

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, September 14, 2016
7:00 P.M.**

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

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)
- 4. APPROVAL OF MINUTES**
Regular Meeting of July 20, 2016
Special Meeting of August 10, 2016
- 5. CHIEF OF POLICE'S REPORT**
Crime, budget, staffing, training updates, and other items.
- 6. CHAIR'S REPORT**
Report on National Night Out activities; other items.
- 7. PRC OFFICER'S REPORT**
Status of complaints; subcommittee use of city facilities; September & October meeting schedule; announcements.
- 8. OLD BUSINESS (discussion & action)**
 - a. Status of request to BPD to revise General Order on the Right to Watch.
From: Commissioner Bernstein
 - b. Follow-up on PRC's letter to City Manager and her response regarding the standard of proof used in BOI hearings.
From: Commissioner Bernstein
 - c. Consider an ordinance on community control of surveillance equipment.
From: City Council

- d. Creation of a subcommittee to examine revisions to the PRC enabling ordinance.
From: Commissioner Perezvelez
- e. Content of findings report sent to complainants following a BOI.
From: Commission

9. NEW BUSINESS (discussion & action)

- a. Prioritization of any new issues the PRC decides to address.
From: PRC Officer
- b. Consideration of recommendations from General Orders C-64, etc.
Subcommittee: i) Revised General Order C-64 (Crowd Management and Control); and ii) Commander's Guide to Crowd Management and Crowd Control
- c. Report on August 1, 2016 meeting with City Manager.
From: Commissioner Perezvelez
- d. Report on September 14, 2016 meeting with BPD representatives to resolve differences on body-worn camera policy.
From: Commissioner Perezvelez
- e. Policy regarding publication of communications from the public to the PRC.
From: PRC Officer
- f. Review of BPD marijuana enforcement report.
From: Commissioner Bernstein
- g. Outreach: consider ways to effectively reach target audience, including possible formation of subcommittee.
- h. Decide whether to accept policy complaint #2406; if accepted, decide how to proceed.
From: PRC Officer

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

- a. General Orders C-64, etc. Subcommittee
Schedule next meeting date or consider dissolving.
- b. Fair & Impartial Policing Subcommittee
Update; next meeting scheduled for September 19, 2016, at 6:00 p.m.
- c. Mutual Aid Pacts Subcommittee
Schedule first meeting date.
- d. Media Credentialing Subcommittee
Review tasks; schedule first meeting date.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. 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 matters:

13. INQUIRY TO CITY MANAGER REGARDING EXCUSING A SUBJECT OFFICER FROM APPEARING AT A BOI

14. REVIEW OF CALOCA DECISION

Complaint #2380 *(Decision and brief to be distributed during closed session.)*

15. VOTE ON WHETHER TO ACCEPT A LATE-FILED COMPLAINT

Complaint #2402

16. VOTE ON WHETHER TO ACCEPT A LATE-FILED COMPLAINT

Complaint #2404

End of Closed Session

17. ANNOUNCEMENT OF CLOSED SESSION VOTES

18. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.



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 981-6342 (V) or 981-6345 (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

September 14, 2016

MINUTES

July 27, 2016 Regular Meeting	Page	7
August 10, 2016 Special Meeting	Page	13

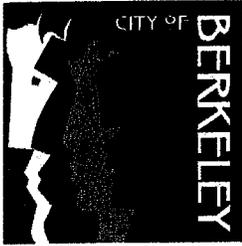
AGENDA-RELATED

Item 8.c – Consent Calendar dated July 12, 2016: 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.	Page	15
Item 9.a – PRC Priority List updated 8-22-16.	Page	29
Item 9.a – Prioritization of PRC requests to BPD updated 8-22-16.	Page	31
Item 9.a – PRC Subcommittees List updated 8-31-16.	Page	33
Item 9.b – Memo: Referral of Revised General Order C-64 to the Full Commission.	Page	35
Item 9.b – Draft of BPD General Order C-64 dated August 25, 2016.	Page	37
Item 9.b – Excerpt from PRC Report of Investigation Into Police Dept. Response to Protests on December 6, 2014.	Page	53
Item 9.c – September 6, 2016 memo: Report of August 1, 2016 meeting with City Manager.	Page	65
Item 9.f – Semi-Annual Report of Marijuana Enforcement Activity for period January 1 – June 30, 2016.	Page	67
Item 9.f – Semi-Annual Report of Marijuana Enforcement Activity for period July 1 – December 31, 2013; and BPD response to PRC request for additional information.	Page	71
Item 9.h – Policy Complaint #2406.	Page	79

COMMUNICATIONS

- Memo from the PRC Officer to the Chief of Police, dated July 25, 2016: Release of Use of Force Data to California Department of Justice and Police Review Commission. Page 85
- Email from the Chief of Police to the PRC Officer, dated August 22, 2016: PRC Actions Regarding Review of BPD Response on Dec. 7 & 8, 2014; and attached memo of same date. Page 87
- August 22, 2016 request from the Community Health Commission for a letter to the City Council in support of the development of an African American Resource Center in Berkeley. Page 91
- Information Calendar item dated September 13, 2016, from the City Manager to the Mayor and Councilmembers re: Progress Report on Berkeley Police Department and Police Review Commission Development of Revisions to BPD Policies and Procedures for Responding to Protest Activity. Page 101
- Article from the Daily Cal, dated August 24, 2016: Berkeley Police Review Commission report shows decrease in sustained allegations. Page 103
- Nixle announcement, Berkeley Police Department, dated August 31, 2016: 551 Tickets Written/17 Arrests Made in First Two Weeks of School. Page 105
- Article from Berkeleyside.com, dated August 31, 2016: Officers question leadership of Berkeley police chief. Page 107
- Two emails from a citizen, dated August 31 and September 1, 2016 re: The League of California Cities. Resolution Process. Awareness of Bicycle and Pedestrian Fatalities With use of Vision Zero Program. Page 113

KJL:mgm



Police Review Commission (PRC)

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

**Wednesday, July 27, 2016
7:00 P.M.**

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

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:03 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Terry Roberts (Vice Chair)
Commissioner Alison Bernstein
Commissioner Kimberly DaSilva
Commissioner George Lippman
Commissioner Michael Sherman
Commissioner Kad Smith
Commissioner Ari Yampolsky
Commissioner Bulmaro Vicente (*temporary appointee*)

Absent: Commissioner Jerry Javier

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Michael Meehan (left 7:45 p.m.), Sgt. Benjamin Cardoza, Sgt. Sean Ross

2. APPROVAL OF AGENDA

The Chair asked to move Item #10.a. to after Item #7, to consider an appointment to the Fair & Impartial Policing Subcommittee. The PRC Officer noted a correction to Item #4, which states approval of the July 20 minutes, which should state July 13.

With the above changes, the agenda was approved by general consent.

- **A moment of silence** was observed for: Baton Rouge Police Department Officers Montrell Jackson and Matthew Gerald, and East Baton Rouge Sherriff's Deputy Brad Garafola.

3. PUBLIC COMMENT

There were 3 speakers.

4. APPROVAL OF MINUTES

Motion to approve the Regular Meeting minutes of July 13, 2016, as corrected to show Commissioner Yampolsky seconded the motion on Item #13.

Moved/Seconded (Sherman/Bernstein) **Motion Carried**

Ayes: Bernstein, DaSilva, Lippman, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain: None

Absent: Javier

5. CHIEF OF POLICE'S REPORT

-- Increase assault and rape; decrease in robbery & burglary. Anecdotal evidence that the statewide trend from last year of significant increase in crime is continuing.

-- Budget: looks like ran over; primarily due to filling shifts to meet minimum staffing requirements.

-- Lt. Montgomery at a training: Sr Management Inst. for Police, a 3-week course at Boston University; sponsored by PERF.

-- BPD developed and got POST-certified a Tactical De-escalation training course.

-- Currently 174 sworn, little over 98%, but includes 6 in academy.

-- Hosted a Young African Leader Institute fellow at BPD, a woman from Sudan. City hosted 6 people. Thousands of applications in Africa for each position. 4 weeks here with BPD, then 6 weeks in Washington, DC.

-- Reminder that National Night Out is on Tuesday, Aug. 2.

-- On Sept. 20 BPD will present mid-year crime report to Council; usually present to PRC shortly thereafter. Will work with PRC Officer to schedule.

-- Capt. Harris retiring Friday after 41 years; an amazing career and will be big loss. Due to her retirement a series of promotions: Sgt. Samantha Speelman (Professional Standards); Lt. Mike Durbin; Capt. Jennifer Louis.

Questions/comments:

-- Commend BPD on de-escalation training; described in Berkeleyside article. Shout-out to Sgt. Cummings. Chief: Don't know if BPD is the first, but to get POST-certified a big thing; other jurisdictions impressed and reaching out to them.

-- On Thursday people wanted to meet with Council at City Hall; many officers there. Chief: per City Manager, not a meeting but a protest inside the building. Okay to protest, but outside, not inside. Pass along any questions to PRC Officer.

-- More appreciation for de-escalation training. Also heard meetings scheduled and people turned away at the door even though Councilmembers came down and said let them in. Would like more information. Rise in rape stats due to re-classification? Chief: once re-classification took place (two years ago), then comparing same stats.

-- Re marijuana enforcement statistics, is it possible to layer demographic data on top of those stats? Chief will see. Commissioner: we have in past asked for the marijuana arrests to be placed in context of all drug arrests and will be asking again. Chief: marijuana is low priority among all enforcement, not just drug enforcement.

-- Council Worksession on body-worn cameras. Down to 4 items; looks like will move forward. Willing to sit down with representatives to find some common ground? Chief: Yes. Perhaps consider changing the mix of people who are participating, on both sides.

-- Coro fellowship program -- on Sunday, having police accountability event at City Hall; will you be there? Some high school students planning event to interact with police officers. Chief: ask was for 20 officers on a Sunday night; good idea but a challenge.

-- In light Capt. Frankel retiring soon, considered other promotions? Chief: Retirement not official yet. However, only 2 eligible from prior Captain's test.

-- Speaking of crime stats, PRC has been waiting for report on beat statistics.

6. CHAIR'S REPORT

-- Juneteenth: Commissioners Perezvelez, Lippman and Smith staffed the PRC table. Timbuktu (business) kind enough to loan a canopy. Table was too close to music and could've been visually improved. Topic of outreach will be agendized to discuss more effective ways of reaching target audience.

-- Commonwealth Club sponsoring a discussion next Monday on police accountability at Glide Memorial Church in SF.

-- Newest Commissioner, Kim DaSilva, introduced herself. She is an attorney currently working for the Judicial Council's criminal justice division. Before then, worked for people on death row. Longstanding commitment to criminal justice issues. Has lived in Berkeley 4 years; 2 kids; invested in community.

7. PRC OFFICER'S REPORT

-- Complaint deadlines report distributed and explained.

-- Reminder that next Regular meeting is not until September 14, and meeting after that is September 21 because during the last week of September the PRC Officer and Investigator, and Chair, will be at the NACOLE Conference in Albuquerque, NM.

-- Scheduling of presentation of tactical de-escalation training; Commissioners agreed to August 10, 2016, at 7 p.m.

-- PRC Officer will be on vacation August 1 – 12, but will attend August 1 meeting with City Manager and the training on August 10.

A three-minute recess was taken.

8. OLD BUSINESS (discussion & action)

a. Review of draft PRC Annual Report.

Heard following Item #10.a.

By general consent, the Commission adopted the change to Commissioner Bernstein's letter, as clarified by Commissioner Yampolsky.

Motion to adopt the second of the two suggested alternatives, with the addition of "and incidents" to follow "violent individuals."

Moved/Seconded (Sherman/Bernstein) **Motion Carried**

Ayes: Bernstein, DaSilva, Lippman, Perezvelez, Roberts, Sherman, Smith, and Yampolsky.

Noes: None

Abstain: DaSilva, Vicente

Absent: Javier

Motion to add the proposed paragraph to the Policy Work section.

Moved/Seconded (Bernstein/Sherman) **Motion Carried**

Ayes: Bernstein, Lippman, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain: DaSilva

Absent: Javier

Motion to approve the full Annual Report as revised

Moved/Seconded (Yampolsky/Sherman) **Motion Carried**

Ayes: Bernstein, Lippman, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain: DaSilva

Absent: Javier

- b. Decide on scope and any next steps in December 7 & 8, 2014 investigation.

Motion that recommendations 1) and 3) be referred to the General Orders Subcommittee for consideration; and that a letter be sent on behalf of the full Commission to the Chief asking for answers to questions 1,3,5, and 7; and that the Dec 7 & 8 Subcommittee be disbanded.

Moved/Seconded (Bernstein/Perezvelez) **Motion Carried**

Ayes: Bernstein, DaSilva, Lippman, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain: None

Absent: Javier

- c. Consider initiating policy review regarding operation of DUI checkpoints.

By general consent, the Commission declined to open a policy review regarding the operation of DUI checkpoints.

- d. Status of request to BPD to revise General Order on the Right to Watch.

From: Commissioner Bernstein

Item postponed to the next meeting.

- e. Follow-up on PRC's letter to City Manager regarding the standard of proof used in BOI hearings.

Item postponed to the next meeting.

- f. Status of inquiry to City Manager regarding excusing a subject officer from appearing at a BOI.
Item postponed to the next meeting.
- g. Prioritization of any new issues the PRC has decided to address.
By general consent, the Commissioners prioritized their new requests to the Chief as follows: Assigning a departmental representative to the Fair & Impartial Subcommittee as Group 1, and responding to the Commission's questions regarding December 7 and 8, 2014, as Group 2.
- h. Review of 2015 Internal Affairs complaint statistics.
The statistics were discussed; no action taken.

9. NEW BUSINESS (discussion & action)

- a. Recognition of Capt. Cynthia Harris upon her impending retirement.
By general consent, the Commission approved the proposed resolution honoring Capt. Harris, with minor edits by Commissioner Yampolsky; Chair Perezvelez to sign the final copy, which staff will print on nice paper and frame before sending.
- b. Consider an ordinance on community control of surveillance equipment.
Item postponed to the next meeting.
- c. Report on Council Worksession on body-worn cameras and next steps in finalizing policy.

Motion to empower a subset of the Commission to sit down with whomever the Chief brings to the table, with the following guidance: As to the PRC's positions that all interrogations should be recorded, that the use of private recording devices be prohibited, and that videos should be released to the PRC in conjunction with investigations, these general decisions are not negotiable, although details can be worked out; as to officer review of video prior to writing reports on use of force cases, see what better understanding you can get; and bring back to the full Commission.

Moved/Seconded (Bernstein/Roberts) **Motion Carried**

Ayes: Bernstein, DaSilva, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain: Lippman

Absent: Javier

- d. Creation of a subcommittee to examine revisions to the PRC enabling ordinance.
Item postponed to the next meeting.
- e. Participation in National Night Out.
Several commissioners indicated their intent to participate. PRC Officer to distribute list of participating neighborhood groups to commissioners.
- f. Content of findings report sent to complainants following a BOI.
Item postponed to the next meeting.

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

a. Fair & Impartial Policing Subcommittee

Heard following Item # 7.

Commissioner Lippman, who is Subcommittee chair, gave an update of the first meeting. The next meeting is scheduled for August 1, 2016 at 5:30 p.m.

Elliott Halpern presented himself to the Commission as a candidate for a public member of the subcommittee. The Chair appointed him.

b. General Orders C-64, etc. Subcommittee

Heard following Item #9.f.

The Subcommittee anticipates meeting once more before bringing a report to the full Commission in September.

c. December 7 & 8 Investigation Subcommittee

None. (Disbanded in Item #8.b.)

d. Mutual Aid Pacts Subcommittee

PRC Officer to work with Subcommittee members to schedule its first meeting.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

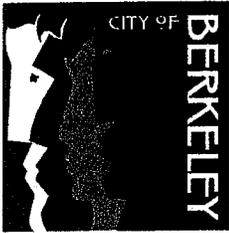
Attached.

12. PUBLIC COMMENT

There were no speakers.

13. ADJOURNMENT

By general consent, the meeting was adjourned at 10:15 p.m.



Police Review Commission (PRC)

POLICE REVIEW COMMISSION
SPECIAL MEETING
MINUTES
(unapproved)

Wednesday, August 10, 2016
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:14 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Terry Roberts (Vice Chair)
Commissioner Alison Bernstein
Commissioner Kimberly DaSilva
Commissioner Jerry Javier
Commissioner George Lippman

Absent: Commissioners Michael Sherman, Kad Smith, Ari Yampolsky

PRC Staff: PRC Officer Katherine J. Lee, PRC Investigator Byron Norris

BPD Staff: Sgt. Spencer Fomby, Sgt. Sean Ross

2. PUBLIC COMMENT

There was 1 speaker.

3. BERKELEY POLICE DEPARTMENT PRESENTATION OF DE-ESCALATION TRAINING PROGRAM FOR POLICE OFFICERS (discussion or action)

The presentation was delivered by Sergeant Spencer Fomby with questions from Commissioners and members of the public (no action taken).

4. ADJOURNMENT

The meeting was adjourned at 9.55 p.m. by general consent.





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.

ENVIRONMENTAL SUSTAINABILITY:

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

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

From Annotated Agenda:

41. Community Control of Surveillance Equipment

From: Councilmember Worthington

Recommendation: Refer to the City Manager, the Police Review Commission, and the Peace and Justice Commission to consider an ordinance on community control of surveillance equipment.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: Moved to Consent Calendar. Adopted revised recommendation in Supplemental Reports Packet #1 as follows:

Refer 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.





Kriss Worthington

Councilmember, City of Berkeley, District 7
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ACTION CALENDAR

July 12, 2016

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

Subject: Community Control of Surveillance Equipment

RECOMMENDATION:

Refer to the City Manager, the Police Review Commission, and the Peace and Justice Commission to consider an ordinance on community control of surveillance equipment.

BACKGROUND:

Santa Clara County Board of Supervisors unanimously approved Ordinance No. NS-300.897 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, 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. 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.

Link to Santa Clara County's Ordinance No. NS-300.897: <http://tinyurl.com/znee97e>

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. NS-300.897

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDING DIVISION A40 OF THE COUNTY OF SANTA CLARA ORDINANCE
CODE RELATING TO SURVEILLANCE-TECHNOLOGY AND COMMUNITY-
SAFETY**

Summary

This Ordinance adds Division A40 relating to the Board-approval requirement for the acquisition and operation of surveillance equipment, and for a related surveillance use policy.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

Title A of the Ordinance Code of the County of Santa Clara is hereby amended by adding a new Division to be numbered and titled and to read as follows:

**DIVISION A40
SURVEILLANCE-TECHNOLOGY AND COMMUNITY-SAFETY**

Sec. A40-1. Findings.

The California Constitution provides that all people have an inalienable right to privacy, which is just as explicitly described in the California Constitution as the right to enjoy and defend life and liberty; the right to acquire, possess, and protect property; and the right to pursue and obtain safety and happiness. State and federal courts, including both the California Supreme Court and the United States Supreme Court, have affirmed individuals' fundamental right to privacy, and the Board finds that protecting and safeguarding this right is a vital part of its duties. Acknowledging the significance of protecting the privacy of County citizens, the Board finds that surveillance technology may also be a valuable tool to bolster community safety and aid in the investigation and prosecution of crimes. To balance the public's right to privacy with the need to promote and ensure community safety, the Board finds that any decision to use surveillance technology must be judiciously balanced with an assessment of the costs to the County and the protection of privacy, civil liberties and civil rights. The Board finds that proper transparency, oversight, and accountability are fundamental to minimizing the risks posed by surveillance technologies. The Board finds it essential to have an informed public

discussion before deploying surveillance technology, and that safeguards should be in place to address potential privacy, civil liberties, and civil rights issues before any new surveillance technology is deployed. The Board finds that if surveillance technology is acquired and deployed, there must be continued oversight and regular evaluation to ensure that safeguards are being followed and that the Board is assessing the surveillance technology's benefits and potential benefits in addition to its costs and potential costs.

Sec. A40-2. Board Approval Requirement for Acquisition and Operation of Surveillance Equipment, and for Related Surveillance Use Policy

(A) County Departments Other than the Sheriff's Office and District Attorney's Office. Each County department other than the Sheriff's Office and District Attorney's Office must obtain Board approval at a properly-noticed public meeting, on the regular (non-consent) calendar, before any of the following:

- (1) Seeking funds for surveillance technology, including but not limited to, applying for a grant, or accepting state or federal funds, or in-kind or other donations;
- (2) Acquiring new surveillance technology, including but not limited to procuring that technology without the exchange of monies or other consideration;
- (3) Using surveillance technology for a purpose, in a manner, or in a location not previously approved by the Board; or
- (4) Entering into an agreement with a non-County entity to acquire, share, or otherwise use surveillance technology or the information it provides.

Those County departments must also obtain Board approval of a Surveillance Use Policy at a properly-noticed public meeting, on the regular (non-consent) calendar, before engaging in any of the activities described in subsections (A)(2), (A)(3), and (A)(4).

(B) Sheriff's Office and District Attorney's Office. Other than with respect to surveillance technology limited to use in law enforcement investigations and prosecutions as specifically defined in Sec. A40-9 of this Division, and subject to Sec. A40-2(C) below, the Sheriff's Office and District Attorney's Office must notify the Board, and obtain Board approval, at a properly-noticed public meeting, on the regular (non-consent) calendar, before any of the following:

- (1) Seeking funds for surveillance technology, including but not limited to, applying for a grant, or accepting state or federal funds, or in-kind or other donations;

- (2) Acquiring new surveillance technology, including but not limited to procuring that technology without the exchange of monies or other consideration;
- (3) Using surveillance technology for a purpose, in a manner, or in a location not previously approved by the Board; or
- (4) Entering into an agreement with a non-County entity to acquire, share, or otherwise use surveillance technology.

The Sheriff's Office and the District Attorney's Office must also notify the Board, and obtain Board approval, of a Surveillance Use Policy at a properly-noticed public meeting, on the regular (non-consent) calendar, before engaging in any of the activities described in subsections (B)(2), (B)(3), and (B)(4).

- (C) In enacting this Division, the Board is not limiting its rights under Government Code section 25303, including without limitation, its right to supervise the official conduct of all county officers, to require reports, or to exercise budgetary authority over the district attorney and sheriff.
- (D) Consistent with California Government Code section 25303, however, in receiving notification and approving or denying the actions in subsections (B)(1), (B)(2), (B)(3), and (B)(4), and approving, and/or denying any Surveillance Use Policy, the Board shall not "obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney."
- (E) To the extent the Board or a court of law determines that approving or denying the actions in subsections (B)(1), (B)(2), (B)(3), or (B)(4), or approving or denying the Surveillance Use Policy would unlawfully "obstruct" the applicable function of the sheriff or district attorney under Government Code section 25303, the Board shall simply receive and discuss notification from the Sheriff's Office or District Attorney's Office regarding subsections (B)(1), (B)(2), (B)(3), or B(4) and receive and discuss the applicable Surveillance Use Policy at a properly-noticed public meeting, on the regular (non-consent) calendar.

Sec. A40-3. Information Required

Unless it is not reasonably possible or feasible to do so (e.g., exigent circumstances, a natural disaster, or technological problems prevent it, etc.), the County department seeking approval under Section A40-2 of this Division must submit to the Board an Anticipated Surveillance Impact Report and a proposed Surveillance Use Policy before the public meeting. The County shall publicly release printed and online copies of

the Anticipated Surveillance Impact Report and proposed Surveillance Use Policy before the public meeting.

Sec. A40-4. Determination by Board that Benefits Outweigh Costs and Concerns

Before approving any action described in Section A40-2(A) and A40-2(B) of this Division, the Board shall assess whether the benefits to the impacted County department(s) and the community of the surveillance technology outweigh the costs—including both the financial costs and reasonable concerns about the impact on and safeguards for privacy, civil liberties, and civil rights.

Sec. A40-5. Compliance for Existing Surveillance Technologies

Each County department possessing or using surveillance technology before the effective date of this Ordinance shall submit a proposed Surveillance Use Policy for that surveillance technology no later than one-hundred eighty (180) days following the effective date of this Ordinance, for review and approval by the Board at a properly-noticed public meeting, on the regular (non-consent) calendar. If a County department is unable to meet this 180-day timeline, the Department may notify the Board in writing of the department's request to extend this period and the reasons for that request. The Board may grant County departments extensions of up to 90 days beyond the 180-day timeline to submit a proposed Surveillance Use Policy.

Consistent with California Government Code section 25303, in approving or denying a Surveillance Use Policy from the Sheriff's Office or the District Attorney's Office, the Board shall not "obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney." To the extent the Board or a court of law determines that approving or denying the Surveillance Use Policy would unlawfully "obstruct" under Government Code section 25303, the Board shall simply receive and discuss the applicable Surveillance Use Policy at a properly-noticed public meeting, on the regular (non-consent) calendar.

Sec. A40-6. Oversight Following Board Approval

- (A) A County department that obtained approval for the use of surveillance technology or the information it provides under Section A40-2(A)(3) or A40-2(A)(4), A40-2(B)(3), A40-2(B)(4), or A40-5 of this Division, must submit an Annual Surveillance Report within twelve (12) months of Board approval, and annually thereafter on or before November 1. Similarly, if the Board received but did not approve a Surveillance Use Policy from the Sheriff's Office or District Attorney's office because of limitations of the Board's authority under Government Code

section 25303, the Sheriff's Office or District Attorney's Office, as applicable, must still submit an Annual Surveillance Use Report within twelve (12) months of the Board's receipt of the Surveillance Use Policy, and annually thereafter on or before November 1.

- (B) Based upon information provided in the Annual Surveillance Report, the Board shall determine whether the benefits to the impacted County department(s) and the community of the surveillance technology outweigh the costs and whether reasonable safeguards exist to address reasonable concerns regarding privacy, civil liberties, and civil rights impacted by deployment of the surveillance technology. If the benefits or reasonably anticipated benefits do not outweigh the costs or civil liberties or civil rights are not reasonably safeguarded, the Board shall consider (1) directing that the use of the surveillance technology cease; (2) requiring modifications to the Surveillance Use Policy that are designed to address the Board's concerns; and/or (3) directing a report-back from the department regarding steps taken to address the Board's concerns.
- (C) No later than January 15 of each fiscal year, the Board shall hold a public meeting, with Annual Surveillance Reports agenda'd on the regular (non-consent) calendar, and publicly release a report that includes the following information for the prior year:
 - (1) A summary of all requests for Board approval and all notifications and Surveillance Use Policies received by the Board pursuant to Section A40-2 or Section A40-5 of this Division, including whether the Board approved, rejected, or received the proposal or notification, and/or required changes to a proposed Surveillance Use Policy before approval; and,
 - (2) All Annual Surveillance Reports submitted.

Sec. A40-7. Definitions

The following definitions apply to this Division:

- (A) **"Annual Surveillance Report"** means a written report concerning specific surveillance technology that includes all of the following:
 - (1) A description of how the surveillance technology was used, including whether it captured images, sound, or information regarding members of the public who are not suspected of engaging in unlawful conduct;

- (2) 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, under what legal standard(s) the information was disclosed, and the justification for the disclosure;
 - (3) A summary of community complaints or concerns about the surveillance technology;
 - (4) The results of any non-privileged internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response;
 - (5) Whether the surveillance technology has been effective at achieving its identified purpose;
 - (6) Statistics and information about public records act requests;
 - (7) 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.
- (B) **“County department”** means any County department with a recognized County budget unit.
- (C) **“Surveillance technology”** means any electronic device, system using an electronic device, or similar technological tool used, designed, or primarily intended to collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of surveillance technology include, but are not limited to, drones with cameras or monitoring capabilities, automated license plate readers, closed-circuit cameras/televisions, cell-site simulators, International Mobile Subscriber Identity (IMSI) trackers, Global Positioning System (GPS) technology, radio-frequency identification (RFID) technology, biometrics-identification technology, and facial-recognition technology.

For purposes of this Division, surveillance technology does not include standard word-processing software; information-technology-protection tools such as web-filtering; medical equipment used to diagnose, treat, or prevent disease or injury; Public Defender or District Attorney case-management databases; publicly available databases; or standard telephone-message equipment that stores the author of a document or the time a phone message was left on a County voicemail, for example.

For purposes of the acquisition and annual reporting requirements in this Division, surveillance technology also does not include County-owned cell phones with the

capacity to capture audio or video footage; or recording devices used exclusively with the express consent of everyone captured on the recording devices; but use of a County-owned cell phone or recording device for an illegal or unauthorized surveillance purpose violates this Division.

(D) **“Anticipated Surveillance Impact Report”** means a publicly-released written report including at a minimum the following:

- (1) Information describing the surveillance technology and how it works;
- (2) Information on the proposed purpose(s) for the surveillance technology;
- (3) The location(s) it may be deployed;
- (4) The potential impact(s) on civil liberties and privacy, and a description of whether there is a plan to address the impact(s); and,
- (5) The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding.

(E) **“Surveillance Use Policy”** means a publicly-released policy for use of the surveillance technology, vetted through County Counsel and submitted to and approved by the Board at a properly-noticed public meeting on the regular (non-consent) calendar. The Surveillance Use Policy shall at a minimum specify the following:

- (1) Purpose: The specific purpose(s) for the surveillance technology.
- (2) Authorized Use: The uses that are authorized, the rules and processes required before that use, and the uses that are prohibited.
- (3) Data Collection: The information that can be collected by the surveillance technology.
- (4) Data Access: The individuals who can access or use the collected information, and the rules and processes required before access or use of the information.
- (5) Data Protection: The safeguards that protect information from unauthorized access, including, but not limited to, encryption, access-control, and access-oversight mechanisms.
- (6) Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason that retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the conditions that must be met to retain information beyond that period.
- (7) Public Access: If and how collected information can be accessed by members of the public, including criminal defendants.

- (8) Third-Party Data-Sharing: If and how other County or non-County entities can access or use the information, including any required justification and legal standard necessary to do so, and any obligation(s) imposed on the recipient of the information.
- (9) Training: The training, if any, required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology, including whether there are training materials.
- (10) Oversight: The mechanisms to ensure that the Surveillance Use Policy is followed, including, but not limited to, identifying 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 sanctions for violations of the policy.

(F) “**Exigent circumstances**” means the County Sheriff’s Office or District Attorney’s Office’s good faith belief that an emergency involving danger of death or serious physical injury to any person requires use of the surveillance technology or the information it provides.

Sec. A40-8. Severability

The provisions of this Division are severable. If any section, subsection, paragraph, sentence, clause or phrase of this Division is for any reason held unconstitutional or invalid, the remaining parts of this Division shall remain fully effective. If the application of any part of this Division to any person or circumstance is held invalid, the application of that part of this Division shall not be affected regarding other persons or circumstances.

Sec. A40-9. Temporary Acquisition and Use of Surveillance Equipment Related to Law Enforcement Investigations and Prosecutions

Notwithstanding the provisions of this Division, the County Sheriff’s Office and District Attorney’s Office may temporarily acquire or temporarily use surveillance technology in exigent circumstances without following the provisions of this ordinance before that acquisition or use unless a State law or federal law preempts or conflicts with this exigent-circumstances exception in any manner (e.g., Civil Code sections 1798.90.5, et seq.; and Government Code section 53166). However, if the Sheriff’s Office or District Attorney’s Office acquires or uses surveillance technology in exigent circumstances under this subdivision, that Office must (1) report that acquisition or use to the Board of Supervisors in writing within 90 days following the end of those circumstances; (2) submit a proposed Surveillance Use Policy to the Board regarding that

surveillance technology within 90 days following the end of those circumstances; and (3) include that surveillance technology in the department's next Annual Surveillance Report to the Board following the end of those circumstances. If the Sheriff's Office or District Attorney's Office is unable to meet the 90-day timeline to submit a proposed Surveillance Use Policy to the Board, that Office may notify the Board in writing of the Office's request to extend this period and the reasons for that request. The Board may grant extensions of up to 90 days beyond the original 90-day timeline to submit a proposed Surveillance Use Policy.

Sec. A40-10. Enforcement

This Division does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to seek the cancellation or suspension of a County contract. This Division does not confer a private right of action upon any person or entity to seek injunctive relief against the County or any individual unless that person or entity has first provided written notice to the County Executive and the Board of Supervisors, by serving the Clerk of the Board, regarding the specific alleged violation of this Division; and has provided the County Executive and the Board with at least 90 days to investigate and achieve compliance regarding any alleged violation. If the specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If it is shown that the violation is the result of arbitrary or capricious action or conduct by the County or an officer thereof in his or her official capacity, the prevailing complainant in an action for injunctive relief may collect from the County reasonable attorney's fees—computed at one hundred dollars (\$100) per hour, but not to exceed seven thousand five hundred dollars (\$7,500)—if he or she is personally obligated to pay the fees. However, a prevailing complainant may not recover attorney's fees under this section and under Government Code section 800 for the same arbitrary or capricious action or conduct.

Sec. A40-11. Retaliation is a Ground for Discipline

It shall be a ground for disciplinary action for a County employee to retaliate against any individual who makes a good-faith complaint to the County Executive's Office that there has been a failure to comply with any part of this Division.

Sec. A40-12. Intentional Misuse of Surveillance Equipment is a Misdemeanor

It shall be a misdemeanor to intentionally use County-owned surveillance technology (1) for a purpose or in a manner that is specifically prohibited in a Board-approved Surveillance Use Policy, or (2) without complying with the terms of this Division with respect to that County-owned surveillance technology. Unless otherwise

prohibited by law, either the District Attorney or County Counsel may prosecute a violation of this Division.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _____ by the following vote:

AYES:

NOES:

ABSENT:

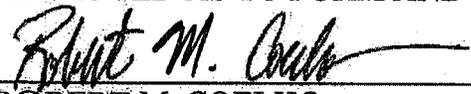
ABSTAIN:

DAVE CORTESE, President
Board of Supervisors

ATTEST:

MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



ROBERT M. COELHO
Assistant County Counsel

1317046

PRC Priority List

Updated August 22, 2016

Top Priorities	Notes
Revision of General Orders, incl. C-64, U-2, M-2	Subcommittee active.
Body-worn camera policy	Following 7.19 Council Work Session, PRC and BPD are meeting 9.14 to see if policy differences can be reconciled.
Fair and Impartial Policing (includes policy review re race designation on traffic citations)	Subcommittee active.
BPD acquisition of non-military armored vehicle	To be agendized.
Review of BOI procedures and underlying authority (Copley Press, PSOBRA, BPA v. COB, etc.)	Staff to prepare memo.
Review of pending regulation changes, and discussion of possible actions, including promulgation and implementation of agreed upon regulation changes and report to Council	Standard of Proof inquiry sent to City Manager 4.19.16; Chair & Vice-Chair meeting 8.1.16; to be agendized for 9.14.16 meeting
City Council directive of 1.26.16 to work with BPD on recommendations from reports re response to Dec. 2014 protests.	Items not referred to General Orders or Media Credentialing Subcommittees agendized for 3.23 meeting. To be agendized for 9.14.16 meeting.
Pending items	
McKinley Ave. Staging – policy review	BPD to present revised G.O. U-4, Unusual Occurrences. (Per 4.13.16 meeting)
G.O. W-1: Right to Watch	Request to BPD 3.31.16 to adopt SFPD's G.O. 5.07
Investigation into BPD response on Dec. 7 & 8, 2014	1) Letter to Chief with inquiries sent 8.22.16; 2) 2 issues referred to G.O. C-64 etc. Subcommittee
Policy review re Smoking Control Ordinance	On 7.15.15, PRC authorized further action as memorialized in 8.7.15 letter from PRC Officer to Chief expressing concerns and making requests.
G.O. M-3: Monthly Management and Annual Reports	7.18.16 letter to CM and Chief re why reports not generated. CM on 8.1.16 indicated she directed Chief to respond.

PRC Priority List

Updated August 22, 2016

Remaining items	
Outreach – community awareness of who the PRC is and what it does	Agendized for 9.14.16 meeting.
Media credentialing policy	Subcommittee formed but activity on hold (per discussion 1.27.16). Agendized for 9.14.16 meeting.
Commissioner training on law and police procedures	Tactical de-escalation training presented 8.10.16. Additional training?
Policy review of citations to bicyclists running red lights	(A. Bernstein would like to add "Idaho stop" issue.)
How to read CAD reports	
Achieving agreement with BPD regarding consultation on all new and changes to G.O.s	
BPD budget review	
BPD preparedness and capacity	Comm. Roberts' item.

Updated August 22, 2016

Prioritization of PRC requests to BPD

Note: This list does not include requests related to Council directive to PRC and BPD to work on recommendations following review of December 6, 2014 response; **assume high priority.**

Date/form of request	Request	Status/Notes
GROUP I		
12.9.15 oral	Center for Policing Equity analysis of stop data – when?	As of July 2016, still unknown
3.31.16 letter	Consider adopting SFPD G.O. 5.07, Rights of Onlookers, as the BPD's Right to Watch G.O.	
GROUP II		
12.9.15 oral	Analysis of new beat plan – when?	At 12.9.15 meeting, Chief said would be another 4 – 6 months.
1.5.16 letter	3 new ordinances to “improve conditions on community sidewalks”: any plan to issue G.O., T&I Bulletin, or Captain’s Instructions?	
4.13.16 meeting	Provide Revised G.O. U-4, Unusual Occurrences, for review.	
8.22.16 letter	Respond to questions regarding BPD response on Dec. 7-8, 2014	
GROUP III		
8.27.15 letter	Smoking Ordinance/dissemination of info to officers re new ordinances.	At 12.9.15 meeting, PRC did not include in top 10 priorities.
1.13.16 oral	Cost analysis to carry out recommendations in Dec. 2014 post-incident review?	

To be prioritized:

General Order M-3, BPD reports to City Manager et al. (letter to CM and Chief 7.18.16)

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 8-31-16**

Subcommittee	Commissioners	Chair	BPD Reps / Others
Body-worn & Dash Cameras Formed 12-9-15	Javier Lippman Roberts Yampolsky	Lippman	Lt. Dave Reece Sgt. Joseph Okies
General Orders on Crowd Control C-64, U-2, M-2 Formed 1-13-16	Bernstein Lippman Perezvelez	Bernstein	Capt. Dave Frankel Lt. Michael Durbin
Fair & Impartial Policing Formed 1-13-16	Javier Lippman Roberts Smith <i>Public members:</i> Christina Murphy Paul Kealoha-Blake Elliot Halpern	Lippman	Capt. Andy Greenwood
Media Credentialing Formed 1-13-16	Perezvelez Sherman Smith		
Mutual Aid Pacts Re-formed 7-13-16	Bernstein DaSilva Sherman		

September 1, 2016

To: Police Review Commission

From: PRC General Orders C-64, etc., Subcommittee *via KJ*

Re: Referral of Revised General Order C-64 to the Full Commission

In the course of the Subcommittee meetings, the Department recommended, and the Subcommittee agreed, that policy matters would be addressed in G.O. C-64 and police practices would be contained in a newly created Commander's Guide. The revisions to G.O. C-64 reflect what the group agreed were proposed policy changes in crowd management and crowd control.

The Department has taken the position that a draft of the Commander's Guide cannot be shared with the Subcommittee at this time. Without reviewing the Commander's Guide, the Subcommittee cannot get a full picture of how the newly-revised crowd management and crowd control practices are to be implemented. At this time, the issue must be addressed by the full Commission, as the Subcommittee has not reached consensus on how to proceed.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: ~~June 11, 2009~~ Draft 8/25/16

GENERAL ORDER C-64

SUBJECT: CROWD MANAGEMENT AND CONTROL FIRST AMENDMENT ASSEMBLIES

PURPOSE

- 1 - The purpose of this Order is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response, and/or deployment of police personnel for crowd situations.

Mission Statement

- 2 - The mission of the Berkeley Police Department in all crowd situations is to facilitate free expression, de-escalate violence, and resolve conflict peacefully ~~appropriately manage events~~ with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.
 - (a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.
 - (b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

POLICY

- 3 - In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.
- 4- The department shall make it a priority to establish lines of communication with the demonstrators both before and during the crowd situation. The department shall consider social media as one means of communication.
- 4/5 - In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.
 - (a) (a) — Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes, or a dispersal order, if the assembly is unlawful.
 - (b) Prior to issuing a dispersal order, BPD shall make efforts to safely arrest those committing crimes while preserving the rights of citizens to demonstrate.
 - (c) Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available

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DATE ISSUED: ~~June 11, 2009~~ Draft 8/25/16

GENERAL ORDER C-64

resources and deploying them flexibly.

Use of Force

- 5/6 - Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in General Order U-2.
- (a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons, and chemical agents should not be used on persons participating in a crowd situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.
- (1) Verbal commands to stand followed by control holds (e.g. wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
- (2) If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
- (3) Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.
- (b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)
- (c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.
- (1) Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine or groin except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person.
- (2) Batons shall not be used to move a crowd prior to dispersal orders being given unless exigent circumstances exist.
- (d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).

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GENERAL ORDER C-64

- (e) Less-lethal munitions shall only be fired at a specific target and may never be used indiscriminately against a crowd or group of people.
- ~~76 - If physical force becomes necessary to disperse the crowd, make arrests, or move a crowd from an area, only reasonable force shall be used to accomplish the mission. Personnel deployments during demonstrations should include clear and specific objectives.~~
- ~~87 - In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.~~
- ~~98 - Less-than-lethal munitions, chemical agents (excluding OC spray), and/or smoke shall only be deployed in crowd situations as outlined in General Order U-2. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.~~
- ~~10 - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agent, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed.~~

Use of Vehicles

- ~~119 - Patrol vehicles may be used in crowd control situations by trained officers to employ authorized Mobile Field Force (MFF) tactics at the direction of the Incident Commander. BPD shall enhance mobility and flexibility by using police vehicles such as trained bicycle officers and motorcycle officers, in addition to foot patrols, to maintain peaceful crowd management. Parking Enforcement Officers will only be used for traffic control purposes.~~
- ~~120 - Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.~~
- (a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.
- (b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.
- ~~134 - Police bicycles employed by specifically trained officers may be used in crowd control situations to physically control or disperse an unlawful assembly.~~
- (a) ~~The use of police bicycles in crowd control situations should only occur when reasonable and until other officers arrive to assist.~~

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GENERAL ORDER C-64

DEFINITIONS

- ~~14 -2~~ Control Hold: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).
- ~~153~~ - Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.
- ~~164~~ - Crowd Control: ~~Any tactic indicating force may be used to dictate crowd movement or actions. Options include, but are not limited to: show of force (large numbers of officers in riot gear); crowd dispersal; crowd containment; and/or, physical arrest of persons in the crowd. Law enforcement response to a pre-planned event or spontaneous event, activity or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd. These strategies include but are not limited to skirmish lines, mobile field force techniques, targeted and mass arrests and the use of force generally.~~
- ~~165~~ - Crowd Management: ~~Tactics used to manage a crowd or event that do not indicate force may be used. Options include, but are not limited to: active involvement in the permit process; communication with crowd monitors; visible monitoring of the crowd; and/or re-direction of pedestrian or vehicular traffic. Strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event's lawful activities. These strategies include, but are not limited to: communication with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.~~
- ~~176~~ - Crowd Management Team (CMT): ~~Sworn officers who have received special training to deal with crowd management and crowd control situations, and are available for callout at the discretion of the Patrol Division Captain with approval from the Chief of Police.~~
- ~~187~~ - Demonstration: A public assembly of persons to exhibit thoughts, ideas, or opinion.
- ~~198~~ - Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.
- (a) During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.
- ~~2019~~ - Mobile Field Force (MFF): a statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.

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GENERAL ORDER C-64

- 210 - Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.
- 224 - Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.
- 23_2 Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).
- 243 - Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)
- (a) Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered "passive".
- 254 - Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.
- 265 - Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.
- 276 - Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.
- (a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations (ref. paragraph 34 of this Order).
- 287 - Riot: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace. (ref. Penal Code §405)
- 298 - Riot Gear: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.
- 3029 - Spontaneous Event: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals,

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major political events, major news events, or any combination thereof.

- 310 - Squad: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.
- 324 - Squad Leader: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.
- 332 - Team: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.
- 343 - Team Leader: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.
- 354 - Time, Place, or Manner Restrictions: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.
- 365- Unlawful assembly: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner. (ref. PC §407)
 - (a) The prohibition in PC §407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence. (ref. *In re Brown* (1973) 9 Cal. 3d 612, 623)

PROCEDURE

Planned Events

- 376 - At such time as a special event or crowd situation comes to the attention of police department personnel, the Patrol Division Captain or Patrol Watch Commander shall be notified, and forwarded all information regarding the event.
- 387 - ~~The Patrol Division Captain or Acting Captain will review the information and determine whether or not a request to call out CMT is warranted.~~
- 398 - The Incident Command System (ICS) shall be used for managing all crowd situations. ICS should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.
 - (a) ~~The command structure should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.~~

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~~(b) If CMT is called out for an event, the CMT Commander may be assigned as the Incident Commander.~~

4039 - The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.

- (a) Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.
 - (1) Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.
 - (2) If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.

410 - Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.

- (a) Initial assessment may include on-duty personnel in the Patrol Division and other divisions within the department.
- (b) If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies. (ref paragraphs 67-71 of this Order)

424 - Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Commanders to secure their participation.

432 - Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.

~~(a)~~ (a) — An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response, and the department resources dedicated to it. (ref. General Order P-23)

~~(b)~~ (b) The Operations Plan shall include specific guidelines and priorities to consider when making deployment decisions and shall reflect the department's commitment to crowd management.

~~(cb)~~ (cb) Upon approval by the Patrol Captain and signed by the Chief of Police, the

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original Operations Plan shall be routed to the Bureau of Internal Controls in the Office of the Chief, and copies distributed to all appropriate personnel.

Spontaneous Events

- 443 - Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.
- 454 - The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:
- (a) Broadcast the type of event, if known, and estimated number of participants.
 - (b) Report known or imminent public safety hazards.
 - (c) Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.
- 465 - The on-duty Patrol Division Watch Commander, or if absent or unavailable, the senior Patrol Division Sergeant, shall respond to the event scene and take the following actions:
- (a) Assume the role and responsibilities of Incident Commander.
 - (b) Assess the potential risks to public safety.
 - (c) Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
 - (d) Assess the number of officers and type of equipment required to maintain order and their manner of response.
 - (e) Assess the potential need for outside resources:
 - (1) On-duty personnel from other police agencies.
 - (2) Fire Department personnel and resources.
 - (3) Media relations personnel.
 - (f) Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.
- 476 - The Incident Commander should consider the following factors when making decisions regarding the police response:

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- (a) The number of people involved in the event and their behavior.
- (b) The level of vehicular traffic.
- (c) The level of disruption to those not involved in, but impacted by the event.
- (d) The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
- (e) The personnel and equipment available for the task.

487 - The Incident Commander may use on-duty personnel from other Divisions or units to assist in the police response to a spontaneous event.

498 - The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:

- (a) Assign personnel to monitor the event only.
- (b) Use personnel to maintain order at the event and/or divert uninvolved, effected traffic away from the area.

5049 - If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:

- (a) Let the group proceed with no police presence.
- (b) Assign officers to facilitate the mobile event by providing traffic control.
- (c) Attempt to direct the path of the mobile event by denying access to certain roadways.
- (d) Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.
- (e) Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.

510 - There is no required order of response; the Incident Commander shall be responsible for continually assessing the event and adjusting the response strategies and tactics accordingly. Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.

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524 - The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished another officer who officially assumes the responsibility.

- (a) Any change of command shall be broadcast on the radio frequency used to manage the police response.

General Event Procedures

532 - Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.

- (a) ~~CMT members shall be in approved CMT uniform when assigned to CMT operations.~~
- (b) Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.

543 - Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment. (i.e., helmet, chemical agent mask, etc.)

554 - Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander. The Incident Commander shall be responsible for assuring that there is an inventory of less-lethal munitions, CS gas, and/or smoke prior to deployment, including any outside agencies assisting BPD. Absent exigent circumstances, such less-lethal munitions, CS gas and smoke shall not be deployed prior to determination of an accurate inventory.

565 - The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.

- (a) Information communicated in an operational briefing shall include, at minimum:
 - (1) The nature of the event.
 - (2) The mission and operational goal(s) of the department.
 - (3) The chain of command managing the event.
 - (4) The individual's assignment and any special equipment he/she may require to accomplish it.
 - (5) When possible, the identity and appearance of all undercover personnel involved in the police response.

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- (i) Undercover personnel should be present at operational briefings for planned events.

576 - Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.

587 - Verbal requests or commands should be used before and when advancing on a crowd.

- (a) Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")

598 - ~~Employees shall not engage members of a crowd in debate or unnecessary dialogue in a crowd situation shall conduct themselves in a professional and courteous manner, answering questions when appropriate.~~

6059 - When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating law.

- (a) Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.

610 - In conformance with procedures set forth in General Order V-10, visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.

- (a) Activities that should be documented via visual recording device include, but are not limited to:

- (1) Criminal activity (misdemeanor or felony);
- (2) Violation of a Permit condition, City Ordinance, or traffic violation.
- (3) Use of force by officers.
- (4) Arrests by officers.
- (5) Any person who, by words or action, is inciting violence.
- (6) Dispersal orders issued by police.

624 - Employees shall adhere to information release and media liaison protocols set forth in General Orders R-23 and P-29, respectively.

- (a) The Incident Commander shall ensure legitimate "credentialed" members of the media are provided access to areas available to them by law.

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- (b) A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.

Dispersal Orders

632 - The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.

643 - Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:

- (a) "I am (*rank*) (*name*) with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at (*location*) to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal munitions projectiles, baton strikes, or use of tear gas, which may pose a risk of serious injury. The following routes of dispersal are available: (*state options available*) -You have (*state time expectation*) to leave the area."

654 - Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.

665 - The Incident Commander, or his/her designee, shall issue a dispersal order:

- (a) As close to the crowd as practical;
- (b) In a manner clearly audible to persons in the crowd;
- (1) Use sound amplification systems when necessary;
- (2) When practical, shall record the dispersal order to establish that the orders were audible to the crowd.
- (32) When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
- (c) In more than one language if possible, depending on the needs of the crowd; and,
- (d) A second time, Additional dispersal orders may be given following a reasonable period of time to allow for crowd dispersal. (Ongoing dispersal orders should be avoided).

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67 - If after a dispersal order is given, a crowd is discovered in a different location, the new location should be evaluated to determine if it is an ongoing unlawful assembly.

Mass Arrests

686 - When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:

- (a) Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.
- (b) In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
- (c) Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
- (d) Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
- (e) Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

Mutual Aid

697 - An official request for mutual aid resources shall adhere to procedures set forth in General Order M-2.

- (a) Emergency requests for immediate assistance may be made directly to local agencies.

7068 - The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.

- (a) This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.
- (b) Absent exigent circumstances, responding mutual aid personnel shall be briefed prior to deployment and should be given clear and specific objectives.

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- ~~7169~~ - In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications, and response to event location.
- ~~720~~ - MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.
- (a) Personnel should be formed into squads or teams that are easily integrated into squads and platoons.
- ~~734~~ - When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

Post-Event

- ~~742~~ - At the conclusion of an event the Incident Commander shall ensure that an After Action Report is prepared within 72 hours.
- (a) An After Action Report shall document arrests, injuries, ~~and property damage, personnel costs, inventories of less lethal munitions, CS gas and smoke and an overall~~ critique of the police preparation and response.
- (b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.

Training

- ~~753~~ - When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.
- ~~764~~ - When possible prior to a major pre-planned event, update training should be provided to all assigned officers.
- ~~775~~ - ~~The CMT will train regularly, and incorporate as appropriate, all General Orders and Training Bulletins related to crowd management and crowd control into their sessions.~~
- ~~786~~ - ~~All newly hired police officers will receive supplementary training on crowd management and crowd control by attending a CMT training session as part of their Field Training Program.~~

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**References: *In re Brown* (1973) 9 Cal. 3d 612, 623
Penal Code §§405, 407, 409 and 830.10
General Orders C-1, C-10, M-2, P-23, P-29, R-23, U-2, V-10 and X-1
Police Regulations 225, 226, 249 and 250**

4. RECOMMENDATIONS

The PRC reviewed the 32 recommendations of the Berkeley Police Department in its post-incident report (pp. 3 – 8). The PRC agrees with some of the recommendations but, for most, proposes alternative recommendations of its own, and makes two new recommendations. All the recommendations are informed by the PRC's findings and have their basis in the analyses found in the Discussion section of this report.

Communication

- ***New Recommendation as a preamble to the Communication section***

PRC

Police officers will seek to navigate complex and confusing crowd situations which may have mixed elements of legal and illegal, peaceful and violent behavior. Facilitation of free expression, de-escalation of tension, and peaceful resolution of conflict are primary goals of police interaction with crowds.

- ***Recommendation #1***

BPD

We recommend the Department get clarity on the availability of regional radio interoperability for common encrypted radio channels to improve communications with mutual aid partners during large scale events.

PRC

We recommend the Department investigate and determine the availability of regional radio interoperability for common tactical and recorded radio channels to improve communications with mutual aid partners during large scale events, and that the department communicate directly with EBRCS and ask for a speedy resolution to these questions and any appropriate training that is necessary.

- ***Recommendation #2***

BPD

We recommend the Department use social media proactively before and during the event to communicate with participants. As dispersal orders are given over the loud speaker social media could be used to communicate more detailed information to the crowd.

PRC

We recommend the Department use social media proactively before and during the event to communicate with participants. As dispersal orders are given over the loud speaker social media could be used to communicate

more detailed information to the crowd; all communications be clearly identified as coming from BPD. We urge the City to adopt rules for BPD's use of social media as quickly as possible.

- **Recommendation #3**

BPD

Explore the use of BPD Negotiators to enhance communication with the crowd and crowd leadership before and throughout the event.

PRC

The BPD should focus on enhancing tools for communication during the course of a demonstration to ensure it is peaceful, and that the tools include the use of BPD negotiators; the PRC urges a focus on two-way communications to facilitate peaceful demonstrations.

- **Recommendation #4**

BPD

BPD should acquire a high quality mobile mounted public address system. This equipment would also be an asset during natural disasters.

PRC

The PRC endorsed BPD's Recommendation #4 as written.

Tactical Command

- **Recommendation #5**

BPD

Tactical command decision making and responsibility should be relocated from the Department Operations Center to the field. We recommend coordination of squad movements happen in the field.

PRC

The PRC endorsed BPD's Recommendation #5 as written.

- **Recommendation #6**

BPD

Command should make efforts to ensure as much mission clarity as possible when resources are dispatched.

PRC

(This recommendation is an alternative to both Recommendations #6 and #7 of the BPD.)

The PRC agrees that a lack of mission clarity hampered the BPD's success

on December 6, but where the BPD sees lack of clarity as a tactical confusion about the priority of specific tasks, we find a strategic lack of clarity. Deployments during demonstrations should include clear and specific objectives. Field Commanders should be given specific guidelines and priorities to consider when making deployment decisions, including whether a given police action will improve the situation, or escalate tension and confrontation between police and protesters, and should make redeployment decisions proactively based on known situational awareness and the approved guidelines.

- **Recommendation #7**

BPD

We recommend commanders in the field make redeployment decisions proactively based on known situational awareness.

PRC

(See PRC Recommendation to #6 above.)

- **Recommendation #8**

BPD

Opportunities for the police to deescalate from crowd control to crowd management tactics need to be recognized and seized.

PRC

1) The City considers non-violent demonstrations of concern about community issues to be positive and healthy activities. The City will interact with such demonstrations primarily as events to be facilitated rather than as threats to public safety.

2) Heavily armed, massed police using crowd control tactics may inflame an assembly and incite rather than prevent violent clashes. They can intimidate peaceful demonstrators and promote alienation and confrontation.⁹⁷ The need for sufficient police resources must also be balanced against the chilling effect of a large and visible police presence.⁹⁸

3) BPD orders call for protecting First Amendment activities (freedom of speech and assembly).⁹⁹ For this protection to have meaning, police must win the trust of the assembly that they can demonstrate in safety.

4) Police interaction with a demonstration or other public event should

⁹⁷ "Tony Ribera, San Francisco police chief from 1992 to 1996, said law enforcement agencies are usually most successful at handling demonstrations when they approach with a non-confrontational stance and ramp up when necessary. 'It's hard to have a confrontational situation, then pull back from that.'" See: <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>.

⁹⁸ OPD Crowd Control Policy, Sec. III.C.1.

⁹⁹ BPD General Order C-64, para. 26.

begin with a posture of crowd management, unless the event commences as an illegal assembly. Current BPD policy requires that a clear and present danger of imminent violence as a prerequisite for declaration of an illegal assembly, making it clear that non-violent civil disobedience is not grounds for such a declaration.¹⁰⁰ If police must move to a crowd control posture, the goal should be to de-escalate back down to crowd management. Police officers must make every effort to reduce tension and de-escalate conflict, with support from non-sworn City staff and elected/appointed officials.

5) a) It is essential to recognize that all members of a crowd of demonstrators are not the same.

b) Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent or destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger.

c) This understanding does not mean BPD cannot take enforcement action against the crowd as allowed under BPD policy, but BPD shall seek to minimize the risk that force and arrests may be directed at innocent persons.

Deployment

- **Recommendation #9**

BPD

Deploy resources flexibly in crowd management roles designed to keep events peaceful.

PRC

(This recommendation is an alternative to both Recommendations #9 and #10 of the BPD.)

BPD should review its operational deployment of its resources, such as bicycle, and parking enforcement officers, in crowd management roles in order to provide greater mobility, flexibility and accessibility. The review should focus on areas of opportunity focusing on the peaceful maintenance of events, crowd/departments communication and violent element identifications. Training and resource proposals should be developed by BPD to achieve this end and should be reviewed with the PRC.

¹⁰⁰ BPD General Order C-64, para. 62.

- **Recommendation #10**

BPD

Increase staffing of bicycle officers, motorcycle officers and parking enforcement officers for large scale crowd management events.

PRC

(See PRC Recommendation to #9 above.)

- **Recommendation #11**

BPD

Deploy joint police and fire scout teams to manage small fires and scout medical calls.

PRC

The PRC endorsed BPD's Recommendation #11 as written.

Maneuver

- **Recommendation #12**

BPD

Have a contingent of officers to move with the crowd, so that violent elements in the crowd will see a continuous police presence.

PRC

As an alternative to this Recommendation #12, reference is made to PRC Recommendations #8 and #9 above.

- **Recommendation #13**

BPD

Deploy squads with dedicated drivers who remain with the vehicles to facilitate maneuvers and vehicle security.

PRC

The PRC endorsed BPD's Recommendation #13 as written.

Situational Awareness

- **Recommendation #14**

BPD

Explore technology that can improve the quality and timeliness of information available to decision makers.

PRC

Before BPD implements the use of any additional surveillance and data gathering technology, the use of that technology shall be brought to PRC and the City Council for approval.

- **Recommendation #15**

BPD

Consider proposing changes to the City Council Resolution 51,408-N.S., to permit the use of helicopters in instances of significant civil unrest.

PRC

The PRC recommends that the current City policy regarding the use of helicopters should be retained.

Dispersal Orders

- **Recommendation #16**

BPD

Issue fewer dispersal orders and record evidence that the crowd was able to hear the orders.

PRC

Consistent with existing policy, dispersal orders should only be given if there is clear evidence that the focus of the crowd has become violent. If and when it is determined that a dispersal order is necessary, several quality dispersal orders should be given. BPD should record the orders to establish that the orders were audible to the crowd. BPD should take appropriate steps to ensure that a dispersal order is audible throughout the entire crowd. After an initial dispersal order has been given, if a crowd reassembles in a different location, that new location must be reevaluated to determine if it is an unlawful assembly, and a new dispersal order must be given. We specifically recommend that BPD discontinue the practice of continuous dispersal orders.

- **Recommendation #17**

BPD

Revise the dispersal order script to include specific types of force that may be used to disperse the crowd including the use of CS gas.

PRC

Revise the dispersal order script to include specific types of force that may be used to disperse the crowd including the use of CS gas; the PRC should review the proposed new script before it becomes BPD policy.

Use of Force

- **Recommendation #18**

BPD

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

PRC

BPD, in conjunction with the PRC, should review its policy regarding the use of CS gas and batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs, rakes or overhead strikes, and with the intent of putting substantial constraints on the use of CS gas in crowd control and crowd management.

- **Recommendation #19**

BPD

Less Lethal operators should be briefed regarding the rules of engagement prior to deployment. Command should review the use of force as it relates to accomplishing mission objectives with less lethal operators, prior to deployment.

PRC

The PRC recommends that BPD's policy regarding the use of less-lethal munitions be revised to reflect that less-lethal weapons should only be direct-fired at a specific target, may never be used indiscriminately against a crowd or group of persons, and may be used only against a specific individual engaged in conduct that poses an immediate threat of loss of life or serious bodily injury. All less-lethal operators, including mutual aid responders, should be briefed regarding the rules of engagement for the specific mission prior to deployment. Command should review the use of force with all operators, including mutual aid responders, as it relates to accomplishing mission objectives prior to deployment.

- **Recommendation #20**

BPD

Skirmish lines should be deployed only in situations where the use of force that may be necessary to enforce the line is warranted by the objective of deploying the line.

PRC

The PRC endorsed BPD's Recommendation #20 as written.

- **Recommendation #21**

BPD

We recommend that the Department continue to train and reinforce disciplined use of baton strikes by officers to avoid striking people in no strike zones.

PRC

The numerous reports from civilians of being struck by batons as they were engaged in peaceful, lawful demonstrations are a cause of significant concern. BPD, in conjunction with the PRC, should review its policy regarding the use of batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs and rakes. Overhead strikes should be prohibited in crowd control and crowd management.

- **Recommendation #22**

BPD

Preparatory orders warning officers of the impending use of chemical agents should be announced over the radio.

PRC

The use of CS gas on December 6 is a cause of major concern. Not only is it unclear whether the actions of the crowd warranted such use, it is unclear how decisions were made to continue to deploy CS gas, and whether the continued use was necessary. Careful review of the policies regarding both the initial use of CS gas and its continued deployment must be undertaken by the BPD in conjunction with the PRC. New policies need to be drafted more carefully delineating when and how CS gas should be used in crowd management and control situations.

If and when CS gas is deployed, a public announcement regarding the impending use should be made, as well as a radio broadcast to all law enforcement personnel.

- **Recommendation #23**

BPD

Prior to the planned deployment of CS Gas, medical aid should be on scene and available to respond to treat people who might be affected by CS Gas.

PRC

Prior to the planned deployment of CS Gas, medical aid should be on scene and available to respond to treat people who might be affected by CS Gas. The PRC recommends that an operational policy regarding the use of CS gas be established delineating a removal and transport process as well as establishing a secure triage area for the treatment of affected personnel and members of the public.

Accountability

- **Recommendation #24**

BPD

To comply with our existing policies an After Action Report (AAR) should be written after each incident even if only in summary form.

PRC

BPD should comply with its existing policies and an After Action Report (AAR) should be written after each incident, even if only in summary form, within 72 hours.

- **Recommendation #25**

BPD

Improve accountability for the deployment and use of less lethal munitions and CS gas. Use of less lethal munitions should be recorded in the after action report and the policy should be updated to include this requirement.

PRC

To improve accountability for the deployment and use of less-lethal munitions and CS gas, the PRC recommends that BPD and mutual aid responders perform an inventory of less-lethal munitions and CS gas both before and after deployment in a crowd control situation and, whenever an officer uses less-lethal force in a crowd control situation, that officer is responsible for preparing an individual report of such use within 72 hours.

Training

- **Recommendation #26**

BPD

All officers should continue to receive crowd management training every two years. We recommend the following trainings be developed:

- *Commanders should conduct crowd management table top exercises, in addition to departmental training, to explore topics such as planning, command and control, mutual aid management, tactics, and operations center logistics.*
- *All crowd management trainings should include legal update training in the area of crowd management case law as well as a review of first amendment case law.*
- *Mobile Field Force training with regards to conducting targeted arrests. Including a tactical review of how to deploy in order to better support a*

mission of targeted arrests while maintaining the ability to transition into crowd control formations.

- *Train sufficient personnel to use higher quality camera systems to gather better video evidence at protests.*

PRC

The PRC endorsed BPD's Recommendation #26 as written, with the addition the following phrase, in bold: All officers should continue to receive crowd management training every two years. We recommend the following trainings be developed in conjunction with the PRC, and that these trainings include de-escalation tactics:

- **Recommendation #27**

BPD

Commanders should attend training to improve their understanding of BPD's current capabilities and limitations in crowd management and control which should enhance planning and tactics.

PRC

The PRC endorsed BPD's Recommendation #27 as written.

- **Recommendation #28**

BPD

We recommend the creation of a document on BPD website which will provide information on how to conduct or participate in a protest in a safe and legal manner.

PRC

The PRC should work in collaboration with BPD to develop a website and other informational materials to inform the public about the BPD's approach to protests, ground rules for them, and details of the warning and dispersal system.

Media

- **Recommendation #29**

BPD

We recommend the BPD Public Information Officer investigate the viability of establishing a regional media credentialing system.

PRC

(This recommendation is an alternative to both Recommendations #29 and #30 or the BPD.)

This is a complicated issue that requires input from all stakeholders. It is the PRC's position that no policy should be implemented until the matter has been referred back to the PRC to establish a subcommittee to allow for a full discussion and formulation of a policy.

- **Recommendation #30**

BPD

We recommend the Department develop a collaborative training for press to enhance their safety and safeguard the First Amendment right of a free press.

PRC

(See PRC Recommendation to #29 above.)

Equipment

- **Recommendation #31**

BPD

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

PRC

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

- **Recommendation #32**

BPD

The Department should investigate the use of body armor to be worn underneath a uniform of the day, to protect officers from projectiles while minimizing the projection of force to protestors.

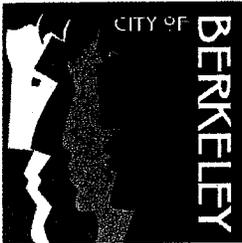
PRC

The PRC endorsed BPD's Recommendation #32 as written.

- ***New Recommendation regarding mutual aid***

PRC

The conduct of mutual aid responders in their crowd control roles during the events of December 6 was a primary concern that the PRC heard from the public. The PRC believes that state law and existing mutual aid pacts require each agency to follow its own policies regarding the use of force. We therefore believe that the BPD cannot enforce its use-of-force policies on mutual aid responders. We believe it is critical for BPD to communicate to mutual aid responders the values of the COB, including de-escalation tactics, before and during a crowd event. BPD should continue to review its briefing and communication practices to make every effort that use-of-force policies by mutual aid responders is consistent with our policies. We request that the BPD make specific recommendations on strategies and procedures to achieve these goals.



Police Review Commission (PRC)

September 6, 2016

To: Police Review Commission
From: George Perezvelez, PRC Chair; Terry Roberts, PRC Vice-Chair,
Katherine J. Lee, PRC Officer *KJL*
Re: Report of August 1, 2016 meeting with City Manager

Attendees: Dee Williams-Ridley, City Manager; Michael Meehan, Police Chief;
George Perezvelez, PRC Chair; Terry Roberts, PRC Vice-Chair; Kathy Lee, PRC
Officer; Kristy van Herick, Assistant City Attorney

1. Standard of Proof used in PRC Board of Inquiry hearings

Chair Perezvelez pointed out that PRC Commissioners did not participate in the recent meet-and-confer (M&C) regarding the PRC's Regulations [for Handling Complaints Against Members of the Police Department]. By contrast, when the prior revision of the Regulations occurred, in 2007 [2010], then-Deputy City Attorney Sarah Reynoso said the process undertaken then was not a meet-and-confer, so the proceedings were not closed. Regardless, there was a lack of transparency in the most recent process. Decisions were made and no explanations were given; no representative of the City Attorney's or the City Manager's offices came to a PRC meeting to explain, so that's why the PRC generated its letter to the CM.

Ms. Williams-Ridley pointed out that usually, meet-and-confers are confidential. The parties engage in a M&C in good faith; they are negotiating. The City Manager can't make arbitrary decisions outside of that process.

Vice-Chair Roberts suggested that it would be helpful for the Commission just to get an explanation of why the standard of proof for sustaining allegations in a BOI was not changed from "clear and convincing" to "preponderance of the evidence," as the PRC desired.

Ms. Williams-Ridley said she would communicate, in the form of a formal letter to the PRC, the factors that were considered in her decision to not accept the recommendation to change the standard of proof.

2. Excusing officers from BOIs

(This topic will be the subject of a separate, confidential report and discussed in closed session.) The Chair and the Vice Chair expressed their individual concerns as well as the concerns of the commission during this discussion.

3. General Order M-3

Ms. Williams-Ridley has asked the Chief to respond to the PRC. Her recommendation is that General Order M-3 [Monthly Management Report and Annual Report] be fully revised so that it reflects the department's capacity to generate reports, and so it is more up-to-date in light of advances in information technology and data tracking.

4. Body-Worn Cameras Policy: next steps

Chair Perezvelez noted that the PRC said, of the four disputed items, three were non-negotiable; however, the PRC is interested in continuing discussions to see if common ground can be reached on the last area of dispute. Ms. Williams-Ridley expressed her desire that the department and the PRC should endeavor to reach a consensus. Chair Perezvelez also indicated that in order for the pilot program to be implemented a general order has to be in effect. One cannot be independent of the other

Ms. Williams-Ridley reminded the group that she has the authority to determine what policy will be implemented.

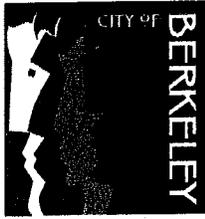
[The discussion was lengthier than these notes indicate, with the Chair, Vice-Chair, and the Chief expressing thoughts on the process.]

[Ms. Williams-Ridley then excused herself.]

5. Release of draft working document to PRC/public

Chief Meehan said that a draft of the Commander's Guide for Crowd Management, which Capt. Frankel had shared with the General Orders Subcommittee, showed up in litigation against the city. Although it was technically not a confidential document, its use in a lawsuit damaged the collaborative environment.

The group grappled with ways to disseminate the draft to the subcommittee without having it misused. Releasing to the subcommittee is a release to the public, so it can't be sent to the subcommittee members confidentially. Perhaps bullet points of the draft could be circulated and discussed as a way to ensure that the concerns of the subcommittee were met, but it is clear that the points are not final and still under discussion.



Office of the City Manager

July 26, 2016

To: Honorable Mayor and City Council members
From: *Dee* Dee Williams-Ridley, City Manager
Subject: Semi-Annual Report of Marijuana Enforcement Activity

The table below is a compilation of the marijuana enforcement activity which occurred in the City of Berkeley, or was engaged in by Berkeley officers in other cities, during the period of January 1, 2016 through June 30, 2016.

The specific Health and Safety Code sections related to marijuana which were charged are defined in the following table:

11357(a) HS	Possession of concentrated cannabis (hashish)
11357(b) HS	Possession of not more than an ounce of marijuana
11357(c) HS	Possession of over one ounce of marijuana
11357(d) HS	Adult Possession on school grounds during school activity
11357(e) HS	Minor possessing marijuana on school grounds during school activity.
11358 HS	Cultivation of marijuana
11359 HS	Possession of marijuana or hashish for sale
11360 HS	Sales of marijuana or hashish
11361 HS	Inducing a minor to sell or use marijuana

The following information is provided in compliance with BMC 12.224.070.

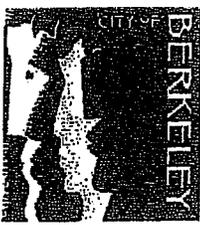
<u>Case/Citation Number</u>	<u>Date</u>	<u>Statute</u>	
2016-00000187	1/1/2016	11359	
49912	1/9/2016	11357 (B)	
50091	1/9/2016	11357 (B)	
2016-00001955	1/11/2016	11359	
2016-00002840	1/15/2016	11359	
2016-00002840	1/15/2016	11359	
50263	1/24/2016	11357 (B)	
49986	1/24/2016	11357 (B)	
50122	1/29/2016	11357 (B)	
50074	1/30/2016	11357 (A)	
2016-00006466	2/2/2016	11357 (A)	
2016-00006552	2/2/2016	11360 (A)	11359
2016-00006563	2/2/2016	11359	
2016-00006569	2/2/2016	11360 (A)	11359
2016-00006609	2/2/2016	11357 (A)	
50176	2/2/2016	11357 (B)	
2016-00009609	2/17/2016	11360 (A)	11359
2016-00011864	2/28/2016	11359	
2016-00013351	3/6/2016	11357 (B)	
2016-00013469	3/7/2016	11359	
2016-00013927	3/9/2016	11359	
2016-00015100	3/15/2016	11357 (A)	
2016-00016007	3/18/2016	11359	
2016-00016052	3/18/2016	11359	
2016-00016108	3/20/2016	11359	
50869	3/21/2016	11357 (B)	
2016-00017901	3/28/2016	11359	
2016-00019322	4/3/2016	11360 (A)	11359
2016-00019532	4/4/2016	11357 (A)	
2016-00019551	4/5/2016	11357 (A)	
2016-00020473	4/8/2016	11359	
2016-00020709	4/9/2016	11357 (A)	
2016-00021576	4/13/2016	11357 (B)	
2016-00023318	4/21/2016	11357 (A)	
51375	4/22/2016	11357 (B)	
51369	4/23/2016	11357 (B)	
51732	4/27/2016	11357 (B)	
2016-00025896	5/2/2016	11357 (B)	
2016-00026329	5/4/2016	11357 (A)	
51767	5/4/2016	11357 (B)	
2016-00026719	5/6/2016	11359	
2016-00026723	5/6/2016	11360 (A)	11359

July 26, 2016

Re: Semi-Annual Report of Marijuana Enforcement Activity

<u>Case/Citation Number</u>	<u>Date</u>	<u>Statute</u>
2016-00026727	5/6/2016	11360 (A) 11359
51774	5/6/2016	11357 (B)
2016-00026996	5/7/2016	11359
51878	5/10/2016	11357 (B)
51797	5/12/2016	11357 (B)
2016-00028471	5/14/2016	11357 (A)
2016-00028542	5/15/2016	11360 (A) 11359
2016-00029227	5/18/2016	11359
2016-00029442	5/19/2016	11360 (A) 11359
2016-00029445	5/19/2016	11360 (A) 11359
2016-00032614	6/3/2016	11359
2016-00033018	6/4/2016	11357 (C) 11357 (A)
2016-00033461	6/6/2016	11357 (A)
2016-00034088	6/9/2016	11360 (A) 11357 (B)
2016-00034088	6/9/2016	11357 (B)
2016-00034100	6/9/2016	11357 (B)
2016-00034173	6/9/2016	11357 (A)

cc: Police Review Commission
Zach Cowan, Interim Deputy City Manager / City Attorney
Mark Numainville, City Clerk
Ann-Marie Hogan, City Auditor
Michael K. Meehan, Chief of Police
Matthai Chakko, Public Information Officer



Office of the City Manager

January 21, 2014

To: Honorable Mayor and City Councilmembers

From: Christine Daniel, City Manager *CD*

Subject: Semi-Annual Report of Marijuana Enforcement Activity

The table below is a compilation of the marijuana enforcement activity which occurred in the City of Berkeley, or was engaged in by Berkeley officers in other cities, during the period of July 1, 2013 through December 31, 2013.

The specific Health and Safety Code sections related to marijuana which were charged are defined in the following table:

11357(a) HS	Possession of concentrated cannabis (hashish)
11357(b) HS	Possession of not more than an ounce of marijuana
11357(c) HS	Possession of over one ounce of marijuana
11357(d) HS	Adult Possession on school grounds during school activity
11357(e) HS	Minor possessing marijuana on school grounds during school activity.
11358 HS	Cultivation of marijuana
11359 HS	Possession of marijuana or hashish for sale
11360 HS	Sales of marijuana or hashish
11361 HS	Inducing a minor to sell or use marijuana

The following information is provided in compliance with BMC 12.224.070.

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Case #2013-00037389	7/2/2013	11360 (a); 11359
Ticket #29000	7/6/2013	11357 (b)
Ticket #29002	7/6/2013	11357 (b)
Case #2013-00039133	7/10/2013	11357 (b)
Ticket #29227	7/10/2013	11357 (a)
Ticket #28792	7/11/2013	11357 (b)
Ticket #29228	7/11/2013	11357 (a)
Case #2013-00040302	7/15/2013	11359
Case #2013-00040380	7/16/2013	11359

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Ticket #29059	7/20/2013	11357 (a)
Case #2013-00042102	7/24/2013	11359
Ticket #28679	7/24/2013	11357 (b)
Case #2013-00042334	7/25/2013	11359
Ticket #28674	7/26/2013	11357 (b)
Ticket #28675	7/26/2013	11357 (a)
Ticket #28576	7/28/2013	11357 (b)
Ticket #28587	7/28/2013	11357 (b)
Ticket #29500	7/31/2013	11357 (a)
Case #2013-00043923	8/2/2013	11357 (a)
Ticket #29502	8/2/2013	11357 (a)
Ticket #29498	8/3/2013	11357 (a)
Case #2013-00045230	8/8/2013	11357 (a)
Ticket #29520	8/10/2013	11359
Ticket #29918	8/14/2013	11357 (a)
Case #2013-00047557	8/19/2013	11357 (a)
Case #2013-00047836	8/20/2013	11359
Ticket #29920	8/21/2013	11357 (b)
Case #2013-00048129	8/22/2013	11357 (a)
Case #2013-00049064	8/26/2013	11359
Case #2013-00049883	8/29/2013	11359
Case #2013-00051308	9/4/2013	11359
Case #2013-00051983	9/7/2013	11357 (b)
Case #2013-00052008	9/7/2013	11357 (b)
Case #2013-00052064	9/8/2013	11359
Case #2013-00052218	9/8/2013	11359
Case #2013-00053074	9/12/2013	11359
Ticket #29953	9/13/2013	11357 (a)
Case #2013-00054901	9/20/2013	11359
Case #2013-00055753	9/24/2013	11357 (a); 11359
Case #2013-00055753	9/24/2013	11357 (a); 11359
Case #2013-00056168	9/26/2013	11357 (b)
Case #2013-00056449	9/27/2013	11357 (a)
Case #2013-00056727	9/29/2013	11357 (b); 11357 (a)
Case #2013-00056818	9/29/2013	11357 (a)
Ticket #30356	9/30/2013	11357 (a)
Case #2013-00057236	10/1/2013	11357 (a)
Case #2013-00058270	10/5/2013	11359; 11358
Ticket #30573	10/6/2013	11357 (a)
Ticket #30507	10/7/2013	11357 (a)

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Ticket #30674	10/10/2013	11357 (b)
Case #2013-00059571	10/11/2013	11359
Case #2013-00060396	10/15/2013	11359; 11358
Case #2013-00060888	10/17/2013	11359
Case #2013-00061143	10/18/2013	11359
Case #2013-00062092	10/23/2013	11359
Case #2013-00064476	11/3/2013	11359
Case #2013-00064716	11/4/2013	11357 (b)
Case #2013-00065278	11/7/2013	11359
Case #2013-00066233	11/12/2013	11357 (a)
Case #2013-00068579	11/23/2013	11359
Case #2013-00070333	12/3/2013	11360 (a); 11359
Case #2013-00070333	12/3/2013	11360 (a); 11359
Case #2013-00074008	12/21/2013	11359
Case #2013-00075349	12/29/2013	11357 (a)
Case #2013-00075380	12/29/2013	11357 (c)
Case #2013-00075453	12/30/2013	11359

cc: Police Review Commission
William Rogers, Deputy City Manager
Mark Numainville, City Clerk
Ann-Marie Hogan, City Auditor
Michael K. Meehan, Chief of Police
Matthai Chakko, Public Information Officer

PRC Additional Information Request; Semi-Annual Marijuana Report

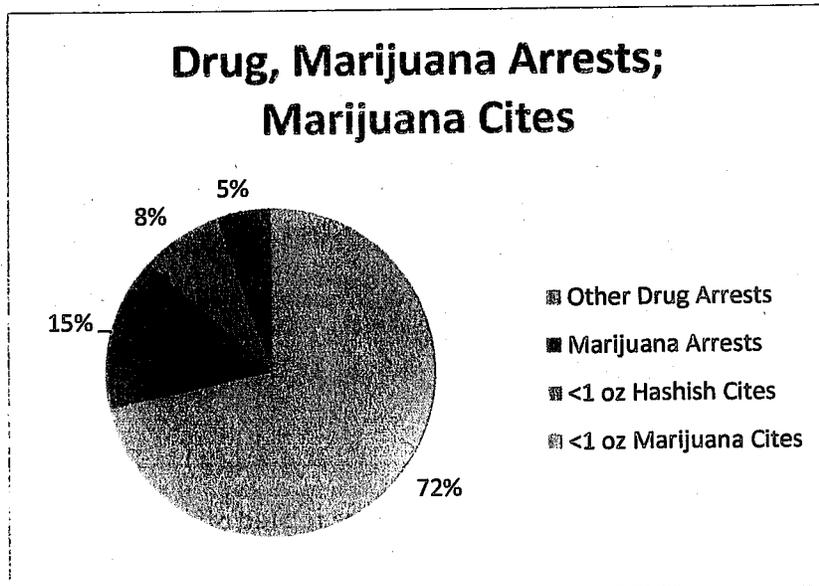
Semi-annually the Berkeley Police Department prepares a report that documents the total number of arrests and citations related to marijuana enforcement. In that report we specifically document those arrests and citations that document the following Health and Safety code sections:

- 11357(a) – Possession of Concentrated cannabis.
- 11357(b) – Possession of not more than an ounce of marijuana.
- 11357(c) – Possession of over one ounce of marijuana.
- 11357(d) – Adult possession on school grounds during school activity.
- 11357(e) – Minor possessing marijuana on school grounds during school activity.
- 11358 - Cultivation of marijuana.
- 11359 - Possession of marijuana or hashish for sale.
- 11360 - Sales of marijuana or hashish.
- 11361 - Inducing a minor to sell or use marijuana.

In the PRC meeting on April 9, 2014 the PRC requested additional information regarding the Berkeley Police Department's enforcement of marijuana laws. Below are information requests posed by Commissioner Sherman, in his April 18, 2014 letter to Chief Meehan. Our responses appear after each question below.

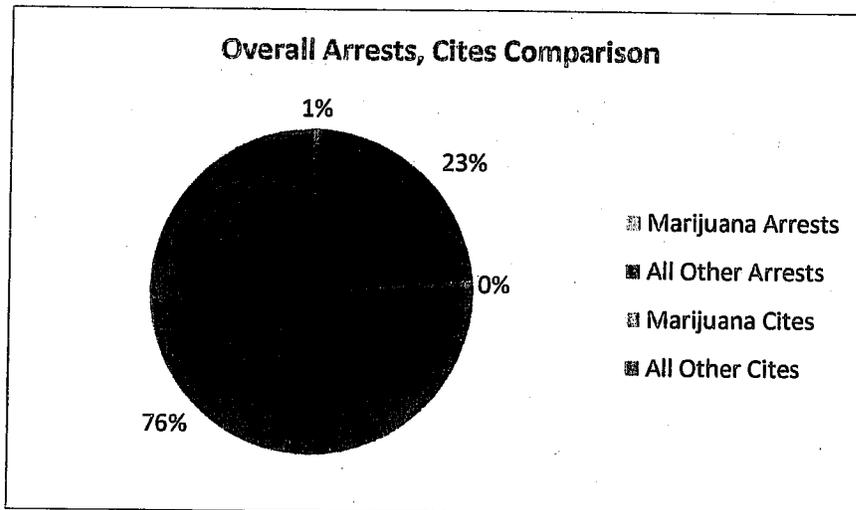
1. The total number of Narcotics arrests within the six month time period reflected in the report (July 1 – December 31, 2013).

Response: Our records show 284 total narcotics arrests during that period. Included in that total are 38 citations for either <1 oz. hashish or <1 oz. marijuana, 43 arrests for other marijuana offenses (e.g. possession for sale) and 203 arrests for other drugs¹.

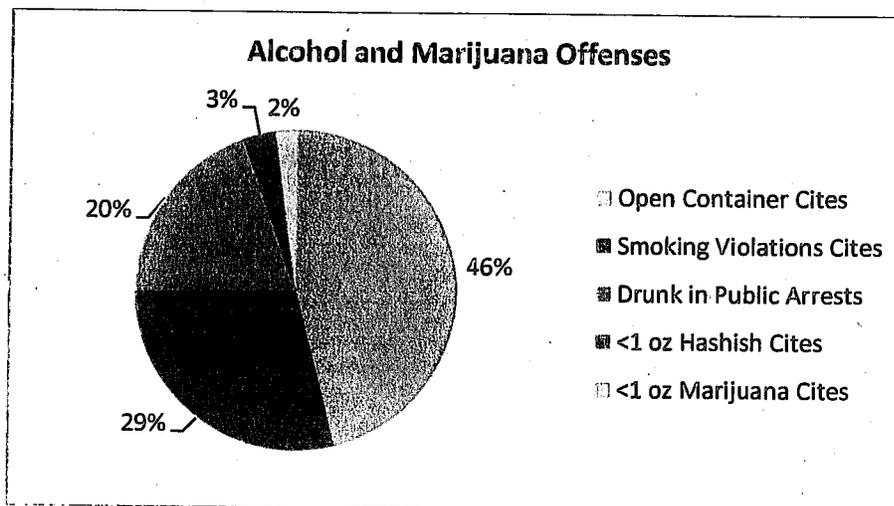


It may be helpful to consider the number of marijuana arrests and citations, compared with other arrests and citations during the same period. Our records show 4,610 citations issued. Of those, twenty three (.5%) were issued for <1oz of hashish, and fifteen (.3%) were issued for <1oz of marijuana. Therefore, of 4610 citations issued for the period, thirty eight (.8%) were marijuana cites.

Our records show 1,432 arrests made during the period. Of those, forty three (3 %) arrests were made for marijuana offenses. The chart below illustrates all citations and arrests, and breaks out marijuana related arrests and citations.



It may also be helpful to compare the number of citations and arrests related to alcohol, as compared to marijuana. The following chart shows 321 Open Container cites, 201 Tobacco cites, 138 "Drunk in Public" arrests, twenty three <1 oz hashish cites, and fifteen <1oz marijuana cites.



2. The total number of arrests involving only marijuana related offenses. For each of these arrests, the quantity of marijuana seized as noted in the police report.

Response: There were 20 cases that document charges for marijuana-*only* related offenses (Arrests only, not citations). Other than those statutes delineated in the semi-annual report, included are cases that also documented associated offenses of 1203.2 PC (Probation violation), 11364.1 H&S (Possession of drug paraphernalia), 647(f) PC (Public intoxication) and warrant arrests. See the attached spreadsheet for the list of these cases and the quantity of marijuana seized as noted in the police report. There are multiple lines in many cases representing multiple pieces of marijuana evidence associated with that case.

3. For each of the arrests involving only marijuana related offenses, the total number that were referred for prosecution to the District Attorneys' office, the outcome of each of these cases, and the total weight of marijuana in each case as identified by the criminalist.

Response: All 20 of the cases that involved arrests for only marijuana related offenses were referred to the District Attorney's office for prosecution. Thirteen were charged or resulted in probation revocation. Seven were not charged, or are unknown dispositions. Alameda County crime lab outcomes are not maintained directly in our records system's fields, and would therefore require case-by-case research.

4. For all arrests involving violations of Health and Safety Code section 11357(b), possession of less than an ounce of marijuana, a copy of the police report, redacted to exclude the name of the arrestee and the arresting officers.

Response: 11357 (b) offenses are typically documented through an infraction citation, without a formal report. Only two cases with narrative were located; both involved the arrests of juveniles.

5. The total number of arrests involving marijuana related offenses and additional offenses, with a listing of the additional charges.

Response: There were 28 cases that document the arrest of subjects for marijuana offenses as well as other crimes.ⁱⁱ

ⁱ The other drug-related offenses for which arrests were made are as follows:

- 11350(a) H&S - Possession of a narcotic / controlled substance.
- 11351 H&S - Possess or purchase for sale narcotics / controlled substance.
- 11351.5 H&S - Possess or purchase for sale cocaine base.
- 11352 H&S - Transport for sale a narcotic / controlled substance.
- 11366 H&S - Keep a place to sell a narcotic / controlled substance.
- 11370.1(a) H&S - Possess a controlled substance while armed.
- 11370.2(a) H&S - Enhancement of prison terms for prior drug convictions.
- 11375(b) H&S - Possess for sale / sell controlled substance.
- 11377(a) H&S - Possess a controlled substance.
- 11378 H&S - Possess a controlled substance for sale.
- 11379.6(a) H&S - Manufacture etc. a controlled substance.
- 4060 B&P - Possess a controlled substance without a prescription.

- ii Other associated offenses included:
- 484e(d) PC - Use an access card without consent.
 - 530.5(a) PC - Identity theft.
 - 13.52.010 BMC - Trespassing.
 - 148(a) PC - Obstruct or resist a police officer.
 - 166(a) PC - Contempt of court.
 - 11350(a) - Possession of a narcotic / controlled substance.
 - 647(f) PC - Public intoxication.
 - 381 PC - Possession of toluene.
 - 3056 PC - Parole violation.
 - 30305 PC - Prohibited person own or possess ammunition.
 - 29900(a)PC - Illegally possess a firearm with a prior violent offense.
 - 29800(a)PC - Felon or addict possess a firearm.
 - 186.22(a)PC - Participate in a criminal street gang.
 - 186.22(b)PC - Participate in a criminal street gang with other conviction.
 - 1203.2 PC - Probation violation.
 - 25850(a)PC - Carry a loaded firearm in public.
 - 12022(a)(1) PC - Armed with a firearm in the commission of a felony.
 - 1203.073(b)(5)PC - Possess over 14.25 grams of crack for sale.
 - 22210 PC - Possession of a billy, blackjack, sandbag, sap or loaded cane.
 - 11370.1(a) H&S - Possession of a controlled substance while armed with a firearm.
 - 11351.5 H&S - Possession or purchase for sale cocaine base.
 - 148.9(a) PC - False identification to police officers.
 - 11364.1 H&S - Possession of drug paraphernalia.
 - 11377(a) H&S - Possession of a controlled substance.
 - 11378 H&S - Possession of a controlled substance for sale.
 - 484e(c) PC - Sell, transfer, receive etc. access cards with the intent to defraud.
 - 245(a)(1) PC - Assault with a deadly weapon other than a firearm.
 - 242 PC - Battery.
 - 211 PC - Robbery.
 - 417(a)(1) PC - Exhibit a deadly weapon other than a firearm.
 - 12022.1 PC - Felony committed while on bail.
 - 496(a) PC - Possession of stolen property.
 - 30605 PC - Possession of an assault weapon.
 - 23900 PC - Tamper with the identification marks on a firearm.
 - 273a(b) PC - Willful cruelty to a child causing injury or death.
 - 11370.2(a) H&S - Enhancement for prior drug convictions.
 - 33210 PC - Possess or sell a short barreled shotgun or rifle.
 - 3455 PC - Violation of Post Release Community Supervision. (PRCS – prison realignment from AB 109)
 - 21310 PC - Carry a concealed dirk or dagger.



POLICY COMPLAINT FORM

Police Review Commission (PRC)

1947 Center Street, 1st Floor, Berkeley, CA 94704

Website: www.ci.berkeley.ca.us/prc/

E-mail: prc@ci.berkeley.ca.us

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

Date Received:

2406
Received by PRC

PRC CASE #

AUG 30 2016

1

Name of Complainant: Keenley James Pieper
Last First Middle

Mailing Address: 1725 Wesley Ave. El Cerrito CA 94530
Street City State Zip

Primary Phone: (510) 926-9233 Alt Phone: () _____

E-mail address: jkeenley@gmail.com

Occupation: Attorney Gender: M Age: 34

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic: _____ Other: _____

COPY

2

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

Please see attached description of incident and policy concerns.

3

Location of Incident (if applicable) San Pablo Ave between Cedar and Virginia

Date & Time of Incident (if applicable) August 19, 2016 at approximately 10:30 PM

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

Please see attached description of incident.

4

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

Please see attached information.

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Commission in evaluating your complaint.)

Please see attached document.

6

CERTIFICATION

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

Jan P. [Signature]

Signature of Complainant

8-29-16

Date

7

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

- Internet
Publication:
Referral:
Other:

Attachment to Policy Complaint Form 4-22-16

Complainant: James Keenley

Date of Incident: August 19, 2016

2. Improper Practice: Conducting search of vehicle and person based on smell of marijuana when the driver and sole occupant of the vehicle produced prima facie evidence of being an authorized medical user and was stopped in a dragnet sobriety checkpoint.

3. Description of Incident: At approximately 10:30 PM on August 19, 2016, I was driving home from my office in west Berkeley (I own a Berkeley-based law firm) to my home in El Cerrito. I was taking Cedar across town to avoid the traffic on Interstate 80 and was caught up in a sobriety checkpoint on San Pablo avenue. Upon being detained at the checkpoint, I presented my driver's license to the officer at my vehicle. The officer was a male, [REDACTED] [REDACTED] I did not get the officer's name. He shined his flashlight in my face, and his first question to me was hostile: "How much marijuana is in the car?" I asked him what he meant by that, and he said "I smell marijuana coming from the car, how much marijuana is in the car?" I answered that I had some marijuana in the car, that I was not sure of the exact amount, but that I had medical authorization to possess the marijuana. The officer asked me to provide him with my medical card, which I did. The card has my photograph on it, is issued by my physician, and contains information on the card as to how to confirm the recommendation both online and by telephone.

The officer instructed me to pull over onto Virginia and then proceeded to pepper me with questions about the last time I consumed marijuana, whether I had any weapons or other drugs in the car or on my person, whether I had been drinking, and so forth. I explained to the officer that the marijuana was in a closed container in the back of the car and that I was unsure of the total amount but that it was approximately one-half of an ounce. The officer then stated that he was going to have me exit the vehicle and that he was going to search my person and my car and that following the search I would be required to complete field sobriety testing. I asked the officer "Do I have to consent to this search?" and the officer replied "You have to consent, medical marijuana is not a defense to being searched."

I exited the car, I was frisked, my pockets were emptied, and then my car (a 2015 Honda Odyssey minivan) was searched extensively. The officer located the marijuana exactly where I told him it would be. He did not find any contraband of any kind, because there was none. After finishing his search, the officer returned my license and medical cannabis card and allowed me to proceed on my way home without citation or further incident. Despite his prior statements to the contrary, the officer did not conduct any sobriety testing of any kind. When handing back my identification, the officer stated that the smell of marijuana was probable cause for him to search for other drugs or weapons.

4. Proposed Change to Berkeley Police Department Procedures:

I propose that Berkeley police officers should not search the persons or vehicles of persons in possession of marijuana where those persons are able to establish prima facie evidence that they are authorized medical users under the Compassionate Use Act of 1996, Cal. Health & Safety Code § 11362.5, especially when the person is initially detained in a dragnet stop.

I understand that as a matter of constitutional law, the Fourth Amendment has been interpreted to permit the search that was conducted in this instance. I also understand that the officer was not required by law to investigate my medical authorization in field, and could have issued a citation for possession or even made an arrest. I believe that those actions would have violated existing Berkeley Police Department policies, but if that is not the case I urge the department to adopt policies against such practices.

However, notwithstanding the current state of Fourth Amendment case law, the Berkeley Police Department should adopt more progressive, safe, and humane policies with regard to invasive police searches. This was a dragnet search: I was not initially detained based on any suspected violation of the law, I was detained for no reason other than that I was driving eastbound on Cedar at 10:30 PM on August 19, 2016. I concede that the officer did smell marijuana in the car because there was marijuana in the car. Note that the location of this dragnet was only seven blocks from Berkeley's biggest medical marijuana dispensary—the Berkeley Patients Group--where some of the marijuana in my possession was purchased. It is no doubt the case that many people drive up and down San Pablo in legal possession of marijuana.

While there was fresh marijuana in the car, there was no burnt marijuana or any other evidence that I had been using marijuana at any time proximate to driving home from my office. As noted I do not believe that the officer had any doubts about my sobriety at the time of my detention because he did not administer any sobriety testing of any kind. I was up front with the officer about my possession, the location of it, and my legal authorization to possess it. The marijuana itself was stored in a location not accessible from the driver's seat where I was sitting. I provided documentation showing that my possession of the marijuana was legal, and that documentation provided further means for the officer to investigate if he had any doubts as to the legitimacy of my physician's recommendation.

Nonetheless, I was subject to an invasive and, frankly, humiliating search on a public street in the community where I live and work, on my way home from a late night at the office. Citizens who are engaged in legal activity and detained without any probable cause whatsoever should not be subject to invasive searches simply because they are legally in possession of marijuana. The officer had no probable cause whatsoever to believe that I had any other drugs, illegal weapons, or other contraband in my car or on my person.

5. Other Information

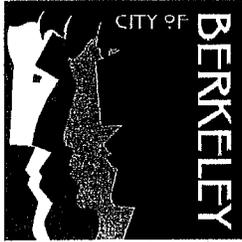
In addition to the formal search policy, I have concerns about the officer's personal behavior during this encounter and the Berkeley Police Department's use of dragnet searches generally.

While generally professional, I found the officer's initial question--"How much marijuana is in the car?"--unreasonably hostile. The officer and I at that point hadn't exchanged any conversation, and his first question was a confrontational one that presumed I was engaged in a criminal activity. This may be a useful tactic for catching people off guard, but it is a terrible way to build positive and productive relationships with the community and it needlessly escalates what was at that point an ordinary and calm interaction. I suggest that officers who suspect that someone is in possession of marijuana simply ask "Do you have any marijuana on your person or in the car?" Should be easy to do, since this is how normal people have conversations.

I also found the officer's ex post justification for the search—that he had probable cause to search for other drugs or weapons—completely ridiculous and insulting. I am an attorney, I know a few things about a probable cause, and while I concede that for purposes of the Fourth Amendment the case law establishes that the officer did have probable cause to search for evidence of sales, the smell of marijuana and my free acknowledgement that I had it in my car, combined with my presentation of a medical cannabis authorization card, does not give rise to any reasonable suspicion that I was in possession of contraband or engaged in any other criminal activity.

Finally, as a Berkeley business owner and a former resident of the city who frequently patronizes Berkeley businesses and partakes in Berkeley's community life in various ways, I am strongly opposed to the use of sobriety checkpoints and any and all other types of dragnet searches. These procedures have been shown to be rather ineffective at reducing drunk driving, and they do not make me feel any safer. To the contrary, the presence of such searches makes me feel unsafe, it makes me feel that I am vulnerable to random search by the police despite being a law abiding citizen, simply because I tend to work late and thus I am out driving at the time that these sorts of dragnets are conducted. Further, the use of dragnet searches is so contrary to our fundamental sense of liberty—the basic idea that a citizen should not be subject to random search and seizure by the state—that it shocks me that a famously progressive and high-minded city like Berkeley would ever deploy them.

Finally, my personal observation during the time that I was detained at the dragnet was that every single other driver who was pulled over for further questioning and sobriety testing was a Hispanic male. Obviously, I was only present for a small portion of the dragnet, but it seems to me highly probable these types of searches are more likely to produce racially biased law enforcement because rather than relying on observation of suspected illegal activity, the officers conducting dragnets are required to use their judgment as to the sobriety of a large number of individuals who pass before them in a small amount of time, and in so doing their subconscious racial biases are more likely to affect their judgment.



Police Review Commission (PRC)

July 25, 2016

To: Chief Michael Meehan
From: Katherine J. Lee, Police Review Commission Officer 
Re: Release of Use of Force Data to California Department of Justice and Police Review Commission

As you know, the City Attorney recently issued an opinion responding to the Police Review Commission's question about whether it could obtain redacted use of force (UOF) reports, or a synthesis or summary of information from those reports. A copy of the opinion is attached for your reference.

With respect to UOF summaries, the City Attorney described the new law that expands the obligations of law enforcement agencies to collect use of force data and report it to the California Department of Justice (DOJ) (AB 71; Government Code section 12525.2). The opinion concludes that the BPD may release to the PRC both a summary of complaints filed on use of force, and may release a summary of the data that is released to the DOJ, in a form that cannot be used to determine the officer(s) involved.

At its July 13, 2016 meeting, the PRC voted to request that when BPD releases data to the DOJ, that BPD simultaneously release it to the PRC.

Thank you for your consideration of this request.

Attachment: City Attorney opinion of May 31, 2016

cc: PRC Commissioners (w/o attachment)
Kristy van Herick, Assistant City Attorney (w/o attachment)

Lee, Katherine

From: Lee, Katherine
Sent: Monday, August 22, 2016 1:30 PM
To: Meehan, Michael
Cc: Frankel, David A.; Martinez, Maritza
Subject: PRC Actions Regarding Review of BPD Response on Dec. 7 & 8, 2014
Attachments: Chief Dec 7-8 Qs 8-22-2016.pdf

Dear Chief Meehan,

The PRC's Dec. 7 & 8 Subcommittee reported to the full Commission at the latter's July 27, 2016 meeting, and voted to take the following actions:

A. Ask you a set of questions, which are transmitted on the attached letter.

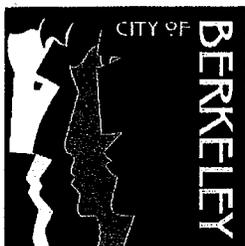
B. Refer the following topics to the General Orders C-64 etc. Subcommittee:

1) The BPD prioritized protecting the Public Safety Building (PSB) over all other critical infrastructure, and over private property. The commission is concerned about the basis for the decision, as the substantial allocation of law enforcement resources at the PSB contributed to the department's inability to mitigate the large scale damage to other critical infrastructure, and non-critical civic and private buildings. We encourage development of a policy identifying what factors the department should consider in allocating resources to protect all our critical infrastructure, non-critical civic and private property when it appears likely that Black Bloc or looters have become, or are likely to become a significant factor in any protest.

2) One of the problems that we understand contributed to the BPD's difficulty in mitigating the large scale damage to property that occurred on December 7-8 was the initial denial of our request mutual aid, and consequently the small size of the force available to respond to the protests in the initial stages. However, once mutual aid arrived on December 7-8, they were not utilized in an efficacious manner to contain and control the ongoing vandalism and looting. This issue should be more thoroughly examined, and considered in conjunction with the issue outlined above.

Thank you,
Kathy

Katherine J. Lee
Police Review Commission Officer
City of Berkeley
510.981.4960



Police Review Commission (PRC)

August 22, 2016

To: Chief Michael Meehan
From: Katherine J. Lee, Police Review Commission Officer *KJL*
Re: PRC Questions Regarding BPD Response on December 7-8, 2014

At its July 27, 2016 meeting, the Police Review Commission received a report from the December 7 & 8 Investigation Subcommittee. The Subcommittee's review focused on the BPD's response to the violent conduct and property destruction that occurred on the evening of December 7 into the early morning hours of December 8, 2014. The Subcommittee expressed concern that the vandalism and looting was not prevented, especially as the groups engaged in those acts are likely to be present at future demonstrations in Berkeley.

The full Commission thus voted to request your answers to these questions:

1. SRT DEPLOYMENT

Why was SRT part of the original deployment? Was SRT deployed on December 6? If not, was the decision to deploy SRT December 7 a response to events of December 6? Can you please articulate what aspect of the SRT's specific training and resources were thought to be beneficial assets in either crowd control or crowd management. How, specifically, was SRT deployed on December 7-8. What is the assessment of the efficacy of that deployment.

2. CITY HALL

Is it accurate that executive staff were on the fifth floor of City Hall during protests of December 7-8? Was this information communicated to BPD command?

3. MUTUAL AID

How many mutual aid officers/units ultimately responded on December 7-8? How were the mutual aid officers that responded on December 7-8 deployed? Fremont, Alameda, ACSO, CHP and UCPD appear to all have responded, what other agencies responded?

Chief Michael Meehan
August 22, 2016
PRC Questions Regarding BPD Response on December 7-8, 2014
p. 2

4. LESS LETHAL MUNITIONS

How many less than lethal munitions, if any, were discharged on December 7-8? Can you identify the instances at which less than lethal munitions were used on December 7-8?

The PRC voted unanimously (with Comm. Javier absent) to ask these questions of you. They also voted that this is a "Group II" priority among the PRC's requests to your department.

Thank you for your consideration.

cc: PRC Commissioners

Lee, Katherine

From: Bustamante, Tanya
Sent: Monday, August 22, 2016 4:05 PM
To: Al-Hadithy, Nabil; Allen, Shannon; Amoroso, Alexander; Brannigan, David; Brenman, Eric; Bryant, Ginsi; Burns, Anne M; Bustamante, Tanya; Clay, Tracy; Crane, Fatema; Davidson, Amy; Dentan, Sarah; Funghi, Amelia; Geiken, Delfina M.; Greene, Elizabeth; Hector, Manuel; Hollander, Eleanor; Iyengar, Savith; Javandel, Farid; Klatt, Karen; Klein, Jordan; Lee, Katherine; Merker, Mary Ann; Miller, Roger; Powell, Greg; PRC (Police Review Commission); Ramirez, Manuel; Rejwan, Carmella; Reynoso, Sarah; Romain, Billi; Talley, Leah; Torres, Jonathan; Tsering, Dechen; Wicker, Andrew; Wong, Wingyin
Cc: Bustamante, Tanya
Subject: Request from Community Health Commission
Attachments: 7_19_2016; CLK - Report (Public); COMMUNITY HEALTH COMMISSION; ; REGULAR.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: For Agenda

Hello Commission Secretaries,

The Community Health Commission voted at their regular meeting on July 28 that they would like to request letters of support for a recommendation to City Council. This recommendation involved the development of an African American Resource Center in Berkeley. This item was on the City Council agenda for July 19, but was postponed by the City Manager for discussion at the Sept. 27 Council meeting.

Please let me know if you have any questions. I apologize for the delay in sending this to you now, as I was out of the office for the past week and half.

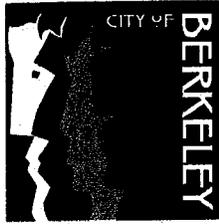
Thank you,
Tanya

Tanya Bustamante, MPH
Community Health Commission Secretary

Health, Housing, & Community Services Department
Public Health Division
1947 Center St, 2nd floor
Berkeley, CA 94704
510-981-5324

Tanya Bustamante, MPH
Health Services Supervisor
City of Berkeley Public Health Division
1947 Center St, 2nd floor
Berkeley, CA 94704

Phone: 510-981-5324
Email: tbustamante@cityofberkeley.info



Community Health Commission

ACTION CALENDAR
July 19, 2016

To: Honorable Mayor and Members of the City Council
From: Community Health Commission
Submitted by: Neal Nathan, Chairperson, Community Health Commission
Subject: African American Holistic Resource Center in South Berkeley

RECOMMENDATION

The Community Health Commission (CHC) strongly recommends that the City of Berkeley take immediate action steps towards the development and support of an African American Holistic Resource Center in South Berkeley.

The primary objective of the African American/Black Holistic Resource Center is to serve as a prevention and intervention model to consistently reduce the racial health disparities in Berkeley. It is to progressively increase positive health and wellness outcomes among the populations most affected. The Center will responsibly address the alarming health status rates among African American citizens in the City of Berkeley by providing culturally responsive and community defined-practices that will increase positive health outcomes. Furthermore, the CHC urges the City Manager and the City Council to both endorse and direct The Department of Health, Housing, and Community Services in general, the Public Health and Mental Health Divisions in particular, to set the development of such a Center as an urgent priority (with guidance and oversight of the project from the AABPCN, BNAACP, PCAD, BLM and HBF).

The Health Equity Subcommittee of the CHC has developed the following recommended action steps:

1. The City of Berkeley to either fund the Public Health Division or send out an RFP to conduct a thorough feasibility study within the next fiscal year (2016-2017) to determine the potential cost of creating and operating the African American Holistic Resource Center.
 - a. This study will include collaboration with community stakeholders: African American/Black Professionals & Community Network (AABPCN), Berkeley NAACP, Black Lives Matter, Bay Area/Berkeley group, Parents of Children of African Descent (PCAD), Healthy Black Families, and Friends of the CHC.

2. Provide funding that will allow for a culturally responsive driven community needs assessment:
 - a. Collaborative effort to hold African American/Black community focus groups to gather community input into the design, layout of the resource center and services.
 - b. Include focus groups with front-line staff service providers within the HHCS Department.
3. Immediate action: The City Council and City Manager are to direct the Adeline Corridor planning project team to use cultural responsiveness to appropriately consider and address health equity concerns in every phase of planning and development. The Adeline Corridor plan is to include the social determinants of health into each phase of the plan and development.
4. The City Manager and the City Council is to immediately direct the Adeline Corridor Planning committee to partner with the Public Health and Mental Health Divisions and African American/Black community stakeholders. In addition to directing the Planning Department to incorporate the African American/Black Holistic Resource Center into the Adeline Corridor project plan, the plan should consider generous square footage space to build and incorporate a green facility to house the Center, which would include a community garden and a spacious community meeting space that will allow for the gathering of at least 200 people.
5. The City of Berkeley to provide, in part, a generously protected funding stream to contribute to the staffing, business startup, and maintenance of the African American/Black Holistic Resource Center. The City of Berkeley will take the lead in developing collaborative funding from Alameda County, Alta Bates/Summit Medical Center, Children's Hospital/UCSF Benioff Oakland, Kaiser Hospital, University of California at Berkeley, Adeline Corridor Planning, and other public and private organizations in order to support the Center financially.
6. Direct the Department of Health, Housing, and Community Services to incorporate into the department's program plans for the 2017-2018 fiscal year a number of dedicated persons to assist in staffing and/or provide technical assistance to the resource center.
7. Creation of a City of Berkeley African American/Black Community Advisory Council that evaluates health equity status and suggests interventions to improve the health equity status of African American/Black people in Berkeley led by and comprised of 80% African American/Black members.

SUMMARY

Health inequities have impacted the City of Berkeley over a protracted number of years, with little positive change over the past two decades. The African American/Black Holistic Resource Center will create a much needed paradigm shift in the delivery of health and behavioral health services. Finally, the Center will serve as a free to low cost communal meeting space for Black residents and local groups.

FISCAL IMPACTS OF RECOMMENDATION

A substantial investment into culturally appropriate services will prove to be successful in reducing health disparities and improving positive health outcomes. The African American Community Service Agency in San Jose that deals with the health/mental and emotional development of the community is an example of such efforts. Anticipated costs (with a possible initial cost of \$20,000): feasibility study, focus groups, initial startup needs, City staff time (including data collection costs), administrative expenditures, daily operations and maintenance expenditures, supplies, electronic systems costs, and salaries. Additionally, private-public partnerships may provide funding for the feasibility study and operation costs, and/or the Adeline Corridor planning project may provide funding to absorb the costs of the feasibility study if the center is housed within the Adeline Corridor. Furthermore, research shows that the impact of health and behavioral health outcomes that are delivered in a culturally responsive manner will improve health outcomes and substantially reduce the costs of medical attention, for more serious health and mental health conditions, thereby reducing health and mental health cost to the city over time. Thus, the total costs of such a program and services should both be reasonable and justified, as the African American Community Service Agency in San Jose has been realized and sustained via private-public partnerships, which will form in Berkeley as well.

At the regularly scheduled meeting of the Community Health Commission (CHC) on March 24, 2016, the Commission took the following action:

1. M/S/C (Nathan/Stein) Motion to approve recommendation to City Council for African American Holistic Resource Center as amended, and as further amended by Commissioners Kwanele, Nathan, and Stein.

Ayes: Commissioners Chen, Engelman, Kwanele, Namkung, Nathan, Speich, Stein, and M. Wong

Noes: None

Abstain: None

Absent: Commissioners Franklin, Shaw, and A. Wong

Excused: Commissioners Rosales, Smith, and Wertman

Motion passed.

The CHC made further edits to the Council report, and at the regularly scheduled meeting of the Community Health Commission (CHC) on The April 28, 2016, the Commission took the following action:

2. M/S/C (Kwanele/Nathan) Motion to approve edited and revised recommendation to City Council for African American Holistic Resource Center.

Ayes: Commissioners Engelman, Franklin, Kwanele, Lopez, Nathan, Shaw, Speich, Wertman, and Wong

Noes: None

Abstain: None

Absent: Commissioner Rosales

Excused: Commissioners Chen, Namkung, and Stein

Motion passed.

CURRENT SITUATION AND ITS EFFECTS

The Public Health Division within HHCS Department identifies health inequities as a priority. According to the 2013 Health Status report states that in Berkeley, "The death rate for African American men is over twice that of men overall. The death rate for African American women similarly is nearly double that of women overall. African American men stand out as having the highest death rate of all racial/ethnic and gender groups. These vast differences in death rates are the result of differences in health status as seen throughout this report; these are health inequities" (*The City of Berkeley 2013 Health Status Report, pp. 113*). The report further explains that African Americans die much younger than any other racial or ethnic group in Berkeley. The health outcomes for African Americans in Berkeley continue to be staggering and a cause for alarm.

BACKGROUND

The following table from the 2013 Berkeley Health Status report demonstrates health inequities:

HEALTH INEQUITIES IN BERKELEY

Berkeley's health inequities disproportionately affect African American residents in South and West Berkeley neighborhoods. These health inequities are evident at every stage of life.

Compared to a White resident, an African American living in Berkeley is:

Demographics	Pregnancy & Birth	Child & Adolescent Health	Adult Health	Mortality
	20 times more likely to be a teen parent	7 times more likely to live in poverty	4 times more likely to have been diagnosed with diabetes and 14 times more likely to be hospitalized for diabetes	2 times more likely to die in a given year from any condition
	2.5 times more likely to be born too small	9 times more likely to be hospitalized for asthma (<5 years old)	12 times more likely to be hospitalized due to hypertensive heart disease	2.5 times more likely to die of cardiovascular disease

The 1998 Health Status Report identifies, among many issues, "Ambulatory Care Sensitive Conditions are defined group of medical illnesses which hospitalization can be prevented through timely and adequate primary care services. It is a measure of access to primary care". In this 1998 report in the ambulatory Care Services section, it identifies "Blacks accounted for 60% of all asthma hospitalizations in Berkeley among children 0 to 19 years of age, followed by Whites with 2.1% (*City of Berkeley 1998 Health Status Report, pp. 74*).

The 1999 City of Berkeley Health Status Report informs "The Health Status Report shows that overall Berkeley is a healthy community...However, health status is impacted by the significant economic, educational, social and racial disparities that exist within the City". It further explains that "African Americans have the highest mortality rate unadjusted for age of all race/ethnicities" (*City of Berkeley 1999, Health Status Report Executive Summary, pp. 1*). The 1999 report continues to identify racial health disparities among African Americans in almost every subcategory of the report, some much more significant than others.

The City of Berkeley 2001 Health Status report in its introduction informs, "Our report also revealed a disparity in mortality for Berkeley residents based on race. African Americans in Berkeley have shorter life spans in general than do Whites in Berkeley. Our health data shows that African Americans in Berkeley have significantly higher premature death rates for preventable or manageable diseases such as hypertension, stroke and diabetes" (*City of Berkeley Health Status Report, 2001, pp. 5*). The report continues on to state that the Department of Public Health worked for three years to understand and pinpoint the disparities. The Department at that time introduced new programs to address the problem such as the Community Action Team (CAT) and the Black Infant Health program, among other programs, with a goal to close the health equity gap in Berkeley. After implementation of such programs, the Public Health Department began to notice some, albeit small, but positive changes in birth rate.

The 2002 Health Status Report credits the Black Infant Health Program for changes and states that "For all births (normal and low birth weight) in the period 1990-1992, African American mothers were 4.5 times more likely to receive untimely prenatal care as compared to Whites. During the last three years (1999-2001), this disparity gap has decreased significantly so that African American mothers are now 2.5 times more likely to receive untimely prenatal care as compared to Whites" (*The City of 2002 Berkeley Health Status Report, pp.20*).

In the next couple of years to follow, the Public Health Department began the process of slowly moving the needle in reducing the daunting racial health disparities numbers in Berkeley. By 2007, The City of Berkeley Health Status report identified Race and Racism as a social determinant of health among other categories. As with the reports in prior years, African Americans in Berkeley (and Nationwide) continued to have significantly larger concerns concerning poor health outcomes.

The 2007 reports states, "Our ability to eliminate health inequities requires that we address the upstream determinants of health. If we truly wish to improve the health of our community, the Public Health Division must work closely together with Berkeley's residents, schools, community based organizations, policymakers, and many other agencies to achieve greater social justice and a healthier environment for all" (*The City of Berkeley Health Status Report, 2007, Section I: Social Determinants Of Health & Health Inequities, pp. 2*).

By 2013, although the health equity gap in the City of Berkeley has narrowed in some areas, the numbers continue to be sobering and cause for alarm. The steps to address this problem must be aggressive, multi-systemic, multi-dimensional, culturally responsive interventions to address the social determinants of health, community involved, African American/Black culturally specific and centered. The AABPCN authored a document, A Community Approach for African American/Black Culturally Congruent Services, April 2011, which was given to members of the City Council and the prior City Manager in 2011. The report cited several areas of concern within the

City, including concerns about the health and mental health status of African Americans in Berkeley.

The report offered pragmatic solutions to each identified problem, and offered the suggestion that the City of Berkeley should build an African American/Black Resource Center. The AABPCN reports states the following: "The vision for the African American/Black Resource Center is that it would be developed to have office space for various organizations to serve the community. Services would include, but not be limited to community support, career development, legal services, housing assistance, mental health treatment, educational support, nutritional support, and a meeting space that can be divided up when necessary to make smaller meeting spaces, or opened up for large community events. The building would be a modern green building that is environmentally friendly and located in South Berkeley" (*A Community Approach for African American/Black Culturally Congruent Services, AABPCN report April 2011, pp. 23*).

Later, in July 2013, the NAACP, Berkeley Chapter co-sponsored a Community Town hall meeting at the South Berkeley Library where over 150 participants partook in the event. Among the serious topic discussions, the health inequities within the City were identified as a crisis which needed immediate attention. Fast-forwarding to 2016, the racial health inequities in the City of Berkeley continue to be alarming, and continue to require immediate attention.

ENVIRONMENTAL SUSTAINABILITY

The community garden may contribute positivity to the landscape of South Berkeley and may serve as a small sustainable food supply. Possible impacts observed may be increased auto, foot, and/or bicycle traffic in an around the area of the Center. Visible Recycling and refuse receptacles may minimize possible waste resulting from the increased human traffic flow.

RATIONALE FOR RECOMMENDATION

Over the past 2.5 decades the health status rates of African American residents in the City of Berkeley has been horrendous, especially when it is compared to the White population in Berkeley. Many Cities and Counties have taken strong bold successful steps to understand and address the social determinants of health and mental health and see positive outcomes for their residents. Finding a resolution to the City of Berkeley's racial health equity problem will benefit the entire City, and create healthier citizens with increased positive outcomes. An African American/Black Holistic Resource Center will be a stabilizing force in the African American/Black community in South Berkeley. It would increase Community empowerment, support and involvement. Furthermore, culturally congruent services that are provided to African Americans/Blacks and other marginalized people in a respectful and welcoming manner will net great benefits to all parties.

ALTERNATIVE ACTIONS CONSIDERED

- 1 Add culturally congruent health services to existing Department of Health Services and Public Health Division services along with the creation of a City of Berkeley African American/Black Community Advisory Council that evaluates health equity status and suggests interventions to improve the health equity status of African American/Black people in Berkeley led by and comprised of 80% African American/Black members.
- 2 Partner with Alameda County Public Health Department to develop and provide culturally congruent, responsive services to the African American Community in the City of Berkeley to be delivered with Cultural Humility.

CITY MANAGER

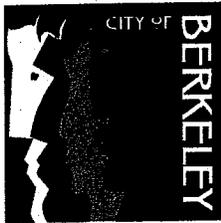
See City Manager companion report.

CONTACT PERSON

Tanya Bustamante, Commission Secretary, HHCS, (510) 981-5324

Attachments:

- 1: 2013 Health Status Summary Report
- 2: AABPCN Report: A Community Approach for African American/Black Culturally Congruent Services, April 2011



Office of the City Manager

INFORMATION CALENDAR
September 13, 2016

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Submitted by: Michael K. Meehan, Chief, Police Department
Katherine J. Lee, Police Review Commission Officer

Subject: Progress Report on Berkeley Police Department and Police Review Commission Development of Revisions to BPD Policies and Procedures for Responding to Protest Activity

INTRODUCTION

At its January 26, 2016 meeting, the City Council considered the Police Review Commission's investigation into the Berkeley Police Department's response to protests on December 6, 2014, along with the BPD's response to the PRC's report. As part of its report, the PRC addressed the 32 recommendations of the BPD in its own post-incident review. The Council directed the City Manager to begin the process of implementing reforms by working with the BPD and PRC to refine the language of the agreed-upon recommendations, and to continue to seek consensus in areas of disagreement. The Council also requested a progress report every 90 days, including a timeline for implementation.

CURRENT SITUATION AND ITS EFFECTS

The work to revise BPD policies and procedures has been taking place in the PRC's Subcommittee on General Orders on Crowd Control, etc. (C-64, U-2, and M-2). A handful of recommendations are being handled outside of that Subcommittee.

Revisions of General Orders

The Berkeley Police Department and the PRC's Subcommittee on General Orders has been meeting about twice a month since February. They have made substantial progress on the Crowd Control General Order (C-64) and the Subcommittee expects to propose a revised general order to the full Commission in the fall.

The Subcommittee has also made progress on portions of the Use of Force General Order (U-2) which relate to crowd control. They will soon be turning their focus to the Mutual Aid General Order (M-2), and anticipate bringing recommendations for revised orders to the full Commission before the end of the year.

Other BPD Recommendations

- *Clarify the availability of regional radio interoperability for common encrypted channels.*

Status: The BPD has learned that a single encrypted channel shared by multiple agencies in the EBRCS system requires the purchase of a secondary encryption key at a cost of \$140 per radio across all jurisdictions. Not all agencies are willing to purchase the secondary encryption key.

Alternatives include the continued use of Berkeley "pathfinders", Berkeley Police Officers assigned to work directly with mutual aid responders, or for all agencies to use a non-encrypted channel.

- *Explore technology that can improve the quality and timeliness of information available to decision makers*

This pertains to overhead information that is currently banned (helicopters and drones). At Mayor Bates' request, the BPD is drafting a policy on the use of drones for submission to the City Council.

- *Reconsider permitting the use of helicopters in cases of significant civil unrest.*

This topic needs more discussion between BPD and the PRC. Given the current workload of both groups the Department and the Commission plan to begin discussion on this topic in September.

- *Invest in quality video cameras, live stream capability, and video capture software to improve situation awareness.*

This topic needs further discussion between BPD and PRC which will begin in September.

- *Investigate the use of body armor to be worn under uniforms.*

BPD has investigated the cost of this equipment which is significant. Funding would need to be identified before purchasing. BPD is postponing further research until next fiscal year.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

Updates on the progress of the PRC and BPD will continue to be provided. Recommendations will be brought before Council when appropriate.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

To be determined.

CONTACT PERSONS

Dave Frankel, Captain, Police Department, 981-5810

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

<http://www.dailycal.org/2016/08/24/berkeley-police-review-commission-releases-annual-report-revealing-low-number-sustained-police-allegations/>

Wednesday, August 24, 2016

Berkeley Police Review Commission report shows decrease in sustained allegations

By Anderson Lanham | Staff

Sustained allegations such as discrimination or excessive force against the Berkeley Police Department filed with Berkeley Police Review Commission are at a five-year low, according to the commission's 2015 annual report.

The annual report detailed the commission's work last year and shows that it reviewed 23 complaints, including 51 different allegations regarding police actions, as well as four policy reviews. Of those 23 complaints from 2015, 14 were closed without a hearing and only one allegation — of discourtesy — was sustained, meaning that the act listed in the complaint both occurred and was unjustified.

According to the report, however, the allegation which was sustained by the PRC was appealed by a BPD officer, and will be heard through an independent reexamination in 2016.

The PRC is required to inform the Internal Affairs Bureau of the police department whenever they receive a complaint, after which the Bureau conducts an investigation as well. The Internal Affairs Bureau also independently receives and investigates complaints — last year, a PRC handout stated that it received 30 external complaints and sustained six.

“There is nothing inherently wrong about people choosing to go to the department rather than the PRC,” said Alison Bernstein, 2015 PRC chair. “But if that number is a reflection of people not having faith in our process or not knowing about our process than that is something we need to address.”

Nine of the 23 complaints sent to the commission were lodged by Berkeley residents who are Black, which Berkeley Copwatch member Andrea Pritchett said was in line with the “racial profiling problem” in Berkeley. According to the report, in four out of the last five years Black people have filed the most complaints with the PRC.

“You have African Americans year after year filing close to half of complaints against the police to the PRC yet they only make up eight percent of Berkeley's population,” said James Chanin, a Berkeley civil rights lawyer. “Someone needs to ask why that is.”

Besides reviewing citizen complaints, the PRC creates policy recommendations for BPD, with commissioners talking with BPD representatives and addressing policy issues “one way or the other,” Bernstein said.

In 2015, the commission and BPD initiated a review of police actions during the December 2014 Black Lives Matter protests at the request of Berkeley City Council. Since then, a PRC subcommittee and BPD officials have met regularly to redraft the department’s general orders regarding crowd control. In January, City Council accepted a PRC report on BPD’s response to the protest. Bernstein said that the PRC subcommittee will report to the full commission this fall.

“It is over one and a half years later and a protest could happen today and we would have no agreement on how to handle crowds,” Chanin said. “It is completely unacceptable and makes people feel like their First Amendment rights are subject to the excessive force and misbehavior that colored the December 2014 protests.”

Also outlined in the report, the commission amended a BPD policy regarding how officers report suspicious activity and terrorist threats to other law enforcement institutions which, according to PRC member George Lippman, could infringe on citizens’ First Amendment rights. Originally, officers could report suspicious activity based off of a citizen’s beliefs or association with political groups, but PRC’s amendment emphasized federal regulations against inappropriate reporting of suspicious activity to decrease ethnic, political or religious bias.

BPD spokesperson Sgt. Andrew Frankel could not be reached for comment on the report.

Anderson Lanham is an assistant news editor. Contact her at mlanham@dailycal.org and follow her on Twitter at @AndersonLanham.

Nixle

Berkeley Police Department

Unsubscribe

Wednesday August 31st, 2016 :: 09:56 a.m. PDT



Community

551 Tickets Written/17 Arrests Made in First Two Weeks of School

The Berkeley Police Department (BPD) has long recognized that with the return of its University of California community members, comes an increase in the number of alcohol related incidents. This year was no different. The BPD in a coordinated effort with officers from another 14 law enforcement agencies wrote a total of 551 alcohol related citations and made 17 in-custody arrests over the last two weekends in the South Campus area.

Citations were written for a number of offenses including Open Containers, Selling/Furnishing Alcohol to a Minor, Minor in Possession, and Possession of a Fake ID for the Purposes of Purchasing Alcohol. If cited for one of these offenses a person could face punishments which range from a fine, community service, to the loss of one's driving privileges (depending on the offense) for up to a year. Arrests were made this year for Public Intoxication, Armed Robbery, Assault with a Deadly Weapon, and Petty Theft.

The BPD would like to thank the California Department of Alcoholic Beverage Control and the following agencies: Watsonville Police, University of California Police, Alameda County Sheriff's Office, Folsom Police, Richmond Police, Sacramento Police (both the ABC Unit and the Entertainment team), Nevada County Sheriff's Office, Placerville Police, Central Marin Police Authority, Rohnert Park Department of Public Safety, Fresno Police, San Rafael Police, and the Stockton Police for their participation. All of the participating agencies did so under a grant provided by the California Alcohol Beverage Control Board.

The Berkeley Police would like to remind students to obey the law and for those old enough to drink, please do so responsibly. Please have a safe and productive school year.

Address/Location

Berkeley Police Department
2100 Martin Luther King Junior Way
Berkeley, CA 94704

Contact

Emergency: 9-1-1
Non-emergencies: 510-981-5900

Officers question leadership of Berkeley police chief

August 31, 2016 11:15 am by Emilie Raguso

More than six years after taking the helm of the Berkeley Police Department, Chief Michael Meehan is facing serious criticism from within his own ranks, according to two internal emails he sent to employees earlier this month and numerous interviews with BPD staffers.

The criticisms focus on weak leadership, low morale, insufficient staffing and inconsistent communication. They were spelled out in surveys from 134 people, just over half the department, that included nearly 80 pages of written comments. Much of that focused on the chief.

“That direct feedback tells me that I am failing some members of this organization,” Meehan wrote in an Aug. 11 email to BPD employees. “That is unacceptable.”

The comments are “a strong wake-up call” about what many characterized as a “lack of leadership and clear vision for our agency,” the chief wrote. He sent the email, entitled “Priorities and Commitment,” at about 10:10 p.m. after two long days of involved discussions with his leadership team.

The survey responses reportedly included scathing critiques of Meehan’s leadership style, along with other frustrations faced by the rank and file. The results have not been made public — and Meehan says they won’t be — but the chief’s email messages about those responses offer a rare glimpse into the department’s inner workings.

Morale inside the department has sunk to what may be an all-time low, some officers have told Berkeleyside, and that stems largely from what many have said is the failure of the chief to advocate effectively for what his officers want. Berkeleyside has granted those officers anonymity because they were not authorized to speak publicly on behalf of the department.

The chief’s emails were also shared with Berkeleyside by a BPD staffer on condition of anonymity. Meehan provided additional context regarding the messages, as well as staff concerns, during a lengthy conversation with Berkeleyside on Monday night.

In his remarks to Berkeleyside, the chief described the survey feedback as “a motivator” he says will drive him to improve. He offered insights on his view of department staffing, and described a range of efforts undertaken under his watch that he believes have made BPD a leader across a number of important areas, from training to recognize implicit biases to efforts to equip all officers with crisis intervention and de-escalation skills.

“Any leader, if they’re always listening and paying attention and trying to do better, it’s a pretty good start,” he said.

Over the years, officers have expressed frustration to Berkeleyside about a variety of issues related to the chief. Many are longtime employees who say the gripes go beyond the typical tensions between leadership and those on the ground.

Many have said Meehan focuses much more energy on his relationships outside the department than on those within it. He can seem disconnected during conversations, non-responsive in his answers and frustrating in his approach to decision-making, according to the complaints.

It is also true, however, that this is among the most politically and emotionally challenging times in recent decades to work in policing.

Berkeley Mayor Tom Bates said, from an external standpoint, Meehan has been an exemplary leader.

“I think Chief Meehan has built excellent community relations between the police department and the overall Berkeley community,” he said. Bates described Meehan as engaged and involved with the public and credited him with helping to create the Martin Luther King Jr. community breakfast in 2012. Bates said he is also pleased to see Meehan pushing forward on a pilot program to fund body cameras for officers in Berkeley.

In recent years, BPD has managed to avoid many of the more significant scandals that have plagued nearby law enforcement agencies and those in other parts of the country as well. The department has not had an officer-involved shooting since 2012, and reports what it says is a comparatively low number of external complaints related to officer behavior.

Meehan has also been chief for more than six years during a period in which there has been high turnover of chiefs in nearby cities. Oakland, for example, has gone through six police chiefs since 2010. That department is now being overseen by the city administrator. San Francisco has had three police chiefs in that period. Monday, Hayward’s police chief was placed on sudden leave by her city manager in relation to a personnel matter.

And there has been criticism of BPD from some external quarters over the years. Meehan made headlines in 2012 when he sent 10 officers to Oakland to find his son’s stolen cell phone and, two months later, sent a sergeant to a reporter’s home in the middle of the night to ask for changes to a news story. He has also been grilled publicly in connection with dispatching decisions during the brutal murder of Peter Cukor in the Berkeley Hills, the in-custody death of Kayla Moore in 2013, and the tear-gassing of protesters during Black Lives Matter demonstrations in 2014.

Internal survey prompts “tough responses” from BPD staff

In May, as part of an effort to create a strategic plan for BPD, Meehan sent out, through a third-party consultant, a 14-question survey to his staff. Employees were asked, among other questions, if they felt they had a clear understanding of department priorities, what they saw as the most pressing public safety issues in Berkeley, what could be done to increase the public

trust, and what they believed to be the agency's biggest challenges. The answers were anonymous.

As the months wore on, some wondered when they would hear back from the chief about the feedback they had shared. They finally got their answer in August. On Tuesday, Aug. 9, at about 5:15 p.m., Meehan sent a brief message to employees to let them know he had, in fact, received the survey results.

"I want to assure each of you, as tough as some of the responses were to read, I plan to turn this difficulty into increased awareness and understanding about our department," he wrote.

Meehan announced that he and his leadership team would immediately take two days away to brainstorm about how to address the issues that had been raised. At times, one attendee said, those discussions were heated. They involved passionate debates about how best to move forward.

The chief's next email, sent Thursday, Aug. 11, after the off-site sessions concluded, laid out Meehan's initial plan for how to do that.

He promised, among other things, to share more information internally, make decisions faster, make his expectations clearer, and spend more time with officers and in the field. To that end, he told Berkeleyside this week, he has attended briefings for all of his teams, and went on a ride-along on a recent weekend with one of his officers. And he said he plans to continue those efforts.

(One member of the department told Berkeleyside, however, that the chief was initially unable to log into the computer system in the police cruiser during his patrol shift because he had never before done so. He has worked for the city since December 2009.)

"You expect and deserve more of my time and attention and you will get it," he wrote in the Aug. 11 email. "I care about the health of our entire department and recognize the need for action. It is my responsibility to give clear direction about my vision, build trust throughout our organization, and support each of you as you carry out our shared mission."

His external goals included crime prevention and reduction, and building community trust. Internally, he wrote, he wants to provide more chances for training and development, and continue to build "an engaged and cohesive agency."

Meehan's plan includes a push to maintain staffing levels, which have been the subject of significant officer concern for years; a move to reduce the size of police beats, after a plan was adopted about 18 months ago that made the beats larger; and an effort to allow and encourage the community to file more reports online rather than in person, should they so choose.

Regarding the move from 14 to 16 beats, he wrote, "We can't just throw a switch; there's work involved but we will fast-track this project to the best of our abilities and available resources with the goal of completing the transition by the end of 2016."

Meehan also said he'd launch a pilot program to give officers the option of temporary 1-2 week assignments in special units such as robbery, sex crimes and the traffic division, and — in response to complaints about New World, the clunky and sometimes unreliable computer system in patrol vehicles — said BPD would “explore the option” of letting officers hand-write the narrative part of their reports to “reduce the amount of keyboarding needed in your car.”

The memo also referenced challenges faced by the department's dispatchers. The dispatch center has for years been understaffed, meaning dispatchers can be forced to work 15-20 hours of mandatory overtime each week, according to one employee. At the time of his memo, Meehan said the department is authorized to hire 28 dispatchers but had just 24 on staff. As of last week, one of those dispatchers had reportedly left or will leave for another agency.

Meehan said Monday night he could not confirm the exact mandatory overtime figure, but said it has been very difficult to get adequate staffing in the dispatch center for quite some time, even before he came on board.

“It has always been a huge challenge,” he said. “It's hard to recruit qualified dispatchers who can make it through our training program.”

One employee told Berkeleyside that, earlier in August, the department lost both a dispatch trainee and an officer trainee who were unable to complete BPD's training program.

Some have said that, though the agency has been trying to hire up to its authorized total of 176 sworn officers, it just hasn't been able to keep pace. As recently as 2014, the department only received enough money from the city to hire 171 officers, despite its “authorized” number of 176. At times, injuries, sickness, leave, training and other factors have meant the actual number of available officers on the timesheet has fallen down into the 150s. And many officers have left for other departments, too. A certain amount of “churn” is natural in any organization, but some feel it's beyond the norm at BPD.

“I've never in my career seen this many people either leaving for other places or having applications out in other places,” said one longtime BPD employee. “It does speak to morale across the profession. But we're blessed with our own special set of problems [in Berkeley] that exacerbate the problem.”

Unlike many other agencies, officers in Berkeley don't have Tasers or police dogs. As of earlier this year, there's no longer a Drug Task Force, which reduced the number of special assignments available to police. Unlike other agencies, many of which have embraced social media as a way to promote department wins, particularly in the face of increasing scrutiny and criticism nationally, BPD has been mostly mum online. The agency has minimally used Twitter but is otherwise not involved with social media, though sources say this is not entirely the department's fault. (Meehan himself, however, has an active Twitter feed.)

Officers have complained that, though Meehan has spoken publicly in favor of tools like Tasers and a more proactive and transparent approach to social media, he does not push hard enough to turn those ideas into a reality.

The staffing issues are, at least in part, the result of the city's approach to budgeting and hiring — no full-time BPD recruiter, no continuous hiring process and no extension of conditional offers, which are approaches used by other agencies to attract applicants — as well as what's been reported as an overall plunge in candidates who want to work in law enforcement in recent years. A typical applicant pool in Berkeley used to be 1,200 to 1,500 applicants. It is now down to 200 or 300.

The department describes its officers as highly educated and highly focused on customer service, and the chief has often described BPD's hiring process as more selective than Harvard. They count lawyers, artists, nurses, accountants and a psychologist among their ranks.

But some officers also say poor planning over the years and a failure to stay on top of hiring — and to offer ample advancement opportunities to women and minorities — has contributed to what they see as a problem that may have gotten too large to solve.

Record numbers of female officers are reportedly leaving the department this year, which could put a dent in BPD's proud record of diversity and inclusiveness. Last year, the New York Times identified BPD as being among the most racially representative departments in the country, according to 2007 data. It was unclear as of publication time, however, how staffing changes since 2007 may have impacted those results.

According to Meehan's Aug. 11 email, the department expects to lose another 6-8 positions to retirement and resignation by year's end. He noted, however, that five new recruits would be starting at the police academy Aug. 30, and that a third round of recruitment is in the works for 2016.

“More communication, better communication”

Meehan has a different take on the staffing numbers. He told Berkeleyside this week he believes he is operating with 97% or 98% of his authorized employees. And, while that doesn't take into account people who are out due to training, vacation, injuries or other factors, he said that gap is one that has always existed.

Meehan said he would love to see more officers out on foot and bike patrol through the neighborhoods, but that answering emergency calls is his No. 1 priority, particularly when resources are limited.

“There's no science behind police staffing,” he said, no accepted ratio of officers to a city's overall population. Meehan said officers who remember the size of the department 15 years ago are bound to take issue with the size of the current force. He noted, too, that the overall number of approved officers has not dropped in five years. “It's not good enough for some folks: I totally understand.”

He said he has struggled to communicate internally about many of the accomplishments he is proudest of at BPD: the overall downward trend in serious crime reports over the years; the department's approach to fair and impartial policing to counter implicit bias; a new criminal

justice class launching this year at Berkeley High; and his officers' focus on customer service, de-escalation tactics and crisis intervention training.

Meehan describes the department as "years ahead nationally" in terms of training related to implicit bias that has only recently become part of the broader conversation. And every member of the department has received that training, he said. The department was the first in the state to sign up to turn over its car and pedestrian stop data for analysis related to racial disparities, he added. It was also the first or among the first, he said, to publish that stop data online "for everyone to see."

"Not every officer necessarily agrees with that approach," Meehan said. "I think that is the right thing to do and I am very proud of that."

He said it's possible, however, that all of these efforts may have left officers feeling that there's a lack of focus. There may also be unrealistic expectations within the department, he said, about how quickly changes can be made: "You can't just say yes to everything."

Meehan has pledged to provide more and better communication internally to try to offer the clarity he feels his staff has requested. He said he hopes to complete the strategic plan by the end of the year after also surveying the public about what it wants to see from BPD.

Above all, Meehan said, he's taking the survey results as an opportunity to grow.

"It was very much a motivator for me," he said. "I'm just naturally an optimistic person. I don't hang my head and complain.... I just feel like: How can I do better?"

He continued: "Enough employees feel like I can improve. That's exactly what I'm going to try to do."

City manager Dee Williams-Ridley said Wednesday she has recently returned from vacation and plans to review the survey results soon.

"It's very important for the department to embark on a strategic plan so we more effectively address the needs of the community and the department," she said. "I'll work with the Chief and the department on a plan of action to address any challenges identified in the survey."

Berkeleyside welcomes news tips from readers. Reach reporter Emilie Raguso by email or by phone at 510-459-8325. Tipsters can remain anonymous.

Lee, Katherine

From: bob tom <cranberrysauce23@gmail.com>
Sent: Wednesday, August 31, 2016 4:24 PM
Subject: A letter by Blair Beekman. Wednesday, August 31, 2016. Letter #10.
The League of California Cities, Resolution Process, Awareness
in Bicycle and Pedestrian Fatalities. With use of Vision Zero Program.

Dear city government, of San Jose, the League of California Cities, UASI, local governments, agencies, advocacy groups, and others,

Hi, this is Blair Beekman. For the time being, I hope you can please re-consider, and hopefully end, your awareness ideas, for a resolution process, and a leadership role, for future ideas of Vision Zero, with the League of California Cities, parts of the federal government, and others.

The city government of San Jose's, introduction ideas, to the local community, for what should be the beginning, of a new era in national security, surveillance and technology, has been irresponsible, arrogant, reckless, undemocratic, and has been introduced, with the ideas of a community, to continue to live in, a heightened state, of insecurity, fear, and war.

With this, it is my feeling, your city's ideas of future leadership, for this state and this country, will also be based, on how to plan, and how to continue the ideas, of disinformation, coercion, propaganda, manipulation, and to actively plan, how to limit the ideas of a fair, honest, local democratic process, in future communities, of the state, and possibly the country.

This is a very matter-of-fact language. A more polite language, is to offer that basically, your groups will be wanting to continue, the democratic processes and practices, that are considered more acceptable, in a time of war. I find it, very important and necessary, your groups will have to re-evaluate, how it will intend to introduce, Vision Zero, national security plans, and surveillance and technology ideas, to local communities, in the future.

It is the ideas of peace and the better constitutional and democratic ideas and ideals, of this country, that will be the way, in how to shape, the future of local communities, and this country. It is time your groups, learn to leave bad habits, and learn to look for, more peaceful and healthy ideas of a democracy, and a local community democracy

The people of San Jose were patient, and compromised greatly, with the city government of San Jose, national security, surveillance and technology plans, from 2014, when a super bowl, was first announced, for the San Jose area. Here in 2016, the super bowl, and its national security issues, are over with. It is now time, for the city of San Jose government, to learn how to reciprocate, to the everyday people, and an intelligent, well meaning, activist community, of San Jose.

It is time the city government, of San Jose, learns its own ideas, of patience, trust, and compromise. It is time the city government, learn to offer simple, good information, and more open, better reasoned ideas, for open community discussion. And to also respect, we are trying to leave the ideas of war, as a country, as a society, and as everyday people, of local communities. Better ideas of local community democracy, are developing.

With the help from government entities, like Santa Clara County, the State of California, the city of Oakland, Alameda County, the ACLU, and the everyday people, of local Bay Area government, local agencies, advocacy groups, and others, we may have finally entered a transition period, we have all been hoping for, and waiting for.

This is no longer 2014. New ideas, and new legal standards and precedents, in peace, accountability, organization, guidelines, public oversight, democracy, are developing, in this state. A good, honest, logical, and reasonable dialogue, throughout the country, is also developing, and is being more trusted, between a local government, and its community. It is offering hope, and well reasoned thought, in how to work towards and build, the future of this country. A more accountable local government, with a more transparent process, for its local community democracy, is starting

It is a part of a logic, and a reasoning, that will naturally build, based on more clear and better reasoned ideas of democracy, the u.s. constitution. When they work well together, they create a good reasoning, and ideas of peace. Ideas and legal precedents, are organizing, that can help, in how to leave the ways, of confusion and opacity, created in the past fifteen years, of war.

For the few good intentions, the city of San Jose, and the League of California Cities, will offer, with their resolution process, and their awareness plans, I fear they will literally offer, many other hidden and secret agendas, that will be meant to take advantage, and not be honest, with the people of local communities, and that will coerce, the basic democratic practices, of local communities.

Whether there is a future Vision Zero in this country or not, federal and local governments, are going to have to learn, to be more accountable and transparent, with national security plans, and surveillance, and technology ideas, for everyday people and their local communities. It is a question of when, and how to begin. I think this is the time, to start to look for, and learn how to practice, the better ideals of this country.

The county of Santa Clara, the city of Oakland, and other Bay Area cities, have been working on guidelines, organization, public oversight, and transparency, for surveillance and technology projects, within their community. Not connecting, and offering a heavy sense of competition, hidden and secret agendas, the intended use of opacity, and the overall practicing, as if this country, is still in a state of war. Or to practice, a heightened state of war, or national disaster, national security preparedness, will subvert and take away. from the peaceful intentions, the peaceful goals, and the overall good, that can come from what is being worked on, for all of us.

I feel this is an important time, a transition period. It is the time to look, and that we can honestly work towards, how to leave the bad habits, the bad ideas, the pain, and the hurt, that has been created, in the past fifteen years of war. Not in how to re-invent, and re-create, the bad habits, bad ideas, and status quo, of the past fifteen years. What is being worked on, by many local Bay Area governments, and with everyday people, and advocacy groups, around the Bay Area, is the idea of a better future, for the people

of local communities, and this country. This could eventually lead, to better relationships, with people of the world.

There is something good beginning. I find it important, the city of San Jose, the League of California Cities, parts of the federal government, and others, are going to have re-evaluate, in how to understand, their awareness ideas, in bicycle and pedestrian fatalities, for their resolution process. And how Vision Zero, will be used in these awareness plans. These groups, will also need to re-evaluate, what the idea of leadership means. They going to have to re-learn, what trust and respect is, of the everyday people, of local communities, they say they are trying to serve.

I hope your groups, can take the time, to understand, what is possible, and the many steps it takes, to leave being a society, that mostly builds, towards the ideas of war. And to be considered a society, that is working more toward the ideas of peace. Legal standards and precedents, are starting, in places like the County of Santa Clara, the city of Oakland, and the state of California, with accountability, organization, beginning guidelines, public oversight, transparency, and better ideas in civil protections.

Please learn, to take the time and the effort, to end your harmful practices. There are important ideas, of peaceful, better reasoning democracy, that are developing in the Bay Area, in the state, and across the country, that is meant for everyone, to be a part of.

Sincerely,
Blair Beekman

p.s. I hope your own groups, do not have plans, to hurt this new peaceful democratic process, that may be beginning. the city of San Jose, the League of California Cities, parts of the federal government, and others, possibly heavily competing, with this peaceful process, will be defeating a healthy future, for all of us. We are at a point, in our lives, and we have the space to ask, how do we leave, building this society, toward the ideas of war. And how do we start to return, to build this society, more towards the ideas of peace.

I have a few questions, I hope your groups, can think about, and you can offer some honest answers to yourselves. How strong are your ideas of competing? Are there ways, you can work to end, practices of the bad ideas, bad habits, and the status quo, created in the past fifteen years of war? Why would your groups, want to purposely try to avoid, the good ideas, that are developing, for a local community democracy? Are you willing to make, adjustments and compromises, with the good ideas that are developing?



Lee, Katherine

From: bob tom <cranberrysauce23@gmail.com>
Sent: Thursday, September 01, 2016 4:25 PM
Subject: Letter from Blair Beekman. Letter #4 _____ The League of California Cities. Resolution Process. Awareness of Bicycle and Pedestrian Fatalities. With use of Vision Zero Program

Hi, this is Blair Beekman, again. This is my second letter, since yesterday. It should offer some interesting thoughts. After the Labor Day weekend, I hope we can all sit down, and begin to think about, new beginnings that are starting, in the Bay Area, and across the country, in how a local government and its community, relate to each other.

Questions about accountability and transparency, are beginning to be answered. Answering these questions, on a local level, may actually have good effect, and an important meaning, for all the people, of this earth, and this world.

I have written these letters, of yesterday and today, to the major city and county governments. of the Bay Area. And to everyday people, advocacy groups, union, and media, of the Bay Area.

It is time to seriously ask, if we are going to allow the city of San Jose, to continue their ideas and plans, for how to introduce surveillance and technology, to a local community, Or is it time, that with this letter writing, to have what may be called, a conversation, in working together, as 'the Bay Area', towards a more peaceful future.

I feel it is time, for what may be called, a 'regional conversation'.

There are peaceful new ideas, of local government, everyday people, and, community democracy, that are seriously developing. Good dialogue, in accountability and transparency is developing.

I feel it time the city of San Jose, learn to grow up a bit. They have answered certain questions, of how to prepare, for future police use of force issues, better than anyone. A fine, and healthy example, for the future of other cities, in this country.

But on the issue of receiving and introducing new surveillance and technology, San Jose, is still believing we are in a time of war, in some ways, to satisfy some immature ideas, of the meaning of leadership. It is time the city of San Jose, learn to mature a little. and learn that there are peaceful and democratic ways, national security, surveillance and technology ideas, can be introduced to a community.

Peaceful, democratic ways, that will not rely on the tactics of war, and a country, and a democracy, in a state of war, that I fear the city of San Jose, are intending to continue to use.

We are hopefully beginning a transition period, in how to build the more peaceful ideas of democracy, as local communities, and as a country, in ways we all like to work towards. We are hopefully learning to leave the ideas, of a country, being in a state of war. or being in a continual state of war.

I hope you can talk with people and city government, from San Jose. I hope we can all talk to each other, more. Write back if you can. I hope you can enjoy the words and ideas, of these letters, of the past couple of days.

Sincerely,
Blair Beekman

Dear city government of San Jose, local governments, the League of California Cities, Bay Area UASI, agencies, advocacy groups, and others,

A healthier, more organized, constitutional idea, of local government, is developing.

Some of the groups, working on these new ideas, include, the county of Santa Clara, the city of Oakland, Alameda County, the ACLU, other local bay area governments, agencies, and advocacy groups, of the east bay, and the bay area. And interestingly, representatives from the State of California, in Sacramento.

You had mentioned, talking to people in Sacramento, about your awareness ideas, in bicycle and pedestrian fatalities. You should talk with the people, in State Government, who are creating, a new standard and new state laws, in accountability, transparency, and civil protections, in issues about surveillance and technology, within local state communities.

They are creating guidelines, to give local communities, the option to improve upon, good state laws being developed. This shouldn't be the time, for local communities, to simply learn, how to take advantage, of these good beginnings.

For the city of San Jose, and the League of California Cities, to continue in direct competition, or with the intention, to purposefully or forcefully, continue the efforts and bad habits, created during a time of war, is hurtful to what this new era, is beginning to work towards, and actually accomplish.

To respect the hurt, the past fifteen of wars has created, for this world, I feel we need to honor, that a dialogue, and a process of peace, is beginning. It should be allowed to grow, and to eventually supercede, the unhealthy bad ideas and habits, the city of San Jose, the LOCC, the federal government, and others, would like to purposefully continue.

It has been fifteen years of fear, pain, hurt, confusion, insecurity, and war, after the events, of 9/11/01. I think peaceful, well-reasoned, and healthy ideas, are beginning to make themselves clear.

The idea community health and well-being, is an important part of Vision Zero. Practicing open and transparent ideas in local community democracy, I think will be important, in this regard.

Obviously, federal and local government, Vision Zero, its national security plans, its surveillance, and its technology, like all surveillance, technology, and national security plans, in the future of local communities, is going to have go through a more formal, open, transparent, and accountable, local democratic process.

The question is, what will be the steps, to work towards this idea.

I feel these steps can happen, with good ideas, positive thought, honest work, the power of the pen, and the written word. It is how to form this, into the good ideals, of this country. And the good ideals, of constitutional law.

We are at the beginning, of a transition period. I feel it is studying and learning to create, good guidelines, public oversight, and a care for civil protections, along with respecting, and simply enjoying, the well established, good ideas of democracy and the u.s. constitution, that can be, some of the ideas, to help with a peaceful transition process.

With this, we can safely prepare, for the future of technology, war, and terrorism. And to also address, the future of local discontent, and in how to create an overall, healthy, sustainable, local community process. New ideas, in guidelines and organization have started, with the good, well thought out, peaceful ideas, of a democracy, and the u.s. constitution.

It is helpful to think, there are now better, more honest forms, of peaceful dialogue, to address, the original questions, of 9/11/01. And the ideas of continual war and terrorism.

Among the many ways of peace and good thought, I hope we can all respect and comprehend, a few basic ideas from the work the County of Santa Clara, the State of California, and the city of Oakland, have started, for the future of this country. And their work, in organization, transparency, and public oversight, for surveillance and technology issues, for a local community.

Sincerely,
Blair Beekman

