

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, October 25, 2017
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 October 11, 2017.
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**
Status of complaints; other items.
- 7. CHIEF OF POLICE'S REPORT**
Crime, budget, staffing, training updates, and other items.
- 8. SUBCOMMITTEE REPORTS (discussion & action)**
Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:
 - a. Fair & Impartial Policing Subcommittee
 - b. General Orders C-64, etc. Subcommittee
 - c. Homeless Encampment Subcommittee
 - d. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting)

- e. Re-establish Mutual Aid Subcommittee and appoint additional members

9. OLD BUSINESS (discussion & action)

- a. Provide further direction regarding new Right to Watch General Order adopted October 11, 2017.
From: PRC Officer
- b. Consider amendments to PRC regulations regarding challenge to a commissioner seated on a Board of Inquiry.
From: Commissioners Prichett and Lippman
(See materials attached to October 11, 2017 agenda, beginning p. 29.)
- c. Observations of PRC Commissioners who attended Urban Shield exercise Sept. 8 or 9.
From: Commissioner Lippman
- d. Proposal for BPD Accountability Plan, including professional development/ training of BPD officers, department budget, etc.
From: Commissioner Prichett
(See materials attached to October 11, 2017 agenda, beginning p. 39.)
- e. Review Council revision of policy banning use of pepper spray in crowd control and resulting changes to General Order U-2; and review response, if any, from Council and staff to PRC's letter of on lack of consultation with the PRC on this and other policy changes.
From: Commissioner Lippman
(See materials attached to October 11, 2017 agenda, beginning p. 41.)
- f. Rescind Standing Rule prohibiting non-Berkeley residents from sitting as community members on PRC subcommittees.
From: Commissioner Lippman
(See materials attached to October 11, 2017 agenda, beginning p. 51.)
- g. Review and approval of 2016 Annual Report.
From: PRC Officer

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

11. 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

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

12. CONSIDER STAFF RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2426

End of Closed Session

13. ANNOUNCEMENT OF CLOSED SESSION ACTION

14. ADJOURNMENT

Communications Disclaimer

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Communication Access Information (A.R.1.12)

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

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

PRC REGULAR MEETING ATTACHMENTS

October 11, 2017

MINUTES

October 11, 2017 Regular Meeting Minutes Page 7

AGENDA-RELATED

Item 8. – PRC Subcommittees List updated 9-15-17. Page 13

Item 9.a. – The Right To Watch Revised General Order W-01
(As adopted by PRC October 11, 2017) Page 15

Item 9.e. – Email from Osha Neumann dated October 11, 2017 re:
Proposed Resolution on Pepper Spray Policy Reversal Page 19

COMMUNICATION(S)

Berkeley Police Department After Action Report: Demonstration/
Protest On 8/27/2017 In Berkeley Page 21

Berkeley Police Department After Action Report: "Ben Shapiro" Protest
9/14/17 Page 25

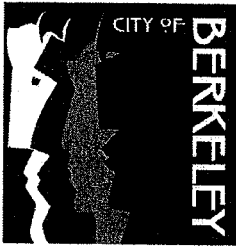
Berkeley Police Department After Action Report: "Free Speech Week"
Events 9/24 - 9/27/2017 Page 31

Council Item for Nov 14, 2017 Action Calendar: PRC's Proposed
Ordinance on Surveillance Technology Use and Community Safety. Page 35

Council Item for Oct. 31, 2017 Action Calendar: Direct the City
Manager and BPD Regarding the BPD's Use of Force Policy (pp. 1 –
18 only) Page 51

Council Item for Oct. 31, 2017 Action Calendar: Refer to the BPD to
Address Disparate Racial Treatment and Implement Policy and
Practice Reforms Page 69

Council Item for Oct. 31, 2017 Action Calendar: Referral to Police
Review Commission to Write a Charter Amendment Ballot Measure Page 71



Police Review Commission (PRC)

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

**Wednesday, October 11, 2017
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR LIPPMAN AT 7:13 P.M.

Present: Commissioner George Lippman (Chair)
Commissioner Gwen Allamby
Commissioner Clarence Ford
Commissioner Sahana Matthews
Commissioner George Perezvelez
Commissioner Andrea Prichett
Commissioner Terry Roberts
Commissioner Ari Yampolsky (left 9:47 p.m.)

Absent: None

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood (left 8:20 p.m.), Sgt. Sean Ross (BPA)

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were 3 speakers

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of September 27, 2017, with the following corrections:

- In PRC Officer's report, Commission asked PRC Officer to write to City administration asking for explanation of why the Boalt law students project could not be added to the list of Complainant Advocates on the PRC website.
- In Chief's report, the question re Capt. Reece concerned his photographing on Saturday, Aug. 26, not Sunday.

- In Item #9.g., first friendly amendment, "see" should be "seek."
 - In Item #9.g., fourth friendly amendment, "PR" should be "PRC,"
- Moved/Seconded (Prichett/Allamby) **Motion Carried**
 Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Roberts, and Yampolsky.
 Noes: None Abstain: Perezvelez Absent: None

5. CHAIR'S REPORT

- Several items relevant to PRC will be on Council's Oct. 31 agenda so may want to save that date. Items: Use of force reporting; recommendations PRC made last year concerning fair & impartial policing; role of BOIs; powers of PRC; transformation of PRC or creation of a new commission overseeing work of BPD.
- Surveillance Ordinance will be on the Council's Nov. 14 agenda; copy of item will be in next packet.

6. PRC OFFICER'S REPORT

- No new complaints filed since the last PRC meeting.
- Maritza Martinez, PRC administrative support staff, is on vacation through Oct. 31. A part-time temporary employee, Andreana Davis, is filling in.
- An updated priority list has been distributed tonight; it shows rankings of each responding Commissioner as well as a separate list showing rankings of the group, in order..
- The Sept. 29 memo from PRC to Council (p. 43 of packet) contained an error in stating the vote was unanimous, though the vote reported was correct. Correction reflected in a second memo, dated Oct. 6, handed out tonight.
- Report on NACOLE Conference, Sept. 10 -14, was given.

7. CHIEF OF POLICE'S REPORT

- Staffing: down to 160 sworn, when should be at 176. Got double the number of applicants in most recent recruitment. Sending 2 people to Washington, D.C. to recruitment event by historically black colleges. Couple retirements and one resignation. Ofc. Castle promoted to Sgt.
- Very busy managing recent demonstrations. Re After Action reports, the one for August 27 was just released via a PRA request; the AARs for Sept. 14 and free speech week are forthcoming later this week.
- For North Bay fires, BPD has sent 12 officers up since Monday morning; anticipate continuing support at least through the weekend. Several employees live in the area and at least one has been evacuated.
- Testified last week before State Senate Judiciary Committee at hearing on combatting hate while protecting the 1st Amendment. Chief addressed challenges of policing in an emergent dynamic of demonstrations.
- Attending IACP conference in a week from next weekend; George Lippman also attending.

-- Body Worn Cameras: Expect to go live in late November. Hardware such as cradles and mounting, Ethernet cables, to be installed. Software: will use Evidence.com, Axon's cloud-based storage system. IT installing app on Dept.-issued iPhones to help manage.

Questions:

-- Chief earlier committed to bringing body camera system in for demo; when would that be? Will aim for December 13 meeting.

-- How is beat configuration working? Challenging in light of staffing shortages.

-- Re Capt. Reece photographing on Aug. 26, what is policy on whether that is allowable? Any policy or training bulletin that prevents officer from using private device for personal use? When officer takes photos on duty, do they become public documents? Don't know. Will report back.

-- Meet & confer over body cams scheduled yet? No.

-- Further details on recent death of woman at homeless encampment? Death investigation is open and awaiting coroner's report.

-- Length of body camera training? Axon here starting Nov. 28 for 4 days, and they will train the trainers, who will do 7 – 8 days of training.

-- Will After-Action Reports be public documents? Yes.

-- Re the Center for Policing Equity, has their request for 2016 data been provided? Yes. Climate survey will be postponed, however.

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

a. Fair & Impartial Policing Subcommittee

Meeting tomorrow. Into last substantial piece of report, the Recommendations section. Hope to finish within couple meetings and bring to Commission in Dec.

b. General Orders C-64, etc. Subcommittee

PRC Officer to facilitate scheduling next meeting.

c. Homeless Encampment Subcommittee

Members responded to Doodle poll but heard nothing; PRC Officer to follow up.

d. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting)

Met on Oct. 4 and took testimony from about 12 people for 2 – 2-1/2 hours. Have photos and videos to view also. Next meeting Nov. 8 [Nov. 7] at 7 p.m. Lots of material to review and may need two more meetings.

e. Re-establish Mutual Aid Subcommittee and appoint additional members

Still in need of members in addition to Comm. Matthews; need to make recommendations by December.

9. OLD BUSINESS (discussion & action)

- a. Continue reviewing draft of a revised General Order W-1, Public Recording of Law Enforcement Activity (Right to Watch).

Motion to adopt the proposed Right to Watch policy starting on page 17 of the packet.

Moved/Seconded (Prichett/Lippman)

Amendments approved by General Consent:

Revise beginning of the first sentence to read, "The purpose of this General Order is to provide policy and procedural guidance regarding the right of members of the public to observe, [etc.]"

Add, at the end of the first paragraph under Section I. POLICY: "Members of this department will not prohibit or intentionally interfere with such lawful recordings."

Insert as a second paragraph under Section I. POLICY: "Officers shall exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties"; and, in the now third paragraph in that section, change "should" to "shall."

Under Section II. PROCEDURES, Subsection 2, revise the first sentence to read: "Members of the public also have the right to communicate with detained person, provided:"

Under Section II. PROCEDURES, Subsection 3, revise the first sentence to read: "Members of the public are allowed to approach:"

Under Section II. PROCEDURES, Subsection 3, add a last paragraph following subsection 3b. that reads: Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).

Under Section II. PROCEDURES, delete subsections 5. and 6.

Motion to amend Section II. PROCEDURES, by adding a new Subsection 5 that reads: "An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provide the film or other recording. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime and that the evidence will be important to prosecution of that crime."

Moved/Seconded (Matthews/Lippman) **Motion Carried**

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Roberts, and Yampolsky.
Noes: None Abstain: Prichett Absent: None

Motion to adopt the proposed Right to Watch policy starting on page 17 of the packet, as amended, Carried

Ayes: Allamby, Ford, Lippman, Matthews, Perezveléz, Prichett Roberts, and Yampolsky.

Noes: None Abstain: None Absent: None

- b. Consider amendments to PRC regulations regarding challenge to a commissioner seated on a BOI.
(Discussion to be continued to the next meeting.)
- c. Observations of PRC Commissioners who attended Urban Shield exercise Sept. 8 or 9.
(Item postponed to the next meeting.)
- d. Proposal for BPD Accountability Plan, including professional development/training of BPD officers, department budget, etc.
(Item postponed to the next meeting.)
- e. Review Council revision of policy banning use of pepper spray in crowd control and resulting changes to General Order U-2; and review response, if any, from Council and staff to PRC's letter of on lack of consultation with the PRC on this and other policy changes.
(Item postponed to the next meeting.)
- f. Completion and release of After-Action Reports to the PRC, and possible request to the City Council or City Manager; review change to General Order C-64.
(Item postponed to the next meeting.)
- g. Rescind Standing Rule prohibiting non-Berkeley residents from sitting as community members on PRC subcommittees.
(Item postponed to the next meeting.)
- h. Review and approval of 2016 Annual Report.
(Item postponed to the next meeting.)
- i. Police Department's timeline for implementation of body-worn camera program, including finalization of General Order governing use and access to video.
(Item postponed to the next meeting.)

10. NEW BUSINESS (discussion & action)

- a. Understand and address constraints on publicizing Boalt Police Review Project (UC Berkeley Law School student legal services project).

Motion that the PRC supports the efforts of the Boalt Law students to represent complainants, and the inclusion of their project on the PRC's website page listing Complainant Advocates; and communicating this to

the City Manager, asking her to authorize the PRC Officer to add their name to the PRC website.

Moved/Seconded (Prichett/Allamby)

Friendly amendment: That the letter be cc'd to the Mayor and City Council.

Moved by Lippman; accepted by Prichett and Allamby

Motion, as amended, Carried

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett, Roberts, and Yampolsky.

Noes: None

Abstain: None

Absent: None

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

(Heard following Item #15)

There was 1 speaker.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

13. CONSIDER REQUEST FOR LATE FILING OF COMPLAINT #2428

Motion that good cause exists to accept the late filing of Complaint #2428.

Moved/Seconded (Prichett/Allamby) **Motion Carried**

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett, Roberts.

Noes: None

Abstain: None

Absent: Yampolsky

14. STATUS OF REPORT OF INVESTIGATION IN CASE #2420

End of Closed Session

15. ANNOUNCEMENT OF CLOSED SESSION ACTION

The vote to accept late-filed Complaint #2428 was announced.

16. ADJOURNMENT

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 9-15-17**

Subcommittee	Commissioners	Chair	BPD Reps / Others
General Orders on Crowd Control C-64, U-2, M-2 Formed 1-13-16 Renewed 3-22-17	Lippman Perezvelez Prichett	Perezvelez	Lt. Michael Durbin
Fair & Impartial Policing Formed 1-13-16 Renewed 3-22-17	Allamby Ford Lippman Roberts <i>Public members:</i> Christina Murphy Paul Kealoha-Blake Elliot Halpern	Lippman	Lt. Michael Durbin
Homeless Encampments Formed 2-1-17	Prichett Yampolsky	Prichett	
June 20, 2017 (Review of BPD Response at City Council Meeting) Formed 7-12-17	Matthews Prichett Roberts <i>Public member:</i> Elliot Halpern	Roberts	Chief Andrew Greenwood Sgt. Sean Ross
Mutual Aid Pacts			

THE RIGHT TO WATCH
REVISED GENERAL ORDER W-01
(As adopted by PRC October 11, 2017)

The purpose of this General Order is to provide policy and procedural guidance regarding the right of members of the public to observe, photograph or video record officers during the course of the officers' public duties that reflect these clarifications.

I. POLICY

It shall be the policy of the Berkeley Police Department to place the least possible restriction on public observation, photographing or video recording of police officers' performance of their duties, while ensuring the safety of the public and the officers. The "least possible restriction" means that the officer's mindset should be to only limit observation if necessary for law enforcement purposes. Members of this department will not prohibit or intentionally interfere with such lawful recordings.

Officers shall exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

Officers shall restrict the practice of requesting that onlookers withdraw only to those instances where a potential threat to safety is involved.

II. PROCEDURES

1. It is the policy of this Department that **persons not involved in an incident be allowed to remain in the immediate vicinity** to witness stops, detentions and arrests of suspects occurring in public areas, except under the following circumstances:

- a. When the safety of the officer or the suspect is jeopardized.
- b. When persons interfere or violate law.
- c. When persons threaten by words or action, or attempt to incite others to violate the law.

2. **Members of the public also have the right to communicate with the detained person, provided:**

- a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148

prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.

- b. that the observer's actions or communications do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's attention. An officer may instruct an observer to maintain a safe distance from the scene. In such an instance, the officer shall provide clear directions on what an individual can do to be compliant; directions shall be specific enough to allow compliance.

3. Members of the public are allowed to approach: If the conditions at the scene are peaceful and sufficiently quiet, and the situation is stable, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:

- a. The suspect objects to persons overhearing the conversation.
- b. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.

Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).

4. Officers shall promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence.

5. An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provide the film or other recording. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime and that the evidence will be important to prosecution of that crime.

III. SUPERVISOR RESPONSIBILITIES

1. A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior. The supervisor should review the situation with the officer and:
 - a. Request any additional assistance as needed to ensure a safe environment
 - b. Take a lead role in communicating with individuals who are observing and recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded.

- c. When practicable, allow adequate time for individuals to respond to requests for a change or location or behavior.
- d. Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
- e. Explain alternatives for individuals who wish to express concern about the conduct of Department members, such as how and where to file a complaint

Lee, Katherine

From: J. George Lippman <george@igc.org>
Sent: Wednesday, October 11, 2017 3:19 PM
To: Lee, Katherine
Cc: OSHA NEUMANN ESQ.
Subject: Fwd: Proposed resolution on pepper spray policy reversal

Kathy,

If it's not too late, can you please distribute this legal suggestion from attorney Osha Neumann to commissioners for tonight, and bring copies for tonight's meeting?

Thanks,
George Lippman

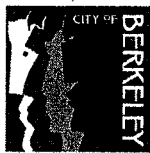
Begin forwarded message:

From: Osha Neumann <oneumann@ebclc.org>
Subject: Re: Proposed resolution on pepper spray policy reversal
Date: October 11, 2017 at 12:17:45 PM PDT

George:

Sorry I didn't get back to you earlier. A problem I see with the resolution is that it calls for reinstating the language on pepper spray in the 1997 resolution, but the City Council in permitting the police to use pepper spray against specific individuals in crowds said that they did not think this was in contradiction to the 1997 resolution, because they were not using it for crowd control, but just to prevent an individual's bad acts. So I think the resolution would have to address that, either by saying that the 1997 resolution should be interpreted to include the use of pepper spray against individuals in crowds, or, that, whether or not it was covered by the 1997 resolution, the use against individuals should be prohibited. I personally don't think police should get any new weapons, and there should be no new policies until first, they get body cameras, and second, there is a complete independent review of the way they policed the "free speech" demonstrations.

Osha



Berkeley Police Department After Action Report



Demonstrations/Protests on 8/27/2017 in Berkeley

Prepared by: Lt. A.B. Rateaver, Updated 10/06/17

Type of Occurrence:

Civic demonstration/protest: this was originally billed as:

“No to Marxism in America”

However, in the weeks leading up to the 8/27 event, in Charlottesville, VA on 8/12/17 a man drove a car into a protest, impacting several people, killing one. This event on the east coast added attention to the event advertised in Berkeley. Soon, several different groups stated their intention to demonstrate in Berkeley. These included:

Civic Park (Berkeley): Keep Nazis out of Berkeley.

Crescent Lawn (UC Berkeley): Bay Area Rally Against Hate.

Ohlone Park (Hearst/MLK): Join SURJ - BA to Resist Racist Violence and Hate in Berkeley.

Ohlone Park (MLK/Hearst): Meet then march to Old City Hall: Nazis are Coming.

Civic Park (Berkeley): Protest the White Supremacist Rally: Communities

March from Cedar and Oxford to the Crescent: Holocaust Survivor Group

The Berkeley Police Department preparation for this event not only involved internal planning with other allied agencies, but BART, AC Transit, UC and community-based organizations as well. Meal providers who serve the homeless were contacted and provided alternate serving areas so as not be impacted.

Productive communication was established with the original event organizer. Other event organizers were also contacted. These outreach efforts afforded an opportunity to disseminate information about municipal codes and safety. Several bulletins were posted on the City website. Nixle was used to inform the community in the days leading up to and during the event as well.

The events in Charlottesville, VA on 8/12/17 dramatically impacted the department's plans to safely manage these events. In addition to magnifying the public attention, the Charlottesville event created a potential opportunity for a “copy cat” event to take place in Berkeley. At least one outside agency found a “copy cat” threat on social media and forwarded it to BPD. In response to that potential, concrete and water filled barriers were obtained to fortify areas where crowds might gather. Large dump trucks were pressed into service to block vulnerable zones. Intensifying matters, a “Patriot's Prayer” event that was slated to occur in San Francisco on 8/26 was cancelled. Organizers of that event advocated for attending the Berkeley event on 8/27. That event organizer was later spotted here in Berkeley on 8/27. At its peak, crowd size in Berkeley on 8/27 were estimated to be 3000.

Command Post Information:

A Department Operations Center was established at the PSB. This included:

- Unified Command with Berkeley Fire and the University of California Police
- Emergency Operations Center for citywide services.

Chronological Narration

7/23/17: BPD employees notified of emergency call back .

7/27/17: First Multi-agency coordination meeting

8/10/17: Second Multi-agency coordination meeting, community outreach begins

8/21/17: Planning meeting for rail/barrier installation

8/22/17: City EOC activation; BPD Incident Management Team meeting

8/23/17: Planning meeting

8/24/17: Third Multi-agency coordination meeting

8/25/17: EOC/DOC set-up

8/26/17: Install barriers

8/27/17: Event start:

- 0842 hrs. group of 25 gathered at Hearst/California
- 1022 hrs. large crowd gathering and taking the street at Center/Oxford; LE shutting the street down
- 1031 hrs. group at Hearst and California now 120. Protestors have shields, may be concealing sticks
- 1044 hrs. Group masking up at University and Oxford
- 1048 hrs. 3,000 on Oxford between University and Center. Activate large truck protection.
- 1110 hrs. Hearst/California now 300
- 1139 hrs. Crowd estimate 3700
- 1156 hrs. Hearst and Ohlone Park. Group still there; making anti-police rhetoric
- 1203 hrs. CBS news reporter at Addison and Oxford; surrounded by 20; won't allow him to leave.
- 1226 hrs. Crowd at California and Hearst now 300.
- 1228 hrs. Officer report: "completely covered from head to toe wearing masks".
- 1228 hrs. Officer report: groups from Ohlone Park were practicing martial arts/sparring
- 1228 hrs. Officer report: something may be concealed behind shields.
- 1244 hrs. report "1000 coming to MLK and University"
- 1314 hrs. 1500 northbound on Milvia from Dwight area.
- 1321 hrs. Park Units: move to perimeter.
- 1322 hrs. 2000 now estimated at Civic Center Park.
- 1329 hrs. Officer assaulted
- 1334 hrs. Officer emergency at area south of the Public Safety Building
- 1331 hrs. Officer report: vandalism to barriers in the park
- 1333 hrs. Reported fight at University/Velero Gas Station
- 1335 hrs. Large fight at area south of the Public Safety Building
- 1335 hrs. Officers make arrest of suspect after assault on officers.
- 1431 hrs. crowd continuing NB MLK going back to Ohlone Park
- 1507 hrs. Oxford area clear; less than 500 at the park; couple hundred at Ohlone Park
- 1548 hrs. Mutual Aid units demobilized
- 1830 hrs. Incident terminated.

Arrest Information:

Overall, 13 arrests were made. Offences ranged as follows:

Offence	# of charges
PC 242 (Battery)	2
PC 182 (Conspiracy)	1
BMC (Muni code)	5
PC 245 (Assault-Felony)	1
PC 148 (Resist Arrest)	2
PC 404.6 (Inciting Riot)	1
PC 243 (Battery on Officer)	1
PC 405 (Riot)	1
PC 647f (Intoxication)	1
PC 415 (Disturbance)	1
PC 594 (Vandalism)	1

Death and Injuries

No deaths reported.

Officer injuries: 3 officers reported injuries at the debriefing.

Civilian injuries: BFD reports 6 medical responses. Of those responses, 2 were transported to hospital.

Inventory of Less Lethal Munitions:

Munitions inventoried at the event start loadout are as follows:

Field Deployed Loadout :

Chem Agent: 21 Canisters

Smoke: 15 Canisters

Muzzle Blast: 9 rounds

40 mm impact: 31 rounds

40 mm marking: 7 rounds

Returned Loadout:

Chem Agent: 21 Canisters

Smoke: 11 Canisters

Muzzle Blast: 9 rounds

40 mm impact: 30 rounds

40 mm marking: 7 rounds

Munitions inventoried at the event end are as follows:

- (1) 40mm foam round used
- (4) smoke canisters used.

Personnel Costs:

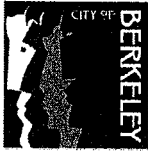
- Barriers, Rentals, food, and supplies = \$46,357.86
- BPD Personnel: \$204,250.93

Property Damage:

None reported.

Use of Force Reporting:

- Early afternoon: Area of Allston and McKinley Streets
 - Officer responding to a fight involving a large group deploys (1) white smoke canister.
 - Officer responding to this same event also deployed (1) white smoke canister. Officer also used open hands to move the crowd.
 - Officer responding to the fight deploys (2) white smoke canister. Officer observed protester about to pick up the deployed canister. Officer launched a 40mm less lethal projectile at that subject.



BERKELEY POLICE DEPARTMENT AFTER ACTION REPORT



"Ben Shapiro" Protest 9/14/17

Prepared by: Lt. M. Durbin

Type of Occurrence:

In February of 2017, a campus group invited controversial speaker, Milo Yiannopoulos to speak on campus at Sproul Hall. Counter demonstrators met outside the venue on Bancroft Way near Telegraph Ave. A contingent of approximately 150 Antifa attacked the venue and UCPD officers securing the venue. Barricades were torn down and thrown through plate glass windows, fires were lit and officers and event attendees were attacked. The group marched through downtown and vandalized banks throughout the downtown. Property damage estimates were over \$100,000.

Right wing and "Alt-right" groups offended by what occurred, planned protests in Berkeley to "Defend Free Speech" in March, April and August. These events drew a counter protest element and Antifa. There were significant assaults and coordinated attacks against protesters.

On 9/14/17 UC Berkeley hosted political commentator Ben Shapiro at Zellerbach Hall on the UC Campus. We anticipated possible civil unrest and increased staffing accordingly. Berkeley Police called all available staffing in to work this event.

This was a UC Berkeley Event, however, it was managed using a Unified Command Structure with the Emergency Operation Center and Command Center located at the Berkeley Police Department.

The Berkeley Police Department preparation for this event not only involved internal planning with other allied agencies, but BART, AC Transit, UC and community-based organizations as well. Several bulletins were posted on the City website. Nixle was used to inform the community in the days leading up to and during the event as well.

Command Post Information:

A Unified Operations Center was established at the PSB. This included:

- Unified Command with Berkeley Fire and the University of California Police
- Emergency Operations Center for citywide services.
- Mutual Aid was coordinated by UCPD through the Alameda County Office of Emergency Services. Deployment was coordinated through the Unified Command Operations Center.

Arrest Information:

Overall, 9 individuals were arrested during this incident. Offenses ranged as follows:

Offense	# of charges
PC 242 (Battery)	2
PC 243(B) Battery of Officer	1
BMC (Municipal code)	4
PC 148 (Resist Arrest)	1
PC 415 Challenge to fight	2
PC 647f (Intoxication/drugs)	1

Injuries

Officer injuries: No officers reported injuries related to the protests.

Civilian injuries: BFD reports # medical responses. Of those responses, # were transported to hospital.

Inventory of Less Lethal Munitions:

Munitions inventoried at the event deployed in the field are as follows:

Gold Team Go Bag:

- Qty 5 - 40mm CS Muzzle Blast Rounds
- Qty 8 - 5231 CS Triple Phaser Canisters
- Qty 3 - 6230 CS Canisters
- Qty 1 - 5210 White Smoke
- Qty 1 - 6210 White Smoke

Blue Team Go Bag:

- Qty 4 - 40mm CS Muzzle Blast Rounds
- Qty 8 - 5231 CS Triple Phaser Canisters
- Qty 2 - 6230 CS Canisters
- Qty 2 - 5210 White Smoke

In reserve but not deployed:

Go Can #1:

- Qty 2 - 5230 CS Canisters
- Qty 2 - 5231 CS Tri Chamber Canisters
- Qty 5 - 6210 White Smoke
- Qty 2 - 6210 Red Smoke

Go Can #2:

Qty 2 – 5230 CS Canisters
Qty 2 – 5231 CS Tri Chamber Canisters
Qty 3 – 6210 White Smoke
Qty 4 – 5210 White Smoke

Go Can #3:
Qty 15 – 5230 CS Canisters

Three Go Cans Consisting of Newly Purchased Smoke:
Qty 60 – 5210 White Smoke

Borrowed ACSO Smoke:
Qty 24 – 9210 White Smoke

No less lethal munitions were used during this incident. All munitions deployed in the field were returned to SRT-Logistics unused.

Personnel Costs:

- Pending report from payroll

Property Damage:

None reported.

Use of Force Reporting:

No intermediate use of force. (No batons, no less lethal, no pepper spray). Of note: This was the first event in which officers deployed the larger OC canisters recently approved by City Council.

Overall Critique:

Planning and Preparation:

There was significant advanced notice about the events and planning began internally following the No Racism events on 8/31/17. The Planning team planned for Shapiro on 9/14/17 and Free Speech Week at the same time. In order to save time and resources; the planning process, leadership structure, and operations plan remained largely the same as both events had similar contingencies. Planning involved significant involvement of tactical leadership in developing tactical contingency plans. Their input was invaluable. Most of the commanders who would have leadership in the field were included in the planning process. This helped operations during the incident as they were involved, contributed and were oriented to the plan. City EOC staff assisted in the planning process as well with the barricade plan and installation of the concrete K rails the day of the event.

Mutual Aid meetings were held weekly at OPD and then at UCPD. BPD offered to establish the Unified Command at BPD as well as operate the Emergency Operations Center. The Multi-Purpose Room was used for the Unified Command Post. Intelligence gathering and Tactical Dispatchers were also assigned this room. This limited the space for mutual aid commanders and made it difficult to communicate with the Field Command because of the multiple conversations being held in the room.

9/14/17 Event Timeline Overview (Based primarily on CAD Entries):

- 1400 hours – Briefing. Of note: Officers were issued new Crowd Utility Uniforms after briefing as well as 36" batons. This created a significant delay between briefing and officers being on posts in the field.
- 1501 hours – Dispatch receives reports of groups mobile in the City with masks on.
- 1630 hours – Crowd at Telegraph and Bancroft estimated at 75-100
- 1632 hours – Amplified sound reported at south edge of Sproul Plaza
- 1641 hours - Crowd at Telegraph and Bancroft estimated at 250-300
- 1656 hours - UCPD investigates amplified sound but decision is made to take no enforcement. Of note: The amplified speakers could be heard from over a block away and would have been well within legal grounds to take enforcement under the BMC regarding amplified sound.
- 1659 hours – Crowd at Telegraph and Bancroft estimated at 400-500
- 1837 hours – Crowd at Telegraph and Bancroft estimated at 500
- 1856 hours – Crowd at Telegraph and Bancroft estimated at 700-800
- 1929 hours – Shapiro starts speech
- 1946 hours – Crowd at Telegraph and Bancroft estimated at 700
- 2011 hours – Some members of the crowd can be heard saying "F... the Police"
- 2100 hours – Event ends and Zellerbach Hall is reportedly empty at 2105 hours
- 2136 - 2209 hours – Estimates of crowd at Telegraph and Bancroft fluctuates between 100-200.
- 2208 hours – Crowd of approximately 200 at Telegraph and Bancroft begins moving south on Telegraph
- 2214 hours – Crowd moves westbound Durant
- 2225 hours – One part of the westbound crowd is allowed to move southbound Ellsworth while the opposition is stopped on Durant.

Response:

During the incident we handled the crowd in crowd management and crowd control deployments, facilitated a march consisting of opposition groups, and made 9 arrests (5 – BPD and 4 – ACSO) for individual violations.

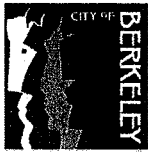
Crowd Management:

BPD Units took primary responsibility for creating a safe place for people to protest and counter protest peacefully off campus. In support of this goal, concrete K rails were ordered and set up on Bancroft and the adjacent streets; vehicle traffic was redirected. When crowds of protesters and counter protesters came together, BPD units were deployed close to the issue to deter assaults and intervene quickly with arrests for individual behavior. Arrest support from transport units were able to quickly remove

arrestees from the scene. Rescue Task Force vehicles were able to quickly provide assistance to the injured (Ex. At approximately 2123 hours a female was reportedly knocked to the ground and required medical assistance).

Marching:

At approximately 2208 hours the crowd of approximately 200 protesters marched away from the campus southbound on Telegraph Avenue. BPD units joined the march and were supported by OPD and ACSO. Marching with the protest proved effective. We were able to intervene and prevent assaults. Marching alongside the crowd was a new deployment for us and was effective given mixed (protester/counter protester) crowds and favorable crowd to officer ratios. No property damage was reported on city streets. Of note: Once the crowd went mobile the protections provided by the K rails from potential vehicle assaults was gone. We need to utilize resources quickly to redirect vehicles in these situations. Continuing communication with the marching crowd proved effective in separating the opposition groups at Durant and Ellsworth and convincing the remaining crowd to return to the sidewalks.



BERKELEY POLICE DEPARTMENT AFTER ACTION REPORT



"Free Speech Week" Events 9/24-9/27/17

Prepared by: Lieutenant Dan Montgomery

Type of Occurrence:

"Free Speech Week"

In February of 2017, a campus group invited controversial speaker, Milo Yiannopoulos to speak on campus at Sproul Hall. Counter demonstrators met outside the venue on Bancroft Way near Telegraph Ave. A contingent of approximately 150 Antifa attacked the venue and UCPD officers securing the venue. Barricades were torn down and thrown through plate glass windows, fires were lit and officers and event attendees were attacked. The group marched through downtown and vandalized banks throughout the downtown. Property damage estimates were over \$100,000.

Right wing and "Alt-right" groups offended by what occurred, planned protests in Berkeley to "Defend Free Speech" in March, April and August. These events drew a counter protest element and Antifa. There were significant assaults and coordinated attacks against protesters.

UC Berkeley had been in conversation with a conservative campus group to host "Free Speech Week" September 24 - 27 (Sunday - Wednesday). Though formal plans and agreements were ultimately not reached, several controversial speakers including Yiannopoulos were scheduled to speak each day on University property. Regardless of University action, we anticipated possible civil unrest and increased staffing accordingly. Berkeley Police called all available staffing in to work for the 4 days of "Free Speech Week".

This was a UC Berkeley Event, however, it was managed using a Unified Command Structure with the Emergency Operation Center and Command Center located at the Berkeley Police Department.

The Berkeley Police Department preparation for this event not only involved internal planning with other allied agencies, but BART, AC Transit, UC and community-based organizations as well.

Communication with event organizers was conducted by UCPD but was unproductive. The student group was unable to secure permits for indoor venues. It became clear leading up to the event, that it was likely a publicity stunt as many of the announced speakers were not aware or actually attending the event. Outreach was conducted to

groups planning protest and counter protest events. These outreach efforts afforded an opportunity to disseminate information about municipal codes and public safety. Several bulletins were posted on the City website. Nixle was used to inform the community in the days leading up to and during the event as well.

This After Action Report will cover the entire 4-day event with each day being an operational period of the same event.

Command Post Information:

A Unified Operations Center was established at the PSB. This included:

- Unified Command with Berkeley Fire and the University of California Police
- Emergency Operations Center for citywide services.
- Mutual Aid was coordinated by UCPD through the Alameda County Office of Emergency Services. Deployment was coordinated through the Unified Command Operations Center.

Arrest Information:

Overall, 23 individuals were arrested over the course of 4 days. Offenses ranged as follows:

Offense	# of charges
PC 242 (Battery)	1
PC 185 (Masked offender)	2
BMC (Municipal code)	14
PC 148 (Resist Arrest)	4
PC 405 (Riot)	3
PC 647f (Intoxication/drugs)	4
Weapons Violations	3

Injuries

Officer injuries: no officers reported injuries related to the protests.

Civilian injuries: BFD reports # medical responses. Of those responses, # were transported to hospital.

Inventory of Less Lethal Munitions:

Munitions inventoried at the event deployed in the field are as follows:

Gold Team Go Bag:

- Qty 5 - 40mm CS Muzzle Blast Rounds
- Qty 8 - 5231 CS Triple Phaser Canisters
- Qty 3 - 6230 CS Canisters
- Qty 1 - 5210 White Smoke
- Qty 1 - 6210 White Smoke

Blue Team Go Bag:

- Qty 4 - 40mm CS Muzzle Blast Rounds

Qty 8 – 5231 CS Triple Phaser Canisters
Qty 2 – 6230 CS Canisters
Qty 2 – 5210 White Smoke

In reserve but not deployed:

Go Can #1:

Qty 2 – 5230 CS Canisters
Qty 2 – 5231 CS Tri Chamber Canisters
Qty 5 – 6210 White Smoke
Qty 2 – 6210 Red Smoke

Go Can #2:

Qty 2 – 5230 CS Canisters
Qty 2 – 5231 CS Tri Chamber Canisters
Qty 3 – 6210 White Smoke
Qty 4 – 5210 White Smoke

Go Can #3:

Qty 15 – 5230 CS Canisters

Three Go Cans Consisting of Newly Purchased Smoke:

Qty 60 – 5210 White Smoke

Borrowed ACSO Smoke:

Qty 24 – 9210 White Smoke

No less lethal munitions were used during free speech week. All munitions deployed in the field were returned to Logistics unused.

Personnel Costs:

- Pending report from payroll.

Property Damage:

None reported.

Use of Force Reporting:

No intermediate use of force. (No batons, no less lethal, no pepper spray)

Overall Critique:

Planning and Preparation:

There was significant advanced notice about the events and planning began internally following the “No Racism” events on 8/31/17. The Planning team planned for Shapiro on 9/14/17 and Free Speech Week at the same time. In order to save time and resources; the planning process, leadership structure, and operations plan remained largely the

same as both events had similar contingencies. Planning involved significant involvement of tactical leadership in developing tactical contingency plans. Their input was invaluable. Most of the commanders who would have leadership in the field were included in the planning process. This helped operations during the incident as they were involved, contributed and were oriented to the plan. There were issues with the barricade plan and installation. Responsibility should have been assigned earlier in the planning process and perhaps we could have used logistical support from the EOC to make this smoother.

Mutual Aid meetings were held weekly at OPD and then at UCPD. BPD offered to establish the Unified Command at BPD as well as operate the Emergency Operations Center. The Multi-Purpose Room was used exclusively for the Unified Command Post which created plenty of space for mutual aid commanders.

Response:

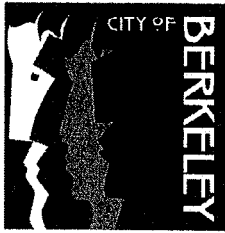
During the course of the 4 days of "Free Speech Week", we handled multiple crowds in crowd management and crowd control deployments, multiple marches, effected 23 arrests for individual violations. Multiple weapons were confiscated including a gun from an unrelated car stop.

Crowd Management:

BPD Units took primary responsibility for creating a safe place for people to protest and counter protest peacefully off campus. When crowds of protesters and counter protesters came together, BPD units were deployed very close to the issue to deter assaults and intervene quickly with arrests for individual behavior.

Marching:

Several times during the 4 days of protest, protesters marched away from campus. BPD units joined the march and were supported by OPD and ACSO. Marching with the protesters proved effective. We were able to intervene and make arrests for assaults committed as the group marched. Arrest support from transport units were able to quickly remove arrestees from the scene. Marching alongside the crowd is a new deployment for us (first used for Shapiro) and was effective given mixed (protester/counter protester) crowds and favorable crowd to officer ratios. No property damage was reported on city streets.



Police Review Commission

ACTION CALENDAR
November 14, 2017

To: Honorable Mayor and Members of the City Council
From: Police Review Commission
Submitted by: George Lippman, Chairperson, Police Review Commission
Subject: Proposed Ordinance: Surveillance Technology Use and Community Safety

RECOMMENDATION

Adopt first reading of an ordinance governing the approval, acquisition, and use of surveillance technology by the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

Staff and commission time to carry out review and reporting requirements.

CURRENT SITUATION AND ITS EFFECTS

Presently, when surveillance technology is acquired and used by City departments, it is often done so without public discussion of the potential intrusions into civil liberties and privacy rights associated with the use of such technologies. While City departments use surveillance technology to advance their work, consideration is not always given to possible drawbacks, and whether those are outweighed by the benefits in using the particular technology. The proposed ordinance establishes a public process by which benefits are balanced against costs before any new surveillance technology is purchased or used, and applies that process to surveillance equipment currently in use.

BACKGROUND

Process

At its July 12, 2016 meeting, the City Council referred to the City Manager, the Police Review Commission, and the Peace and Justice Commission an item to consider adopting a community control of surveillance measure similar to that enacted by the County of Santa Clara. (Attachment 1.) On September 14, 2016, the Police Review Commission formed a Surveillance and Community Safety Ordinance Subcommittee. Four members of the Commission were appointed to the Subcommittee, along with three members of the public with interest and expertise in the subject.

After several meetings, the Subcommittee learned that the Fire Department used many more technologies subject to the draft ordinance than the Police Department and, on January 11, 2017, the PRC voted to refer the draft to the Disaster and Fire Safety Commission, and to suspend its own work in the interim. The Disaster and Fire Safety

Commission completed its review on March 22, 2017, and the PRC's Surveillance and Community Safety Subcommittee resumed its work on April 12, 2017, proceeding diligently on a proposal, culminating in its presentation of a recommended draft ordinance to the full Commission on July 26, 2017.

At its July 26, 2017 meeting, the PRC voted unanimously to recommend that the City Council adopt the attached Surveillance Technology Use and Community Safety Ordinance. (Attachment 2.) (M/S/C Yampolsky/Halpern. Ayes: Allamby, Halpern (temp.), Lippman, Price, Prichett, Roberts, Yampolsky; Noes: None; Abstain: None; Absent: DaSilva, Ford, Perezvelez.)

Ordinance provisions

Under the ordinance, City Council approval is required before: seeking funding for surveillance technology; accepting funds for or donations of such technology; using surveillance technology in a way not previously approved; or agreeing with anyone outside the City to acquire, share or use surveillance technology or the information it provides. (Section 4.)

Before seeking Council approval, the City department must first seek review from the appropriate commission, e.g., the PRC for the Police Department, or the Disaster and Fire Safety Commission for the Fire Department. The department must submit a Surveillance Impact Report and a Surveillance Use Policy for the proposed technology, to be considered by the reviewing commission at its next regular meeting. (Section 4.)

The Surveillance Impact Report describes the how the technology works; how and where it will be used; potential impacts on civil liberties and possible mitigation of such effects; types of data to be collected and how it will be secured; costs of the technology and funding sources; a summary of alternatives to the technology; and a summary of other entities' experience with it. (Section 4.) The Surveillance Use Policy specifies the purpose of the technology; authorized and prohibited uses; information that may be collected, as well as who may access and collect the data; safeguards to protect the data; retention requirements; public accessibility; whether data will be shared with third parties; training to use the technology or use data; and how compliance with the Use Policy will be ensured. (Section 5.)

The reviewing commission may approve or object to proceeding, or take no action. Regardless of the commission's decision or failure to act, the requesting department must still seek City Council approval and submit the Surveillance Impact Report and Surveillance Use Policy to the Council. (Sections 4 and 6.)

The City Council may approve a surveillance technology request only after considering the reviewing commission's recommendation, and then making a determination that the benefits to the community outweigh the costs; that the proposal will safeguard civil liberties and civil rights; and that, in the Council's judgment, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective. (Section 7.)

Any City department possessing or using surveillance technology before the ordinance takes effect must seek approval for continued use, undergoing the review process for new technologies described above, and submit a Surveillance Impact Report and proposed Surveillance Use Policy to the City Council for approval within 180 days of the effective date of the ordinance. (Section 8.)

Following approval of a surveillance technology, the City Council must annually re-evaluate whether the technology continues to meet the thresholds required for initial approval. This occurs following the City department's written Surveillance Report to the appropriate reviewing commission, which makes a recommendation to Council. The Council may direct that use of the technology cease or be modified if the balancing of interests and other concerns are not satisfied. The Council must annually publish a summary of all requests for approve of surveillance technology, as well as all Surveillance Reports submitted, and agendize them for discussion. (Section 9.)

In exigent circumstances, a City department may temporarily acquire or use surveillance technology without first going through the steps set forth above. Notice to the Council and the reviewing commission must, however, be provided within 30 days. If the use is anticipated to be ongoing, the department must submit a proposed Surveillance Use Policy to the reviewing commission, and then the Council, within 90 days. (Section 5.)

The proposed ordinance provides for a private right of action against the City if the ordinance or a Surveillance Use Policy is violated, but only after a 30-day notice of violation and opportunity to cure is given. A private right of action is also allowed against any third party who uses surveillance technology or data in violation of the ordinance. A person subjected to a surveillance technology in violation of the Ordinance, or about whom information has been gathered, may bring a suit for damages. (Section 10.)

As an additional enforcement mechanism, the Subcommittee's recommendation to the Commission included a clause making a willful or intentional violation of the ordinance or Surveillance Use Policy a misdemeanor, punishable by a fine of up to \$1000 per violation. This is the only provision that generated substantial disagreement in both the Subcommittee and the Commission. Proponents believe the criminal violations for flagrant violations shows that the City is serious about adhering to the ordinance, while opponents feel that criminalization is overkill and duplicative of existing law. In a 4-3 vote, the Commission voted to delete this provision from the draft ordinance presented to you. M/S/C (Yampolsky/Price) Ayes: Allamby, Halpern (temp.), Roberts, Yampolsky; Noes: Lippman, Price, Prichett; Abstain: None; Absent: Ford, DaSilva, Perezvelez.

Finally, the draft ordinance contains prohibitions on surveillance-related agreements that conflict with the ordinance and on non-disclosure agreements (Section 11); and protects whistleblowers – employees who bring to light a violation of the ordinance – from adverse action by the City. (Section 12.)

ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects or opportunities are associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposed ordinance responds to a Council referral. See Attachment 1.

CITY MANAGER

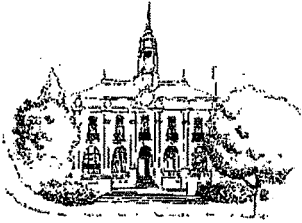
See companion report.

CONTACT PERSON

Katherine J. Lee, Police Review Commission Officer, 510-981-4960

Attachments:

- 1: July 12, 2016 Consent Calendar Item
- 2: Proposed Surveillance Technology Use and Community Safety Ordinance



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177, EMAIL
kworthington@ci.berkeley.ca.us

CONSENT CALENDAR

July 12, 2016

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington

Subject: Referral to the City Manager, the Police Review Commission, and the Peace and Justice Commission to consider adopting a community control of surveillance measure similar to that of Ordinance No. NS-300.897 of Santa Clara County

RECOMMENDATION:

Referral to the City Manager, the Police Review Commission, and the Peace and Justice Commission to ~~review and consider~~ adopting a community control of surveillance measure similar to that of Ordinance No. NS-300.897 of Santa Clara County.

BACKGROUND:

Santa Clara County Board of Supervisors unanimously approved a law which governs surveillance equipment used by police and other law enforcement officials - such as drones, license plate readers, cellphone trackers - including a broad public debate prior to equipment implementation. The law also requires board approval of a Surveillance Use Policy that safeguards civil liberties and civil rights, and ongoing accountability including an annual audit. This law is vital in assuring civil liberties are not hindered and that there is the utmost transparency between law enforcement officials and the citizens which they serve. Santa Clara County Supervisor Joe Simitian spearheaded this effort because there would be a great deal of transparency and accountability.

Implementing a law similar to Ordinance No. NS-300.897 in Berkeley would provide the community with a strong footing in the public debate regarding transparency between citizens and law enforcement officials. The ACLU of California has issued recommendations for municipal ordinances regarding community control of surveillance, and the Santa Clara ordinance was modeled based on the ACLUs suggestions. Many of the technologies that are covered under this law pose serious risks for the health and safety of residents. Since April 2014, the Federal Aviation Administration reported that almost 1,000 near misses or other incidents nationally occurred with approximately 20 percent of those incidents coming from California. Drones and other surveillance technology pose risks to the constitutional rights to the citizens of Berkeley as well.

For more information:

Santa Clara Ordinance <http://tinyurl.com/znee97e>

ACLU Report "Making Smart Decisions About Surveillance" - <http://tinyurl.com/zla8mu6>

Model Ordinance - https://www.aclunc.org/sites/default/files/20141112-model_ordinance.pdf

FINANCIAL IMPLICATIONS:

Minimal.

ENVIROMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

ORDINANCE NO. -N.S.

SURVEILLANCE TECHNOLOGY USE AND COMMUNITY SAFETY ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Title

This ordinance shall be known as the Surveillance Technology Use and Community Safety Ordinance.

Section 2. Findings

The City Council finds as follows:

- 1) Through the enactment of this ordinance, the City seeks to establish a thoughtful process regarding the procurement and use of surveillance technology that carefully balances the City's duty to protect public safety with its duty to protect the privacy and civil rights of its community members.
- 2) Transparency is essential when the City is considering procurement and use of surveillance technology.
- 3) Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk. In U.S. history, government surveillance has had a disproportionately repressive effect on marginalized racial, ethnic, religious, and LGBT communities and social change movements.
- 4) No decisions relating to surveillance technology should occur without strong consideration of the impact such technologies may have on civil rights and civil liberties, including those rights guaranteed by the California and United States Constitutions.
- 5) Surveillance technology involves immediate, as well as ongoing, financial costs. Before the City acquires any surveillance technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.
- 6) Decisions regarding whether and how surveillance technologies should be funded, acquired, or used should give significant weight to public input.
- 7) Legally enforceable safeguards, including robust transparency, oversight, and accountability measures, must be in place to protect civil rights and civil liberties before any surveillance technology is acquired or deployed.

- 8) If a surveillance technology is approved, data reporting measures must be adopted that empower the City Council and public to verify that mandated civil rights and civil liberties safeguards have been strictly observed.

Section 3. Definitions

The following definitions apply to this Ordinance:

- 1) "Surveillance Report" means an annual written report concerning a specific surveillance technology that includes all of the following:
 - a) A description of how the surveillance technology was used, including the quantity of data gathered or analyzed by the technology;
 - b) Whether and how often data acquired through the use of the surveillance technology was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, and the justification for the disclosure(s);
 - c) Where applicable, a breakdown of what physical objects the surveillance technology software was installed upon; for surveillance technology software, a breakdown of what data sources the surveillance technology was applied to;
 - d) Where applicable, a breakdown of where the surveillance technology was deployed geographically, by whatever geographical unit is used by the City entity;
 - e) A summary of each community complaint received by the City entity or applicable reviewing commission about the surveillance technology;
 - f) The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;
 - g) Information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;
 - h) Information that helps the community assess whether the surveillance technology has been effective at achieving its identified purposes;
 - i) Statistics and information about public records act requests;
 - j) Total annual costs for the surveillance technology, including personnel and other ongoing costs, and what source of funding will fund the technology in the coming year; and
 - k) Any request by the City entity for modifications to the Surveillance Use Policy and a detailed basis for the request.

- 2) "City entity" means any department, bureau, division, or unit of the City of Berkeley.
- 3) "Surveillance technology" means any electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered surveillance technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems; body-worn cameras; social media analytics software; gait analysis software; video cameras that record audio or video, and transmit or can be remotely accessed; and personal communication devices.
 - a) "Surveillance technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 8(3): (a) routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or law enforcement functions; (b) Parking Ticket Devices (PTDs); (c) manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings; (d) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles; (e) manually-operated technological devices used primarily for internal municipal entity communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems; (f) municipal agency databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology; or (g) electrocardiogram machines.
- 4) "Surveillance Impact Report" means a publicly-released written report that, if the surveillance technology were to be used or deployed, includes the following:
 - a) **Description:** Information describing the surveillance technology and how it works, including product descriptions from manufacturers;
 - b) **Purpose:** Information on the proposed purposes(s) for the surveillance technology;
 - c) **Location:** The location(s) it may be deployed and reasons for deployment in the location(s);

- d) **Impact:** An assessment identifying any potential impact on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;
 - e) **Mitigation:** Information regarding specific, affirmative technical and procedural measures that will be implemented to appropriately safeguard the public from any impact identified in subsection (d);
 - f) **Data Types and Sources:** A list of all sources of data to be collected, analyzed, or processed by the surveillance technology, including "open source" data;
 - g) **Data Security:** Information about the steps that will be taken to ensure that adequate security measures are used to safeguard the data collected or generated by the technology from unauthorized access or disclosure;
 - h) **Fiscal Cost:** The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding;
 - i) **Third Party Dependence:** Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis;
 - j) **Alternatives:** A summary of all alternative methods (whether involving the use of a new technology or not) considered before deciding to use the proposed surveillance technology, including the costs and benefits associated with each alternative and an explanation of why the proposed technology is preferable; and,
 - k) **Track Record:** A summary of the experience (if any) other entities, especially government entities, have had with the proposed technology, including, if available, quantitative information about the effectiveness of the proposed technology in achieving its stated purpose in other jurisdictions, and any known adverse information about the technology (such as unanticipated costs, failures, or civil rights and civil liberties abuses).
- 5) "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of the surveillance technology that at a minimum specifies the following:
- a) **Purpose:** The specific purpose(s) that the surveillance technology is intended to advance;
 - b) **Authorized Use:** The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;

- c) **Data Collection:** The information that may be collected by the surveillance technology. Where applicable, list any data sources the technology will rely upon, including “open source” data;
 - d) **Data Access:** The individuals who may access or use the collected information, and the rules and processes required prior to access or use of the information;
 - e) **Data Protection:** The safeguards that protect information from unauthorized access, including encryption and access control mechanisms;
 - f) **Data Retention:** The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond that period;
 - g) **Public Access:** How collected information may be accessed or used by members of the public;
 - h) **Third Party Data Sharing:** If and how other City or non-City entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;
 - i) **Training:** The training required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology, including any training materials;
 - j) **Auditing and Oversight:** The mechanisms to ensure that the Surveillance Use Policy is followed, including the job title category and number of personnel assigned to ensure compliance with the policy, internal recordkeeping of the use of the technology or access to information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the legally enforceable sanctions for violations of the policy; and
 - k) **Maintenance:** The mechanisms and procedures to ensure that the security and integrity of the surveillance technology and collected information will be maintained.
- 6) “Exigent circumstances” means a City entity’s good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the surveillance technology or the information it provides.

- 7) "Appropriate reviewing commission" means the existing citizens commission with reviewing responsibilities over the City entity. If no such commission exists, the City Manager may designate a citizens commission to act as the reviewing commission or ask the City entity to submit reports directly to the City Manager.
- 8) "Personal communication devices" means mobile telephones, personal digital assistants, wireless capable tablets and similar wireless two-way communications and/or portable Internet accessing devices, whether procured or subsidized by a City entity or personally owned, that are used in the regular course of business.

Section 4. City Council Approval Requirement

- 1) A City entity shall notify the Chair of the appropriate reviewing commission prior to the entity:
 - a) Seeking or soliciting funds for surveillance technology, including but not limited to applying for a grant; or
 - b) Soliciting proposals with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides.

Upon notification by the City entity, the Chair shall place the item on the agenda at the next meeting for which it may be properly noticed, for discussion and possible action. At this meeting, the City entity shall inform the reviewing commission of the cost of the proposal, the need for the funds or equipment, or shall otherwise justify the action the entity intends to take. The reviewing commission may vote its approval to proceed, object to the proposal, recommend that the entity modify its proposal, or take no action. Neither opposition to the act or failure by the reviewing commission to act shall prohibit the City entity from proceeding. The City entity is still bound by subsection (2) regardless of the action taken by the reviewing commission under this subsection.

- 2) A City entity must obtain City Council approval, subsequent to a regularly scheduled, non-consent City Council meeting prior to any of the following:
 - a) Accepting state or federal funds for, or in-kind or other donations of, surveillance technology;
 - b) Acquiring new surveillance technology, including but not limited to procuring such technology without the exchange of monies or consideration;
 - c) Using new surveillance technology, or using existing surveillance technology for a purpose, in a manner or in a location not previously approved by the City Council; or

- d) Entering into an agreement with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides.
- 3) A City entity must obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (2)(a)-(d).

Section 5. Temporary Acquisition and Use of Surveillance Equipment

Notwithstanding the provisions of this ordinance, a City entity may temporarily acquire or temporarily use surveillance technology in exigent circumstances without following the provisions of this ordinance before that acquisition or use. However, a City entity that acquires or uses surveillance technology in exigent circumstances must: (1) provide notice of that acquisition and use to the City Council and appropriate reviewing commission in writing within 30 days following the commencement of those circumstances; (2) if it is anticipated that the use will continue beyond the exigent need, submit a proposed Surveillance Use Policy to the City Council regarding that surveillance technology within 90 days following the commencement of those circumstances pursuant to Section 4; and (3) include that surveillance technology in the City entity's next annual Surveillance Report to the City Council following the commencement of those circumstances.

Section 6. Information Required

- 1) Prior to seeking City Council approval under Section 4, the City entity shall submit the Surveillance Impact Report and proposed Surveillance Use Policy to the appropriate reviewing commission for its review at a regularly noticed meeting.
- 2) The reviewing commission shall recommend that the City Council adopt, modify, or reject the proposed Surveillance Use Policy.
- 3) After receiving the recommendation of the reviewing commission, the City entity seeking approval under Section 4 shall submit to the City Council a Surveillance Impact Report and a proposed Surveillance Use Policy at least forty-five (45) days prior to the City Council meeting. The City Council shall publicly release in print and online the Surveillance Impact Report, proposed Surveillance Use Policy, and reviewing commission recommendation at least thirty (30) days prior to the City Council meeting.
- 4) The City Council, or its appointed designee, shall continue to make the Surveillance Impact Report and Surveillance Use Policy, and updated versions thereof, available to the public as long as the City entity continues to utilize the surveillance technology in accordance with its request pursuant to Section 4.

Section 7. Determination by City Council that Benefits Outweigh Costs and Concerns

The City Council shall only approve any action described in Section 4 (2) or Section 5 of this ordinance after first considering the recommendation of the appropriate reviewing commission, and subsequently making a determination that the benefits to the community of the surveillance technology outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights; and that, in the City Council's judgment, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective.

Section 8. Compliance for Existing Surveillance Technology

Each City entity possessing or using surveillance technology prior to the effective date of this ordinance shall submit a Surveillance Impact Report and a proposed Surveillance Use Policy in compliance with Section 6 and no later than one hundred eighty (180) days following the effective date of this ordinance for review and approval by the City Council pursuant to Section 4. If such review and approval has not occurred within ninety (90) days of the City Council submission date, the City entity shall cease its use of the surveillance technology until such review and approval occurs.

Section 9. Oversight Following City Council Approval

- 1) A City entity that obtained approval for the use of surveillance technology must submit a written Surveillance Report for each such surveillance technology to the City Council within twelve (12) months of City Council approval and annually thereafter on or before November 1.
 - a) Prior to submission of the Surveillance Report to the City Council, the City entity shall submit the Surveillance Report to the appropriate reviewing commission for its review.
 - b) The reviewing commission shall recommend to the City Council that the benefits to the community of the surveillance technology outweigh the costs and that civil liberties and civil rights are appropriately safeguarded; that use of the surveillance technology cease; or propose modifications to the Surveillance Use Policy that will resolve the concerns.
- 2) Based upon information provided in the Surveillance Report and after considering the recommendation of the reviewing commission, the City Council shall determine whether the requirements of Section 7 are satisfied. If the requirements of Section 7 are not satisfied, the City Council shall direct that use of the surveillance technology cease and/or require modifications to the Surveillance Use Policy that will resolve any deficiencies.

- 3) No later than January 15 of each year, the City Council shall hold a public meeting and publicly release in print and online a report that includes, for the prior calendar year:
 - a) A summary of all requests for City Council approval pursuant to Section 4 or Section 8 and the pertinent reviewing commission recommendation, including whether the City Council approved or rejected the proposal and/or required changes to a proposed Surveillance Use Policy before approval; and
 - b) All Surveillance Reports submitted.

Section 10. Enforcement

- 1) Any violation of this Ordinance, or of a Surveillance Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance. An action instituted under this paragraph shall be brought against the city entity, the City of Berkeley, and, if necessary to effectuate compliance with this Ordinance or a Surveillance Use Policy (including to expunge information unlawfully collected, retained, or shared thereunder), any third party, except a city employee, with possession, custody, or control of data subject to this Ordinance.
 - a) Prior to the initiation of any legal proceeding under subsection 1), the City of Berkeley or City entity must be given notice of the violation(s) and an opportunity to correct such violation(s) within 30 days of receipt of the notice.
- 2) Any person who has been subjected to a surveillance technology in violation of this Ordinance, or about whom information has been obtained, retained, accessed, shared, or used in violation of this Ordinance or of a Surveillance Use Policy, may institute proceedings in any court of competent jurisdiction against any person who committed such violation and shall be entitled to recover actual damages.
- 3) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought under paragraphs (1) or (2).

Section 11. Secrecy of Surveillance Technology

It shall be unlawful for the City to enter into any surveillance-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

To the extent permitted by law, the City shall publicly disclose all of its surveillance-related contracts, including any and all related non-disclosure agreements, if any regardless of any contract terms to the contrary.

Section 12. Whistleblower Protections

1) It shall be a violation of Section 12 for the City or anyone acting on behalf of the City to take or fail to take, or threaten to take or fail to take, an adverse employment action with respect to any employee or applicant for employment, because:

a) The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of a surveillance technology or surveillance data based upon a good faith belief that the disclosure evidenced a violation of this Ordinance.

Section 13. Severability

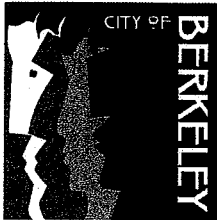
The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 14. Construction

The provisions of this Ordinance, including the terms defined in Section 3, are to be construed broadly so as to effectuate the purposes of this Ordinance.

Section 15. Effective Date

This Ordinance shall take effect on [DATE].



Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 31, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison, Mayor Arreguin, and Councilmembers Bartlett and Worthington
Subject: Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy

RECOMMENDATION

1. Direct the City Manager and the Berkeley Police Department ("BPD" or "the Department") to amend General Order U-2: Use of Force ("General Order U-2") to:
 - a. Enhance BPD's use of force policy statement; and,
 - b. Create a definition of use of force; and
 - c. Require that all uses of force be reported; and
 - d. Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and
 - e. Require Use of Force Reports to be captured in a manner that allows for analysis; and
 - f. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.
2. Direct that the City Manager report to the Council by December 12, 2017 on the progress to date.

BACKGROUND

The BPD has a long record of embracing modern policing policies. A further enhancement would be to clarify the Department's use of force policies.

Specifically, the June 27, 2017 draft report commissioned by BPD and authored by CPE—an independent, non-profit, grant-funded organization—advised that BPD policy is not comprehensive in tracking use of force by BPD officers:

"BPD departmental policy does not require the comprehensive tracking of use of force incidents. In particular, BPD policy does not require that an officer's use of physical force be reported unless the officer used a weapon, the subject was injured, or the subject complains. As a result, incidents of physical force not involving a weapon are not comprehensively reported or tracked by BPD, and are not reflected."

That same report confirmed that Hispanic and Black people in Berkeley are more likely to be subjected to the use of force by BPD. With respect to the latter group, the report noted that "Black residents of Berkeley were about six times more likely than White residents to be subjected to reported use of force." This part of the report is not planned for revision in the final report.

Berkeley is not immune to the broader history of racial and ethnic disparities in the United States. It is incumbent upon the City to continue its efforts towards addressing and remedying ongoing instances of inequity. These issues are of particular urgency given that the City has endowed the police with the responsibility to enforce the law and keep the peace. Most critically, the police are empowered to reasonably employ lethal, less-than-lethal and non-lethal force for the purpose of achieving these ends when justified by law and city protocols and procedures. In short, the City has the means and power to dramatically affect the lives and liberties of the people within its jurisdiction. Therefore, to ensure the public's safety and liberty, the utmost prudence must be demonstrated in internal policies governing the use of force. Officers must strive to use the minimal amount of force necessary and use de-escalation techniques whenever feasible and appropriate.

Current BPD policy requires officers to submit an oral report to their supervisor in five situations relating to the use of force:

- (1) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer.
- (2) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16).
- (3) When an officer or employee uses a non-lethal weapon (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained.
- (4) When an officer or employee uses a force during a crowd situation.
- (5) When any officer or employee who observes a potentially unauthorized use of force

Department supervisors are not required to report when other types of force are used.

It is necessary to ensure that the Department and City have a clear understanding of its use of force policies and how force is being used in practice. Current reporting policies

are in some cases ambiguous and incomplete. Further review of BPD General Order U-2 has indicated that it could be improved with substantive and organizational amendments relating to use of force.

First, the BPD and the community would benefit from an updated policy statement regarding use of force in General Order U-2. The proposed policy statement attached to this item draws from the statements of the Bay Area Rapid Transit Police Department ("BART PD") and the Oakland Police Department ("OPD"). It also seeks to highlight BPD's commitment to valuing the protection and sanctity of human life, striving to use the minimal amount of force necessary, a requirement to de-escalate force when a lesser level of force is reasonable, increased attention to applying force to vulnerable populations and the necessity of transparency, accountability through rigorous reporting and review of all instances of the use of force, and not using force with bias, based upon: race; ethnicity or nationality; religion; sex, sexual orientation; economic status; age; cultural group; disability, or affiliation with any other similar identifiable group. While the policy statement references the importance of de-escalation, a more detailed section relating to de-escalation techniques is beyond the scope of this referral. BPD might consider referring to Section 300.2.2, De-Escalation Techniques, in BART PD's Use of Force policy.

Second, the proposed update adds a foundational definition of "Use of Force" to the definitions section of General Order U-2. The definition of force proposed here explicitly includes physical techniques and tactics, meaning force stemming from the utilization of an officer's body. While complaints about the improper use of officer hands and feet is referenced in General Order P-26 and a checkbox relating to physical force is included in the exemplar Use of Force Report attached to General Order U-2, there is no explicit reference in General Order U-2 to reportable use of an officer's body.

Third, the proposed update reorganizes and enhances the use of force reporting section. Similar to the general orders of BART PD and OPD, the proposed update requires all uses of force to be reported, and categorizes uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review, and for illustrating the force continuum. Physical force and the intentional pointing of a weapon are explicitly referenced as a reportable uses of force. Body cameras are also referenced with the expectation that the body camera implementation will be finalized soon. If the program is not finalized by the time General Order U-2 is updated, the body camera language should be added upon implementation.

Fourth, the proposed update requires that the Use of Force Reports should be digitized and made available internally in a text-searchable format. The purpose of this provision is to encourage Department leadership to have use of force data readily available to them for analysis purposes. Analysis can rapidly inform the implementation of new

policies to address disparities and other issues. In addition, the proposed update requires the Department to prepare an annual anonymized analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.

BART PD and OPD have both categorized and organized use of force into levels of intensity, clarified physical uses of force and enhanced reporting policies for the purpose of analysis. These departments have clear policies about the force continuum available to officers and the responsibility for reporting, investigating, documenting and reviewing uses of force across their respective continua. In addition, the San Francisco Police Department ("SFPD") has begun implementing more than 200 recommendations made by the Department of Justice, including those related to use of force policies. SFPD has reported in 2017 an 11% decrease in use of force incidents and an 8.6% decrease in complaints to the San Francisco Department of Police Accountability as compared to the first six months of 2016. The Council, the City Manager and the BPD would benefit from the examples of neighboring departments in seeking to improve community policing and accountability. By implementing the proposed use of force amendments, the BPD would be furthering existing internal and national efforts to update its use of force policies, and would be acting to enhance safety of the public and the officers sworn to protect them. Officers would face less confusion about the force continuum and police leadership would enjoy improved understanding of how their officers are employing force. By acting now to further update its use of force policies, the City can empower both the BPD and the community to understand how to best address use of force disparities disproportionately affecting certain racial and ethnic groups.

FINANCIAL IMPLICATIONS

Staff time is necessary for amending General Order U-2, and additional training will be needed to comply with these updates. The City stands to potentially benefit from fewer instances of costly litigation and personnel investigations due to the increased clarity of General Order U-2.

ENVIRONMENTAL SUSTAINABILITY

No Ecological Impact

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS

1. Proposed amendments to General Order U-2
2. Use of Force policies of the BART PD and OPD

BERKELEY POLICE DEPARTMENT

DATE ISSUED: ~~September 13, 2017~~

GENERAL ORDER U-2

SUBJECT: USE OF FORCE

PURPOSE

- 1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

- 2 - The Berkeley Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police objective with respect and minimal reliance on the use of force.
- 3 - The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force.
- 4 - Officers must strive to use the minimal amount of force necessary. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Use of reasonable force and the public welfare requires monitoring, evaluation and a careful balancing of all interests. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary, with limited information and in circumstances that are tense, uncertain and rapidly evolving.
- 5 - Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.
- 6 - Officers and employees shall not use force with bias, based upon: race; ethnicity or nationality; religion; sex, sexual orientation; economic status; age; cultural group; disability; or affiliation with any other similar identifiable group.
- 7 - Officers are required to de-escalate the force when the member reasonably believes a lesser level or no further force is appropriate. Officers shall use de-escalation techniques whenever feasible and appropriate: to potentially reduce or eliminate the need to use force; and to prevent injuries to the subject, the public and the officer(s). De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g.,

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specialized units, mental health care providers, negotiators, etc.) to resolve the incident.

8 - Officers and employees shall intervene and prevent or stop the use of unreasonable force by other members. Officers and employees are prohibited from the use of unreasonable force and using force for interrogation or punishment.

9 - Use of force against vulnerable populations (such as, without limitation, children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective. It is recognized that the above may not be readily apparent or known to the officer.

10 - The Department recognizes that transparency and accountability in the use of force is essential to preserving the trust of the community and to maintaining professional standards. This policy therefore requires rigorous reporting and review of all instances of the use of force.

11 - Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.

(a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.

12 - In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.

(a) The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The "spoked wheel" is one visual concept of the various options that an officer should consider in a threatening situation.

(b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to the threat.

DEFINITIONS

13 - Use of Force: The application of physical techniques or tactics, vehicles, chemical agents or weapons to another person.

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- 14 - Lethal Force: Any use of force that creates a substantial risk of causing death or serious bodily injury.
- 15 - Less-Than-Lethal Force: Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.
 - (a) Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.
- 16 - Non-Lethal Force: Any use of force other than lethal force or less-than-lethal force
- 17 - Officer (or) Police Officer: Any sworn peace officer.
- 18 - Authorized Employee: Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.
- 19 - Employee: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."
- 20 - Deploy:
 - (a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.
 - (b) With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.
- 21 - Use:
 - (a) With respect to less-than-lethal munitions, to discharge a less-than-lethal munition.
 - (b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

Use of Lethal Force

- 22 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:

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- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
- (c) During other police duty:
 - (1) In supervised Department training sessions at an approved range, or other site.
 - (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

Use of Vehicles

- 23 - Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:
- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
 - (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

- 24 - Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.

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- 25 - Except during authorized training programs, less-than-lethal force shall be deployed only at the direction of a sergeant or command officer, or the Incident Commander in a crowd situation.
- 26 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:
 - (a) When an act of violence is occurring, or is about to occur;
 - (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
 - (c) To deter a person who is reasonably believed to be armed and is threatening to harm him/herself, another person, or an officer; or,
 - (d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.
- 27 - When practical, approval for the deployment and use of less-than-lethal force will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).
 - (a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.
 - (b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal force deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.
- 28 - In crowd situations, less-than-lethal force and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).
 - (a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.
 - (b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
 - (c) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g., the reason for the use of force, location, description of the individual(s) upon whom force was used,

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type of force used, etc.

- (d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

Use of Non-Lethal Force

29 - When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use reasonable approved non-lethal force techniques and weapons in the following circumstances:

- (a) To protect themselves or another person from physical injury;
- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

30 - The following uses of force are prohibited:

- (a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."
 - (1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.
- (b) Oleoresin Capsicum (pepper spray) should not be directed against a person or persons who are engaged in peaceful, non-violent expression of First Amendment rights e.g. persons sitting or simply standing during a demonstration. Officers shall not use pepper spray to disperse a crowd, move a crowd, or against subjects involved in passive resistance.
- (c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

31 - When an officer or employee uses force that results in injury, or when a subject

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complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17).

Unauthorized Use of Force / Intervention and Reporting

- 32 - When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:
- (a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.
 - (1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.
 - (b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

USE OF FORCE REPORTING, INVESTIGATION, DOCUMENTATION,
AND REVIEW

Use of Force / Reporting Requirements

- 33 - Personnel shall notify his/her supervisor immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.
- 34 - All uses of force must be documented in a police report and reviewed by an on-duty sergeant or command officer who was not directly involved in the incident. The following categories and parameters will explain levels of force and the respective reporting, investigation, documentation, and review requirements. Incidents will be categorized as Level 1, Level 2, or Level 3. Data on each level of use of force shall be entered into the Use of Force Report and the BPD's database.

Use of Force / Level 1

- 35 - Level 1 Incident Parameters:
- (a) No suspect injury or complaint of injury due to interaction with officer.
 - (b) No allegation of misconduct against officer, regarding force.

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- (c) Officer body camera was activated in a timely manner, per policy and recorded the use of force.
- (d) Officer used lesser levels of force.¹

36 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report.

Use of Force / Level 2

37 - Level 2 Incident Parameters:

- (a) Would have otherwise been classified as a Level 1, except one of more of the following apply:
 - (1) Suspect injury or complaint of injury due to interaction with officer.
 - (2) Allegation of misconduct against officer, regarding force.
 - (3) Officer body camera was not activated during use of force.
- (b) The use of force is Level 2 if the officer used more severe force.²

38 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report. Use of Force involving OC will be documented and reviewed additionally in a Use of Pepper Spray Report.

Use of Force / Level 3

¹ For example, any of the following force options were used:

- (1) Control holds/pressure point application
- (2) Leverage
- (3) Grab
- (4) Bodyweight
- (5) Physical technique or tactic applied to a vulnerable area, excluding strikes (e.g., hair grab, pressure to mastoid or jaw line; and shoulder muscle grab)
- (6) Vehicle pursuit with no collision
- (7) Firearm drawn/deployed but not fired, suspect contacted

² For example, any of the following force options were used:

- (1) Takedowns, lifts and leg sweeps
- (2) Chemical Agents/Munitions (e.g., Oleoresin Capsicum, CS)
- (3) Impact weapon strikes (e.g., baton)
- (4) Use of body or body parts
- (5) Intentional pointing of a firearm at another person
- (6) Use of any other non-lethal or less-than-lethal weapon

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39 - Level 3 Incident Parameters:

- (a) Use of firearm, officer involved shooting
- (b) Any intentional firearm discharge at a person, regardless of injury
- (c) Any unintentional firearms discharge
- (d) Any intentional impact weapon strike to the head
- (e) Any use of force investigation that is elevated to a Level 3 approved by a Watch Commander
- (f) Any force likely to cause death or serious bodily injury

40 - An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to General Order P-12 (See also General Order C-16).

Use of Force / Additional Supervisor Responsibilities

41 - A supervisor or commander involved in a use of force incident shall not investigate the incident or review for approval the Use of Force Report.

42 - A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:

- (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
- (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
- (c) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

43 - The officer or employee must also complete a police or incident report in any of the above three situations.

~~44 — Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:~~

~~44 When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.~~

~~44 When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.~~

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~~44 When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)~~

~~44 When an officer or employee uses a non-lethal weapon (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained~~

~~44 — The officer or employee must also complete a police or incident report in any of the above four situations.~~

44 - Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a "Use of Pepper Spray Report" form. (See Training and Information Bulletin #216 for detailed instructions in completing this form).

45 - Supervisors and commanders have the discretion to elevate any level of force investigation in order to conduct a more thorough investigation of the incident. The Watch Commander shall approve elevating a force investigation to a Level.

46 - Supervisors and commanders shall be held accountable for the timely, accurate, and thorough documentation of all use of force incidents.

47 - The supervisor conducting a Use of Force Report shall:

(a) Attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order).

(b) Route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Captain through the chain of command.

Use of Force / Supervisor Responsibilities

~~— A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:~~

~~When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.~~

~~When an officer discharges a firearm while off duty pursuant to his or her authority as a law enforcement officer.~~

~~When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)~~

~~When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she~~

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~~believes is unauthorized.~~

~~— A supervisor shall complete a Use of Force Report in any of the above four situations.~~

~~A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.~~

~~The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)~~

~~— The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Captain through the chain of command.~~

Use of Force / Administrative Review

- 48 - The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.
 - (a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Captain Review.
- 49 - The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.
- 50 - Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.
- 51 - All Use of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require revision or additional training.
- 52 - Use of Force Reports shall be made available internally in a digital format.
- 53 - At least annually, the office of the Chief of Police should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, the City Council, and the Police Review Commission. The report should not contain the names of officers, suspects or case numbers, and should include:
 - (a) An analysis of use of force incidents with regard to race and ethnicity, location and type of force used.

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- (b) The identification of any trends in the use of force by members.
 - (c) Training needs recommendations.
 - (d) Equipment needs recommendations.
 - (e) Policy revision recommendations
- 54 - Officers will receive annual (at a minimum) training on the policy outlined in General Order U-2 and demonstrate their knowledge and understanding.
- 55 - Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

- 56 - In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:
- (a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: " ... If any person is seriously injured or killed as a result of an officer's actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."
 - (b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings and Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References: *Tennessee v. Garner* (1986) 471 U.S. 1
Graham v. Connor (1989) 490 U.S. 386
Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272
California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843
General Orders A-17, C-16, C-64, F-2, P-12, P-26, R-3 and U-4
Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332
Training and Information Bulletin 216
Lethal and Non-Lethal Force Manual
Uniform and Equipment Manual
City of Berkeley Council Resolution No. 52,605 – N.S. (2/14/85),
"Prohibiting use of 'chokehold' for law enforcement
purposes in the City of Berkeley"
National Tactical Officers Association, General Policy Statement
for Less-Than-Lethal Impact Projectiles (11/22/2002)

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EXEMPLAR

BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT

This report is to be completed by an on-duty supervisor per General Order U-2 if:
(1) Use of any force results in injury or death to a person; (2) Non-lethal weapons
(OC/baton) or less-than-lethal munitions are used on a person; or (3) An officer
discharges a firearm intentionally or unintentionally on duty (other than during
training), or off-duty while acting in the capacity of a police officer.

Date: _____

To: Chief of Police via Chain of Command

From: _____

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): _____

Date / Time of Incident: _____

Location of Incident: _____

Nature of Incident: _____

Officer(s)/Employee(s) Involved: _____

Type of Force used: Physical Baton O.C.
 Firearm Less-than-lethal Other

Level of Force used: Level 1 Level 2 Level 3

Was Officer or Police Employee injured? Yes No

If yes, nature of injuries: _____

Medical treatment required: BFD Response - Yes No

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Was a citizen(s) injured during this incident? Yes No

If "yes," nature of injuries: _____

Medical treatment required: BFD Response - Yes No

Investigator(s) and Identification Technician who responded, if any:

Were photographs taken? Yes No

Summary of actions of Officer(s) involved: _____

Supervisor's Comments:

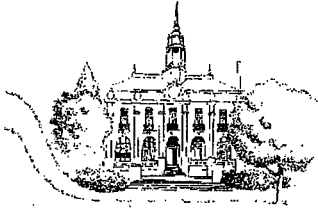
Division Captain Recommendation:

Findings:

- Within Policy
- Referred for Administrative Action/Investigation

Chief of Police (Signature)

(Date)



Kriss Worthington

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 PHONE 510-981-7170, FAX 510-981-7177, EMAIL
 kworthington@cityofberkeley.info

ACTION CALENDAR

October 31, 2017

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Kriss Worthington, Ben Bartlett, and Kate Harrison
 Subject: Refer to the Berkeley Police Department to Address Disparate Racial Treatment and Implement Policy and Practice Reforms

RECOMMENDATION:

Refer to the Berkeley Police Department to track yield rates, develop training programs to address disparities found through the yield rates, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department and broader Berkeley community.

BACKGROUND:

The short-term reforms listed in this referral address the issue of racial disparity of police policies and practices in Berkeley.

The Council directs the Berkeley Police Department to take the actions listed below:

1. Track yield rates (i.e., the percentage of citations or arrests per traffic or pedestrian stop and the ratio of contraband found by search conducted) by individual officer, by patrol and by the department as a whole disaggregated by the race of the individual(s) stopped. This data will focus BPD examination of the reasons for disparate racial treatment and to identify outliers. For the first year, BPD will report its findings quarterly to the Council, using anonymized data.
2. Develop training programs to address the organizational causes of disparate treatment uncovered in #1 above and through examination of footage on police body cameras (e.g., more scenario-based training on procedural justice and the roots of disparate treatment, expanded de-escalation training).
3. Consult and cooperate with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values.
4. Subject to applicable law, provide the PRC with the same access to all department files and records, in addition to all files and records of other City departments and agencies, as the department's Internal Affairs Division (IAD). The Department and other city departments and agencies will make every reasonable effort to respond to the PRC's requests for files and records within (10) days.
5. Use the "Preponderance of the Evidence" as the standard of proof for Board of Inquiry Decisions of the PRC.

6. Extend the current 120-day limit on the imposition of discipline to one year, consistent with existing California law.

FINANCIAL IMPLICATIONS:

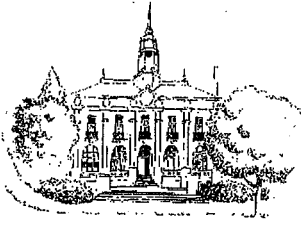
Staff time.

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170



Kriss Worthington

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ACTION CALENDAR

October 31, 2017

To: Honorable Mayor and Members of the City Council
 From: Councilmember Kriss Worthington and Kate Harrison
 Subject: Referral to Police Review Commission to Write a Charter Amendment
 Ballot Measure

RECOMMENDATION: Referral to the Police Review Commission to write a charter amendment ballot measure to present to Berkeley voters to reform the Police Review Commission structure.

BACKGROUND:

In 2016, citizens of Oakland voted to create a Police Review Commission that has power to create real changes. San Francisco voters also passed similar reforms. Berkeley now trails behind these two cities in police accountability standards.

The Police Review Commission (PRC) was established by the voters of Berkeley in 1973. The original 1973 ordinance abolished Internal Affairs, giving sole responsibility for police discipline to the Commission. The city administration of that time held the view that the PRC had an important role to play in reducing the City's liability and fostering a better department. As the PRC was established under an ordinance rather than a charter amendment, it was subject to weakening actions by successive administrations. Regulations limiting the Commission's access to evidence were counter-productive, unnecessary, and not legally required, resulting in and substantially ineffective Commission.

Thus, we refer to the Police Review Commission to review the San Francisco, Oakland, and other police commission models as appropriate and develop a charter amendment ballot measure to provide police accountability. With this referral to the Police Review Commission, the process of writing a ballot measure for the November 2018 election will begin. We request the Commission have a draft ballot measure within six months of the referral.

FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

