	
Evaluation of City policies regarding seizure and storage of homeless persons' property	
Achieving agreement with BPD regarding consultation on all new and changes to G.O.s	
Protest guide on BPD website	
BPD budget review	
BPD preparedness and capacity	Comm. Roberts' item

## MEMORANDUM

TO: Members, Police Review Commission  
FROM: Commissioner Alison Bernstein  
RE: Standard of Proof in BOI Hearings (Regulations Sec. VIII.C.)  
DATE: January 7, 2016

Since the inception of the PRC, the standard of proof used in Board of Inquiry hearings has been clear and convincing evidence. This high standard is not found in the enabling legislation, but was obtained by agreement brokered between the City of Berkeley and the Berkeley Police Association after the passage of the PRC's enabling legislation. Careful consideration of the use of the clear and convincing standard, and exploration of the other settings in which this standard is used, makes clear that it is an inappropriate standard for employee discipline because it places that burden and the risks on the parties in a way that is inconsistent with general public policy, and creates an inherent contradiction in the disciplinary process of our City government.

The standard of proof used in a proceeding reflects a societal determination of the appropriate distribution of risk, both under generally agreed upon norms and due process. The United States Supreme Court has explained that the function of standard of proof is "to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication . . . The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision." *Addington v. Texas* (1979) 441 U.S. 418, 423.

There are generally three standards, or levels of proof, applied in adjudicative proceedings. At one end of the spectrum is "preponderance of the evidence," which is the conventional standard used in civil litigation. Under the preponderance standard the risk of error is shared between the parties; that is, it is not weighted toward one interest or another.

At the other end, in criminal cases, the standard is "beyond a reasonable doubt." We have found that our concepts of due process require that the liberty interests of the accused be protected, so we apply a high standard of proof to exclude, as nearly as possible, the likelihood of erroneous judgment. The risk of error in criminal cases is weighted toward the government, as its burden is higher.

"Clear and convincing evidence" is one of the intermediate standards. This standard is used in civil settings in which policy makers believe the interests of the accused are more substantial, and deserving of more protection, than in the typical civil action. The use of this standard reduces the risk to the accused by increasing the plaintiff's burden of proof substantially. Examples of the types of interests which courts or legislative bodies have found appropriate for the use of the clear and convincing standard are: deportation and denaturalization proceedings, civil commitment proceedings, termination of life support, and termination of parental rights.

Examination of the types of interests which are adjudicated in PRC proceedings, and the role of the PRC in our governmental process as defined by the California courts makes clear that the use of the clear and convincing standard is bad public policy. First, the current system allows for two processes which the California courts have defined as parallel, the Internal Affairs of the Berkeley Police Department, and the Board of Inquiry by the PRC, to investigate the same allegations which are reported to the same final arbiters but use two different standards of proof. Second, and more importantly, in applying the clear and convincing standard, the city is weighting the interests of the police officers in the civilian review process more highly than those of any other civil service employee in disciplinary proceedings anywhere in our City, and is circumventing standard practice in employee disciplinary proceedings and civil litigation.

In 2008, the Court of Appeal held that the PRC process was governed by the provisions of Penal Code sec. 832.5 et. seq. because the PRC had a role in disciplinary matters. *Berkeley Police Ass'n v. City of Berkeley* (2008) 167 Cal.App.4th 385, 402. The Court

specifically held that the parallel procedures of IA and the PRC were equally covered under the applicable statutes, as the findings of either could be relied upon in a determination to impose discipline. As a de facto part of the Department's disciplinary process, the PRC falls within the rubric of the so-called *Skelly* hearing process. In 1975 the California Supreme Court established that permanent civil service employees have a vested property interest in the continuation of their employment and that due process requires certain procedural protections be met before the state can take action against this interest. *Skelly v. State Personnel Board*, 15 Cal.3d 194, 206-207. The Court reasoned that because such employment constitutes a legitimate claim of entitlement to a government benefit, "the state must comply with procedural due process requirements before it may deprive its permanent employees of this property interest by punitive action." Specifically, before imposing discipline, a government employee is entitled to notice and a hearing, at which they may bring an attorney and confront the evidence against them. The standard of proof at such a hearing is preponderance of the evidence. *Skelly v. State Personnel Board*, 15 Cal.3d 194, at 204, fn. 19. The Public Safety Officers Procedural Bill of Rights Act (Gov't Code sec. 3300 et seq., "PBRA") adds specific protections for police officers to the *Skelly* process, but does not alter the standard of proof to be applied in these hearings.

The Court in *BPA v. City of Berkeley* found that the PRC's Board of Inquiry process is parallel to the Internal Affairs process, and is thus governed by PBRA, and by extension the reasoning of *Skelly*. However, under our current system, the same arbiter (the Chief of Police or the City Manager) may be asked to review fact findings in the same incident, but which have been reached applying different standards of proof. Without a clearly articulated policy reason, it is simply bad public policy to have such rampant inconsistencies presented to a single arbiter who is trying to determine what, if any, remediation is necessary for a city employee.

General policy considerations also support the use of the preponderance of the evidence standard. The clear and convincing standard is generally not used in the

employment context. In 1989, the Supreme Court addressed the use of the clear and convincing standard in lawsuits alleging workplace discrimination in violation of Title VII of the Civil Right Act. *Price Waterhouse v. Hopkins* (1989) 490 U.S. 228. Under prior law, once evidence of discriminatory motive was proven, an employer had to prove by clear and convincing evidence that it would have made the same decision in the absence of discrimination. The Supreme Court rejected the clear and convincing standard, reasoning that an exception to the conventional rules of civil litigation should only apply when “the government seeks to take unusual coercive action—action more dramatic than entering an award of money damages or other conventional relief—against an individual.” *Price Waterhouse v. Hopkins* (1989) 490 U.S. 228, 253-54. The High Court then went on to note the kinds of interests which have been found to justify the use of the clear and convincing standard: termination of parental rights; involuntary commitment; deportation; and denaturalization.

These same general rules hold true in California, and California courts have generally held that while the preponderance of the evidence standard is to be applied in employee disciplinary proceedings, the clear and convincing standard would apply only in license revocation proceedings. In *Ettinger v. Board of Medical Quality Assurance*, the court reasoned that although employee discipline cases are civil in nature and that “generally proof in civil cases is required by a preponderance of the evidence,” the question of the standard of proof to be used in determining whether or not to suspend a medical license involves different policy considerations and a higher standard of proof. “It seems only logical to require a higher standard of proof when dealing with revocation or discipline of a professional licensee as opposed to mere termination of state employment. The former affects one’s right to a specific professional employment, while the latter involves only the right to be employed by a specific employer. It is the totality of professional employment opportunity involving vested interest rights which requires the higher standard.” *Ettinger v. Board of Medical Quality Assurance*, 135 Cal.App.3d 853, 855 (1982).



Both state and federal courts have stated a clear policy that employee discipline proceedings are essentially civil proceedings, and as such the interests of the parties are to be weighted evenly and the preponderance of the evidence standard should apply. It is only when some greater liberty interest is involved - parentage, citizenship, civil commitments, cessation of life support, or the revocation of access to an entire class of employment -- that the clear and convincing standard should be applied.

Adoption of the preponderance of the evidence standard in our BOI hearings would bring the PRC process in line with the general standards used in civil service personnel hearings, including the parallel IA proceedings. Moreover, applying the preponderance of the evidence standard would be consistent with public policy, which clearly articulates that in employee discipline matters, the interests of the parties should be evenly weighted by using the preponderance of the evidence standard.





# POLICY COMPLAINT FORM

PRC POLICY  
CASE # 2389

## Police Review Commission

1947 Center Street, 3rd Floor, Berkeley, CA 94704

Website: <http://www.ci.berkeley.ca.us/prc>

E-mail: [prc@ci.berkeley.ca.us](mailto:prc@ci.berkeley.ca.us)

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received

12-9-15

1

Name of Complainant: Harwitz Eli Isaac  
Last First Middle

Home Address: 9000 Marshall - Petaluma CA 94940  
Street City State Zip

Home Phone: 707-364-0361 Alt Phone: \_\_\_\_\_  
City

E-mail address: Eli.Hurwitz@gmail.com

Occupation: Marketing Field manager Gender: M Age: 35  
Digital content Production

Ethnicity (For statistical purposes only):

- Asian
- Black
- Caucasian
- Hispanic/Latino
- Multiethnic: \_\_\_\_\_
- Other: \_\_\_\_\_

COMMUNICATION No. 4160

2

Please identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

on 12-8-15 mid day Berk officers were persueing a citation campaign on bikers at Bikers Blvd at milvia/blake. They cited approx a dozen individuals, for failing to come to a complete stop. They used an exploitative and unlatifull location to make stops and citations

3

Please provide a factual description of the incident that forms the basis of your complaint. Please be specific and include what transpired, and how the incident ended.

Location of Incident (if applicable) milvia and Blake

Date & Time of Incident (if applicable) 12-8-15 noon

1. They were ticketing individuals where there wasn't even a stop sign. It was a 3 way stop so no stop sign yet they cited people for not stopping. (can submit image)
2. The signs give bikers the impression that they can bike <sup>slowly</sup> thru a stop if there is no cars present.
3. Bikers were going under 5 miles an hour

4

What changes to BPD policy, practice, or procedure would you propose?

- ~~New Biker~~ ~~Everybody~~ uses biker
1. Signs that clarify the misleading arrows  
"Bikers must stop on bikers Blvd." etc
  2. nobody stops because of the misleading signs  
so just ticketing ~~people~~ a bunch of people  
will not fix the problem and will aggravate  
citizens

one day

5

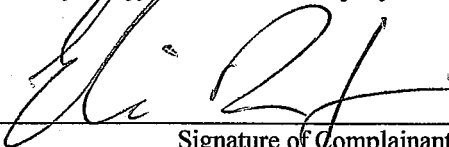
Is there any additional information you can provide the PRC about your complaint?

Officers took advantage of the 3 way stop to give tickets when there is no stop sign coming from that direction. Cars can't go thru but Bikers can. so these have a high systemic issues w/ policing bikers Blvd

6

### VERIFICATION

I hereby certify that, to the best of my knowledge, the statements made herein are true.

  
Signature of Complainant

12-9/15  
Date signed

7

### How did you hear about Berkeley's Police Review Commission?

- Internet
- Publication: \_\_\_\_\_
- Referral: \_\_\_\_\_
- Other: \_\_\_\_\_

*For Office Use Only*

Complaint Received By \_\_\_\_\_

**NOTICE TO APPEAR**

Traffic  Non-Traffic  Misdemeanor

132747

1 Date of Violation: 2/8/15 Time: 7:18 AM Day of Week: Case No. (PM) SMTWTFSS

2 Name: (First, Middle, Last) Owners Responsibility (Veh. Code, § 40001)

3 Address

4 City: State: ZIP Code:

5 Driver Lic. No.: State: Age: Birth Date: Juvenile (Phone No.):

6 Sex: Hair: Eyes: Height: Weight: Race: Other Description:

7 Veh. Lic. No. or VIN: State:  COMMERCIAL VEHICLE (Veh. Code, § 15210(b))

8 Yr. of Veh. Make: Model: Body Style: Color:

9 Evidence of Financial Responsibility:  HAZARDOUS MATERIAL (Veh. Code, § 353)

10 Registered Owner or Lessee:  Same as Driver

11 Address:  Same as Driver

12 City: State: ZIP Code:

13 Correctable Violation (Veh. Code, § 40810)  Booking Required  Misdemeanor or Infraction (Circle)

14 Yes No Code and Section Description

15   29450(a) CUL 500? 500? M

16   M

17 Speed/Approx. P.F./Max. Spd. Veh. Limit Safe Radar:  Continuation Form Issued

18 Location of Violation(s):

19 Comments (Weather, Road & Traffic Conditions):  Collision

20  Violations not committed in my presence, declared on information and belief.

21 I declare under penalty of perjury under the laws of the State of California, the foregoing is true and correct.

22 Arresting or Citing Officer: Serial No.: Days Off:

23 Date: Name of Arresting Officer, if different from citing officer:

24 **WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.** X Signature

25 WHEN CONTACT COURT CLERK AFTER 30 DAYS BUT NO LATER THAN: 2/8/15 Time: AM/PM

26 WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE

27 Where: Superior Court of California, Alameda County

Criminal: Willy W. Manuel Courthouse, 861 Washington St, Oakland, CA 94607, 510-627-4702

Oakland Traffic Court Clerk: Willy W. Manuel Courthouse, 861 Washington St, First Floor, Oakland, CA 94607, 510-627-4701

28  To Be Notified: You may arrange with the clerk to appear at a night session of the court. DEFENDANT COPY SEE REVERSE

Official Council of California Form No. 1107 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40560, Pen Code, § 653.9) TR-130

**WARNING:** If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A \$1,000 FINE, regardless of the disposition of the original charge. (Veh. Code, § 40508; or Pen. Code, § 853.7) In addition, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration (In absentia) pursuant to Vehicle Code section 40903(a) upon any alleged infraction, as charged by the arresting/citing officer.

**JUVENILE:** If you were under age 18 at the time the citation was issued, you must appear in court with your parent or guardian.

**COURTESY NOTICE:** A courtesy notice may be mailed to the address shown on your citation, indicating the required deposit of money (bail) that may be forfeited instead of your appearing in court. If you do not receive such courtesy notice, you are still required to comply with the terms below by the appearance date.

**WHAT TO DO**

You are required to appear at court for a misdemeanor violation. For all violations, your court date/time/place are on the front of this notice to appear. Have the citation with you when contacting the court. In all infraction cases, you must do one or more of the following for each violation:

- Pay the fine (bail)
- Correct the violation (traffic cases, when applicable)
- Appear in court
- Request traffic school (traffic cases, when applicable)
- Contest the violation
- Request trial by written declaration (traffic cases)

If you do not do one of the above actions, then a "failure to appear" charge will be filed against you (Veh. Code, § 40508(a)) and your driver license may be withheld, suspended, or revoked. In some courts you may be charged an amount in addition to the bail amount and the case may be turned over to a collection agency (Pen Code, § 1214.1).

- 1. If you do NOT contest the violation:**
- a. **(Pay the bail amount)** Contact the court for bail information. You will not have to appear in court. You will be convicted of the violation, and it will appear on your record at the Department of Motor Vehicles (DMV). A point count may be charged to your DMV record and your insurance may be adversely affected.
  - b. **(Traffic school)** You may be able to avoid the point count by completing traffic school. You must pay the bail amount, and you may have to pay other fees. After you attend traffic school, the violation will be dismissed and the point count will not be added to your DMV record. Contact the court to request traffic school.
  - c. **(Correctable violations)** If the "Yes" box is checked on the front of your ticket, the violation is correctable. Upon correction of the violation, have a law enforcement officer or an authorized inspection/installation station agent sign below (Veh. Code, § 40516). Registration and driver license violations may also be certified as corrected at an office of the DMV or by any clerk or deputy clerk of a court. The violation will be dismissed by the court after **PROOF OF CORRECTION** and payment of a transaction fee are presented to the court by mail or in person by the appearance date. Violations of Vehicle Code section 6028 (automobile liability insurance) will be dismissed only upon: (1) your showing or mailing to the court evidence of financial responsibility valid at the time this notice to appear was issued; and (2) your payment of a transaction fee.

**CERTIFICATE OF CORRECTION MUST BE RETURNED TO COURT**

Section(s) Violated	Signature of Person Certifying Corrections	Serial No.	Agency	Date

- 2. If you contest the violation (select a or b):**
- a. **(Court trial)** Send a certified or registered letter, postmarked not later than five days prior to the appearance date, or come to the court by the appearance date to request a court trial on a future date when an officer and any witnesses will be present. You will be required to submit the bail amount.
  - OR-
  - b. **(Trial by written declaration (traffic cases))** Send a certified or registered letter, postmarked not later than five days prior to the appearance date or come to the court on or before the appearance date to request a trial by written declaration. Submit the bail amount. You will be given forms to allow you to write a statement and to submit other evidence without appearing in court. An officer will also submit a statement. The judicial officer will consider the evidence and decide the case.
3. **Make check/money order payable to Clerk of the Court.** Write your citation number and driver license number on your check or money order. You may pay in person, by mail, or phone.
4. If "Booking Required" is checked, you must appear for booking on a weekday prior to your court date at Berkeley Jail, 2100 Martin Luther King Jr. Way between the hours of 0900 AM to 5:00 PM and bring the signed verification to your court appearance. Call 510-981-5766 for appointment.
- Booking Verification:** I declare under penalty of perjury under the law of the State of California that

\_\_\_\_\_ was booked on \_\_\_\_\_ Date \_\_\_\_\_ Officer \_\_\_\_\_ Serial No. \_\_\_\_\_

5. Additional information is available at: [www.ncgov.org](http://www.ncgov.org)

## Norris, Byron

---

**From:** Eli Hurwitz <elihurwitz@gmail.com>  
**Sent:** Wednesday, December 09, 2015 12:09 PM  
**To:** Norris, Byron  
**Subject:** Re:

thankyou. also let me fix the statement sent with the street paint image. When I said "light" I meant "stop sign".. there are a few lights on bikers blvd but mostly stop signs. regards

On Wednesday, December 9, 2015, Norris, Byron <[BNorris@ci.berkeley.ca.us](mailto:BNorris@ci.berkeley.ca.us)> wrote:

Mr. Hurwitz,

Thank you for the additional information.

**From:** Eli Hurwitz [mailto:[elihurwitz@gmail.com](mailto:elihurwitz@gmail.com)]  
**Sent:** Wednesday, December 09, 2015 11:43 AM  
**To:** Norris, Byron <[BNorris@ci.berkeley.ca.us](mailto:BNorris@ci.berkeley.ca.us)>  
**Subject:**

ok I did find a stop sign but unfortunately it's hidden by plants which is unacceptable as far as a location to be giving citations *Photo # 2*

On Wednesday, December 9, 2015, Eli Hurwitz <[elihurwitz@gmail.com](mailto:elihurwitz@gmail.com)> wrote:

*Photo # 1*  
here is an image that shows the street paint at every block which gives bikers the impression that they have the right away when there are no cars present. many bikers I know assumed that this is what the indicators meant since many other cities around the nation use these indicators for exactly that. I've observed that 9 out of 10 bikers roll thru the light at slow speeds when no cars are present. so this is not an issue of a few bad actors, and ticketing a few individuals won't solve the problem.

On Wednesday, December 9, 2015, Eli Hurwitz <[elihurwitz@gmail.com](mailto:elihurwitz@gmail.com)> wrote:

*Photo # 3: view from opposite side shown in photo #2*

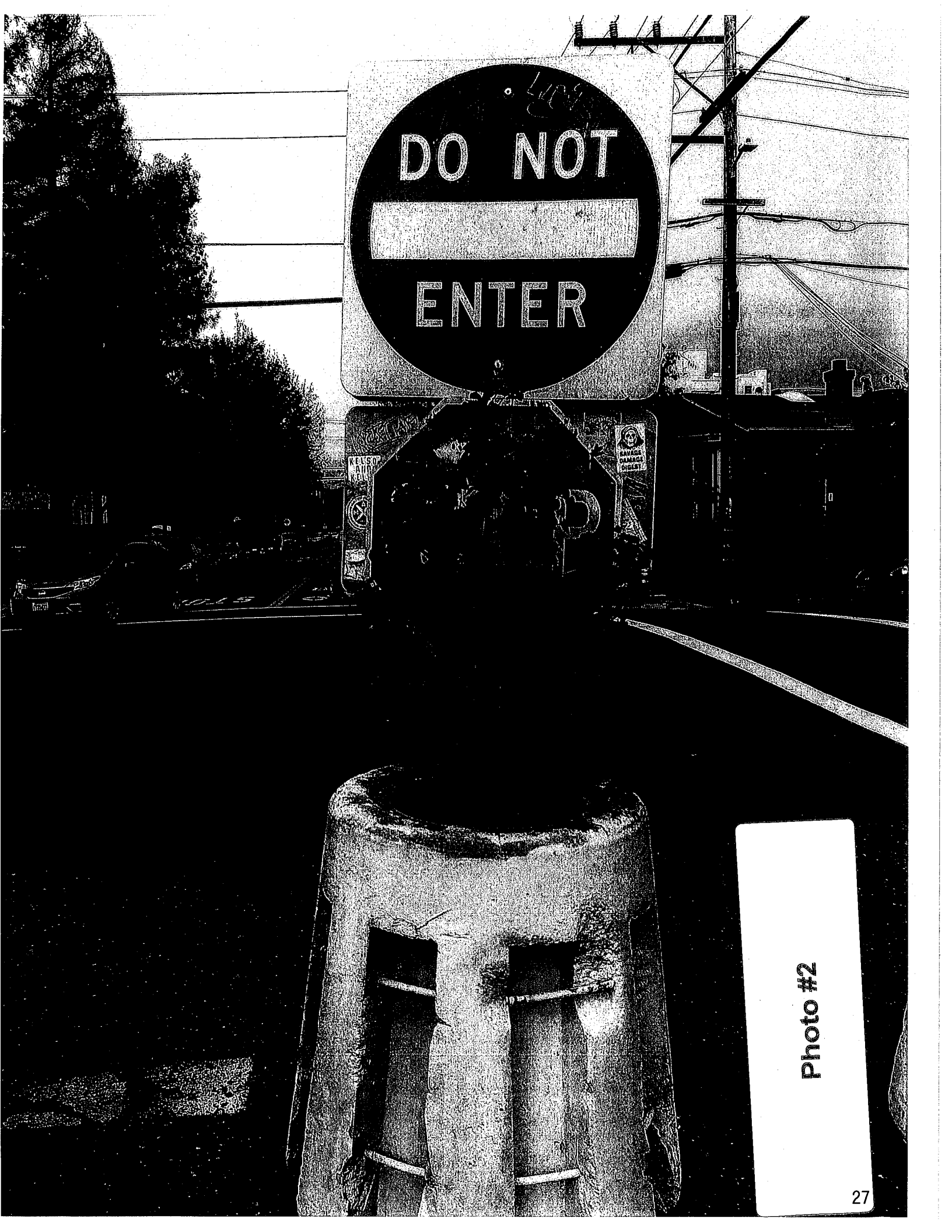




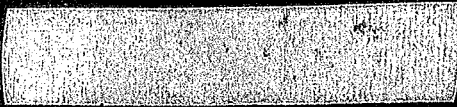


Photo #1





1109  
DO NOT



ENTER

KILLSO

SAVAGE  
DAMAGE  
DIRECT

Photo #2



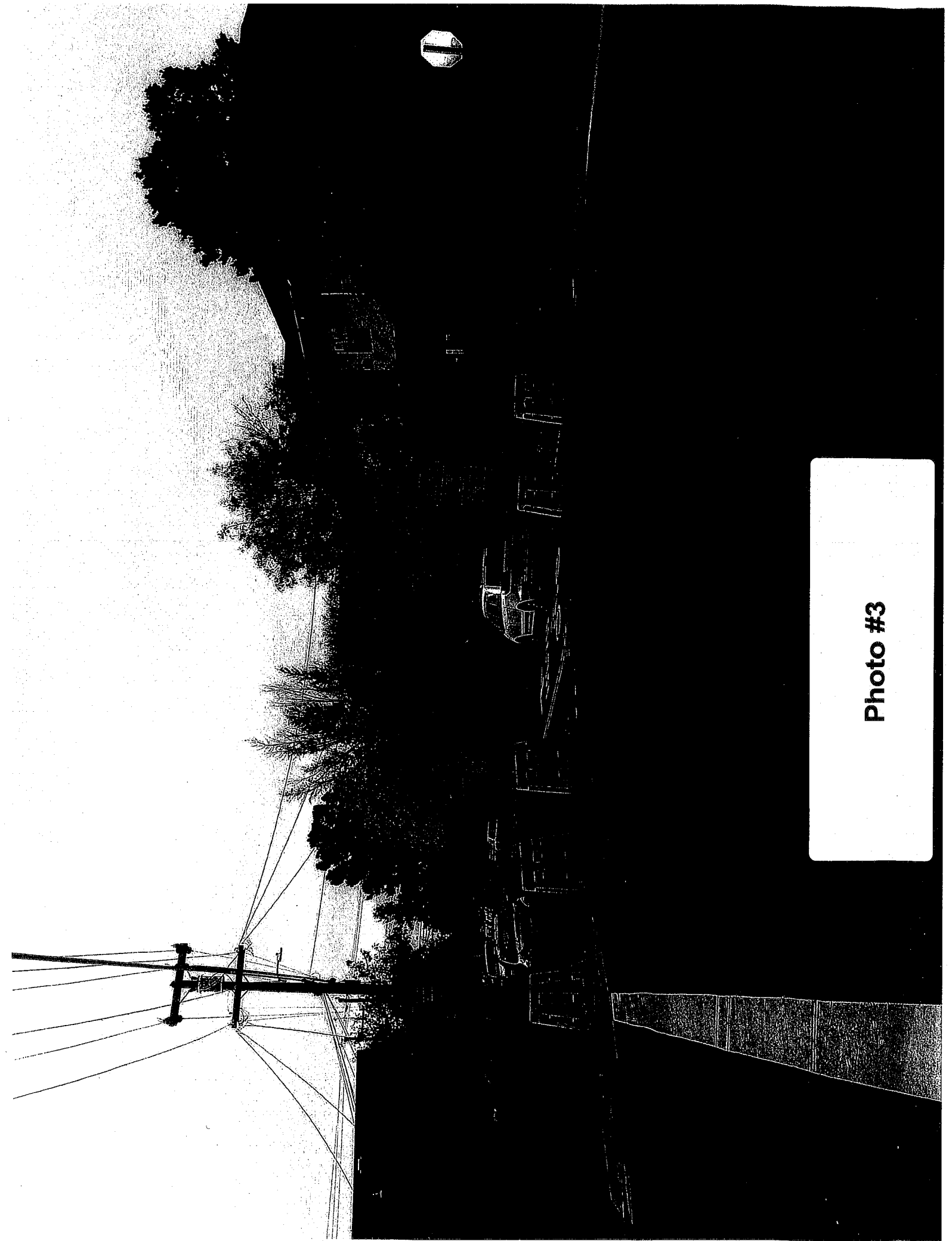


Photo #3



Name of Commission: **Police Review Commission**

Commission Secretary: **Katherine J. Lee**

**2016 Meeting Dates**

Month	Meeting Day and Date	Time
January 2016	Wednesday 1/13/16	7:00 p.m.
	Wednesday 1/27/16	7:00 p.m.
February 2016	Wednesday 2/10/16	7:00 p.m.
	Wednesday 2/24/16	7:00 p.m.
March 2016	Wednesday 3/9/16	7:00 p.m.
	Wednesday 3/23/16	7:00 p.m.
April 2016	Wednesday 4/13/16	7:00 p.m.
	Wednesday 4/27/16	7:00 p.m.
May 2016	Wednesday 5/11/16	7:00 p.m.
	Wednesday 5/25/16	7:00 p.m.
June 2016	Wednesday 6/8/16	7:00 p.m.
	Wednesday 6/22/16	7:00 p.m.

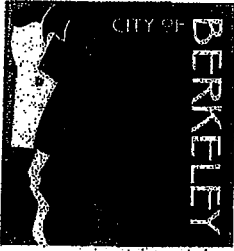
Month	Meeting Day and Date	Time
July 2016	Wednesday 7/13/16	7:00 p.m.
	Wednesday 7/27/16	7:00 p.m.
August 2016	No Meeting	
September 2016	Wednesday 9/14/16	7:00 p.m.
	Wednesday 9/21/16	7:00 p.m.
October 2016	Thursday 10/13/16	7:00 p.m.
	Wednesday 10/26/16	7:00 p.m.
November 2016	Wednesday 11/9/16	7:00 p.m.
December 2016	Wednesday 12/14/16	7:00 p.m.

KJL:mgm

COMMUNICATION No. 4370








Peace and Justice Commission

COMMUNICATION No. 2301

December 9, 2015

To: Honorable Mayor and Members of the City Council

From: Peace & Justice Commission

Submitted by:  Eric Brenman, Secretary  
Peace & Justice Commission

Subject: Support of PRC Minority Report on Berkeley Police Department  
Response to 12/6/2014 Black Lives Matter Protests

At its meeting on December 7, 2015, the Peace & Justice Commission unanimously approved the transmittal of its endorsement of the minority report of the Police Review Commission regarding the Berkeley Police Department response to the December 6, 2014 Black Lives Matter protests (attached).

**M/S/C:** (Bohn/Mabanta)

**Ayes:** Bohn, Kenin, Lippman, Mabanta, Meola

**Noes:** None.

**Abstain:** None.

**Absent:** Herrera; Maran; Nicely (excused); Nuruddin; Reyes (excused)

Attachment

Berkeley Peace and Justice Commission  
Support PRC Minority Report: Black Lives Matter Protest Investigation  
December 7, 2015

The Peace and Justice Commission endorses that minority report contained within the Berkeley Police Review Commission's Dec. 1, 2015 "Report to the City Council: Investigation Into the Police Department Response to Protests on December 6, 2014." The minority report is reproduced below.

\*\*\*

The undersigned PRC commissioners support the majority report, which is strong in many respects.

In a few particulars, the undersigned differ from the majority report. Below we state and explain our dissenting opinions.

*Recommendations 18 and 22: Use of CS gas*

*BPD:*

*We recommend that BPD review its policy regarding the use of CS gas and batons in crowd control situations.*

*PRC: (7.29.15)*

BPD, in conjunction with the PRC, should review its policy regarding the use of CS gas and batons...with the intent of putting substantial constraints on the use of CS gas in crowd control and crowd management.

>> The undersigned commissioners recommend:

**Prohibit CS gas in crowd control and crowd management:**

Signed: Commissioners Bartlett, Lippman, and Sherman

*Recommendation #31: Video surveillance*

*BPD*

We recommend the Department invest in quality video cameras, live stream capability and video capture software to improve situational awareness.

*PRC (9.16.15)*

The PRC recognizes the need for the Department to make better-informed decisions in crowd control situations. Therefore, the department needs access to real time surveillance tools. Gathering such information will require some degree of surveillance, which raises concerns regarding citizens' privacy. We recommend that the Council make a determination of what, if any, surveillance tools should be considered for use, and then refer the matter to the PRC to obtain community input and work with the BPD to establish the appropriate guidelines for such use.

>> The undersigned commissioners recommend adding this sentence to the PRC majority's recommendation:

**PRC should be asked to make a recommendation on any proposal for a surveillance tool before a decision is made to adopt the tool.**

Signed: Commissioners Bartlett, Lippman, and Sherman

*Recommendation: Mutual Aid*

**PRC (10.8.15)**

We believe it is critical for BPD to communicate to mutual aid responders the values of the COB, including de-escalation tactics, before and during a crowd event. BPD should continue to review its briefing and communication practices to make every effort that use-of-force policies by mutual aid responders is consistent with our policies. We request that the BPD make specific recommendations on strategies and procedures to achieve these goals.

>> The undersigned commissioners recommend:

**Abide by state law, section 8618 of the Legislative Code which states, "Unless otherwise expressly provided by the parties, the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident, including the direction of personnel and equipment provided him through mutual aid."<sup>i</sup>**

**Abide by the Law Enforcement Mutual Aid Plan prepared by the California Governor's Office of Emergency Services which states that "the jurisdiction requesting mutual aid" is responsible for "advising responders what equipment they should bring."<sup>ii</sup>**

**Abide by the 1992 Berkeley City Council resolution mandating that the BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum extent amount allowable by law.<sup>iii</sup>**

**The BPD is accountable for the actions of other departments participating in a mutual aid activity in Berkeley. Therefore, the department should account for what policing equipment is brought into Berkeley, in particular what type of less-lethal projectiles and chemical agents, and how many rounds are discharged by mutual aid participants, what type of strikes were delivered, and how many civilian injuries were reported.**

**Pathfinders, BPD personnel assigned to accompany mutual aid agencies in Berkeley, will not only facilitate communication but play an active role in supervising mutual aid and ensuring that mutual aid act under BPD command and follow BPD policies. . . .**

Signed:

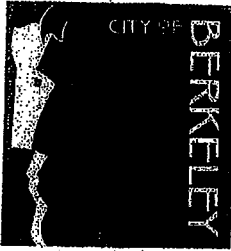
Commissioners Bartlett and Lippman

<sup>i</sup> <http://codes.lp.findlaw.com/cacode/GOV/1/2/d1/7/11/s8618>

<sup>ii</sup> <http://www.caloes.ca.gov/LawEnforcementSite/Documents/1Blue%20Book.pdf>

<sup>iii</sup> "That the BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum amount allowable by law...advise such units that they will be expected to comply with [BPD] regulations and policies," and that if there are conflicts with other agencies over policies which cannot be resolved, "BPD reserves the right to elect not to deploy those units affected....Where the City of Berkeley has adopted more stringent standards, those will take precedence over county-wide standards within Berkeley." <http://www.berkeleyside.com/wp-content/uploads/2015/02/2003-09-09-Item-54-57.pdf>

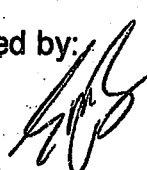




COMMUNICATION No. <sup>4432</sup>  
4433

**Peace and Justice Commission**

**December 9, 2015**

**To:** Honorable Mayor and Members of the City Council  
**From:** Peace & Justice Commission  
**Submitted by:**  Eric Brenman, Secretary  
Peace & Justice Commission  
**Subject:** Statement to Council on NCRIC and UASI Agreements

At its meeting on December 7, 2015, the Peace & Justice Commission unanimously approved the transmittal of the attached statement related to its opposition to BPD relationships with the Northern California Regional Intelligence Center (NCRIC) and the Urban Areas Security Initiative (UASI) (attached).

**M/S/C:** (Bohn/Mabanta)

**Ayes:** Bohn, Kenin, Lippman, Mabanta, Meola

**Noes:** None.

**Abstain:** None.

**Absent:** Herrera; Maran; Nicely (excused); Nuruddin; Reyes (excused)

Attachment

Statement to Council on NCRIC and UASI Agreements  
December 7, 2015  
Berkeley Peace and Justice Commission

The BPD's agreements with NCRIC, the Northern California Regional Intelligence Center, and UASI, the Urban Areas Security Initiative, come before you again on December 15. Peace and Justice reiterates our opposition to these relationships.

Every year since 2012 the BPD has released summaries of the Suspicious Activity Reports (SARs) it sends to NCRIC, the regional intelligence fusion center. Each year the summary contains disturbing examples of reportage on constitutionally protected speech, belief, and association, and reporting on non-criminal activity, all in violation of 28 Code of Federal Regulations (CFR) 23 and your 2012 order that the Department abide by it.

The SAR process is prone to abuse and has been shown nationally to rely on tainted reports full of racial, ethnic, and political bias. Not only are Berkeley's own reports tainted in this way, but Berkeley receives data from far more conservative jurisdictions that make little pretense of objectivity.

The Peace and Justice Commission therefore recommends against approval of the NCRIC agreement at this time.

\*

With regard to the UASI agreement, strong community concerns have arisen about the Urban Shield exercise, which is paid for by UASI. With all the turmoil and pain this country has lived through in the past year, we should know that the burden of militarized policing falls most heavily on African American and other communities of color. We support the proposal by four members of the Police Review Commission to direct the BPD to take a one-year break from participation in Urban Shield, as a beginning to demilitarizing the police department.

Beyond Urban Shield, Peace and Justice remains concerned about the entire UASI relationship. The department should cease this relationship and find other ways to get the training and equipment it needs without this entanglement with the national security, Pentagon, and espionage network.

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For reference, here are some Berkeley SARs from recent years.

January 10, 2012

BPD officers had contact with two persons claiming to be Sovereign Citizens (meaning members of the Sovereign Nation) during a traffic stop for a vehicle code violation. The group Sovereign Nation is an *anti-federal government group* that has been associated with criminal violence, including the murder of police officers. The driver produced a *Sovereign Citizen "ID card"* when asked for identification.... The person's vehicle was towed for driving on a suspended license.

March 4, 2012

Incident: BPD received a request to do a welfare check on the reporting party's sister. The reporting party's sister had a cell phone, which officers called to make contact with the person to determine if she was in duress. A separate person answered the cell phone and berated the officers with *Sovereign Nation rhetoric*, which is fairly unique to this group, about the officers having no constitutional domain over them and the officers being puppets of a corporation government.

April 1, 2012

BPD had contact with a person at an athletic field in Berkeley who appeared to be a military personnel impersonator. This person was in *possession a military uniform and enough medals to span a 50-year military career despite being only 40 years of age.*<sup>1</sup>

July 10, 2013:

BPD contacted an individual during a traffic stop. *The person used language consistent with a group known to confront law enforcement.*

Feb 3, 2014:

A BPD officer conducted a vehicle code enforcement stop on a car driven by an individual who immediately upon contact utilized *language consistent with sovereign citizens*. Sovereign Citizens pose a threat to law enforcement because of their *strong anti government beliefs* and their history of assaulting and killing police officers. The subject had defaced his driver's license, and signed the citation with the common sovereign term of "without prejudice". This is in violation of CVC 31. Sovereigns *believe* this to mean they "reserve their right not to be compelled to perform under any contract they did not enter knowingly, voluntarily or intentionally".<sup>2</sup> [Emphasis added.]

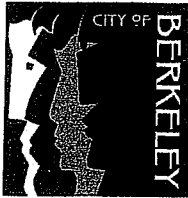
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<sup>1</sup> 2012 summaries taken from Public Records Act BPD response

<sup>2</sup> "S.A.R.'S Reporting 2014," Compendium Agreements, Understandings and Policies Binder: Attachment 2, [http://www.ci.berkeley.ca.us/Clerk/City\\_Council/2014/10\\_Oct/Documents/2014-10-28\\_Item\\_12\\_Agreements\\_With\\_Other\\_Law.aspx](http://www.ci.berkeley.ca.us/Clerk/City_Council/2014/10_Oct/Documents/2014-10-28_Item_12_Agreements_With_Other_Law.aspx), page 7







Police Review Commission (PRC)

COMMUNICATION No. 1106

December 15, 2015

Michael Meehan, Chief of Police  
City of Berkeley  
2100 Martin Luther King, Jr. Way  
Berkeley, CA 94704

Re: Commendations of BPD employees August – December 2014

Dear Chief Meehan:

The members of the Police Review Commission have reviewed the numerous letters and emails of thanks and praise for members of your staff, which your department received from August through December 2014. At its December 9, 2015 meeting, the Commissioners singled out several of the officers and other employees whose actions struck them as particularly noteworthy.

They are:

Ofc. Robin Fuentes  
Det. Glenn Pon  
Ofc. Stephanie Polizziani  
Ofc. Stephen Burcham  
Sgt. Mary Kusmiss  
Ofc. Shan Johnson  
Ofc. Nathan Patrick  
Sgt. Emily Murphy  
CSO Jess Schwarck  
Ofc. Jitendra Singh (twice)  
Res. Ofc. Kevin Fong  
Ofc. Brian Mathis  
Ofc. Victor Martinez (twice)  
Ofc. Beau Hunt  
Ofc. Christopher Waite  
Ofc. Richard Marin  
Ofc. Edward Galvan

Caring and professional responses on the part of your staff, usually during emotionally wrought times, were constant themes on the part of the letter-writers.

Chief Michael Meehan  
Commendations of BPD employees August – December 2014  
December 15, 2015  
Page 2

Please let these officers and employees know that the PRC recognizes and thanks them for their exemplary actions.

The letters and emails that the PRC relied on are enclosed for your information.

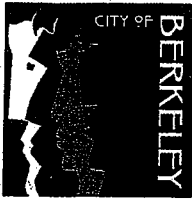
Sincerely,

A handwritten signature in black ink, appearing to read "Katherine J. Lee", with a large flourish at the end.

Katherine J. Lee  
PRC Officer

Enclosures

cc: PRC Commissioners



COMMUNICATION No. 4431

January 5, 2016

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, PRC Officer 

Re: Enforcement of new ordinance provisions

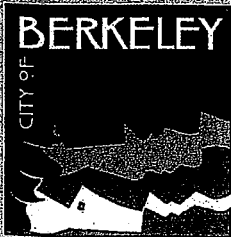
As you are aware, late last year, the City Council adopted three ordinances aiming to "improve conditions on our community sidewalks." These ordinances, which add to Berkeley Municipal Code Ch. 13.36 and amend B.M.C. Ch 14.48, prohibit urination and defecation in public spaces; regulate the placement of personal belongings and shopping carts on sidewalks; prohibit lying in planter beds or on planter walls; prohibit affixing personal items on or to public fixtures; and prohibit the placement of personal objects in planters and tree wells.

The Police Review Commission discussed these new ordinances at its December 9, 2015 meeting. Some commission members raised concerns about how the BPD will be enforcing these new laws, as it seems that the police will have a great deal of discretion, and the ordinances appear to be aimed at a certain subset of society.

Lt. Montgomery expressed his opinion at the meeting that he did not believe that the department planned to issue a General Order, training bulletin, or Captain's instruction regarding the enforcement of these ordinances. Nonetheless, the Commission, by consensus, asked me write you to inquire about your thoughts or plans about generating instructions for how these ordinances are to be enforced.

Thank you for your attention to this query.





# Commissioner Attendance Report

For the Period July 1 through December 31, 2015

(Scroll down for information on completing this form.)

COMMUNICATION No. 4272

Commission Name Police Review Commission  
 Secretary Name Katherine J. Lee

Commissioner Name	# of Meetings Attended	# of Meetings Not Attended/Absent	% of Meetings Attended	Meetings Absent* (List dates, ex. 1/8)	Excused Absences* (List dates, ex. 1/8)
1. Bernstein, Alison	5	1	83%		
2. Javier, Jerry	4	0	100%		
3. Lippman, George	6	0	100%		
4. Perezvelez, George	5	1	83%		
5. Roberts, Terry	5	1	83%		
6. Sherman, Michael	4	2	67%		
7. Smith, Kad	1	0	100%		
8. Waldman, Ayelet	1	0	100%		
9. Yampolsky, Ari	3	1	75%		

\* Only complete if the commissioner has missed 50% or more of regular meetings.

Was any member absent from 3 consecutive regular meetings? (otherwise, leave blank)

Commissioner Name	Dates of Missed Meetings (List dates, ex. 1/8)	Dates of Leave(s) of Absence (List dates, ex. 1/8)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

### Instructions for Completing the Form

Only report the attendance for commissioners that are **active** as of the end of the reporting period. Do not include temporary appointments or commissioners that have already been terminated from the commission.

**Report regular meetings only!** Do not include special meetings or subcommittee meetings.

In the "# of Meetings Attended" column, input the number of meetings the commissioner attended (ex. "2"). In the "# of Meetings Not Attended/Absent" column, input the number of meetings the commissioner did not attend or was absent (ex. "4"). *Be sure to enter zeros where appropriate.* These two columns added together should equal the total number of meetings held during the reporting period (ex.  $2 + 4 = 6$ ).

If the "% of Meetings Attended" column reflects 50% or less, complete the "Meetings Absent" and "Excused Absences" columns. If the commissioner attended 51% or more of meetings, do not complete these columns.

Only complete the lower portion of the form if a commissioner was absent from 3 consecutive regular meetings. If a commissioner was absent from 3 consecutive regular meetings, list the individual's name, dates of meetings missed, and dates of leaves of absence (if any).

### **Additional Attendance Rules**

- a) A member must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purpose of attendance.
- b) If a commissioner was appointed part way through the reporting period, the "meetings attended" and "meetings not attended/absent" is based on the number of regular meetings held since their appointment and through the end of the reporting period. These commissioners must have attended more than half of all regular meetings held since being appointed.
- c) The City Clerk shall note any commissioner reported as being absent from 50% or more of all regular meetings held during the six (6) month period reported. The appointment of the commissioner shall expire on the date the attendance report is received by the City Clerk.
- d) Commissioners may be granted a leave of absence of up to three months by their appointing Councilmember. These approved leaves do not count against lack of attendance.
- e) Commissioners may request that an absence from a meeting be excused due to a conflict resulting from observance of religious or cultural holidays. This request needs to be made on the "Excused Absence Form" and submitted to the Secretary prior to the meeting for which the commissioner's absence is to be excused. The Secretary then excludes the absence from the semi-annual attendance report. (BMC 3.02.030)





**BERKELEY POLICE DEPARTMENT  
TRAINING AND INFORMATION BULLETIN**



**DATE: September 21, 2009**

**NUMBER: 220**

**SUBJECT: TRESPASSING/LODGING ON PRIVATE PROPERTY,  
PUBLIC PROPERTY, AND PARKS**

**PURPOSE**

The purpose of this bulletin is to provide direction regarding enforcement of laws governing trespass/lodging on private property (including store front alcoves), and lodging on public property and in parks.

**STATE AND LOCAL STATUTES**

**Trespass**

**PC §602(m):**

**Statute:** (Willful commission of a trespass by) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

**Discussion:** Prohibits the entry and occupation of property of another. It should not be used in simple trespass cases because it has been interpreted by the courts to apply only to long-term squatters.

**PC §602(o):**

**Statute:** Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or

\*Highlighted text is new.

COMMUNICATION No. 1299

structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

**Discussion:** Provides that it is a trespass for a person to refuse to leave private property not open to the public upon being requested to do so by the owner, the owner's agent or the occupants, or by a police officer acting on their behalf. A police officer making the request must inform the person that the officer is acting at the request of the owner, agent or occupant, and must give the person a chance to leave. **Further, the officer must** receive a specific case-by-case complaint from the owner/occupant prior to enforcement, unless one of the following two exceptions apply:

- A single request for police assistance with trespassers can cover a **thirty (30)** day period if there is a fire hazard on the property or the occupant will be absent; or,
- A single request for police assistance with trespassers can cover a **six (6)** month period if the property is closed to the public and posted as being closed.

**BMC §13.52.010 [Entering upon posted property prohibited]:**

**Ordinance:** It is unlawful for any person to enter or go upon or pass over or remain upon any land of another where the owner of said property, or the person entitled to the possession thereof for the time being, or the authorized agent of either, has posted or caused to be posted upon said land printed notices that the said land is private property and warning all persons from trespassing thereon.

**Discussion:** BMC §13.52.010 streamlines the elements of a **PC §602(o)** trespass violation. Under this section, if the property owner, agent or occupant posts "Private Property No Trespassing" signs, any person *entering* the property without consent is trespassing. There is no requirement regarding a complaint, request to leave, or refusal to leave. While there is no requirement for a complaint under BMC §13.52.010, as a matter of **protocol**, a "No Trespassing" letter, good for **one** year, should be on file when the officer is using BMC §13.52.010. If there is no letter on file, it is preferable for the officer to have a complaint from the owner/occupant with a Citizen Arrest form signed.

When enforcing BMC §13.52.010 officers should ensure that the property is adequately posted so that a reasonable person would know that they are trespassing. Large properties or properties with multiple entrances or access points should have multiple signs. The Community Services Bureau has a supply of "No Trespassing" signs that can be given to property owners who want to post their property.

While it is not required under BMC §13.52.010, it is often preferable for officers to warn persons and give them an opportunity to leave before citing them under this section. It is reasonable and sometimes faster to resolve the issue with a warning when

trespassers are cooperative and willing to leave the property on their own.

**BMC §13.52.020 [Entering upon property after being personally forbidden to do so prohibited]:**

**Ordinance:** It is unlawful for any person to enter or go upon or pass over or remain upon any land of another after being personally forbidden to do so by the owner of said property, or by the person entitled to the possession thereof for the time being, or the authorized agent of either. **The provisions of this section shall not apply when its application would:**

- (1) **Violate the Unruh Civil Rights Act, or any other provision of law relating to prohibited discrimination against any person on account of color, race, religion, creed, ancestry, or natural origin;**
- (2) **Violate laws allowing for peaceful labor picketing or other lawful labor activities; or**
- (3) **Impinge on the lawful exercise of the constitutionally protected rights of freedom of speech or assembly on outdoor property owned and controlled by a public entity during the time the property is open to the public.**

**Discussion:** BMC §13.52.020 is entirely separate from BMC §13.52.010. It defines trespass much the same way as PC §602(o), **but it applies in a broader set of circumstances for the following reasons:**

- BMC §13.52.020 prohibits "entering" after being warned; PC §602(o) only prohibits "refusing to leave" after being warned. Thus, under BMC §13.52.020, one warning is sufficient to prohibit a person from "entering" the property at any subsequent time, whereas under PC §602(o), a new warning and a refusal to leave is required each day prior to enforcement.
- Unlike PC §602(o), a "No Trespassing" letter requesting assistance will serve as a standing complaint for one year.
- **Unlike PC §602(o), the officer is not required to state that he or she is acting on behalf of the owner or occupant.**

Like State trespass laws, violations of BMC §13.52.010 and §13.52.020 are misdemeanors. However, BMC §1.20.020 provides that these violations may be charged as infractions at the discretion of the enforcing officer. Officers should consider citing these offenses as infractions, unless the trespasser has had multiple prior citations or other circumstances justify charging as a misdemeanor.

Lodging / Public Property

**PC §647(e):**

**Statute:** (Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:) Who lodges in any building, structure, vehicle, or place,

whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

**Discussion:** During their November 27, 2007 meeting, the City Council approved Resolution No. 63,906 to amend Resolution No. 61,042 which adopted standard operating procedures for enforcement of PC §647(e). The revised Resolution now provides only one verbal warning, not two, is required before taking enforcement action, and no complaint is required. Enforcement of PC §647(e) is a low priority between 10:00 p.m. and 6:00 a.m., except when a complaint has been lodged, when there has been notification of lodging without consent, or when there is a history of chronic problems of lodging without consent at a specific location.

Based on the interpretation of the City Attorney's Office, PC §647(e) prohibits lodging outside overnight on city property, such as sidewalks, parks and other strips of city land. While PC §647(e) applies to parklands, there is another BMC section that is more specific to parks (see Park Curfew Violations below).

PC §647(e) does not prohibit sleeping on public property during the daytime. Thus, it is lawful for persons to sleep in City parks during the hours that the park is open. Rather, PC §647(e) applies when there is probable cause to believe that the person is lodging outside for the entire night on public property. Officers should consider taking enforcement action for violations of PC §647(e) only when the person is on non-park property owned or controlled by the City such as public sidewalks and small strips of City land and there is probable cause to believe the person is camping.

Factors to consider in deciding whether to cite for violation of PC §647(e) include whether the person:

Is on or in a sleeping bag or bedroll;

Is sleeping;

Has other belongings clustered around and/or otherwise appears to be staying for the entire night;

Appears or is reported to have been at the location for an extended period of time; and/or,

There is a history of continuous or chronic violations of PC §647(e) at a particular location or by a particular individual.

Prior to any arrest or citation for PC §647(e), the officer shall issue one verbal warning as directed by Council Resolution. **A complaint is no longer required prior to enforcement.**

Keep in mind that the Council Resolution only applies to public areas. If an officer responds to a citizen complaint regarding private property where the owner/authorized agent demands a citizen arrest, that request will be honored in accordance with State law and Departmental policy.

**Trespass and Lodging / Private Property, Storefront Alcoves**

A storefront alcove recessed from the public sidewalk is private property. Therefore, persons may be prohibited from lodging in an alcove overnight when the elements of one of the trespass laws outlined above are present. Commercial property owners or occupants who wish to have persons removed from their alcoves when the business is closed may post "No Trespassing" signs on a door or window facing the alcove. This sign may also be part of their "Closed" sign. Posting such a sign, along with a trespass letter on file, allows officers to take action and enforce BMC §13.52.010 without case-by-case complaints by the owner or occupants.

Trespass only occurs when there is a complaint or a no trespassing sign. If a person has permission from the owner or occupant to lodge in an alcove, the person in the alcove is not violating any existing law. Officers should be aware that some property owners give individuals permission to sleep in their alcoves.

**Lodging / City Park Curfew Violations**

**BMC §6.32.020 [Park Hours]:**

**Ordinance:** (a) No person shall enter upon or otherwise remain within City parks, or portions thereof, between the hours or for the period specifically posted as closure hours at the entrance to the particular park and, where applicable, adjacent to any portion of a park being closed.

(b) Where no hours are posted, a park shall be closed between the hours of ten p.m. and six a.m., except that parks equipped with user operated lights shall be closed between the hours of eleven p.m. and six a.m.

**Discussion:** Under BMC §6.32.020, all City parks are closed for all purposes at night (usually from 10:00 p.m. to 6:00 a.m.) and a person sleeping in a park during those hours may be cited under BMC §6.30.020. BMC §6.32.020 only applies to City parks.

Whenever possible, officers should make every effort to coordinate services with **Health and Human Services (HHS) Department** workers and Parks and Recreation Department staff in taking a team approach to providing services to those who are camping/lodging in City parks. HHS workers will often make several visits to warn those who have set up long-term encampments in City parks before referring the matter to the police for enforcement.

**REQUIRED PRE-ARREST WARNING**

Officers are required by Council policy to give a warning when enforcing **Penal Code §647(e) PC [lodging in public]**. According to law, **a warning must also be given before enforcing** trespassing on unposted private property (ref. **PC §602(o)** and **Berkeley Municipal Code §13.52.020**). Whenever practical, officers should also give a warning when enforcing a trespassing violation on posted private property **under BMC §13.52.010**.

Gaining compliance through warnings and referrals is part of the City's social service approach to **responding to complaints regarding** the indigent, mentally ill, and chronic substance abusers.

**SOCIAL SERVICE REFERRAL**

There have been persistent and increasing complaints from property owners about people trespassing on private property without their consent. There are also persistent complaints from homeless people that when the shelters are full there is no place that they can legally sleep in Berkeley. In keeping with the City's policy to address homelessness issues from a social service perspective, whenever possible, referrals should be made to the Health and Human Services Department.

There are two programs that provide outreach services to the indigent, the mentally ill, and chronic substance abusers that are homeless in Berkeley: **Homeless Outreach and the Mobile Crisis Team.**

**Homeless Outreach:** Two full-time Homeless Outreach Workers are available during the day, Monday – Friday. [Note: the new outreach worker may have evening and Saturday hours; still being determined]. These workers assist individuals by making contacts in the field, at shelters, and at the Multi-Agency Service Center, which offers counseling, emergency services, and makes referrals to other appropriate providers. **The best way to reach the Homeless Outreach Workers is by telephone:**

**Eve Ahmed, (510)502-1829**

**Jeff Buell, (510)542-3229**

Via the Mental Health Division, (510)981-5254.

**Mental Health Mobile Crisis Team (MCT):** The MCT is available from 11:00 AM to 10:00 PM daily. They conduct follow-up on their own caseload and respond to mental health crisis situations as they occur. They also provide services, counseling, and make necessary referrals. The MCT is available through the police radio.

**Both Homeless Outreach Workers and MCT members can provide information to residential and commercial property owners regarding services available for the homeless, as well as trespass laws and enforcement options.**

For the purpose of this Bulletin, Homeless Outreach Workers and the Mobile Crisis Team will be referred to as "HHS Workers".

  
Douglas N. Hambleton  
Chief of Police

References: Penal Code §§602(m), 602(o) and 647(e)  
Berkeley Municipal Code §§1.20, 6.32 and 13.52  
**City of Berkeley Council Resolution No. 63,906**