

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**Wednesday, June 22, 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**
  - a. Special Meeting of June 8, 2016
  - b. Regular Meeting of June 8, 2016 *(to be delivered)*
- 5. CHIEF OF POLICE'S REPORT**
  - a. Crime, budget, staffing, training updates, and other items.
  - b. Update on police-community relations referrals to Council.
- 6. CHAIR'S REPORT**
- 7. PRC OFFICER'S REPORT**  
Status of complaints; announcements.
- 8. OLD BUSINESS (discussion & action)**
  - a. Follow-up on PRC's letter to City Manager regarding the standard of proof used in BOI hearings  
From: Commissioner Bernstein
  - b. Review of draft PRC Annual Report  
From: PRC Officer

- c. Decide on scope and any next steps in December 7 & 8, 2014 investigation  
From: December 7 & 8 Subcommittee

**9. NEW BUSINESS (discussion & action)**

- a. BPD use of automated license plate readers (ALPRs) and Administrative Order #001-2016 providing guidelines for ALPR use.  
From: Commissioner Bernstein
- b. Response to City Attorney opinion regarding release of Use of Force Reports  
From: Commissioner Bernstein
- c. Consider initiating policy review regarding operation of DUI checkpoints  
From: Commissioner Lippman
- d.. Status of request to BPD to revise General Order on the Right to Watch  
From: Commissioner Bernstein
- e. Inquiry into why BPD has not been providing monthly management reports to the City Manager as required by General Order M-3, and possible  
From: Commissioner Bernstein

**10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)**

- a. Fair & Impartial Policing Subcommittee  
Meeting scheduled for July 18, 2016 at 5:30 p.m.; update on topics to be considered
- b. General Orders C-64, etc. Subcommittee  
Update; schedule next meeting date
- c. December 7 & 8 Investigation Subcommittee  
Update; schedule next meeting date
- d. Mutual Aid Pacts Subcommittee  
Appointment of members to subcommittee.

**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.)*

**13. 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](mailto:prc@cityofberkeley.info).



# PRC REGULAR MEETING ATTACHMENTS

## June 22, 2016

### MINUTES

- |   |      |   |
|---|------|---|
| a. June 8, 2016 Special Meeting                   | Page | 7 |
| b. June 8, 2016 Regular Meeting (to be delivered) |      |   |

### AGENDA-RELATED

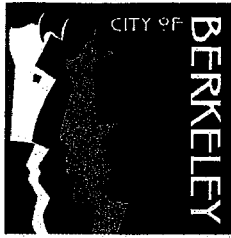
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| <b>Item 8.b</b> – 2015 PRC Annual Report Draft.  | Page | 9   |
| <b>Item 8.c</b> – December 7 & 8, 2014 Investigation materials for discussion.   | Page | 39  |
| <b>Item 9.a.</b> – BPD use of automated license plate readers (ALPRs) and Administrative Order #001-2016 providing guidelines for ALPR use.  | Page | 59  |
| <b>Item 9.a.</b> – Excerpt from “Automated License Plate Recognition Systems: Policy and Operational Guidance for Law Enforcement,” by International Association of Chiefs of Police | Page | 71  |
| <b>Item 9.a.</b> – Article from the Electronic Frontier Foundation, dated January 21, 2015, re <i>What You Can Learn from Oakland’s Raw ALPR Data</i> .                              | Page | 79  |
| <b>Item 9.b.</b> – Memo from the City Attorney to the PRC Officer, dated May 31, 2016: Disclosure of Use of Force Reports and Summaries to the Police Review Commission.             | Page | 91  |
| <b>Item 9.e.</b> – BPD General Order M-3, “Monthly Management Report and Annual Report”  | Page | 103 |

### COMMUNICATIONS

- |  |      |     |
|--|------|-----|
| • Memo from the City Clerk to Commission Secretaries, dated June 3, 2016: Results of City Council Referral Prioritization Process. | Page | 109 |
|--|------|-----|

- Email from citizen, dated June 7, 2016 re: A proposal to expand the PRC's definition of an "aggrieved person" entitled to submit a Complaint regarding police conduct to include a member of the public who personally observed the conduct of which s/he complains. Page 123
- Email from a citizen, dated June 8, 2016 re: PRA request regarding the DUI Checkpoint in May. Page 139
- Memo from the PRC Chair to the Honorable Mayor and Members of the City Council, dated June 14, 2016 re: Suggestions for Ballot Measure to Amend Current Enabling Ordinance Establishing the Police Review Commission (Response to item #52 on the Council's June 14, 2016 agenda.) Page 143

KJL:mgm



Police Review Commission (PRC)

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

**Wednesday, June 8, 2016**  
**6:30 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 6:32 P.M.**

Present: Commissioner George Perezvelez (Chair)  
Commissioner Terry Roberts (Vice Chair)  
Commissioner Alison Bernstein  
Commissioner George Lippman  
Commissioner Michael Sherman  
Commissioner Kad Smith  
Commissioner Ari Yampolsky  
Commissioner Christine Murphy (*temporary appointment*)

Absent: Commissioners Jerry Javier, Ayelet Waldman

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Michael Meehan, Lt. Dan Montgomery, Sgt. Ben Cardoza, Sgt. Sean Ross (arrived 6:50 p.m.)

**2. PUBLIC COMMENT**

There were no speakers.

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

Response to item on June 14, 2016 City Council agenda regarding "Ballot Measure to Increase Police Accountability"

**Motion that the Commission adopt the language of Commissioner Bernstein's memorandum dated June 8, 2016, "Suggestions for ballot measure to amend current PRC enabling legislation," to be put in the form of a letter to the City Council.**

Moved/Seconded (Bernstein/Sherman)

**Friendly amendment #1: that at the end of paragraph number 6), "and other community organizations" be added.**

Moved by Lippman; Accepted by Bernstein and Sherman

**Friendly amendment #2: that a paragraph number 7) be added, which states: "Expand the jurisdiction of the PRC to include non-sworn employees of the BPD."**

Moved by Perezvelez; Accepted by Bernstein and Sherman

**Friendly amendment #3: that a paragraph number 8) be added, consisting of section (b) 6. , regarding budget review, of the Proposed Charter Amendment Creating the Oakland Police Commission [etc.], attached to Councilmember Worthington's agenda item.**

Moved by Perezvelez; Accepted by Bernstein and Sherman

**Friendly amendment #4: that paragraph number 4) be replaced with section (f) 2., regarding access to files, of the Proposed Charter Amendment Creating the Oakland Police Commission [etc.], attached to Councilmember Worthington's agenda item.**

Moved by Bernstein; Accepted by Sherman

**Motion, as amended, Carried.**

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

Noes: None

Abstain: None

Absent: Javier, Waldman

***Closed Session***

**4. REVIEW OF CITY MANAGER'S ACTION IN REGARD TO BOI HEARING OF JUNE 6, 2016, IN COMPLAINT #2395. (discussion and action)**

**Motion that Commissioners Perezvelez, Bernstein, and Roberts collaborate on a letter to the City Manager only regarding her actions related to Complaint #2395.**

Moved/Seconded (Perezvelez/Bernstein) Motion Carried

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

Noes: None

Abstain: None

Absent: Javier, Waldman

***End of Closed Session***

**5. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION**

The action take above was announced.

**6. ADJOURNMENT**

**By general consent, the meeting was adjourned at 8:00 p.m.**



# CITY OF BERKELEY

DRAFT



## POLICE REVIEW COMMISSION

DRAFT

### 2015 ANNUAL REPORT

# CITY OF BERKELEY

## POLICE REVIEW COMMISSION

### Commissioners - 2015

Alison Bernstein, Chair  
George Perezvelez, Vice-Chair

Jerry Javier  
George Lippman  
Terry Roberts  
Michael Sherman  
Kad Smith  
Ayelet Waldman  
Ari Yampolsky

Oliver Zerrudo (through 1-15-15)  
Karen Kiyo Lowhurst (through 4-9-15)  
Barbara Allen (through 4-20-15)  
Bulmaro Vicente (through 9-8-15)  
Benjamin Bartlett (through 11-4-15)  
Ann Rogers (through 11-20-15)

### Mayor

Tom Bates

### Councilmembers

Linda Maio (District 1)  
Darryl Moore (District 2)  
Maxwell Anderson (District 3)  
Jesse Arreguin (District 4)  
Laurie Capitelli (District 5)  
Susan Wengraf (District 6)  
Kriss Worthington (District 7)  
Lori Droste (District 8)

### Interim City Manager

Dee Williams-Ridley

### Interim Deputy City Manager

Gil Dong

POLICE REVIEW COMMISSION OFFICE  
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EMAIL: [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info) WEB: [www.cityofberkeley.info/prc](http://www.cityofberkeley.info/prc)

To the City and Community of Berkeley:

On behalf of the Berkeley Police Review Commission, I present the Commission's 2015 Annual Report. This report includes statistical data concerning misconduct complaints filed during the year, an outline of the complaint process, as well as Commission achievements and work undertaken.

2015 was a busy year for the commission. Much of it was spent investigating the police response to the Black Lives Matter demonstrations and their aftermath in early December of 2014, and then grappling with the policy implications arising from our investigation. The Commission and the Police Department have worked productively to come up with policy recommendations that can help BPD develop better responses to large scale protests in the future. The Commission, working in partnership with the Department, has strived to develop policy recommendations that reflect best practices, and ensure that we are giving the men and women of our Department clear guidance on how to protect not only life and property, but also the principles that the residents of Berkeley hold dear: the right of peaceful demonstrators to share their message; the right of all residents to be respected; and the importance of eviscerating the legacy of racial bias that permeates our society in the Police Department's interactions with the people of Berkeley.

I would like to give a huge shout out to the staff, Ms. Katherine J. Lee, Mr. Byron Norris, Ms. Maritza Martinez, and Ms. Beneba Thomas, for all their hard work. The work of the staff is integral in assuring that the Commission is able to meet the goals of its agenda, and function as a deliberative body. This year in particular the staff put in endless hours organizing and assisting us in our investigation, and for that we are truly grateful.

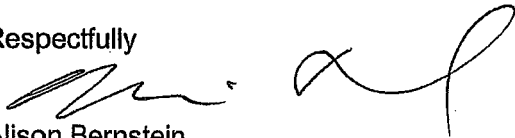
I would also like to thank the citizens of Berkeley and numerous community-based organizations – most notably the Northern California Chapter of the ACLU, the NAACP, COPWATCH, the Coalition for a Safe Berkeley – for their vital participation in and contributions to our process.

I would like to thank the men and women of the Berkeley Police Department for their tireless efforts to keep our community and City safe, for their input and interaction with our Commission, and for their willingness and commitment to continually examine how we could do better. We appreciate that it is not always easy or pleasant to appear before the PRC, and we appreciate the honesty and integrity with which members strive to comport themselves before the PRC.

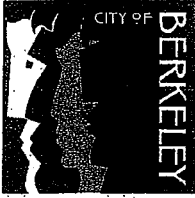
I would also like to commend Chief Meehan on his leadership. He and his leadership team have shown a real willingness to engage the community in a frank exchange of ideas. Although we may not always agree, he has encouraged us all to listen and be respectful, and this in turn has helped guide our community through difficult times.

Finally, and most importantly, on behalf of the commission I wish best health and safety to all the members of BPD as they perform their daily duties. Thank you for your service.

Respectfully



Alison Bernstein  
Police Review Commission  
Chair 2015



Police Review Commission (PRC)

June ~~XX~~ 2015

Dee Williams-Ridley  
City Manager  
2180 Milvia Street  
Berkeley, CA 94704

Dear Ms. Williams-Ridley,

I am pleased to present to you the 2015 Annual Report for the Police Review Commission. The purpose of this report, provided in accordance with the PRC's enabling ordinance (Ord. No. 4644-N.S.), is to furnish statistical data regarding the number of complaints received, their general characteristics, and manner of conclusion.

For cases that have proceeded to Board of Inquiry Hearings, the data also includes the number of hearings, the various categories of allegations heard, and whether the allegations against an officer were sustained, not sustained, unfounded, or exonerated. This report also contains data on the ethnicity, gender and ages of complainants, as well as comparisons to statistics from the previous four years.

Finally, the report reviews the important policy issues that the Police Review Commission tackled in 2015, most notably, an investigation into the Police Department's response to the massive demonstrations on December 6, 2014..

Respectfully submitted,

Katherine J. Lee  
Police Review Commission Officer

# 2015 PRC ANNUAL REPORT

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# I. EXECUTIVE SUMMARY 2015

## Meetings

The Commission conducted a total of 50 regular, special, and subcommittee meetings, and Board of Inquiry hearings in 2015. This compares to the 53 such proceedings held in 2014.

## Complaints

The Commission received 23 individual complaints and 4 policy complaints in 2015. Individual complaint allegations ranged from discourtesy to improper use of force. In 2014, the Commission received 16 individual complaints and 2 policy complaints.

## Complainants

The demographic distribution of individual complainants in 2015 was: 13 males and 10 females; 9 African-Americans, 7 Caucasians, 5 Hispanic and 2 multi-ethnic or decline to specify. Complainants ranged from 25 to 66 years of age with more than half of the complainants (10) in the 50- to 59-year-old age range.

## Board of Inquiry (BOI) Hearings

The Commission completed 8 BOI hearings – proceedings in which a panel of commissioners considers allegations against police officers. Of the 51 allegations heard, one was sustained, for discourtesy.

## Caloca Appeals

Subject officers may seek review of a BOI “sustained” finding through a Caloca appeal. One sustained finding in 2014 was appealed; after a hearing in 2015 it was reversed. The sole sustained finding in 2015 was appealed and will be heard in 2016.

## Policy Review

The bulk of the Commission’s time in 2015 was spent reviewing the Police Department’s response to the December 6, 2014 protest that originated as part of the Black Lives Matter movement. The largely peaceful demonstration was marred by violent individuals and an inadequate law enforcement response.

Both on its own initiative and at the request of the City Council, the PRC undertook a review of what occurred on the night of December 6, 2014, assessing what unfolded and recommending improvements to policies and procedures.

The PRC expects to devote much of its time in 2016 to working with the BPD revising departmental policies related to crowd management and crowd control, use of force (including tear gas and other less-than-lethal weapons) in crowd control, and mutual aid response.

### Berkeley Police Department (BPD)

At the end of 2015, BPD had 163 sworn police officers and received 74,609 calls for service. (This figure includes phone calls to BPD requesting service, calls resulting from an officer personally observing a situation requiring service, and direct contacts to BPD by a person requesting help).



## II. INTRODUCTION

Berkeley's Police Review Commission (PRC) was established by voter initiative in 1973. The PRC is one of the oldest civilian oversight agencies in the nation and has been an important model and source of information for oversight bodies across the United States.

## III. MISSION STATEMENT

The mission of the Police Review Commission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

## IV. STAFF

The PRC Office is a division of the City Manager's Office with a staff of three:

- **The PRC Officer** administers the daily operations of the PRC office, supervises staff, oversees complaint investigations, and serves as Secretary to the Commission. As Secretary, the PRC Officer staffs commission meetings and provides managerial support in the execution of PRC policies and procedures.
- **The PRC Investigator** conducts in-depth investigations of civilian complaints against members of the Berkeley Police Department, assists with special projects, and periodically serves as Acting Commission Secretary.
- **The Office Specialist III** manages the front office, provides administrative support to the PRC Officer and Investigator, prepares and maintains PRC records, and compiles statistics.

In 2015, a temporary investigator, Beneba Thomas, was hired to assist the Commission in its investigation of the BPD's response to the December 2014 demonstrations.



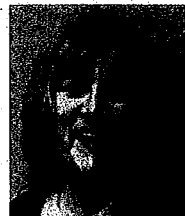
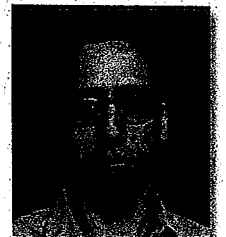
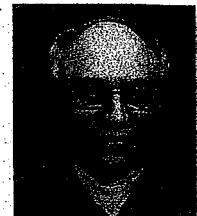
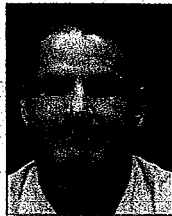
**Byron Norris**, PRC Investigator (joined staff in October 2009);  
**Katherine Lee**, PRC Officer (joined staff in January 2014);  
**Maritza Martinez**, Office Specialist III (joined staff in March 2001).





# V. COMMISSIONERS

Nine Berkeley residents are appointed by the Mayor and members of the City Council to serve on the PRC. These Commissioners represent diverse backgrounds and viewpoints and therefore provide invaluable community perspectives. The Commission generally meets twice a month. Individual commissioners also attend subcommittee meetings and Board of Inquiry Hearings throughout the year. The Commissioners devote considerable time and effort toward fulfilling their duties. In 2015, the Commission experienced a fair amount of turnover, as work, family, or school obligations often must take precedence over this volunteer obligation.



Top and middle rows show current Commissioners as of the end of 2015:

**Top Row** -- Chair Alison Bernstein, Vice-Chair George Perezvelez, Michael Sherman, George Lippman

**Middle Row** -- Terry Roberts, Ari Yampolsky, Jerry Javier, Ayelet Waldman, Kad Smith

Other Commissioners who served in 2015:

**Bottom Row** -- Barbara Allen, Karen Kiyo Lowhurst, Ann Rogers, Bulmaro Vicente, Benjamin Bartlett.



## VI. COMPLAINTS

### 1. INDIVIDUAL COMPLAINTS - Investigation

A complaint consists of one or more claims of alleged misconduct against one or more individual BPD officers. Timely-filed<sup>1</sup> complaints are investigated and prepared for hearing or, if the complainant and subject officer agree, referred for mediation. In some instances, cases are referred to the Commission for administrative closure. Cases may be submitted for closure for reasons that include: the complaint does not allege misconduct on its face or is frivolous; the investigative deadlines are not met; the complainant fails to cooperate; the complainant requests closure.

In cases where an investigation is completed, the PRC investigator interviews witnesses, collects other evidence, and prepares a report. A Board of Inquiry Hearing (BOI) is then scheduled, which consists of three Commissioners impaneled to hear testimony and render findings. The findings from the BOI are forwarded to the City Manager and the Chief of Police.

When a complaint is filed with the PRC, a copy is forwarded to the Berkeley Police Department's Internal Affairs Bureau, which conducts its own, separate investigation. Under the Memorandum of Understanding between the City and the Berkeley Police Association, any discipline that involves a loss or reduction of pay or discharged must occur within 120 days of the incident giving rise to the disciplinary action or the date the City had knowledge of the incident. While the PRC does not impose or even recommend discipline, the City Manager and Chief of Police may consider the PRC's BOI findings when considering discipline, if the findings are issued in time to meet the 120-day deadline.

Separate from the disciplinary process, subject officers can appeal PRC sustained allegations, which are heard by the state Office of Administrative Hearings. (See page 16.)

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<sup>1</sup> Complaints must be filed within 90 calendar days of the alleged misconduct, unless a complainant is incapacitated or otherwise prevented from filing a complaint. A complaint filed between 91 and 180 calendar days of the alleged misconduct can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to timely file.



The standard of proof – the amount of evidence required at a BOI to sustain an allegation – is “clear and convincing evidence.” This standard is higher than a preponderance of the evidence but lower than beyond a reasonable doubt. The four categories of findings are:

1. **Sustained:** the alleged act did occur, and was not justified;
2. **Not Sustained:** the evidence fails to support the allegation, however it has not been proven false;
3. **Unfounded:** the alleged act did not occur; and
4. **Exonerated:** the alleged act did occur but was lawful, justified and proper.

### **MEDIATION – an alternative to investigation**

After an individual files a complaint, he or she may opt for mediation. This will go forward only if the officer who is the subject of the complaint agrees. Mediations are conducted by SEEDS (Services that Encourage Effective Dialogue and Solutions), a local, nonprofit community-based organization that specializes in mediation services. A mediation through SEEDS gives both the complainant and the subject officer the opportunity to speak and respond to each other in a respectful environment. At the conclusion of mediation, SEEDS notifies the PRC staff and the complaint is forwarded to the Commission for closure. Once a mediation is completed, the complaint is permanently removed from the investigative process.

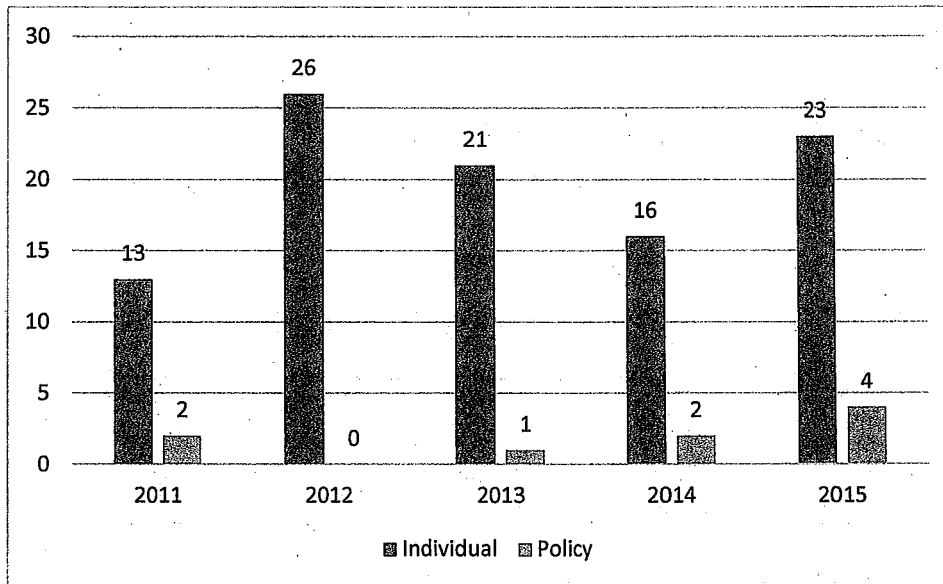
## **2. POLICY COMPLAINTS**

A policy complaint is a request from a member of the public to the Commission to review a particular BPD policy because the complainant believes that the policy could be improved or should be revised. Complaints or concerns about BPD policies, practices or procedures are presented by staff to the full commission at a regular meeting. The Commission may conduct its own review; form a subcommittee to review the policy, practice or procedure; or ask staff to conduct an investigation or take other action, and present a report at a future meeting. After conducting its own review, or receiving a report from a subcommittee or staff, the PRC may close the complaint without further action or recommend changes in policy, practice or procedures to the BPD and the City Manager.



# VII. STATISTICS 2011 - 2015

## 1. COMPLAINTS RECEIVED

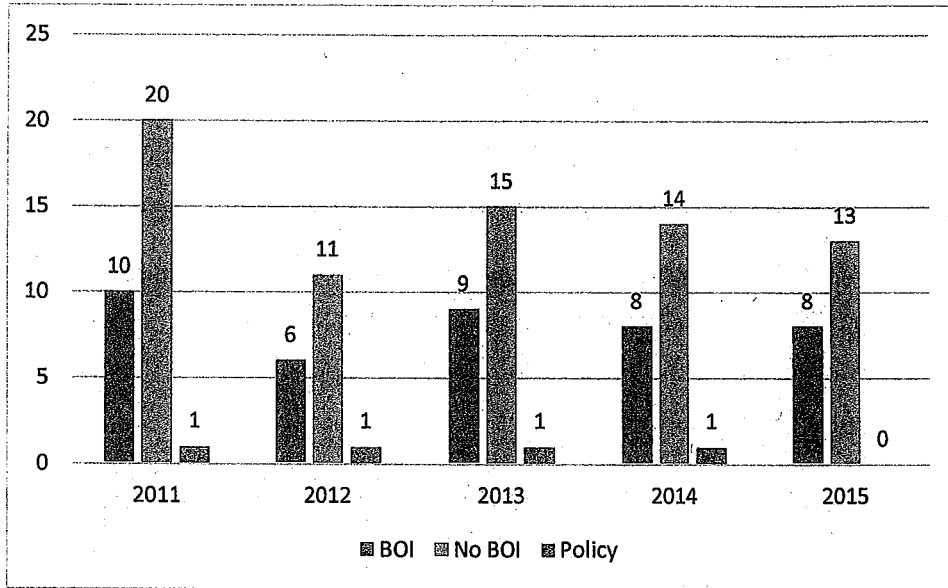


<b>COMPLAINTS RECEIVED</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Individual	13	26	21	16	23
Policy	2	0	1	2	4
<b>Total</b>	<b>15</b>	<b>26</b>	<b>22</b>	<b>18</b>	<b>27</b>

In 2015, the PRC received 23 individual complaints and four policy complaints. The number of individual complaints filed is roughly on par with the number filed the three years prior. Nonetheless, fluctuations in the number of complaints received from year to year cannot be predicted or readily attributed to specific factors or causes.



## 2. COMPLAINTS CLOSED



COMPLAINTS CLOSED	2011	2012	2013	2014	2015
<b>Board of Inquiry Hearing Completed</b>	<b>10</b>	<b>6</b>	<b>9</b>	<b>8</b>	<b>8</b>
<b>Closed without BOI</b>	<b>20</b>	<b>11</b>	<b>15</b>	<b>14</b>	<b>13</b>
Admin Closure (includes withdrawn)	19	7	8	11	6
Mediation	0	2	3	0	1
Dismissal	0	2	0	1	4
Reject*	1	0	4	2	2
<b>Policy</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b> (reject)	<b>0</b>
<b>Total Cases Closed</b>	<b>31</b>	<b>18</b>	<b>25</b>	<b>23</b>	<b>21</b>

The number of cases closed annually following a Board of Inquiry Hearing has been relatively stable. Variances between the numbers of other closures for 2011 through 2015 appear unremarkable.

\* For 2013 through 2015, Rejected complaints are those that do not meet the minimum requirements of a valid complaint, for instance, the person filing was not the aggrieved party, or the complaint was filed more than 180 days after the incident date. Previously, some rejected complaints were not included in the number of complaints reported, so the 2013 - 2015 figures may not be comparable to the Rejected complaints reported for 2011 and 2012.



### 3. DECISIONS FOR ALLEGATIONS HEARD AT A BOARD OF INQUIRY

In 2015, a Board of Inquiry Hearing was held in eight cases, in which 51 allegations were heard. Whether separate types of allegations are lodged against one officer in the same case, or one type of allegation is made against multiple officers, each allegation against each officer is counted individually. For example: if one type of allegation is made against three officers, the statistics will reflect three separate allegations for that case.

In 2015, of the 51 allegations heard, one was sustained, 24 were not sustained, two were exonerated, and 22 were unfounded. No majority vote was reached in two allegations. The table below shows how the decisions made on allegations in 2015 compare to those of the four preceding years.

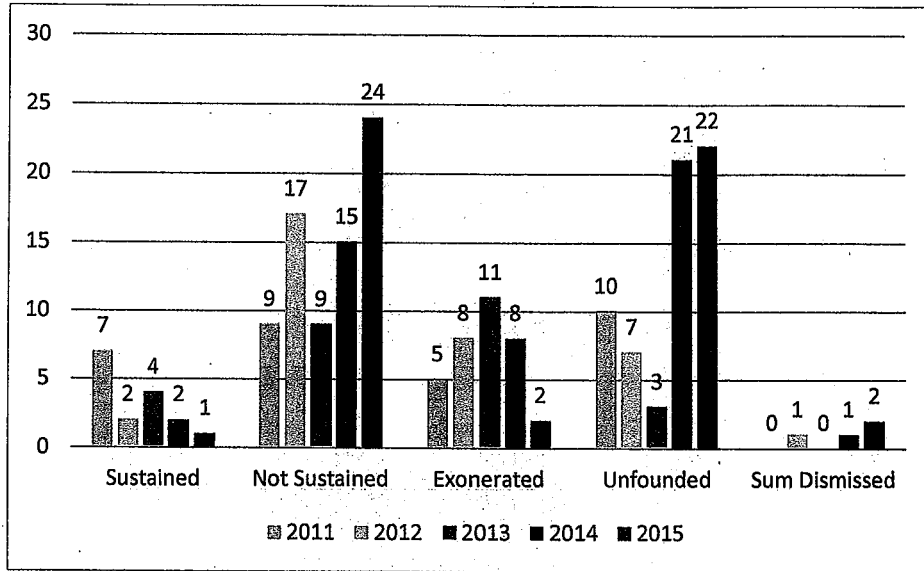
Finding Categories	2011	2012	2013	2014	2015
Sustained	7	2	4	2	1
Not Sustained	9	17	9	15	24
Exonerated	5	8	11	8	2
Unfounded	10	7	3	21	22
No Majority Vote	0	1	0	1	2
<b>Total</b>	<b>31</b>	<b>35</b>	<b>27</b>	<b>47</b>	<b>51</b>

For an allegation against an officer to be sustained, not sustained, exonerated, or unfounded, a majority (at least two of the three commissioners on the Board of Inquiry) must agree on the same finding. "No Majority Vote" in 2012 and 2015 occurred when each of the three commissioners voted differently; that is, one voted sustained, one voted not sustained and one voted exonerated. In 2014, "No Majority Vote" occurred in a death case, in which the whole Commission sat as the BOI, and the five votes needed to sustain were not obtained. When there is no majority finding in a case, the matter is essentially dropped.



**DECISIONS FOR ALLEGATIONS HEARD AT A BOARD OF INQUIRY  
(By number of allegations)**

This bar chart shows the same information as on the previous page, but in a format that allows for easier comparison within and between years.



The following table shows the percentage of allegations sustained out of the total number of allegations heard at a Board of Inquiry Hearing for the years 2011-2015.

Rates of "Sustained" Findings 2011-2015		
2015	1 of 51 allegations sustained	2.0%*
2014	2 of 47 allegations sustained	4.25%
2013	4 of 27 allegations sustained	14.75%
2012	2 of 35 allegations sustained	5.75%
2011	7 of 31 allegations sustained	22.50%

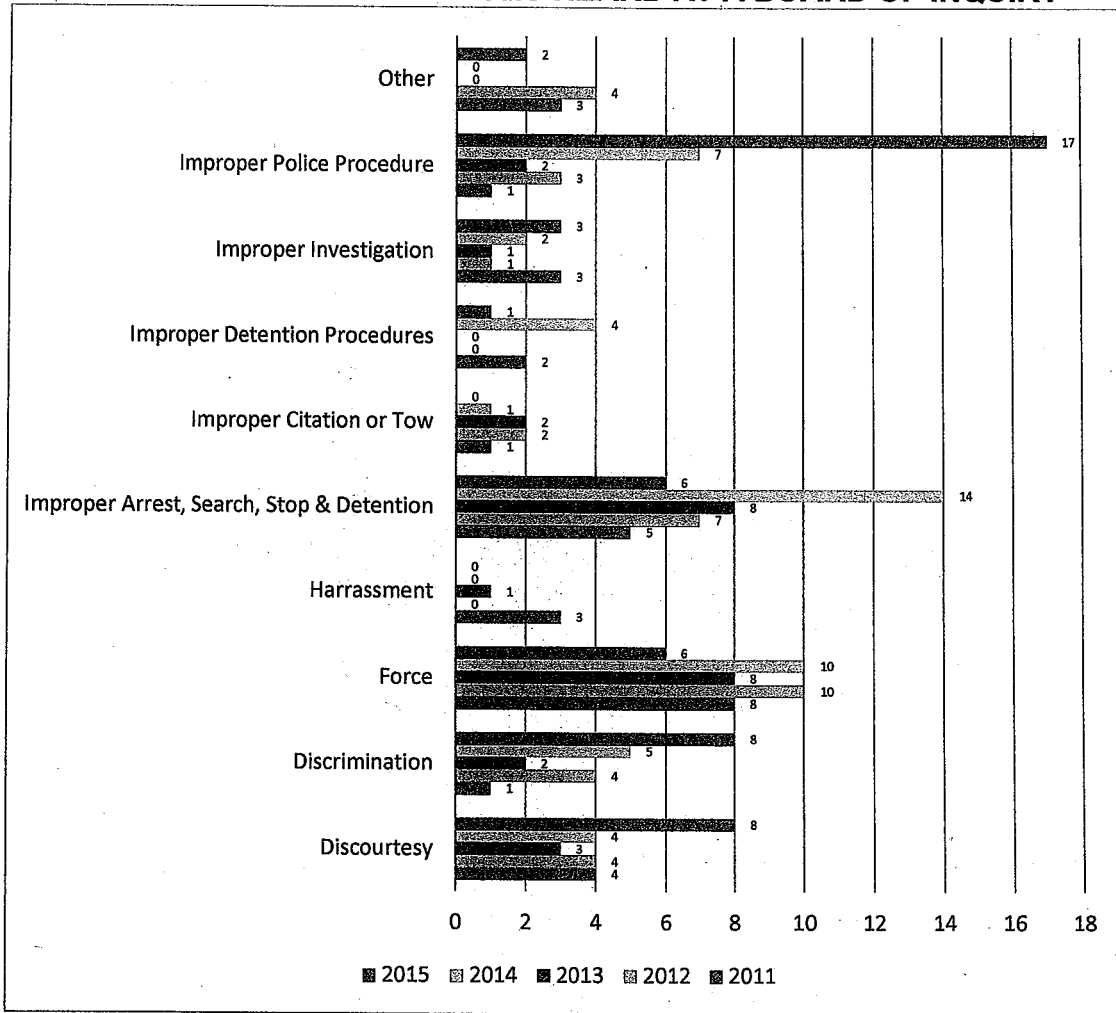
\* The percentages in the last column are rounded to the nearest ¼ of 1 percent.

**DECISIONS ISSUED WITHIN 120 DAYS OF THE COMPLAINT**

Of the eight cases brought to a BOI in 2015, findings were issued within 120 days of the complaint date in seven of those cases.



### 3. CATEGORIES OF ALLEGATIONS HEARD AT A BOARD OF INQUIRY



In 2015, twice as many allegations of Improper Police Procedure were heard at Boards of Inquiry than the next two most common allegations, Discourtesy and Discrimination. This is a change from the three years prior, where the two types of allegations most frequently heard were in the Improper Arrest, Search, Stop or Detention category, and Excessive Force.



**5. FINDINGS ON ALLEGATIONS HEARD AT A BOARD OF INQUIRY****(By category)**

Board of Inquiry Hearings 2015											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	1	0	0	0	0	0	0	0	0	1
Not Sustained	1	6	0	0	2	0	13	0	0	2	24
Exonerated	0	0	1	0	0	0	1	0	0	0	2
Unfounded	5	1	5	0	6	0	3	0	1	1	22
No Majority Vote	0	0	0	1	0	0	0	0	1	0	2
<b>Totals</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>0</b>	<b>17</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>51</b>

Board of Inquiry Hearings 2014											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	1	0	0	0	0	1	0	0	0	2
Not Sustained	7	0	4	0	0	0	2	1	0	1	15
Exonerated	0	0	5	2	0	0	1	0	0	0	8
Unfounded	3	3	5	2	5	0	2	0	0	1	21
No Majority Vote	0	0	0	0	0	0	1	0	0	0	1
<b>Totals</b>	<b>10</b>	<b>4</b>	<b>14</b>	<b>4</b>	<b>5</b>	<b>0</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>47</b>

Board of Inquiry Hearings 2013											9 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	2	1	1	0	0	0	0	0	0	0	4
Not Sustained	5	1	0	0	0	0	2	1	0	0	9
Exonerated	1	0	7	0	1	0	0	1	0	1	11
Unfounded	0	1	0	0	1	1	0	0	0	0	3
<b>Totals</b>	<b>8</b>	<b>3</b>	<b>8</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>27</b>

**Allegation Legend**

EXF=Excessive Force

DIS=Discourtesy

ASD=Improper Arrest, Search, Seizure, Stop or Detention

DET=Improper Detention Procedures

PRJ=Discrimination

HAR=Harassment

PRO=Improper Police Procedures

CIT=Improper Citation or Tow

OTH=Other (includes Abuse of Discretion, Breach of Confidentiality, Failure to Identify Oneself, Lack of Discretion, Threat, Abuse of Authority, and Retaliation)



INV=Improper Investigation

Board of Inquiry Hearings 2012											6 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	1	0	0	0	0	0	1	0	0	2
Not Sustained	3	3	3	0	4	0	0	1	3	0	17
Exonerated	3	0	3	0	0	0	2	0	0	0	8
Unfounded	4	0	1	0	0	0	1	0	0	1	7
No Majority Vote	0	0	0	0	0	0	0	0	1	0	1
<b>Totals</b>	<b>10</b>	<b>4</b>	<b>7</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>35</b>

Board of Inquiry Hearings 2011											10 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	2	1	1	2	0	0	0	0	0	1	7
Not Sustained	3	1	1	0	1	2	0	0	0	1	9
Exonerated	1	0	2	0	0	0	0	0	2	0	5
Unfounded	2	2	1	0	0	1	1	1	1	1	10
<b>Totals</b>	<b>8</b>	<b>4</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>31</b>

**Allegation Legend**

EXF=Excessive Force

DIS=Discourtesy

ASD=Improper Arrest, Search, Seizure, Stop or Detention

DET=Improper Detention Procedures

PRJ=Discrimination

HAR=Harassment

PRO=Improper Police Procedures

CIT=Improper Citation or Tow

OTH=Other (includes Abuse of Discretion, Breach of Confidentiality, Failure to Identify Oneself, Lack of Discretion, Threat, Abuse of Authority, and Retaliation)

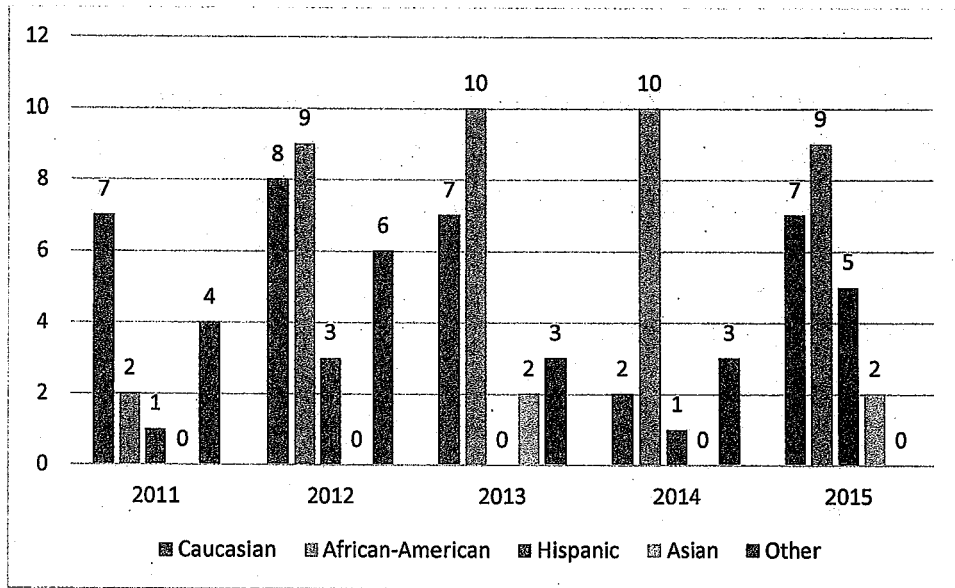
INV=Improper Investigation



### 6. COMPLAINANT DEMOGRAPHICS

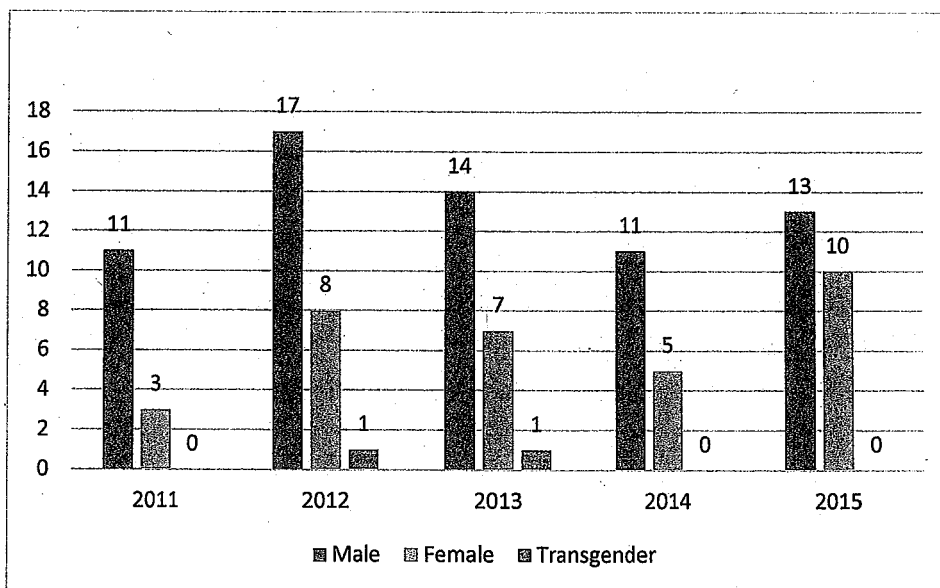
Complainants are asked to report their ethnicity, gender, and age, so that the PRC can track this information for statistical purposes. For 2015, the ethnicity, gender and age statistics are reported for individual complaint filers. There were no co-complainants (two or more people filing an individual complaint about the same incident) in 2015, so the number of persons reflected in the categories below for 2015 is identical to the number of complaints received. In the other years, the numbers reflected in these categories sometimes varied from the number of complaints received for a given year if co-complainants or complainants in policy cases were included.

#### COMPLAINANTS' ETHNICITY



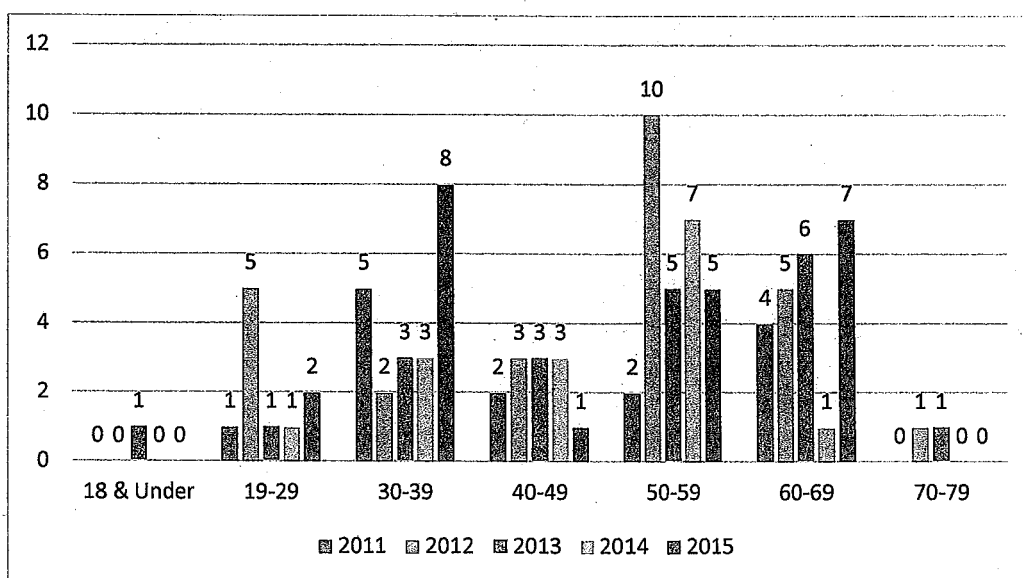
In 2015, the majority of complainants were African American and Caucasian, consistent with most prior years. The "Other" category, showing 2 complainants in 2015, includes multi-ethnic persons and those who did not specify.

### COMPLAINANTS' GENDER



In 2015, males, comprising 57 percent of complainants, outnumbered females, at 43 percent of complainants. This was a significant change from the prior four years, in which the number of male complainants was two to three times the number of female complainants.

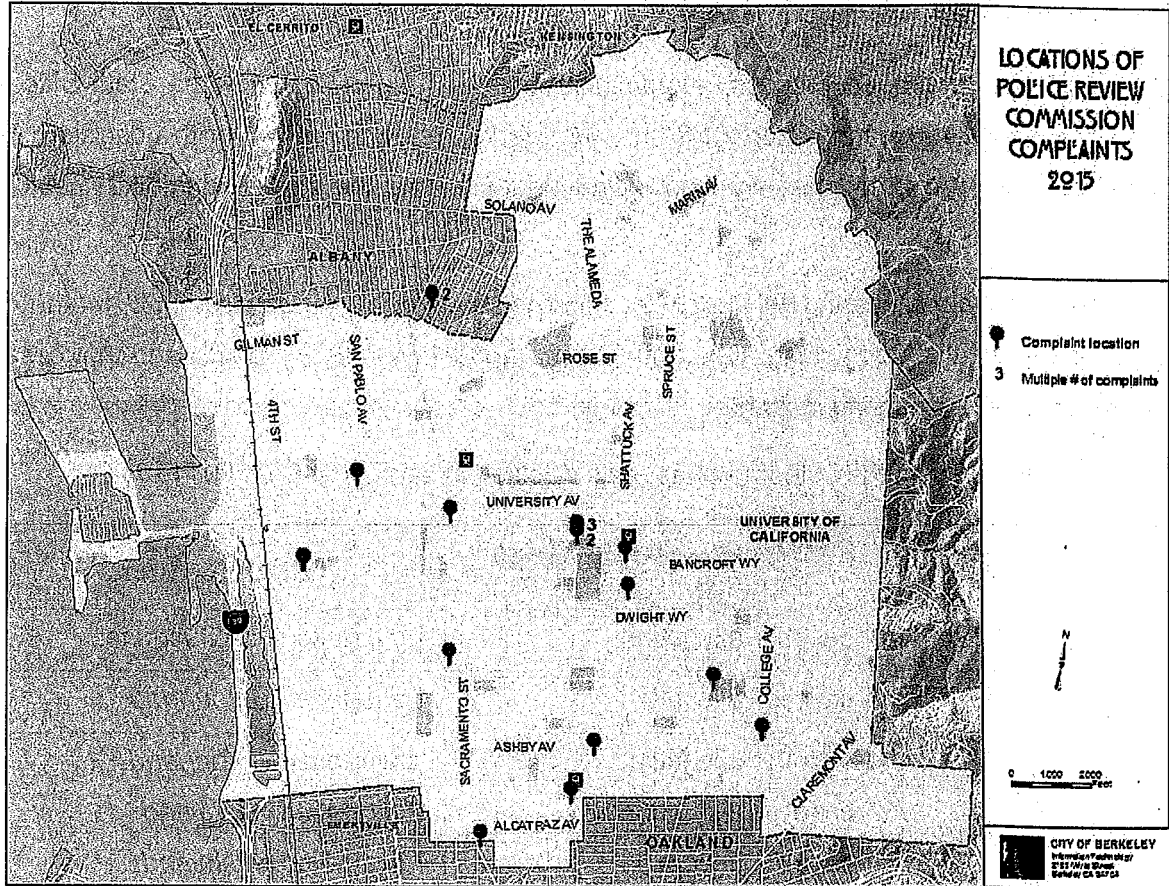
### COMPLAINANTS BY AGE GROUP



In 2015, 30 to 39 year-olds and 60 to 69 year-olds each comprised roughly a third of complainants. The increase in the number of 30 to 39-year olds compared to the prior three years is notable.



### 7. INCIDENT LOCATION MAP FOR 2015



This map shows the locations where misconduct is alleged to have occurred in 2015. It does not show one location in Richmond and another in Oakland. Three instances of alleged misconduct are shown as occurring at 2100 Martin Luther King, Jr. Way, the Public Safety Building. That address is used for allegations that an officer failed to investigate or conducted an inadequate investigation of a matter. Of complaints occurring in Berkeley, all but one were south of University Avenue and the University of California campus.



## 8. APPEALS OF BOARD OF INQUIRY FINDINGS - CALOCA

Police officers can appeal findings of misconduct that are sustained at a Board of Inquiry Hearing. These are referred to as *Caloca* appeals, in reference to the court cases that established the officers' right to appeal.<sup>2</sup>

In the *Caloca* appeal process, an administrative law judge (ALJ) from the State Office of Administrative Hearings conducts an "*independent re-examination*" of the decision. The PRC must prove, by clear and convincing evidence, that the sustained finding should be upheld.

The one *Caloca* hearing held in 2015 concerned an appeal that was filed in 2014; the ALJ overturned the BOI finding. One new *Caloca* appeal was filed in 2015, and that case is scheduled for hearing in 2016.

This table shows the outcome of appeals decided in each year from 2011 to 2015.

Year	PRC Sustained Findings Appealed	<i>Caloca</i> Ruling
2015	(1 case) 1 allegation	1 allegation <i>Not Sustained</i>
2014	(1 case) 1 allegation	1 allegation <i>Unfounded</i>
2013	(1 case) 1 allegation	1 allegation <i>Unfounded</i>
	(1 case) 1 allegation	1 allegation <i>Sustained</i>
	(1 case) 1 allegation	1 allegation <i>Sustained</i>
	(1 case) 3 allegations	3 allegations <i>Exonerated</i>
2012	(1 case) 2 allegations	2 allegations <i>Not Sustained</i>
	(1 case) 1 allegation	1 allegation <i>Unfounded</i>
2011	(1 case) 2 allegations	1 allegation <i>Sustained</i> ; 1 allegation <i>Not Sustained</i>

<sup>2</sup> See *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433.



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## VIII. POLICY WORK, TRAINING, AND OUTREACH

### 1. POLICY REVIEW

A policy review is an examination by the commission of a particular BPD policy to determine whether the department has faithfully executed the policy or whether to recommend changes to the policy. Policy reviews are initiated by one of three ways: a member of the public files a PRC Policy Complaint; the City Council refers a policy issue to the commission; or the Commission on its own initiative votes to conduct a policy review.

#### **INVESTIGATION: BPD RESPONSE TO DECEMBER 2014 PROTESTS**

In January 2015, the Police Review Commission voted to open an investigation into the BPD's handling of the mass protests that occurred on December 6, 7, and 8, 2014. In February 2015, the City Council asked the PRC to investigate the police response on December 6. The PRC decided to focus its inquiry on the events of December 6, and to do so as a full Commission, not by subcommittee. It did create an **Investigation Steering Subcommittee** to help establish a process for conducting the investigation.

To complete the investigation, the Commission held ten special meetings, in addition to its 13 regular meetings, from late February to late October. The Commission heard from scores of people who participated in the protests, and held a special meeting on the U.C. Berkeley campus to make it convenient for students, who constituted a large portion of the protesters, to address the Commission and watch the body's deliberations. The Commission reviewed documents from BPD as well as videotape from the BPD and other sources.

The BPD presented its post-incident review of the department's response in December 2014, at a June Commission meeting. Thereafter, representatives from the BPD's post-incident review team attended PRC meetings to answer questions as the Commission continued its investigation. The PRC's work culminated in its December 1, 2015 report to the City Council, "Investigation into the Police Department Response to Protests on December 6, 2014."

In its report, the PRC offers its own analysis of the events of December 6, disagreeing with the BPD about who organized the protest and its primary focus. The PRC assessed each of the 32 recommendations in the BPD's report, agreeing with many, offering



alternatives to others, and suggesting recommendations of its own. Major recommendations from the Commission to BPD included:

- Develop better strategies for de-escalation and retain a focus on crowd management instead of crowd control;
- Create more accountability in the use of less-than-lethal munitions, and establish clearer guidelines for use of less-than-lethal force in crowd control (e.g., tear gas, baton strikes, projectiles).
- Increase accountability to better ensure that the conduct of mutual aid responders is in keeping with BPD's values and rules of engagement.
- Establish better policies to avoid limitations on media access and better ensure the safety of members of the media, especially in crowd control situations.

The Council is expected to consider the PRC's report and recommendations in early 2016. The full report is available at the PRC website: [www.cityofberkeley.info/prc/](http://www.cityofberkeley.info/prc/).

#### **POLICY COMPLAINT: MCKINLEY AVENUE STAGING**

In January 2015, the Commission voted to accept two policy complaints regarding the staging of law enforcement personnel and equipment on McKinley Avenue in December 2014. The complainants reside on the street behind the Public Safety Building, and said that their block was barricaded without notice, that they were treated hostility while coming and going, and that the personnel gathered there, most from other jurisdictions, were extremely disruptive, yelling, littering, and even urinating in public. The BPD made a preliminary report to the Commission that acknowledged the inadequate communication with the neighbors and the significant disruption to residents. The department pledged to review their staging policies, including the consideration of alternative sites. That review was expected to be completed and presented to the PRC in 2016.

#### **SUBCOMMITTEES**

Because the December 6 investigation was time-consuming, the Commission had fewer active subcommittees than usual in 2015. Ad-hoc (temporary) subcommittees are established as needed to address BPD policy issues and policy complaints by members of the community, and to research and provide recommendations to the full commission pertaining to other police-related issues or referrals from City Council.

Each subcommittee is comprised of three or four commissioners. Representatives from the Berkeley Police Department and the Berkeley Police Association frequently attend PRC subcommittee meetings.





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## **SUSPICIOUS ACTIVITY REPORTING SUBCOMMITTEE**

### **Commissioners Vicente (Chair), Bernstein, Lippman, Rogers**

This subcommittee was formed in late 2014 in response to the Council's direction to City staff and the PRC to review BPD General Order N-17 on Suspicious Activity Reporting. Council took this step after the Commission conveyed its concern over the mutual aid agreement with the Northern California Regional Intelligence Center (NCRIC), to whom the BPD submits information related to potential terrorism and other violent criminal threats, in the form of Suspicious Activity Reports (SARs). The NCRIC accord was singled out due to concerns that inappropriate and unnecessary information was being shared, possibly violating individuals' rights to privacy and First Amendment rights.

The Suspicious Activity Reporting Subcommittee recommended that G.O. N-17 be revised to add language from the federal regulations governing the policies of criminal intelligence systems operations. While the department is already held to those federal guidelines, it was felt that restating them in the General Order would help the BPD ensure that all SARs it submits are appropriate. The full Commission agreed with the SAR Subcommittee recommendation, which it then sent to the City Council. The BPD did not object, and the Council accepted the recommendation.

## **MUTUAL AID PACTS SUBCOMMITTEE**

### **Commissioners Bernstein (Chair), Lippman, Sherman**

The Commission forms a subcommittee each year to review BPD's mutual aid agreements with other law enforcement agencies and organizations. In 2015, the Commission, acting on the subcommittee's proposal, recommended to the Council that all mutual aid pacts be approved. Two of the agreements were singled out for extra scrutiny in 2015, however.

Concerns were raised about the BPD's participation in the annual Urban Shield exercise, funded by the Department of Homeland Security's Urban Area Security Initiative (UASI) program. After hearing from the BPD and from opponents of UASI and Urban Shield, the Commission voted to continue to support BPD's involvement the exercise (and the mutual aid pact with the DHS), but asked the BPD to work with the PRC to decrease militarization and do community outreach about the benefits of Urban Shield.



Regarding the pact with NCRIC, the Commission recommended not approving until it and the Council had an opportunity to review SARs for the preceding 12 months. Then, after receiving and reviewing two SAR summaries, and finding that neither involved profiling, racial, ethnic religious, or political abuses, or infringement on First Amendment activity, the Commission recommended approving the NCRIC accord.

## 2. TRAINING AND OUTREACH

- The National Association for Civilian Oversight of Law Enforcement is a non-profit organization comprised of individuals and agencies working to establish or improve oversight of law enforcement in the U.S. PRC staff and staff of the BART Independent Auditor's Office co-hosted a **regional NACOLE forum** in March, which was attended by staff and commission members from law enforcement oversight agencies in San Francisco, Oakland, BART, and others. The forum provided participants the chance to discuss and exchange ideas about topics such as body-worn cameras, crowd control, and fair and impartial policing.
- In October, the PRC Officer and PRC Investigator attended the **21st Annual NACOLE Conference** in Riverside, California in October. The increased national attention on police misconduct and accountability contributed to record attendance of 487 individuals from 30 states and six countries. The conference is an opportunity for PRC staff to gain training in subjects such as assessing witness credibility and searches and seizures of persons, and to exchange information about community engagement and building bridges between law enforcement and the communities they serve.
- In August, several Commissioners participated in **National Night Out**, using the evening of neighborhood strengthening, crime prevention awareness, and police-community partnership building to publicize the work of the Police Review Commission.



# IX. MEETINGS AND HEARINGS

2015

Type of Meeting or Hearing	Number
Regular PRC Meeting	16
Special PRC Meeting	13
Suspicious Activity Reporting (SAR) Subcommittee	4
Investigation Steering Subcommittee	2
Transgender General Order Subcommittee	1
Mutual Aid Pacts Subcommittee	4
Boards of Inquiry (BOI)	8
BOI Special Meetings	2
<b>TOTAL</b>	<b>50</b>



## 2015 MEETINGS AND HEARINGS

**January**

14 Regular Meeting

**February**

4 Special Meeting

25 Special Meeting

25 Regular Meeting

**March**

4 Suspicious Activity Reporting

6 BOI, Complaint #2360

11 Regular Meeting

19 Suspicious Activity Reporting

19 Special Meeting

23 Transgender General Order

25 Regular Meeting

**April**

8 Regular Meeting

21 Suspicious Activity Reporting

22 Investigation Steering

22 Regular Meeting

29 BOI, Complaint #2365

**May**

4 BOI, Complaint #2364 (\*Dismissal)

5 Suspicious Activity Reporting

6 Investigation Steering

6 Special Meeting

13 Regular Meeting

15 BOI, Complaint #2366

20 Special Meeting

27 Regular Meeting

**June**

10 Special Meeting

10 Regular Meeting

11 BOI Complaint #2369 (\*Dismissal)

17 Special Meeting

24 Regular Meeting



## 2015 MEETINGS AND HEARINGS (continued)

<b>July</b>	
8	Regular Meeting
15	Special Meeting
20	BOI, Complaint #2373 (1 of 2)
22	Regular Meeting
29	Mutual Aid Pacts
29	Special Meeting
29	BOI Special Meeting, Complaints #2374 & #2375
<b>August</b>	
11	BOI, Complaints #2374 (and #2375 - *Dismissal)
12	Special Meeting
<b>September</b>	
3	BOI, Complaint #2373 (2 of 2)
9	Mutual Aid Pacts
9	Regular Meeting
16	Special Meeting
24	Mutual Aid Pacts
<b>October</b>	
8	Mutual Aid Pacts
8	Special Meeting
14	Regular Meeting
21	Special Meeting
21	BOI Special Meeting, Complaint #2361
28	BOI, Complaint #2361 (1 of 2)
30	BOI, Complaint #2361 (2 of 2)
<b>November</b>	
9	BOI, Complaint #2380
18	Regular Meeting
20	BOI, Complaint #2379
<b>December</b>	
2	BOI, Complaint #2381 (*Dismissal)
9	Regular Meeting

\* Dismissal: In these cases, a Board of Inquiry was convened, but the complainant did not appear within 30 minutes of the noticed hearing time. In such cases, under the PRC's Regulations, the complaint must be dismissed.



## **For May 25, 2016 PRC Meeting from Dec. 7 & 8 Investigation Subcommittee**

The Berkeley Police Review Commission has undertaken a review of the events that occurred on the evening of December 7 into the early morning hours of December 8, 2014. Our review focused on the BPD response to the widespread property destruction that occurred throughout the City, as individuals attending the Black Lives Matter protests, some of whom may have been associated with the Black Bloc movement, engaged in violent conduct and looting. All told 17 stores were vandalized, seven of which were locally owned small businesses. The loss sustained by the 17 businesses, including both property damage and theft, ranged from \$300 to \$42,000. The Commission is concerned with the failure of BPD to stop the destruction of property and looting that occurred that night, particularly as it is evident that there are certain groups, both Black Bloc organizations representing a particular political viewpoint, and those who see these protests as an opportunity for looting, who are likely to continue to be present at future demonstrations in Berkeley.

After careful review of the available materials documenting the BPD response on December 7-8, the PRC has identified three areas of particular concern that we believe would benefit from a more focused discussion and review. It is our hope that such a review will assist in ascertaining whether further policy development could avoid similar problems in the future.

- 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) It appears to the PRC that BPD does not have a plan for how best to deploy officers and resource to contain and control a crowd that engages in ongoing acts of vandalism and looting. The PRC strongly recommends that BPD investigate best practices for deployment to contain and control Black Bloc protesters and looters
- 3) 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 for 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 two issues outlined above.
- 4) During the course of the protests in December, over twenty emergency calls were delayed. Some of this delay was caused by congestion in the streets preventing and delaying BFD from responding, and some because BFD was waiting for BPD escorts based on a decision that the call was entering a dangerous situation. However, review of some of the calls that were delayed suggests both that at the time of the emergency call, the protesters were three or four blocks away, and BPD had

**For May 25, 2016 PRC Meeting from Dec. 7 & 8 Investigation Subcommittee**

determined that the protesters were heading away from the location of the emergency call. Further discussion is needed of how BFD and BPD communicate in emergency situations about the potential risks of responding to particular call, as well as the size of the BPD escort needed. The City should also examine whether it is feasible to relocate BFD emergency services away from the City Center, and reroute calls to the Stations on the outer ring of the City when protests result in congestion in the downtown area.

The Commission also has a series of questions the answers to which we think will assist in shedding additional light on the events of December 7-8. We would respectfully request that written answers, if available, be provided to the questions below and that we work together to find the answers to those questions for which the answer is not readily available. The commission believes that finding the answers to these questions will assist us in developing better policies.

**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. AUDIO RECORDINGS**

Are there audio recording of the BPD call channels that were used on December 7-8. Can we get those recordings, from every channel that was used on December 7-8.

**3. 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?

**4. PSB**

After the order at 1935 to break traffic control for PSB, how many officers remained at PSB, including mutual aid and command staff?

**5. 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?

**6. DISPERSAL ORDERS**

How many dispersal orders, if any, were given on December 7-8?

**7. LESS LETHAL MUNITIONS**

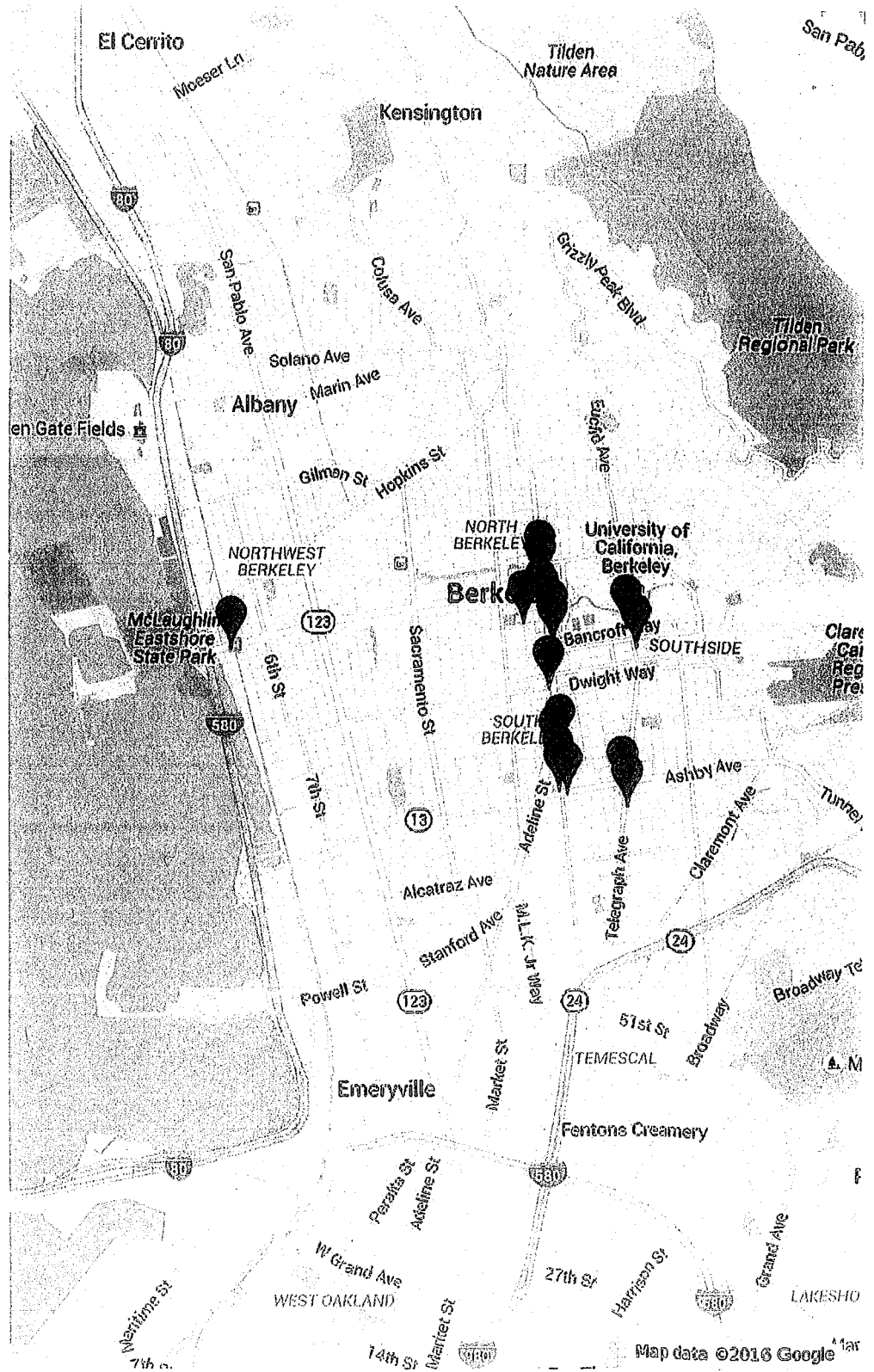
How many less than lethal munitions, if any, were discharged on December 7-8? Can you identify the instances at which less than lethal munitions were used on December 7-8?



# Dec 7 vandalism sites

Untitled layer

- 📍 1998 Shattuck Ave
- 📍 2399 Telegraph Ave
- 📍 2900 Shattuck Ave
- 📍 2500 Shattuck Ave
- 📍 650 University Ave
- 📍 3000 Telegraph Ave
- 📍 2996 Shattuck Ave
- 📍 3089 Telegraph Ave
- 📍 1930 Shattuck Ave
- 📍 2150 Shattuck Ave
- 📍 2180 Shattuck Ave
- 📍 2777 Shattuck Ave
- 📍 1998 Shattuck Ave
- 📍 2479 Bancroft Way
- 📍 2257 Shattuck Ave
- 📍 2301 Shattuck Ave
- 📍 2110 Ashby Ave
- 📍 2801 Adeline St
- 📍 Milvia St & Allston Way





December 7, 2014 -- TIMELINE OF CRITICAL EVENTS

- 1055 Frankel request assistance to borrow CS gas and less lethal ammo from surrounding agencies.<sup>1</sup>
- 1430 Incident Briefing prepared<sup>2</sup>
- 1530 Briefing<sup>3</sup>
- 1530 Initial Deployment - readiness<sup>4</sup>  
Citywide - Patrol on 9 beat configuration  
Patrol T5 - PSB security  
Patrol 6a is committed to event, not on citywide patrol  
Patrol T 7 is on citywide coverage, along with 6b, 6b may be pulled off to cover event.
- 1642 Group of 50 people in silent prayer at Sproul Plaza<sup>5</sup>
- 1645 Deployment<sup>6</sup>  
SRT blue gold squads deploy as directed  
Bike patrol to Bancroft and Telegraph  
Motor stage - Bowditch/Tel and Durant/Tel to shut off vehicle traffic  
Mutual aid buses on order, will be assigned to BPD pathfinders
- 1652 Crowd at Sproul Plaza now 100-150.<sup>7</sup>
- 1700 Event begins, bike patrol to monitor<sup>8</sup>
- 1704 Information that Occupy Oakland says coming to Berkeley, more of the same<sup>9</sup>
- 1709 Information received that crowd at Sproul Plaza unrelated to protests<sup>10</sup>
- 1730 Crowd meets at Bancroft and Telegraph<sup>11</sup>; about 100 protesters in group.<sup>12</sup>

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<sup>1</sup> Email D. Frankel

<sup>2</sup> Incident Action Plan (IAP)

<sup>3</sup> IAP

<sup>4</sup> IAP

<sup>5</sup> Detail Call for Service Report 2014-00072027

<sup>6</sup> IAP

<sup>7</sup> Detail Call for Service Report 2014-00072027

<sup>8</sup> IAP

<sup>9</sup> Detail Call for Service Report 2014-00072027

<sup>10</sup> Detail Call for Service Report 2014-00072027

<sup>11</sup> UCPD email tcwing@berkeley.edu

<sup>12</sup> Detail Call for Service Report 2014-00072027

- 1739 Portion of crowd starts moving SB on Telegraph, but main group of 200 still at B/T<sup>13</sup>
- 1744 Social media intel - more people coming to Bancroft/Telegraph (Bancroft/Telegraph)<sup>14</sup>
- 1746 200 people at Bancroft/Telegraph
- 1752 Two UCPD officers monitoring crowd - one on bike, one on foot.<sup>15</sup>
- 1754 Members of crowd at Bancroft/Telegraph observed to have scarves, goggles and dust masks<sup>16</sup>
- 1755 **Confidential Reliable Informant:** Blackbloc group is in crowd, carrying backpacks have hammers and gasoline.<sup>17</sup>
- 1802 crowd is 300, blocking Bancroft/Telegraph. Initiate traffic plans<sup>18</sup>
- 1802 disturbance (415) with AC Transit Bus at Bancroft/Telegraph - instigators noted
- 1805 Incendiary devices being thrown at officers<sup>19</sup>
- 1805 Crowd marching SB Telegraph<sup>20</sup>
- 1807 crowd stopped at Telegraph/Durant<sup>21</sup>
- 1808 ACSO informed of 415 with AC Transit<sup>22</sup>
- 1808 BPD informed to trail crowd from the rear as March SB on Telegraph, in traffic<sup>23</sup>
- 1808 AC Transit reports that bus being blocked at Bancroft/Telegraph by people lying in the street<sup>24</sup>
- 1809 Crowd moving EB on Durant, 400-500 now.<sup>25</sup>

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<sup>13</sup> Detail Call for Service Report 2014-00072027

<sup>14</sup> Detail Call for Service Report 2014-00072027

<sup>15</sup> Bancroft/Telegraph

<sup>16</sup> Detail call for service report, incident number 2014-00072043

<sup>17</sup> Detail call for service report, incident number 2014-00072043

<sup>18</sup> Detail call for service report, incident number 2014-00072043

<sup>19</sup> Detail call for service report, incident number 2014-00072043

<sup>20</sup> Detail call for service report, incident number 2014-00072043

<sup>21</sup> Detail call for service report, incident number 2014-00072043

<sup>22</sup> Detail call for service report, incident number 2014-00072043

<sup>23</sup> Detail call for service report, incident number 2014-00072043

<sup>24</sup> Detail call for service report, incident number 2014-00072043

<sup>25</sup> Detail call for service report, incident number 2014-00072043

- 1810 AC Transit reports that can now move.<sup>26</sup>
- 1811 Crowd EB Durant, passing Bowditch<sup>27</sup>
- 1813 Portion of Crowd at College and Durant
- 1815 BPD observing vandalism to buildings on Durant, spray-painting of building -- info from chopper feed.
- 1817 AC Transit reports that coaches still being blocked, crowd moving up Durant to College<sup>28</sup>
- 1818 Portion of group, 500 strong, heading SB on College, then WB Channing.<sup>29</sup>
- 1823 Group WB Channing reaching Telegraph, 600 strong. Continuing WB Channing.<sup>30</sup>
- 1825 Two bikes monitoring crowd from rear as heads WB Channing from Telegraph. Traffic plan NOT initiated. **Mutual Aid on order**, will take an hour to hour and half to arrive. BPD ordered to sit tight, will continue to monitor<sup>31</sup>
- 1828 Group continuing to grow in size, Channing/Dana<sup>32</sup>
- 1829 Erecting barrier at MLK between Center and Addison, will be shut off to all pedestrian and vehicle traffic.<sup>33</sup>
- 1831 unit S27 providing traffic control<sup>34</sup>
- 1832 Crowd approaching Fulton on Channing, BART notified.<sup>35</sup>
- 1833 Crowd at Shattuck, taking over intersection Channing and Shattuck<sup>36</sup>
- 1836 Crowd heading NB Shattuck - unit ordered to PSB<sup>37</sup>

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<sup>26</sup> Detail call for service report, incident number 2014-00072043

<sup>27</sup> Detail call for service report, incident number 2014-00072027

<sup>28</sup> Detail call for service report, incident number 2014-00072027

<sup>29</sup> Detail call for service report, incident number 2014-00072027

<sup>30</sup> Detail call for service report, incident number 2014-00072027

<sup>31</sup> Detail call for service report, incident number 2014-00072027

<sup>32</sup> Detail call for service report, incident number 2014-00072027

<sup>33</sup> Detail call for service report, incident number 2014-00072027

<sup>34</sup> Detail call for service report, incident number 2014-00072027

<sup>35</sup> Detail call for service report, incident number 2014-00072027

<sup>36</sup> Detail call for service report, incident number 2014-00072027

<sup>37</sup> Detail call for service report, incident number 2014-00072027

- 1837 Crowd at Shattuck and Durant, blocking all four lanes of traffic, heading NB<sup>38</sup>
- 1838 All available units ordered to PSB<sup>39</sup>
- 1842 Crowd stopped at Shattuck/Allston, 400 strong, chanting. Red flag with white stripe observed (relates to Blackbloc)<sup>40</sup>
- 1844 BPD: We are ready to deploy, assembling in rear lot<sup>41</sup>
- 1851 Group moving, NB on Shattuck, approaching Center.<sup>42</sup>
- 1853 NB, passing Addison, 800 strong.<sup>43</sup>
- 1855 WB University from Shattuck, chanting anti-police rants, taking all four lanes. Crews are now masking up<sup>44</sup>
- 1859 BPD staging west of TJ's.<sup>45</sup>
- 1900 Crowd in intersection MLK and University, stationary blocking all lanes.<sup>46</sup>
- 1902 Crowd SB on MLK<sup>47</sup>. Calls for reinforcements to PSB<sup>48</sup>
- 1903 Crowd at PSB<sup>49</sup>
- 1904 Two or three people are behind the fence ""we should own this area"<sup>50</sup>
- 1906 Crowd of about 400-500 protesters stopped at MLK and Shattuck<sup>51</sup>
- 1917 First bottle thrown at police<sup>52</sup>

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<sup>38</sup> Detail call for service report, incident number 2014-00072027

<sup>39</sup> Detail call for service report, incident number 2014-00072027

<sup>40</sup> Detail call for service report, incident number 2014-00072027

<sup>41</sup> Detail call for service report, incident number 2014-00072027

<sup>42</sup> Detail call for service report, incident number 2014-00072027

<sup>43</sup> Detail call for service report, incident number 2014-00072027

<sup>44</sup> Detail call for service report, incident number 2014-00072027

<sup>45</sup> Detail call for service report, incident number 2014-00072027

<sup>46</sup> Detail call for service report, incident number 2014-00072027

<sup>47</sup> Detail call for service report, incident number 2014-00072027

<sup>48</sup> Detail call for service report, incident number 2014-00072027

<sup>49</sup> Detail call for service report, incident number 2014-00072027

<sup>50</sup> Detail call for service report, incident number 2014-00072027

<sup>51</sup> UCPD email, Nsanchez@berkeley.edu

<sup>52</sup> Detail call for service report, incident number 2014-00072027

- 1917 Group moves EB Addison<sup>53</sup>
- 1918 BART contacted<sup>54</sup>
- 1919 Group moving SB Milvia from Addison<sup>55</sup>
- 1919 BFD working with coded man at 2175 Kittredge<sup>56</sup>
- 1920 Crowd SB Milvia at Center<sup>57</sup>
- 1922 Crowd stationary at City Hall<sup>58</sup>
- 1924 Crowd massed against front doors City Hall, unknown why, can't see what they are doing, trying to watch through open source video - executive staff on 5th floor.<sup>59</sup>
- 1929 Crowd SB on Milvia<sup>60</sup>
- 1930 Crowd EB Allston, approaching Harold<sup>61</sup>
- 1932 Shattuck/Allston, smoke reported, not sure what on fire, perhaps fireworks?<sup>62</sup>
- 1934 Crowd southbound, passing Kittredge
- 1935 Request from BPD to break traffic control for PSB -granted. All motors PEOs to available and stay mobile.<sup>63</sup>
- 1940 Crowd continuing SB on Shattuck, at Dwight<sup>64</sup>
- 1940 Crowd breaking windows at Radio Shack, BPD moving in from South - prepared to maneuver.<sup>65</sup>

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<sup>53</sup> Detail call for service report, incident number 2014-00072027  
<sup>54</sup> Detail call for service report, incident number 2014-00072027  
<sup>55</sup> Detail call for service report, incident number 2014-00072027  
<sup>56</sup> Detail call for service report, incident number 2014-00072027  
<sup>57</sup> Detail call for service report, incident number 2014-00072027  
<sup>58</sup> Detail call for service report, incident number 2014-00072027  
<sup>59</sup> Detail call for service report, incident number 2014-00072027  
<sup>60</sup> Detail call for service report, incident number 2014-00072027  
<sup>61</sup> Detail call for service report, incident number 2014-00072027  
<sup>62</sup> Detail call for service report, incident number 2014-00072027  
<sup>63</sup> Detail call for service report, incident number 2014-00072027  
<sup>64</sup> Detail call for service report, incident number 2014-00072027  
<sup>65</sup> Detail call for service report, incident number 2014-00072027

- 1942 Large group still in front of Radio Shack, can't see if they are entering store.<sup>66</sup>
- 1942 Herrick and Station 5 notified.<sup>67</sup>
- 1943 Group Shattuck and Parker, heading Southbound, blocking all four lanes.
- 1943 Man hit with hammer at Radio Shack, Dwight/Shattuck<sup>68</sup>
- 1946 L8 to secure Dwight Shattuck, critical incident trying to get ambulance in.<sup>69</sup>
- 1948 If can locate the patient, exit him to secure location.<sup>70</sup>
- 1949 Clear for BFD to get in to injured man<sup>71</sup>
- 1950 Scene still not secure at Radio Shack <sup>72</sup>
- 1950 Group heading SB on Shattuck<sup>73</sup>
- 1951 request from BPD for additional traffic control at Dwight/Milvia, trying to get BFD through.<sup>74</sup>
- 1952 (approx..) Radio shack, 2500 Shattuck, burglarized and vandalized<sup>75</sup>
- 1952 OPD notified about protest<sup>76</sup>
- 1952 Group stationary at ward/Shattuck. Some may be heading EB Ward, some static. Chants of Freeway.<sup>77</sup>
- 1956 Portion of group heading EB Ward, some SB Shattuck
- 1957 Group of 200-300 heading SB Shattuck towards Freeway<sup>78</sup>

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<sup>66</sup> Detail call for service report, incident number 2014-00072027

<sup>67</sup> Detail call for service report, incident number 2014-00072027

<sup>68</sup> Detail call for service report, incident number 2014-00072027; 2014-00072043

<sup>69</sup> Detail call for service report, incident number 2014-00072027

<sup>70</sup> Detail call for service report, incident number 2014-00072027

<sup>71</sup> Detail call for service report, incident number 2014-00072027

<sup>72</sup> Detail call for service report, incident number 2014-00072043

<sup>73</sup> Detail call for service report, incident number 2014-00072027

<sup>74</sup> Detail call for service report, incident number 2014-00072027

<sup>75</sup> Detail call for service report, incident number 2014-00072044

<sup>76</sup> Detail call for service report, incident number 2014-00072027

<sup>77</sup> Detail call for service report, incident number 2014-00072027

<sup>78</sup> Detail call for service report, incident number 2014-00072027



- 2001 Part of protest SB on Adeline<sup>79</sup>
- 2002 Portion crowd EB Ward/Fulton<sup>80</sup>
- 2003 BFD reports another group Telegraph/Ward<sup>81</sup>
- 2007 Group at Ward/Dana 200-300 strong, blocking all lanes at intersection<sup>82</sup>
- 2010 Group at Ward/Dana now mobile heading southbound toward Telegraph, heading toward freeway, going to merge with other group per live feed<sup>83</sup>
- 2010 BFD has transported injured man<sup>84</sup>
- 2012 Notify OPD<sup>85</sup>
- 2013 Group heading SB Telegraph, passing Russell<sup>86</sup>
- 2014 Call from Radio Shack, 2500 Shattuck, -- windows broken.<sup>87</sup>
- 2018 Last of group at Ashby/Telegraph<sup>88</sup>
- 2019 Residual group at Carleton/Shattuck<sup>89</sup>
- 2022 Last of group passed 66th/Telegraph, into Oakland<sup>90</sup>
- 2025 Group continuing SB Telegraph, cleared Alcatraz, see OPD lights ahead<sup>91</sup>
- 2035 Concern that group may go to Mayor Bates's house, per Twitter feed. Unit dispatched<sup>92</sup>
- 2058 Scene at Radio Shack now secure, patrol to handle call.<sup>93</sup>

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<sup>79</sup> Detail call for service report, incident number 2014-00072043

<sup>80</sup> Detail call for service report, incident number 2014-00072027

<sup>81</sup> Detail call for service report, incident number 2014-00072027

<sup>82</sup> Detail call for service report, incident number 2014-00072027

<sup>83</sup> Detail call for service report, incident number 2014-00072027

<sup>84</sup> Detail call for service report, incident number 2014-00072043

<sup>85</sup> Detail call for service report, incident number 2014-00072027

<sup>86</sup> Detail call for service report, incident number 2014-00072027

<sup>87</sup> Detail call for service report, incident number 2014-00072027

<sup>88</sup> Detail call for service report, incident number 2014-00072027

<sup>89</sup> Detail call for service report, incident number 2014-00072027

<sup>90</sup> Detail call for service report, incident number 2014-00072027

<sup>91</sup> Detail call for service report, incident number 2014-00072027

<sup>92</sup> Detail call for service report, incident number 2014-00072027

<sup>93</sup> Detail call for service report, incident number 2014-00072027

2100 Fremont responds to call for Mutual Aid - Incident Commander, T/C, video officer and video officer/scribe. Two teams: Team 1 has 2 Sgts and four officers, team 2 has one Sgt and four officers. Fremont team upon arrival deployed to protect PD vehicles staged on McKinley Ave.<sup>94</sup>

2103 Per Twitter feed, group going NE on Claremont, East on 52nd<sup>95</sup>

2108 SRT blue/gold doing initial monitoring, Claremont/College/Telegraph<sup>96</sup>

2126 Group waiting at Claremont off ramp, waiting to link up, trying to come back into Berkeley<sup>97</sup>

2159 Briefing of Alameda PD completed<sup>98</sup> Fremont and ACSO with path finders<sup>99</sup>

2200 Units searching for suspect who hit other protester with hammer in area near Rockridge BART<sup>100</sup>

2200 Crowd of protesters heading towards Public Safety Building, chanting "Fuck the Police"<sup>101</sup>

2207 CHP asking for Code 3 cover area of Aileen and Telegraph<sup>102</sup>

2209 Car being flipped under overpass<sup>103</sup> Group heading northbound approaching 59 on Telegraph<sup>104</sup>

2210 Alameda PD leaving PSB with pathfinder<sup>105</sup>

2217 Group at Telegraph/63rd, 800 strong<sup>106</sup>

2223 Heading NB Telegraph, at 66th<sup>107</sup>

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<sup>94</sup> Fremont PD report No. 141208001

<sup>95</sup> Detail call for service report, incident number 2014-00072027

<sup>96</sup> Detail call for service report, incident number 2014-00072027

<sup>97</sup> Detail call for service report, incident number 2014-00072027

<sup>98</sup> Detail call for service report, incident number 2014-00072027

<sup>99</sup> Detail call for service report, incident number 2014-00072027

<sup>100</sup> Detail call for service report, incident number 2014-00072043

<sup>101</sup> BPD Case Report No. 2014-00072027

<sup>102</sup> Detail call for service report, incident number 2014-00072027

<sup>103</sup> Detail call for service report, incident number 2014-00072027

<sup>104</sup> Detail call for service report, incident number 2014-00072027

<sup>105</sup> Detail call for service report, incident number 2014-00072027

<sup>106</sup> Detail call for service report, incident number 2014-00072027

<sup>107</sup> Detail call for service report, incident number 2014-00072027

- 2229 At Telegraph/Russell, 500 people, can't see end of line<sup>108</sup>
- 2238 Unit heading en route to 2400 block Derby for aid to BFD, medical <sup>109</sup>
- 2241 UCPD only sending one unit, need crew to block Durant/Dana, get scene secure and will bring BFD in behind you, turn on Dana<sup>110</sup>
- 2244 Group heading NB on Telegraph from haste. Tightening up<sup>111</sup>
- 2246 NB Telegraph, at Durant.<sup>112</sup>
- 2247 Looking for patient<sup>113</sup>
- 2248 IFO Cream, battery occurring; dumpster in the street, vandalism to building<sup>114</sup>
- 2249 SRT Takes position Bowditch/Channing, prepare for action at Tele/Channing<sup>115</sup>
- 2249 Crowd moving NB Telegraph past Durant<sup>116</sup>
- 2250 Spray paint to B of A<sup>117</sup>
- 2252 Black Rider liberation party members staging in the area, telling peaceful protesters to go home<sup>118</sup>
- 2253 Group moving WB on Bancroft<sup>119</sup>
- 2254 BPD erecting barricades at McKinley/Allston<sup>120</sup>
- 2255 Wells Fargo vandalized<sup>121</sup>

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<sup>108</sup> Detail call for service report, incident number 2014-00072027

<sup>109</sup> Detail call for service report, incident number 2014-00072027

<sup>110</sup> Detail call for service report, incident number 2014-00072027

<sup>111</sup> Detail call for service report, incident number 2014-00072027

<sup>112</sup> Detail call for service report, incident number 2014-00072027

<sup>113</sup> Detail call for service report, incident number 2014-00072027

<sup>114</sup> Detail call for service report, incident number 2014-00072027

<sup>115</sup> Id.

<sup>116</sup> Id.

<sup>117</sup> Id.

<sup>118</sup> Id.

<sup>119</sup> Id.

<sup>120</sup> Id.

<sup>121</sup> Id.

- 2255 Crowd chanting to the police station<sup>122</sup>
- 2256 Crowd heading WB on Bancroft at Dana<sup>123</sup>
- 2300 Alameda PD officer Foster hit with hammer by protester - hammer thrown at skirmish line
- 2301 Crowd WB Bancroft, believe heading to PSB, stretched out for multiple blocks<sup>124</sup>
- 2302 2460 Bancroft, wells building vandalized, windows broken.<sup>125</sup>
- 2303 Mechanics Bank hit, glass shattered.<sup>126</sup>
- 2306 Units told to prepare for dispersal orders in front of PSB<sup>127</sup>
- 2307 Loots of vandalism on Shattuck Ave, front of group at Shattuck and Allston<sup>128</sup>
- 2309 Looting in progress at Sprint<sup>129</sup>
- 2309 Group heading WB on Center<sup>130</sup>
- 2311 Group at Center and Shattuck, stagnant, vandalism<sup>131</sup>
- 2313 Group slowly moving NB on Shattuck
- 2316 Multiple trash can fires on Shattuck<sup>132</sup>
- 2316 Windows smashed at McDonalds<sup>133</sup>
- 2315 Glass smashed at 2000 Shattuck Ave, Citibank.<sup>134</sup>

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<sup>122</sup> Id.

<sup>123</sup> Id.

<sup>124</sup> Id.

<sup>125</sup> Id.

<sup>126</sup> Id.

<sup>127</sup> Id.

<sup>128</sup> Id.

<sup>129</sup> Id.

<sup>130</sup> Id.

<sup>131</sup> Id.

<sup>132</sup> Id.

<sup>133</sup> Id.

<sup>134</sup> BPD Case Report No. 2014-00073430

- 2319 Multiple trash can fires at Center/Shattuck<sup>135</sup>
- 2322 BPD attempts to arrest man with red pants
- 2322 Taking missiles<sup>136</sup>
- 2327 L2 injured<sup>137</sup>
- 2330 Protesters WB Allston approaching MLK - 350 people. Alameda PD (Mutual Aid) forms skirmish line at Allston and MLK -- less than 20 officers. Fremont PD joins line.<sup>138139</sup>
- 2332 Unit ordered to have crew double back and form scrimmage line at Addison/MLK, stop crowd from coming SB on MLK<sup>140</sup>
- 2333 hooded man enters Citibank at 2000 Shattuck<sup>141</sup>
- 2334 Front of group at Center and Milvia, looking to head WB on Center<sup>142</sup>
- 2335 MLK/University, facing SB - hundreds of people, keep it slow, goal is to drive them South on Milvia<sup>143</sup>
- 2337 Call that doors on City Hall being broken<sup>144</sup>
- 2340 Group is dispersing in all directions, trying to keep them on the move<sup>145</sup>
- 2342 Bottles being thrown<sup>146</sup>
- 2342 Another sighting of red pants<sup>147</sup>
- 2344 Group approaching southern barricades<sup>148</sup>

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<sup>135</sup> Detail call for service report, incident number 2014-00072027

<sup>136</sup> Id.

<sup>137</sup> Id.

<sup>138</sup> Fremont PD report No. 141208001

<sup>139</sup> BPD Case report No. 2014-00072027

<sup>140</sup> Detail call for service report, incident number 2014-00072027

<sup>141</sup> BPD Case Report No. 2014-00073430

<sup>142</sup> Detail call for service report, incident number 2014-00072027

<sup>143</sup> Detail call for service report, incident number 2014-00072027

<sup>144</sup> Detail call for service report, incident number 2014-00072027

<sup>145</sup> Detail call for service report, incident number 2014-00072027

<sup>146</sup> Detail call for service report, incident number 2014-00072027

<sup>147</sup> Detail call for service report, incident number 2014-00072027

<sup>148</sup> Detail call for service report, incident number 2014-00072027

- 2348 Keep group moving SB on MLK, prevent them from coming back up Shattuck<sup>149</sup>
- 2351 Hold the line, have 100 CHP coming to staging area<sup>150</sup>
- 2351 Group is moving slowly, heading SB on MLK at Channing, in all lanes<sup>151</sup>
- 2356 Taking bottles, guy with skateboard, red scarf<sup>152</sup>
- 2359 Making arrest at MLK/Haste<sup>153</sup>
- 2359 Swept MLK Allston to Haste, pretty dispersed<sup>154</sup>
- 2359 Crowd on Dwight Crossing Shattuck - need to prevent them from heading NB on Shattuck<sup>155</sup>
- 0000 Crowd stationary at Shattuck and Dwight<sup>156</sup>
- 0000 Vandalism at Radio shack, start moving them south and making arrests<sup>157</sup>
- 0000 Window at Sahara Imports, 2110 Ashby Ave, smashed.<sup>158</sup>
- 0003 Radio Shack revandalized and robbed.<sup>159</sup>
- 0007 Heading SB on Shattuck, approaching Blake - slow it down<sup>160</sup>
- 0007 Multiple vandalisms along Shattuck<sup>161</sup>
- 0009 Less than Lethal<sup>162</sup>
- 0011 Continuing SB Shattuck/Ward all four lanes<sup>163</sup>

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<sup>149</sup> Detail call for service report, incident number 2014-00072027  
<sup>150</sup> Detail call for service report, incident number 2014-00072027  
<sup>151</sup> Detail call for service report, incident number 2014-00072027  
<sup>152</sup> Detail call for service report, incident number 2014-00072027  
<sup>153</sup> Detail call for service report, incident number 2014-00072027  
<sup>154</sup> Detail call for service report, incident number 2014-00072027  
<sup>155</sup> Detail call for service report, incident number 2014-00072027  
<sup>156</sup> Detail call for service report, incident number 2014-00072027  
<sup>157</sup> Detail call for service report, incident number 2014-00072027  
<sup>158</sup> BPD Case Report No. 2015-00001506  
<sup>159</sup> BPD Case Report No. 2014-00072510  
<sup>160</sup> Detail call for service report, incident number 2014-00072027  
<sup>161</sup> Detail call for service report, incident number 2014-00072027  
<sup>162</sup> Detail call for service report, incident number 2014-00072027  
<sup>163</sup> Detail call for service report, incident number 2014-00072027

- 0013 someone shoots into residence at 1824 Carleton<sup>164</sup>
- 0013 Vandalism at Any Mountain<sup>165</sup>Detail call for service report, incident number 2014-00072027
- 0014 Battery at Radio Shack<sup>166</sup>
- 0016 Vandalism at Walgreens at Adeline<sup>167</sup>
- 0019 Approaching Shattuck/Ashby<sup>168</sup>
- 0023 OPD notified re protest moving southbound<sup>169</sup> Protesters are spread out<sup>170</sup>
- 0023 Maneuver back north<sup>171</sup>
- 0024 Dumpster on fire 2130 Ashby<sup>172</sup>
- 0027 EB Ashby approaching Telegraph<sup>173</sup>
- 0029 Vandalism and looting of Whole Foods<sup>174</sup>
- 0032 Vandalism to True Value Hardware Shattuck/Russell<sup>175</sup>
- 0033 Vandalism to Sahara Moroccan decor<sup>176</sup>
- 0039 Group is SB Telegraph/Alcatraz<sup>177</sup>
- 0040 Large portion heading WB on Alcatraz<sup>178</sup>

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<sup>164</sup> Detail call for service report, Incident 2014 - 00072057  
<sup>165</sup> Detail call for service report, incident number 2014-00072027  
<sup>166</sup> Detail call for service report, incident number 2014-00072027  
<sup>167</sup> Detail call for service report, incident number 2014-00072027  
<sup>168</sup> Detail call for service report, incident number 2014-00072027  
<sup>169</sup> Detail call for service report, incident number 2014-00072027  
<sup>170</sup> Detail call for service report, incident number 2014-00072027  
<sup>171</sup> Detail call for service report, incident number 2014-00072027  
<sup>172</sup> Detail call for service report, incident number 2014-00072027  
<sup>173</sup> Detail call for service report, incident number 2014-00072027  
<sup>174</sup> Detail call for service report, incident number 2014-00072027  
<sup>175</sup> Detail call for service report, incident number 2014-00072027  
<sup>176</sup> Detail call for service report, incident number 2014-00072027  
<sup>177</sup> Detail call for service report, incident number 2014-00072027  
<sup>178</sup> Detail call for service report, incident number 2014-00072027

- 0042 SRT trying to maneuver out, SB at Shattuck approaching Alcatraz, trying to set up mobile field force line<sup>179</sup>
- 0044 We are Shattuck facing SB, see group ahead of us, moving towards group slowly to discourage them<sup>180</sup>
- 0045 Large group decides not to come NB toward BPD line<sup>181</sup>
- 0048 BPD engaging crowd.<sup>182</sup>
- 0051 BPD shows less than lethal to crowd<sup>183</sup>
- 0053 Group continuing to move SB, south of Alcatraz<sup>184</sup>
- 0057 Lulu's bike shop, front door smashed in<sup>185</sup>
- 0107 200 plus moving on 54th<sup>186</sup>
- 0110 Group heading NB looking to get onto ramp at 24<sup>187</sup>
- 0111 BPD needs traffic support to shut down cars coming NB on Telegraph, will give dispersal order and do any arrests that we can.<sup>188</sup>
- 0112 Group continuing NB on Telegraph - BPD tasked to protect on ramp<sup>189</sup>
- 0137 at 56th, setting up perimeter to box them in<sup>190</sup>
- 0139 Smoke seen in middle of street at Telegraph and 66th<sup>191</sup>
- 0200 Moving to south or intersection, making dispersal orders<sup>192</sup> Tele/Alcatraz

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<sup>179</sup> Detail call for service report, incident number 2014-00072027

<sup>180</sup> Detail call for service report, incident number 2014-00072027

<sup>181</sup> Detail call for service report, incident number 2014-00072027

<sup>182</sup> Detail call for service report, incident number 2014-00072027

<sup>183</sup> Detail call for service report, incident number 2014-00072027

<sup>184</sup> Detail call for service report, incident number 2014-00072027

<sup>185</sup> Detail call for service report, incident number 2014-00072027

<sup>186</sup> Detail call for service report, incident number 2014-00072027

<sup>187</sup> Detail call for service report, incident number 2014-00072027

<sup>188</sup> Detail call for service report, incident number 2014-00072027

<sup>189</sup> Detail call for service report, incident number 2014-00072027

<sup>190</sup> Detail call for service report, incident number 2014-00072027

<sup>191</sup> Detail call for service report, incident number 2014-00072027

<sup>192</sup> Detail call for service report, incident number 2014-00072027



- 0209 Crowd dissipated, only real crowd is 20 people.<sup>193</sup>
- 0228 Multiple passes on Tele, very calm.<sup>194</sup>
- 0229 OPD asking for mutual aid Tele/66th<sup>195</sup>
- 0230 OPD takes rocks at Telegraph/66th<sup>196</sup>
- 0234 Crowd is hostile taking rocks, trying to assist in putting out fire<sup>197</sup>
- 0300 BPD demobilizes mutual aid teams

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<sup>193</sup> Detail call for service report, incident number 2014-00072027

<sup>194</sup> Detail call for service report, incident number 2014-00072027

<sup>195</sup> Detail call for service report, incident number 2014-00072027

<sup>196</sup> UCPD email, tcwing@berkeley.edu

<sup>197</sup> Detail call for service report, incident number 2014-00072027

**LOCATIONS VANDALIZED ON 12/7 [see map]**

Missing Link, 1998 Shattuck Ave. (\$1,300)  
Cream, 2399 Telegraph (\$900)  
True Value Hardware, 2900 Shattuck (\$3200, no insurance claim filed)  
Radio Shack, 2500 Shattuck (\$14,000)  
Vehicles at 650 University lot damaged (\$9,000)  
Whole Foods Market, 3000 Telegraph (\$15,000)  
Chevron, 2996 Shattuck Ave (\$300)  
Lulus Cyclery, 3089 Telegraph (\$300)  
Moran Engineering, 1930 Shattuck Ave -- graffiti  
Chase Bank, 2150 Shattuck Ave.  
At&T, 2180 Shattuck Ave (\$42,000)  
Any Mountain, 2777 Shattuck (\$525)  
McDonalds, 1998 Shattuck  
Student Store, 2470 Bancroft way  
T-Mobile, 2257 Shattuck  
Mechanics Bank, 2301 Shattuck (\$7042)  
Sahara Imports, 2110 Ashby (\$1920)  
Walgreens, 2801 Adeline  
City Hall (\$2356)

**Lee, Katherine**

---

**From:** Lee, Katherine  
**Sent:** Monday, May 23, 2016 11:16 AM  
**To:** Lee, Katherine  
**Subject:** FW: goBerkeley Automated Data Collection and Enforcement System  
**Attachments:** goBerkeley ADCES 051916.pdf; ATT00001.htm

Dear Commissioners,

Please see below and attached from Chief Meehan.

-Kathy

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

---

**From:** Meehan, Michael  
**Sent:** Thursday, May 19, 2016 9:44 PM  
**To:** Lee, Katherine <KLee@ci.berkeley.ca.us>  
**Subject:** Fwd: goBerkeley Automated Data Collection and Enforcement System

Kathy. Would you please share this information with the Commission. Mike

Begin forwarded message:

**From:** "Greenwood, Andrew" <AGreenwood@ci.berkeley.ca.us>  
**To:** "Frost, Monique" <MOFrost@ci.berkeley.ca.us>  
**Cc:** "Cassidy, Kathy" <kcassidy@ci.berkeley.ca.us>, "Chakko, Matthai" <MChakko@ci.berkeley.ca.us>, "Schofield, Kevin M." <KSchofield@ci.berkeley.ca.us>, "Frankel, Andrew J." <AFrankel@ci.berkeley.ca.us>, "White, Byron E." <BWhite@ci.berkeley.ca.us>, "Files, Randolph" <RFiles@ci.berkeley.ca.us>, "Garrett, Lyesha" <lgarrett@ci.berkeley.ca.us>  
**Subject:** FW: goBerkeley Automated Data Collection and Enforcement System

Monique,

Please pass along this information to all ComCenter staff... and I'm copying Kathy Cassidy for her info/use/consideration for 311 staff, and others so they are aware.

On Monday several PEO GO-4 scooters will begin using LPRs to assist in their work. These cameras are visible, and potentially could result in folks calling the ComCenter, 311, or other city folks with questions/concerns.

Our people should tell inform callers that the license plate readers are being used to provide anonymized parking occupancy data for the city's GoBerkeley program, which is focused on parking demand in certain areas in Berkeley. They are also being used to conduct routine enforcement in Residential Preferential Parking (RPP) and other time-limited areas, instead of "chalking" cars, and to identify stolen vehicles and scofflaws (vehicles with 5 or more outstanding citations 30 or more days old). By effectively automating

the "tire chalking" process, the system enables PEOs to more efficiently and effectively patrol existing enforcement beats.

If there's a question about policy, data security and confidentiality guidelines to protect citizen privacy are summarized in a Berkeley Police Department Administrative Order #001-2016, here on our website: <http://www.cityofberkeley.info/uploadedFiles/Police/Level 3 - General/001-2016%20ALPR.PDF>

I'm not anticipating tons of calls, but I wanted to keep our staff completely in the loop on this, should they receive calls. The above in **bold** can pretty much be used as a script...

If you have any questions, let me know.

Capt. Andrew Greenwood  
Operations Division Commander  
Berkeley Police Department  
(510) 981-5800  
Mon-Fri, 8 AM - 5 PM

---

**From:** Chakko, Matthai  
**Sent:** Thursday, May 19, 2016 4:16 PM  
**To:** Greenwood, Andrew <[AGreenwood@ci.berkeley.ca.us](mailto:AGreenwood@ci.berkeley.ca.us)>; White, Byron E. <[BWhite@ci.berkeley.ca.us](mailto:BWhite@ci.berkeley.ca.us)>  
**Subject:** FW: goBerkeley Automated Data Collection and Enforcement System

Capt. Greenwood and Officer White,

The off-agenda memo went out to Council, so they know about it. It's attached along with some photos of the cars themselves. The cameras are not that noticeable. Please direct all media calls about it to me. If reporters have questions about the BPD administrative order, then I will direct those questions to Byron.

But the main focus of these cameras is really on goBerkeley, and I will speak to that.

Matthai

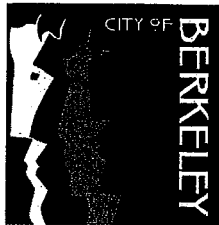
---

**From:** Gan, Yvette On Behalf Of Williams-Ridley, Dee  
**Sent:** Thursday, May 19, 2016 4:07 PM  
**To:** Anderson, Maxwell <[MAnderson@ci.berkeley.ca.us](mailto:MAnderson@ci.berkeley.ca.us)>; Arreguin, Jesse L. <[JArreguin@ci.berkeley.ca.us](mailto:JArreguin@ci.berkeley.ca.us)>; Avellar, Anna <[AAvellar@ci.berkeley.ca.us](mailto:AAvellar@ci.berkeley.ca.us)>; Bates, Tom <[TBates@ci.berkeley.ca.us](mailto:TBates@ci.berkeley.ca.us)>; Birnbach, Kerry <[KBirnbach@ci.berkeley.ca.us](mailto:KBirnbach@ci.berkeley.ca.us)>; Burress, Charles <[CBurress@ci.berkeley.ca.us](mailto:CBurress@ci.berkeley.ca.us)>; Campbell, Brandi <[BCampbell@ci.berkeley.ca.us](mailto:BCampbell@ci.berkeley.ca.us)>; Capitelli, Laurie <[LCapitelli@ci.berkeley.ca.us](mailto:LCapitelli@ci.berkeley.ca.us)>; Droste, Lori <[LDroste@ci.berkeley.ca.us](mailto:LDroste@ci.berkeley.ca.us)>; Elgstrand, Stefan <[SElgstrand@ci.berkeley.ca.us](mailto:SElgstrand@ci.berkeley.ca.us)>; Fong, Calvin <[CFong@ci.berkeley.ca.us](mailto:CFong@ci.berkeley.ca.us)>; Gerstein, Beth <[BGerstein@ci.berkeley.ca.us](mailto:BGerstein@ci.berkeley.ca.us)>; Henneman, Tasha <[THenneman@ci.berkeley.ca.us](mailto:THenneman@ci.berkeley.ca.us)>; Lau, Ryan <[RLau@ci.berkeley.ca.us](mailto:RLau@ci.berkeley.ca.us)>; Lopez, Amelia <[alopez@ci.berkeley.ca.us](mailto:alopez@ci.berkeley.ca.us)>; Magofna, Gregory <[gmagofna@ci.berkeley.ca.us](mailto:gmagofna@ci.berkeley.ca.us)>; Maio, Linda <[LMaio@ci.berkeley.ca.us](mailto:LMaio@ci.berkeley.ca.us)>; Moore, Darryl <[DMoore@ci.berkeley.ca.us](mailto:DMoore@ci.berkeley.ca.us)>; Skjerpung, Lars <[LSkjerpung@ci.berkeley.ca.us](mailto:LSkjerpung@ci.berkeley.ca.us)>; Soto-Vigil, Alejandro <[ASoto-Vigil@ci.berkeley.ca.us](mailto:ASoto-Vigil@ci.berkeley.ca.us)>; Washington, Charlene <[CWashington@ci.berkeley.ca.us](mailto:CWashington@ci.berkeley.ca.us)>; Wengraf, Susan <[SWengraf@ci.berkeley.ca.us](mailto:SWengraf@ci.berkeley.ca.us)>; Worthington, Kriss <[KWorthington@ci.berkeley.ca.us](mailto:KWorthington@ci.berkeley.ca.us)>  
**Cc:** Harrington, Phillip <[PHarrington@ci.berkeley.ca.us](mailto:PHarrington@ci.berkeley.ca.us)>; Javandel, Farid <[FJavandel@ci.berkeley.ca.us](mailto:FJavandel@ci.berkeley.ca.us)>; Perry, Danette <[DPerry@ci.berkeley.ca.us](mailto:DPerry@ci.berkeley.ca.us)>; Hansen, Gordon <[GHansen@ci.berkeley.ca.us](mailto:GHansen@ci.berkeley.ca.us)>; Chakko, Matthai <[MChakko@ci.berkeley.ca.us](mailto:MChakko@ci.berkeley.ca.us)>; Dong, Gil <[GDong@ci.berkeley.ca.us](mailto:GDong@ci.berkeley.ca.us)>; Hogan, Ann-Marie <[AHogan@ci.berkeley.ca.us](mailto:AHogan@ci.berkeley.ca.us)>; Numainville, Mark L. <[MNumainville@ci.berkeley.ca.us](mailto:MNumainville@ci.berkeley.ca.us)>; Williams-Ridley, Dee <[DWilliams-Ridley@ci.berkeley.ca.us](mailto:DWilliams-Ridley@ci.berkeley.ca.us)>  
**Subject:** goBerkeley Automated Data Collection and Enforcement System

Please see the attached memo from Dee Williams-Ridley regarding the goBerkeley Program and the implementation update for the Automated Data Collection and Enforcement System. Thank you.

Yvette Gan  
Secretary to the City Manager  
City of Berkeley  
2180 Milvia Street, 5th floor  
Berkeley, CA 94704  
Tel: 510-981-7004  
Fax: 510-981-7099  
E-mail: [yvg2@cityofberkeley.info](mailto:yvg2@cityofberkeley.info)





Office of the City Manager

Date: May 19, 2016  
To: Honorable Mayor and Members of the City Council  
From: *Dwight* Jee Williams-Ridley, City Manager  
Subject: goBerkeley Program - Automated Data Collection and Enforcement System: Implementation Update

### **Introduction**

As approved by Council on January 27, 2015, staff is implementing the goBerkeley Automated Data Collection and Enforcement System (ADCES) to improve overall efficiency and effectiveness. As a demand-responsive parking management program, goBerkeley relies on accurate parking occupancy data. Staff analyzes this data to adjust the price of meters and off-street facilities in goBerkeley areas to maintain a level of parking availability that minimizes parking-related search traffic. Automated data collection enables the City to collect parking data more frequently at a lower cost than manual collection. This allows for more responsive adjustments to time limits and/or prices to achieve parking availability goals and reduce emissions.

During the goBerkeley Pilot Program, staff verified the use of Automated License Plate Recognition (ALPR) technology as a cost-effective means of implementing the ADCES. With goBerkeley now in permanent operation, the ADCES will be used to gather parking occupancy data and conduct parking enforcement in time-limited areas beginning the week of May 23, 2016.

### **Background**

goBerkeley comprises a suite of strategies and initiatives designed to support economic vitality and reduce greenhouse gas emissions. goBerkeley began as a pilot program testing the effects of demand-responsive parking and transportation demand management strategies in Downtown Berkeley, Southside/Telegraph, and the Elmwood. goBerkeley entered permanent operation based on guidance provided by the City Council on January 27, 2015.<sup>1</sup> The goBerkeley Program has been extremely successful, improving customer satisfaction by increasing parking availability in high-demand areas and extending time limits to two, three or eight hours to better match user needs.

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<sup>1</sup> January 27, 2015 Worksession: [www.cityofberkeley.info/Clerk/City\\_Council/2015/01\\_Jan/City\\_Council\\_01-27-2015\\_-\\_Special\\_Meeting\\_Annotated\\_Agenda.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/01_Jan/City_Council_01-27-2015_-_Special_Meeting_Annotated_Agenda.aspx)

goBerkeley's success depends on the City's ability to adjust to changes in parking demand. Parking demand patterns can vary over time due to adjacent land use changes, school schedules, parking pricing, or other factors that affect where and for how long drivers choose to park. During the goBerkeley Pilot, parking price and time limit adjustments were based on manually collected data. That manual process is labor-intensive, expensive, and only provides "snapshots" of parking conditions. The ADCES was designed to achieve two main goals: provide ongoing parking occupancy data at low cost and through methods operable by City staff; and improve the efficiency of parking enforcement operations.

### **Implementing the ADCES**

In 2013, Council authorized a vendor contract to help the City test and integrate automated data collection and enforcement technology into existing City systems.<sup>2</sup> On January 27, 2015, Council authorized a vendor contract to implement the ADCES using ALPR technology.<sup>3</sup> ALPR equipment has been installed on five (5) of the 30 vehicles used for parking enforcement, and staff are currently testing the system to ensure it works seamlessly with existing City systems and operational practices. Data collection and parking enforcement using the new technology will begin the week of May 23, 2016.

In metered areas, this new technology will be used to collect parking occupancy data that will periodically be provided to the Transportation Division by the ALPR vendor and used to analyze parking demand. Transportation staff will view anonymized data only, and will not have access to raw data such as license plate numbers or photographs.

Separately, the Berkeley Police Department's Parking Enforcement Officers (PEOs) will use the system to conduct routine enforcement in Residential Preferential Parking (RPP) and other time-limited areas; and to identify stolen vehicles and scofflaws (vehicles with 5 or more outstanding citations 30 or more days old). By effectively automating the "tire chalking" process, the system enables PEOs to more efficiently and effectively patrol existing enforcement beats. Data security and confidentiality guidelines to protect citizen privacy are summarized in Berkeley Police Department Administrative Order #001-2016 (Attachment 1).<sup>4</sup>

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<sup>2</sup> December 3, 2013 Council Meeting:  
[http://www.ci.berkeley.ca.us/Clerk/City\\_Council/2013/12Dec/City\\_Council\\_12-03-2013\\_-\\_Regular\\_Meeting\\_Annotated\\_Agenda.aspx](http://www.ci.berkeley.ca.us/Clerk/City_Council/2013/12Dec/City_Council_12-03-2013_-_Regular_Meeting_Annotated_Agenda.aspx)

<sup>3</sup> January 27, 2015 Council Meeting:  
[http://www.ci.berkeley.ca.us/Clerk/City\\_Council/2015/01\\_Jan/Documents/2015-01-27\\_Item\\_09\\_Contract\\_PCS\\_Mobile.aspx](http://www.ci.berkeley.ca.us/Clerk/City_Council/2015/01_Jan/Documents/2015-01-27_Item_09_Contract_PCS_Mobile.aspx)

<sup>4</sup> Berkeley PD Administrative Order 001-2016  
[http://www.ci.berkeley.ca.us/uploadedFiles/Police/Level\\_3\\_-\\_General/001-2016%20ALPR.PDF](http://www.ci.berkeley.ca.us/uploadedFiles/Police/Level_3_-_General/001-2016%20ALPR.PDF)



### **Analysis of RPP Parking Policies**

By enabling more efficient and accurate parking enforcement in time-limited areas like RPP zones, the new technology reinforces the benefits of the goBerkeley Program by allowing the City to more effectively manage the entire parking system. Utilizing the ADCES as a cost-effective means to collect data, the City also plans to analyze how well current two-hour time limits are working to manage parking demand in RPP areas. Staff will present the findings of this analysis to Council at a later date.

### **Fiscal Impacts**

Council has already approved contracts with the vendors responsible for providing the equipment, software, and services necessary to implement and support the ADCES:

- Council Resolution No. 66,393-N.S. (December 3, 2013) authorized the City Manager to execute a contract with Xerox to act as the Automated Data Collection and Enforcement System "System Integrator." That contract is not to exceed \$500,000.<sup>5</sup>
- Council Resolution No. 66,917-N.S. (January 27, 2015) authorized the City Manager to execute a contract with PCS Mobile to provide equipment for the Automated Data Collection and Enforcement System. That contract is not to exceed \$450,000.<sup>6</sup>

### **Attachments:**

1. Berkeley Police Department Administrative Order #001-2016

cc: Gil Dong, Interim Deputy City Manager  
Mark Numainville, City Clerk  
Phil Harrington, Public Works Director  
Matthai Chakko, Assistant to the City Manager  
Ann-Marie Hogan, City Auditor  
Farid Javandel, Transportation Manager, Public Works  
Danette Perry, Parking Services Manager, Public Works  
Gordon Hansen, Senior Planner, Public Works

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<sup>5</sup> See Footnote #2

<sup>6</sup> See Footnote #3

## DEPARTMENT ORDER

ADMINISTRATIVE ORDER #001-2016

DATE ISSUED: 02/18/16

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**SUBJECT: AUTOMATED LICENSE PLATE READER (ALPR)**

### PURPOSE

- 1 - This order establishes guidelines for the use of the Berkeley Police Department's Automated License Plate Reader (ALPR) technology and data. ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR). ALPRs may be used by the Berkeley Police Department Parking Enforcement and Traffic Units for official law enforcement purposes.

### POLICY

#### **Administration of ALPR Data**

- 2- Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain through the Traffic Bureau. The Investigations Division Captain will assign personnel under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### **ALPR Operation**

- 3- Department personnel shall not use, or allow others to use, the ALPR equipment or database records for any unauthorized purpose.
  - a. An ALPR shall only be used for official and legitimate law enforcement business.
  - b. Reasonable suspicion or probable cause is not required before using an ALPR.
  - c. No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
  - d. No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

## DEPARTMENT ORDER

ADMINISTRATIVE ORDER #001-2016

DATE ISSUED: 02/18/16

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### **ALPR Data Collection and Retention**

- 4- All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.
- 5- The Parking Enforcement Manager is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by City Department of Information Technology personnel and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.
- 6- All ALPR data shall be stored as described in this order and thereafter shall be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data shall be downloaded from the server onto portable media and booked into evidence. The records will then be subject to standard evidence retention policies and statutes.
  - a. Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

### **Accountability and Safeguards**

- 7- All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:
  - a. Non-law enforcement requests for access to stored ALPR data shall be processed according to General Order R-23 in accordance with applicable law.
  - b. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requestor is the registered owner of the vehicle in question, and when providing such

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information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

- c. ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time.
- d. Berkeley Police personnel approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relates to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- e. ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes only in connection with specific criminal investigations.
- f. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state, or federal agency or entity without the express written consent of the City Manager.
- g. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units are marked, corrected, or deleted in accordance with the type and severity of the error in question.
- h. ALPR system audits will be conducted by personnel assigned to the Professional Standards Bureau on a regular basis, at least biennially.

### **Current ALPR Deployments**

- 9- The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.
- 10- Effective 2/18/16, the Parking Enforcement Unit will utilize five (5) Parking Enforcement Go-4 vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV/SVS database (stolen and wanted vehicles). The

## DEPARTMENTAL ORDER

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current contracted vendor for this system is PCS Mobile using Genetec ALPR technology.

- 11- The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and checks scanned "reads" against a file of vehicles which have five or more outstanding parking citations exceeding 30-days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the city to recover outstanding citation fees and penalties. ALPR equipment is installed in the Parking Enforcement Unit's Scofflaw Enforcement vehicle.
- 12- The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
- 13- When a car is booted and/or towed, the read, hit, and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
- 14- The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's goBerkeley parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner. The reports will provide only the date, time, location, approximate address, goBerkeley blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement

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DATE ISSUED: 02/18/16

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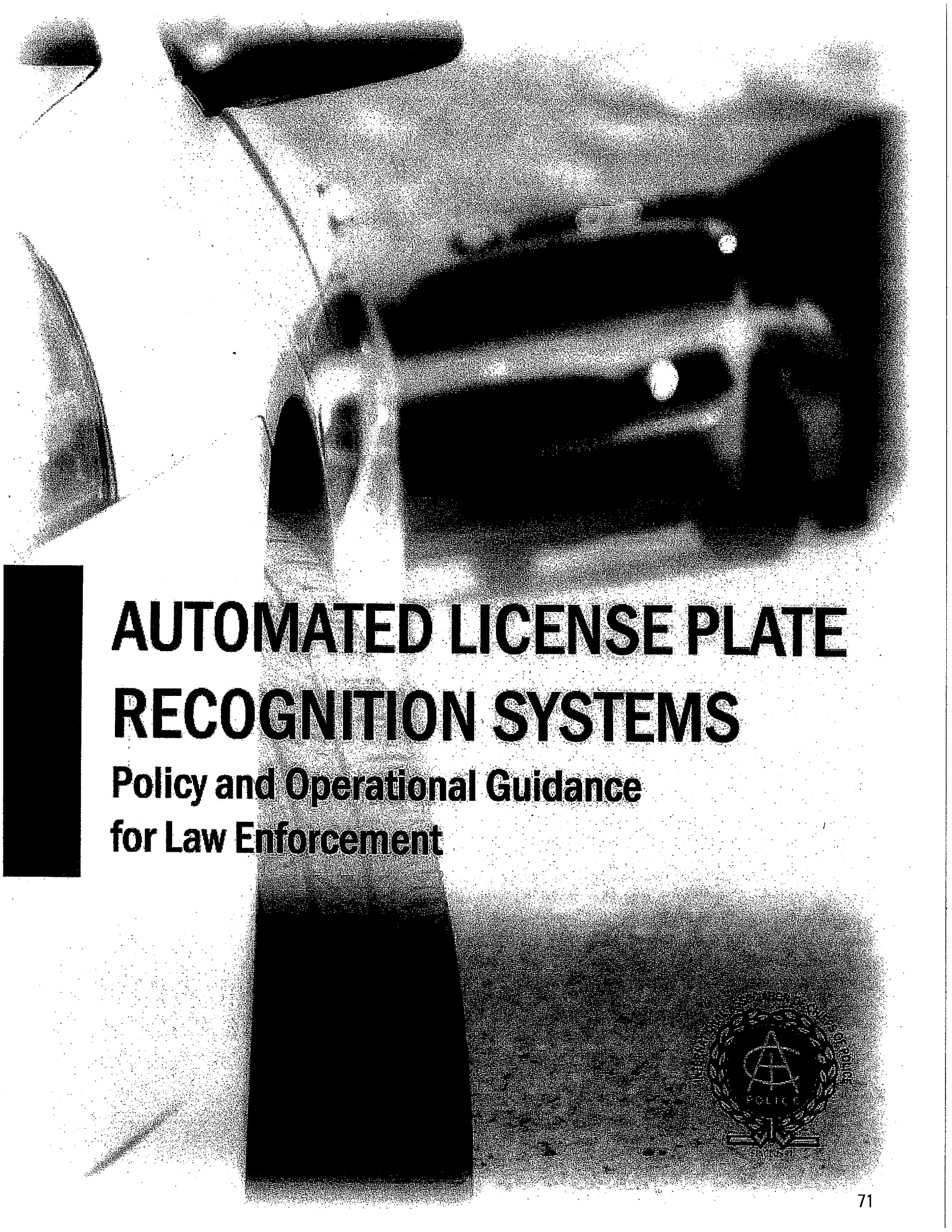
officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Michael K. Meehan  
Chief of Police

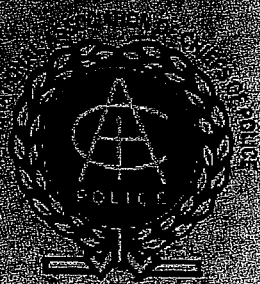
References: NCRIC ALPR Policy  
SB 34  
General Order R-23

Cc: All BPD Personnel



# **AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS**

**Policy and Operational Guidance  
for Law Enforcement**



**This project, conducted by the International Association of Chiefs of Police (IACP), was supported by Grant No. 2007-MU-MU- K004 from the National Institute of Justice. The National Institute of Justice is a component of the U.S. Department of Justice, Office of Justice Programs, which also includes the Bureau of Assistance; the Bureau of Justice Statistics; the Community Capacity Development Office; the Office for Victims of Crime; the Office of Juvenile Justice and Delinquency Prevention; and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART).**

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# Executive Summary

Law enforcement officers are often searching for vehicles that have been reported stolen, are suspected of being involved in criminal or terrorist activities, are owned by persons who are wanted by authorities, have failed to pay parking violations or maintain current vehicle license registration, and any of a number of other factors. Law enforcement agencies throughout the nation are increasingly adopting automated license plate recognition (ALPR) technologies, which function to automatically capture an image of the vehicle's license plate, transform that image into alphanumeric characters, compare the plate number acquired to one or more databases of vehicles of interest, and alert the officer when a vehicle of interest has been observed, all within a matter of seconds.

This project was designed to assess ALPR implementation among law enforcement agencies in the United States, and to identify emerging implementation practices to provide operational and policy guidance to the field. A random sample of 444 local, state, and tribal law enforcement agencies was surveyed. A total of 305 agencies responded to the initial survey (68.7%). Three-quarters of respondents (235 agencies, 77.0%) indicated that they were not using ALPR, while 70 agencies (23.0%) responded that they were using ALPR. A longer, more detailed survey was sent to the 70 agencies who confirmed they were using ALPR, and 40 agencies (57.1%) responded.

Survey respondents had typically implemented mobile ALPR systems (95%), and were primarily using ALPR for auto theft (69%), vehicle and traffic enforcement (28%), and investigations (25%). Agencies reported increases in stolen vehicle recoveries (68%), arrests (55%), and productivity (50%). Fewer than half (48%) had developed ALPR policies. Over half (53%) updated their ALPR hot lists wirelessly, and nearly half (43%) updated their hot lists once each day. A total of 40% of respondents retain ALPR data for six months or less (n=16). Five respondents (13%) indicated they retain ALPR data indefinitely, while two indicated that retention is based on the storage capacity of the equipment installed.

ALPR technology is a significant tool in the arsenal of law enforcement and public safety agencies. Realizing the core business values that ALPR promises, however, can only be achieved through proper planning, implementation, training, deployment, use, and management of the technology and the information it provides. Like all tools and technologies available to law enforcement, ALPR must also be carefully managed. Policies must be developed and strictly enforced to ensure the quality of the data, the security of the system, compliance with applicable laws and regulations, and the privacy of information gathered.

# Introduction

Law enforcement agencies throughout the nation are increasingly adopting automated license plate recognition (ALPR)<sup>1</sup> technologies to enhance their enforcement and investigative capabilities, expand their collection of relevant data, and expedite the tedious and time consuming process of manually comparing vehicle license plates with lists of stolen, wanted, and other vehicles of interest. Police officers, sheriff's deputies, and other law enforcement practitioners are often on the lookout for vehicles that have been reported stolen, are wanted in connection with a crime or traffic violation, are suspected of being involved in criminal or terrorist activities, are parking violation scofflaws, have failed to maintain current registration or to comply with statutory insurance requirements, or any of a number of other legitimate reasons.

ALPR systems function to automatically capture an image of the vehicle's license plate, transform that image into alphanumeric characters using optical character recognition or similar software, compare the plate number acquired to one or more databases of vehicles of interest to law enforcement and other agencies, and to alert the officer when a vehicle of interest has been observed. The automated capture, analysis, and comparison of vehicle license plates typically occurs within seconds, alerting the officer almost immediately when a wanted plate is observed. Although the ALPR term includes a specific reference to "automated," it should be noted that human intervention is needed insofar as the officer monitoring the equipment must independently validate that the ALPR system has accurately "read" the license plate, that the plate observed is issued from the same state as the one in which it is wanted, and to verify the currency of the alert, i.e., verifying that the reason this vehicle or the owner was wanted or of interest is still valid.

This National Institute of Justice (NIJ)-supported project was designed to assess and document ALPR implementation and operational experiences among law enforcement agencies in the United States, and to identify emerging implementation practices to provide operational and policy guidance to the field. Several data collection techniques were used to gather information for this project, including 1) a survey of law enforcement agencies to assess the scope of the current ALPR implementation, deployment, and operational uses, 2) site visits to interview law enforcement practitioners and observe ALPRs system in operation, and 3) reviewing documents and policies addressing ALPR implementation and use.

This report includes sample ALPR policies from several jurisdictions to assist readers in developing their own policies. Readers are also encouraged to review a supplemental report, "Privacy issues concerning the utilization of automated license plate readers," previously prepared by IACP as part of an effort to develop a privacy impact assessment, in developing ALPR policies for their agencies.





SEARCH

JANUARY 21, 2015 | BY JEREMY GILLULA AND DAVE MAASS

## What You Can Learn from Oakland's Raw ALPR Data



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Police cars mounted with automatic license plate readers (ALPRs) wind their way through the streets of Oakland like a "Snake" game on an old cell phone. Instead of eating up pixels of food, these cameras gobble down thousands of license plates each day. And instead of growing a longer tail, ALPRs feed into a giant database of locational data as they conduct surveillance on every driver within the city limits, and sometimes beyond.

This is the portrait that emerged when EFF analyzed eight days of ALPR data provided by the City of Oakland in response to a request under the California Public Records Act.

As cities and counties across the country pursue new law enforcement technologies, EFF is on a mission to use transparency as a counterbalance to mass surveillance. Since May 2013, EFF and the ACLU of Southern California have been engaged in a legal battle with two Los Angeles law enforcement agencies who are refusing to hand over a week's worth of ALPR data. San Diego County, another jurisdiction, has similarly fought efforts by citizens to obtain access to data that law enforcement has collected on them using ALPRs. Both claim that the records are exempted under the California Public Records Act because they are records of law enforcement investigations. The agencies also argue the public interest in maintaining secrecy in ALPR data outweighs the public interest in learning how and where ALPR systems are being used.

The rub here is that law enforcement agencies like those in LA, San Diego, and Oakland aren't using ALPR for targeted investigations, but rather running a dragnet on all drivers in their jurisdictions. As states across the country become more and more concerned about ALPRs and take steps to limit their use, we believe the disclosure of a limited amount of license plate records will help to inform public debate on this mass surveillance tool.

Events in other jurisdictions support our position. After Muckrock and the Boston Globe obtained Boston Police ALPR data, the city suspended the program in the wake of the privacy concerns raised by the data. When the Minneapolis Star-Tribune obtained ALPR data that it used to track the whereabouts of the mayor, it kicked off debate in the legislature about how to balance the privacy of innocent drivers against the ability of police to fight crime. As a Minneapolis city official noted at a public hearing on ALPRs after the data release, "now that we

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Here's what we know about Apple's use of Differential Privacy, according to cryptographer @matthew\_d\_green. <http://blog.cryptographyenginein>  
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JUN 14 @ 6:01PM

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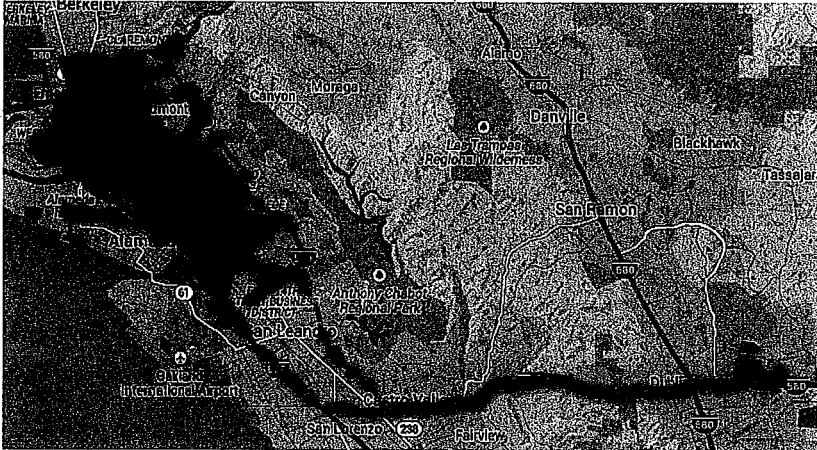
### Projects

[Bloggers' Rights](#)

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see someone's patterns in a graphic on a map in a newspaper, you realize that person really does have a right to be secure from people who might be trying to stalk them or follow them or interfere with them." A state legislator and former police chief noted at that same hearing, "even though technology is great and it helps catch the bad guys, *I don't want the good guys being kept in a database.*"

Not all California law enforcement agencies have followed Los Angeles and San Diego's lead in ALPR secrecy. Whereas Los Angeles cops have stalled for more than two years, Oakland provided raw ALPR data in just under two months.



[Click to open interactive map.](#)

[Free Speech Weak Links](#)

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With more than 63,000 data points, it's a lot of information to process. We dug into the Oakland data to show many of the ways ALPR can be broken down and visualized to help ensure police accountability. It immediately became clear that with just a few ALPR vehicles—as few as two cars—Oakland is able to capture plate data from across the city, with a particular focus on lower income neighborhoods. The data also shows that police cars pick up license plates when making the journey to county jail (that's the long tail extending to the east). The data does not seem to indicate that Oakland has any ALPR cameras mounted in fixed locations.

Today we're releasing the data to the public, with the individual license plate numbers removed to protect the privacy of drivers captured by these cameras. (While LAPD and LASD also claim the public's right to privacy as a reason for withholding the records, the data can be anonymized easily with a few clicks, either by deleting a column for the spreadsheet or replacing the plates with random numbers.) We've also done some preliminary analysis of the data, which we present below. (If you just want the raw data, the links are at the end of the post.)

**The Numbers**

**63,272**

Total number of data points collected by Oakland Police ALPR cameras

**48,717**

Number of unique individual plates captured by Oakland Police ALPR cameras

**39,274**

Number of vehicles that were captured only once

**4,571**

Number of ALPR reads within one mile of Oakland Police headquarters

**589**

Number of captured plates that were likely assigned to government vehicles (i.e. police cars,



buses, county vehicles, etc., which generally receive plates that are seven numeric digits)

**150**

Number of entries that were obvious bad reads (e.g. the cameras picked up road signs such as "CAUTION" or the plate had more than seven digits)

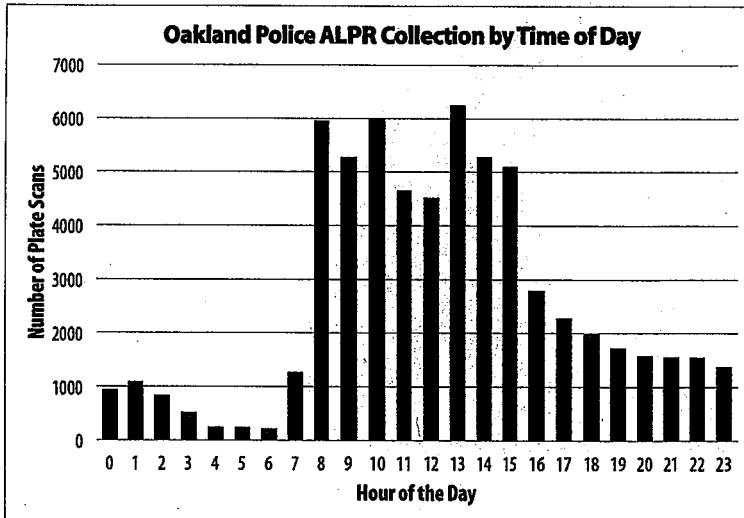
**24**

Number of times the single most-captured plate was hit (a government vehicle, likely a police vehicle, captured multiple times at the same locations over a short period of time)

**1.3**

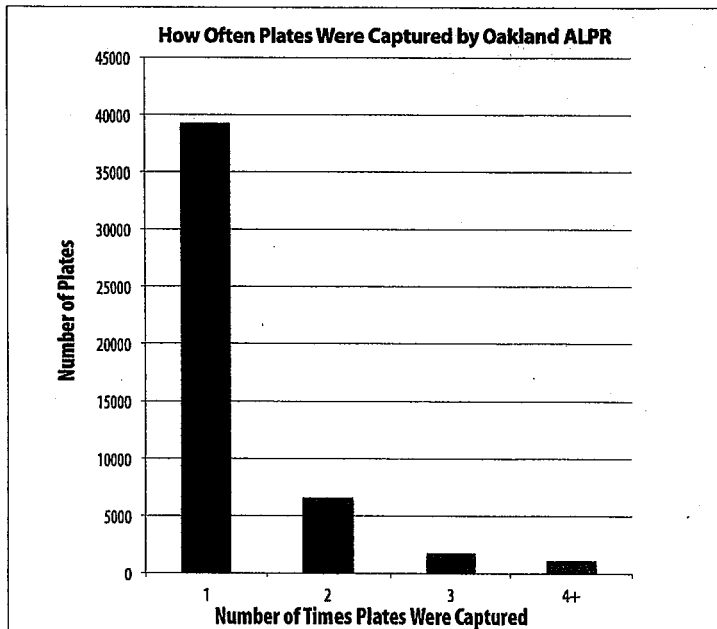
Average number of times an individual plate was captured

**ALPR by the Hour**



The data indicates that Oakland's ALPR program may mirror the normal workday, picking up like clockwork around 8 am, waning slightly at lunchtime, then picking up again in the afternoon. Plate captures dropped off significantly during the overnight shifts, with ALPR vehicles mostly going dark between 4 am and 7 am.

**ALPR by Frequency**



This chart shows how frequently individual plates were captured multiple times. The vast majority of plates were seen only once.

### Heat Maps

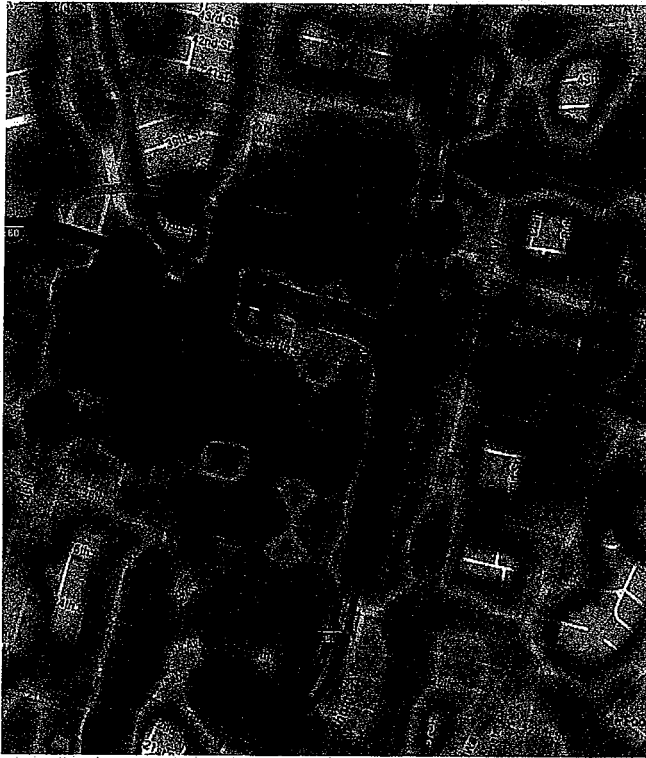


*Click to enlarge. The shaded area shows the boundary of the City of Oakland.*

Your plate is more likely to be caught on camera in a few specific locations. For example:



**Downtown:** Oakland PD headquarters is located near the corner of 7th St. and Broadway, so the increased number of hits in this area are likely due to patrol cars traveling to and from police headquarters.



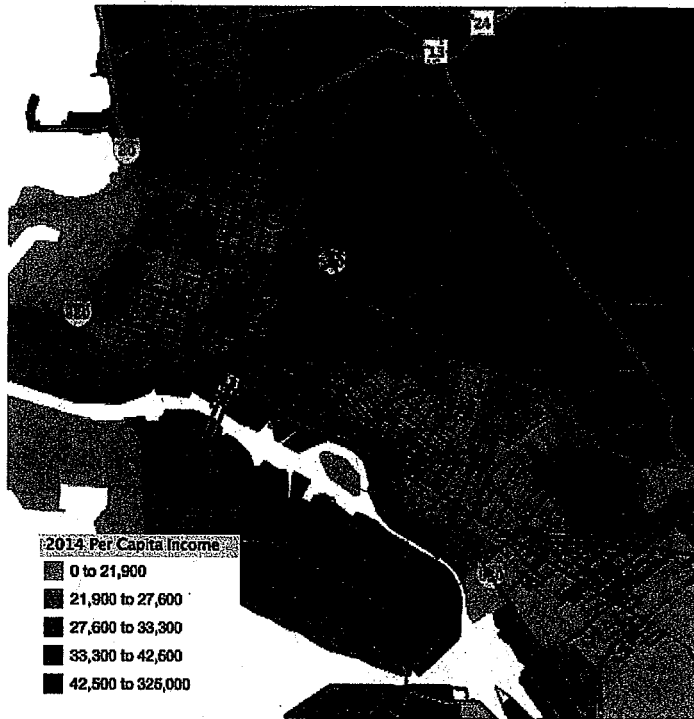
Northwest Oakland: Have a car in northwest Oakland? Prepare to be scanned and recorded.



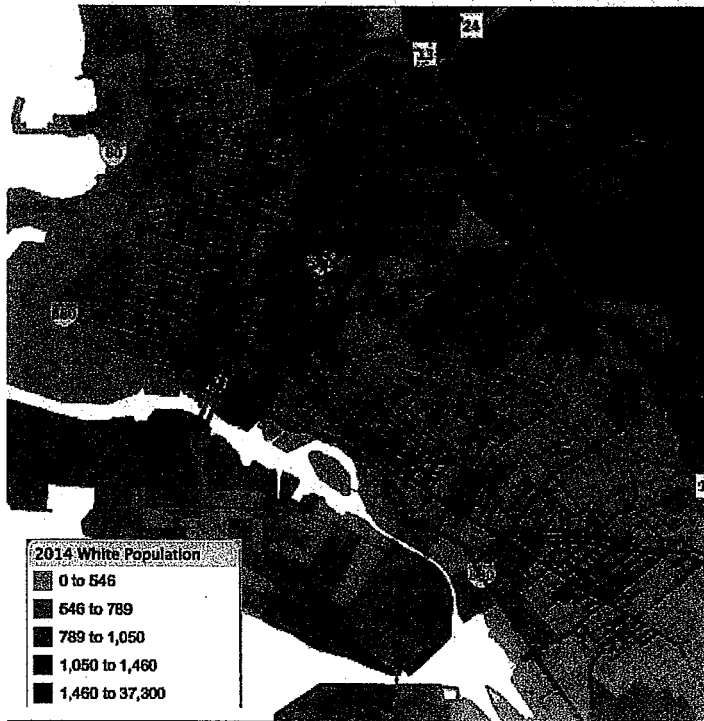
International Blvd. and Fruitvale: The same holds true for International Blvd. and Fruitvale Ave. (though some neighboring areas don't seem to be targeted at all).

### Surveillance and the Census

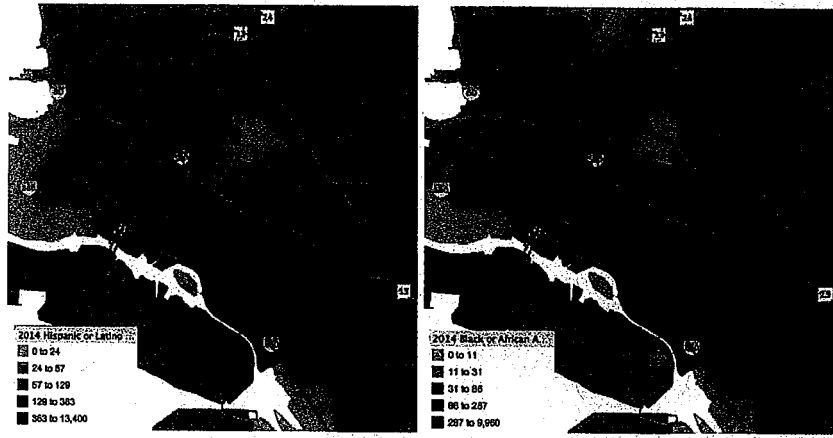
Using [Tableau Public](#) mapping software, we mapped the ALPR data over various layers of data from the U.S. Census Bureau. In each of these images, the darker the color, the higher the intensity.



**Per Capita Income:** The data indicates lower-income neighborhoods are disproportionately captured by ALPR patrols, with police vehicles creating a grid of license plates in the city's poorest neighborhoods.



**White Population:** Perhaps unsurprisingly, the per-capita data and the white population data significantly overlaps. If you are driving through or parking your car in a neighborhood with a higher density of white families, you are less likely to be picked up by ALPR cameras, particularly northwest of State Highway 13.



*Click images to enlarge.*

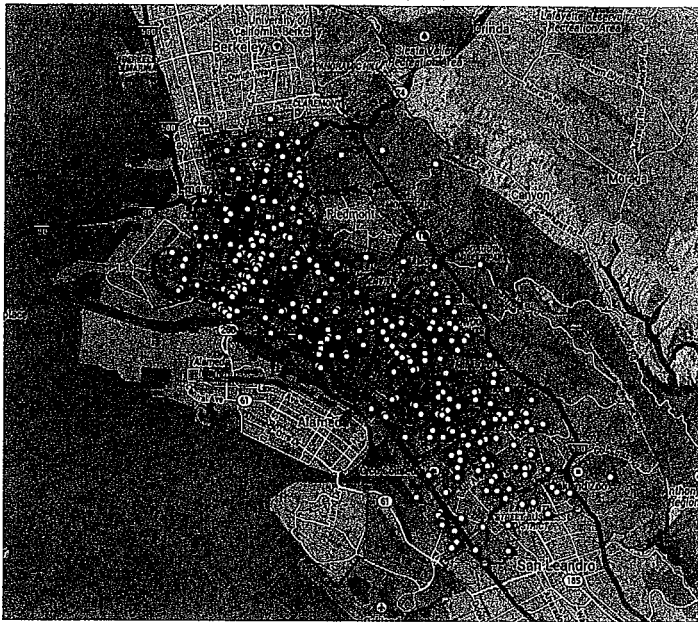
**Black and Hispanic Populations:** Overlaying Census data for African-American and Latino populations shows the converse of the white population.

**ALPR Data vs. Crime Data**



We also filed a California Public Records Act request to obtain the Oakland Police Department's crime data for the same period. Each white dot here indicates a recorded crime. It's not much of a shocker that ALPR use doesn't correlate very well with crime. For example, OPD did not use ALPR surveillance in the southeast part of Oakland nearly as much as in the north, west, and central parts of Oakland, even though there seems to be just as much crime.

To see if perhaps OPD was just focusing its ALPR use in areas with high incidents of automobile-related crime, we decided to map only the auto-related crime:



The result is the same—ALPRs are clearly not being used to deter automobile-related crimes.

### ALPR and Mosques



In filing requests for ALPR data, we chose one week of the Islamic holy month of Ramadan to see whether police were using ALPRs to gather intelligence on Muslim populations. When we plotted out mosques on the map, we discovered several were near ALPR hotspots, but there was little in the data to indicate that any particular focus was placed on these places of worship. Future inquiries worth looking into might include gun shops, medical marijuana collectives, abortion clinics, and protests.

### ALPR Anomalies

Oaklanders aren't the only citizens who should be worried about OPD surveillance. The ALPR data we received also contained instances of ALPR collection outside Oakland's city limits.



**City of Alameda:** Alameda is the island to the bottom of the map, and is an independent city. Apparently at least one officer decided to go spy on its citizens.



**Emeryville:** Emeryville is a city that borders Oakland, and is the portion of the map outside the light-pink shaded area. Obviously Oakland PD doesn't think twice about surveilling its citizens when they cut across it.



**Piedmont:** Piedmont (the central unshaded area) is actually bordered on all sides by Oakland. As with Emeryville, apparently Oakland PD has not been directed to turn off their ALPR surveillance devices when they take shortcuts across other jurisdictions.



**Mall Parking Lot:** Apparently an Oakland PD officer left his ALPR on while taking a trip outside the city (likely to or from the Santa Rita jail) and stopped at the Hacienda Crossings Mall in Dublin, nearly 20 miles away from Oakland.

**False Positives**



ALPRs aren't foolproof. For example, California currently limits vanity plates to seven characters, but many plates with eight characters showed up in the data, including "CROSSWAL," "ROSSWALK," "ROSSINGS," "CAUTICTN," "CAUTICJN," and "DRIVEWAY." Obviously none of these were actual license plates—in fact, 96 of the entries in the data were simply not possible due to being eight or more characters long. Instead, they were likely read (or misread) from traffic signs.

We also found other likely misreads from signs, including "PLUMBING," "AHEAD," "PRIVATE," "PARKING," "PARKIMG," "ALLOWED," "ORTOWED," "DORTOWED," "ONLEFT," "CAUTON," "CAUTION," and four more variations of "CROSSWALK" as well as "ONE WAY." All told, there were 76 entries that were likely misreads from road signs (22 of which were over-length).

In another 95 instances, ALPR cameras captured the license plates, but failed to record any geographic coordinates. Plotted out on a map, it looked like Oakland police were patrolling the ocean off the coast of Africa.



**Don't Take Our Word for It**

Want to take a look at the data yourself? Do you have a better analysis method? Want to draw your own conclusions? Please do! You can find the [ALPR data here](#) and the [crime data here](#), both in CSV format, or [here](#) in a Google Fusion Table.

*Special thanks goes to Ari Isaak of [Evari GIS Consulting](#) for his help managing the data. All heatmaps were created using the awesome open source [heatmap.js project](#) on top of Google Maps.*

*Updated 1/22/2014: After publication of this post, we found a couple of off-by-one errors in our analysis. A manual inspection also found many more likely misreads from road signs, increasing the number from 134 to 150. The post was updated to reflect the correct numbers. We have also made small adjustments to the text for clarity that did not affect the facts of the post.*

**Files**

-  [Oakland PD ALPR Data, July 20-27, 2014](#)
-  [Oakland PD Crime Data, July 20-27, 2014](#)

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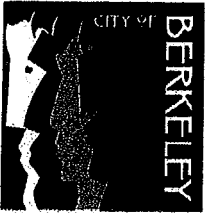
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Office of the City Attorney

Date: May 31, 2016  
To: Katherine J. Lee, PRC Officer  
From: Zach Cowan, City Attorney  
By: Kristy van Herick, Acting Assistant City Attorney *KVH 5/31/16*  
Re: Disclosure of Use of Force Reports and Summaries to the Police Review Commission

### **Background**

Under Berkeley Police Department General Order U-2 (Use of Force), a supervisor must complete a Use of Force Report under certain specified circumstances. Those circumstances include reporting to the Chief where: (1) Use of any force results in injury or death to a person; (2) Non-lethal weapons (OC/baton) or less-than-lethal munitions are used on a person; or (3) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer.

A completed report includes the nature of the incident, officers involved, type of force used, who was injured (e.g. citizen, officer), nature of injuries (including whether medical treatment was required), summary of actions of the officer or officers involved, supervisor's comments, division commander's recommendation, and a finding whether the force used was within policy or referred for administrative action/investigation by Internal Affairs Bureau. Per General Order U-2, all Use of Force Reports are held in file for five (5) years and then purged, unless needed for additional administrative action.

The Police Review Commission ("PRC") is interested in reviewing these reports. The PRC has acknowledged that confidentiality laws may prohibit the disclosure of names of officers identified on the reports (as well as other identifying information related to the incident). The PRC has requested an opinion from the City Attorney on whether the PRC could obtain from the BPD Use of Force Reports, with non-disclosable information redacted. Alternatively, the PRC would like to know if there are any legal impediments to the release of a report that synthesizes or summarizes information from a group of Use of Force Reports.

### Issues

1. Can the PRC obtain redacted Use of Force Reports?
2. Can the PRC obtain a report that synthesizes or summarizes information from a group of Use of Force Reports?

### Conclusion

1. No. Regardless of whether the names and other identifying information from the reports are redacted, these reports fall with the definition of "personnel records," and are therefore confidential under Penal Code Sections 832.7 and 832.8.
2. Yes, so long as the report is in a form which does not directly or indirectly identify the individuals involved.

### Discussion

#### *Individual reports*

Peace officer personnel records are confidential pursuant to the California Penal Code. Penal Code section 832.7 (a), provides, in part, that "[p]eace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

If Use of Force Reports are considered part of a "personnel record", then they will be confidential under Section 832.7. Section 832.8 defines "personnel record" as follows:

- "As used in Section 832.7, "personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:
- (a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.
  - (b) Medical history.
  - (c) Election of employee benefits.
  - (d) Employee advancement, appraisal, or discipline.
  - (e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.
  - (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy."

The California Supreme Court has determined that "peace officer personnel records include only the types of information enumerated in section 832.8." (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 293.) However, the location in which a peace officer's record is stored (i.e., in the official personnel file or some other location) does not necessarily dictate whether or not it is a personnel record. "We consider it unlikely the Legislature intended to render documents confidential based on their location, rather than their content. ... Similarly, we do not believe that the Legislature intended that a public agency be able to shield information from public disclosure simply by placing it in a file that contains the type of information specified in section 832.8." (*Id.* at p. 291.) Therefore, to determine whether a record is part of confidential "personnel record" of a peace officer, one must consider the content of the document and determine whether it falls within one of the categories set forth in Section 832.8.

Consistent with Sections 832.7 and 832.8, Berkeley Police Department General Order P-26 identifies all Internal Affairs Bureau (IAB) files as confidential and limits access to these records to "the employee, the Chief of Police, authorized administrative staff, the employee's Division Commander, the City Attorney, Internal Affairs Bureau personnel, the Human Resources Director and the City Manager and others as required by law." One category of police misconduct investigated by the IAB, as referenced in BPD General Order P-26, is "*improper* use of force", which includes "all allegations concerning the improper use of force that goes beyond reasonable or lawful limits of physical power that may be used upon a person including: (i) Improper use or display of a firearm, (ii) Improper use of any object, (iii) Improper use of hands or feet."

A Use of Force Report is referred for administrative action/investigation to Internal Affairs if there is a determination that the force used may be outside of department policy. In such situations, the Use of Force Report would be part of the complaint used to initiate the internal investigation, and thus would fall within the "personnel record" definition at Section 832.8(e), as a record of a "Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties."

Looking next at Use of Force Reports that do not fall under Section 832.8(e) because they do not result in a complaint or an investigation into a possible "improper" use of force, the question is whether those reports nevertheless fall within some other provision of Section 832.8. Penal Code Section 832.8 (d) and (f) deem confidential personnel records document related to "[e]mployee advancement, appraisal, or discipline," and "[a]ny other information the disclosure of which would constitute an unwarranted invasion of personal privacy."

In the recent case of *Pasadena Police Officers Association v. Superior Court* (2015) 240 Cal.App.4th 268, the Court examined to what extent a report on an officer-involved shooting was not deemed confidential and therefore subject to disclosure under the Public Records Act. The report involved a high profile shooting death of an unarmed teen, and was prepared by an independent consultant, the Office of Independent

Review Group (OIR), which included a broad examination of police department policy as well as the use of force. The court examined the various aspects of the use of force investigation, and while finding portions subject to disclosure, the administrative portion of the investigation was determined to constitute or relate to employee performance "appraisal", and thus to be confidential personnel information.

Specifically, the court noted:

"The protection for personnel records under section 6254, subdivision (k) [of the Public Records Act] applies to any information obtained from an officer's personnel records. (*CPOST, supra*, 42 Cal.4th at p. 289, 64 Cal.Rptr.3d 661, 165 P.3d 462.) Accordingly, portions of the Report culled from personnel information or officers' statements made in the course of the PPD's administrative investigation of the McDade shooting are protected by the *Pitchess* statutes. However, other portions of the Report, including the CID investigation, which do not constitute or relate to employee appraisal, are not."

(*Id.* at p. 290.) The Court further noted that the administrative review of use of force is the process that may result in a recommendation for discipline, and thus the records of that process are confidential. "Only the PPD's administrative review results in a disciplinary recommendation to the Chief. And, only records related to that process enjoy protection under the *Pitchess* statutes." (*Id.* at p. 292.)

A Use of Force Report is used to conduct a review of an officer's performance, and determine whether it complies with Department policy. The form solicits performance-related comments from the supervisor, recommendations from the Division Commander and findings from the Chief. As such, whether the conduct ultimately leads to an administrative action or investigation, it constitutes or relates to employee appraisal. Under *Pasadena Police Officers Assoc.*, a Use of Force Report falls within the definition of a personnel record and can only be released by judge under the process at Evidence Code Sections 1043-1047 (*Pitchess* statutes).

#### *Use of Force Summaries*

On the issue of reviewing a summary of the use of force reports, the key question is whether the information could be identifiable enough to be linked to any individual officer's personnel record. Put another way, could one "reverse engineer" the data in the summary to identify individual officers or incidents. If not, a summary can be released to the PRC.

Generally, disclosure of complaints about use of force in summary form is allowed under Penal Code Section 832.7, so long as the information is not disclosed in a form that would identify a specific officer.

"Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or

May 31, 2016

Page 5 Re: Disclosure of Berkeley Police Department Internal Affairs' records to the PRC

disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers **if that information is in a form which does not identify** the individuals involved." (Penal Code § 832.7(c).)

A recently enacted law impacts how a broad set of data points on use of force is shared with the state and what level of information the Department of Justice (DOJ) will make publicly available. Effective January 1, 2016, AB 71 (Government Code section 12525.2) took effect expanding the obligations on law enforcement agencies to collect and report to the DOJ on use of force incidents.

Pursuant to Government Code Section 12525.2, subdivisions (a) and (b):

"(a) Beginning January 1, 2017, each law enforcement agency shall annually furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

- (1) An incident involving the shooting of a civilian by a peace officer.
- (2) An incident involving the shooting of a peace officer by a civilian.
- (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
- (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(b) For each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

- (1) The gender, race, and age of each individual who was shot, injured, or killed.
- (2) The date, time, and location of the incident.
- (3) Whether the civilian was armed, and, if so, the type of weapon.
- (4) The type of force used against the officer, the civilian, or both, including the types of weapons used.
- (5) The number of officers involved in the incident.
- (6) The number of civilians involved in the incident.
- (7) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders."

Section 12525.2 has a fairly expansive definition of "serious bodily injury" subject to the new data collection requirements. "For purposes of this section, "serious bodily injury" means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ." (Govt Code § 12525.2(d).) The "instructions for Reporting Use of Force Incidents" prepared by the DOJ indicates a fairly broad interpretation of this definition:

"'Serious bodily injury' is more severe than mere physical injury. Per California Criminal Law Jury Instruction 925, physical injuries that are considered serious may include (but are not limited to) loss of consciousness, wounds requiring

extensive suturing, bone fractures or concussions. In the majority of cases, such an injury will require a visit to a hospital or advanced medical care facility, either as an outpatient or by being admitted into the facility (routine medical clearances would not be included).

Serious bodily injury should not, however, mean that one must seek or require medical treatment at a hospital (e.g., a person experiences a loss of consciousness or because the injury is such that it is not immediately apparent that hospital care is necessary). Under those or similar circumstances, agencies must still report the use of force incident upon discovering that it resulted in serious bodily injury.”

The DOJ has developed use of force incident data elements<sup>1</sup> to be reported pursuant to the new law. Starting January of 2016, all law enforcement agencies had to begin internally tracking use of force incident data elements as outlined by the DOJ. Beginning in 2017, law enforcement agencies must begin submitting the expansive data set to the DOJ. Up to the point that the data is reported to the DOJ, it remains confidential. However, the data will then be “summarized” and published by the DOJ for public review.

Specifically, Government Code Section 12525.2, subdivision c specifies:

“Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) in its annual crime report issued by the department pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer’s employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. **This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.**”

While Section 12525.2(c) states that the DOJ is not authorized to release the badge number or “other unique identifying information” of involved peace officers, it will nevertheless be providing a “summary of information” created from the detailed set of data reported by local agencies on a public website. What is meant by a “summary of information” it is not yet clear. For example, the DOJ has not specified whether it will impose additional limitations or criteria on the data to ensure that the information in published summaries cannot be “reverse engineered” to reference back to specific officers.

The DOJ confirmed that it “will be working over the first half of 2016 to develop, refine and test a web-based data collection system, which will allow LEAs to enter and submit use of force data to the DOJ. The system will allow for the ability to track incidents

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<sup>1</sup> The Use of Force Incident Reporting Information Bulletin released by the DOJ can be found here: [https://oag.ca.gov/sites/all/files/agweb/pdfs/law\\_enforcement/dle-15-05-ib-instructions.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-15-05-ib-instructions.pdf)



Memo to Katherine Lee, PRC Officer

May 31, 2016

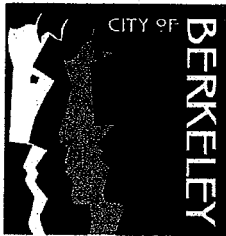
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locally, as well as providing for review and quality control of the data before submitting it to the DOJ." California Department of Justice Information Bulletin DLE-2015-05, 12/29/2015.) It is anticipated that further guidance will be released by the DOJ regarding the level of data which will be publicly accessible.

Based on the existing disclosure language in Penal Code Section 832.7(c) and newly adopted Government Code 12525.2(c), 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. The summary should be in a form that cannot be used to determine the officer(s) involved. The BPD could prepare its own summary, or wait until the DOJ releases its summary.

cc: Dee Williams-Ridley, City Manager  
Mark Numainville, City Clerk  
Opn. Index II.1.2; II.G.8.a.





Police Review Commission

**WORKSESSION**

**July 19, 2016**

**To:** Honorable Mayor and Members of the City Council  
**From:** Police Review Commission  
**Submitted by:** George Perezvelez, Chairperson, Police Review Commission  
**Subject:** PRC's Response to City Council Referral Regarding Berkeley Police Department Use of In-Vehicle and Body-Worn Cameras

**INTRODUCTION**

At its February 10, 2015 meeting, the City Council referred an item regarding Berkeley Police Department (BPD) use of police in-vehicle and body-worn cameras to the City Manager and the Police Review Commission (PRC) to develop a plan to implement the use of these cameras for the BPD. The PRC subsequently formed a Body-Worn and Dash Cameras Subcommittee, which developed a draft policy for body-worn cameras. The Subcommittee presented its draft policy to the full Commission at its May 25 and June 8, 2016 meetings. The Commission revised the draft (attached) and unanimously approved that it be recommended to the Council. M/S/C (Lippman/Roberts). Ayes: Bernstein, Lippman, Murphy (temporary appointment), Perezvelez, Roberts, Sherman, Smith, and Yampolsky. Noes: None. Abstain: None. Absent: Javier, Waldman.

The PRC did not take up the subject of in-vehicle, or dashboard, cameras. This is because, according to the BPD, it has not yet been provided the funds for either body-worn or dashboard cameras; consequently, due to these funding needs, it is currently considering the purchase of body-worn cameras only, because they are more cost-effective than dashboard cameras.

**CURRENT SITUATION AND ITS EFFECTS**

Presently, the BPD has neither in-vehicle cameras nor body-worn cameras. Amidst the national conversation about improving accountability of the law enforcement officers, video-recording systems are widely seen as an important new tool for strengthening police transparency, preventing and resolving complaints against the police by civilians, and documenting police-public interactions.

**BACKGROUND**

In March 2014, the Council asked the PRC to investigate the BPD's possible use of body-worn cameras. The PRC reported back to Council on January 27, 2015, concluding that, if the necessary resources are available, it saw no reason why the BPD should not develop policies for and adopt a body-worn camera program.

In response to the February 10, 2015 Council referral, the PRC established a Body-Worn and Dash Cameras Subcommittee. This group met about three times monthly from January through mid-May 2016. At least one BPD representative was present at almost every meeting and actively participated in the Subcommittee's work, answering questions, explaining the department's position, and supplying background information. The Subcommittee worked off a draft general order, based on the model Lexipol policy, submitted by the BPD. The Subcommittee also reviewed the existing policies of several jurisdictions, including Oakland, BART, Richmond and Los Angeles, as well as the growing body of literature and commentary about best practices and policies for the use of body-worn cameras (BWCs).

The Subcommittee's recommendation was presented to the full Commission, which devoted most of its May 25 and June 8, 2016 meetings reviewing and revising the proposed general order. Representatives from BPD's Professional Standards Division attended both Commission meetings and, along with other BPD staff who regularly attend PRC meetings, answered Commissioners' questions, especially on those provisions for which the two groups had differing views.

While the PRC and the BPD agree on many provisions in the PRC's proposed policy and compromised on some, they did not reconcile all of their disagreements. The significant differences of opinion concern:

- Review of recordings before writing a statement or report. The PRC proposes that in all use-of-force incidents (about 40 to 50 per year, according to the BPD), the officer not be allowed to view the video of the incident until after he or she provides an initial report or statement, which may be supplemented after viewing the video. The BPD would require an initial interview before viewing camera footage only in cases of an officer-involved shooting or an incident involving a death.
- Mandatory activation of the BWC during interrogations. The PRC wants the BWCs activated whenever interrogations occur. The BPD pointed out that interrogations are conducted not only at the police station, but also in the field, and by detectives. The BPD's current plan is to equip only officers assigned to the Patrol Division with BWCs.
- Use of mobile recording devices other than department-issued BWCs. The PRC would like to ban the use of any other recording devices, except with the Chief's express permission, due to the lack of safeguards in preserving and maintaining recordings made using non-department issued BWCs. The BPD believes that if a BWC is not available or not working, an officer should be allowed to use other means, such as a cell phone, to record an incident.

- Release of recordings. The PRC would like BWC video to be released to the PRC in conjunction with a PRC investigation of a civilian complaint. The BPD believes that video from body-worn cameras should be treated in the same manner as any other BPD records, as described in General Order R-23, "Release of Public Records and Information." Under that general order, BPD records released to the PRC are routinely redacted.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### POSSIBLE FUTURE ACTION

The Council could choose to fund the purchase of body-worn cameras and related equipment, and the maintenance of a video storage and retrieval system.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

To be determined.

#### CONTACT PERSON

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

#### Attachments:

1: PRC's Recommended Berkeley Police Department General Order for Body-Worn Cameras



## BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 30, 1997

GENERAL ORDER M-3

SUBJECT: MONTHLY MANAGEMENT REPORT AND ANNUAL REPORT

### PURPOSE

- 1 - The purpose of this Order is to describe the Monthly Management Report and Annual Report requirements for the Berkeley Police Department.

### POLICY

- 2 - The Monthly Management Report is a means of describing the activities, goals and objectives, accomplishments, crime trends, and problems of the Berkeley Police Department to the City Manager, City Council, Police Review Commission, and the community on a monthly basis. It also assists the Chief of Police in making decisions regarding personnel administration and finances, and it stands as a control document and provides a quick reference for portions of the Annual Report. The Annual Report is a means of summarizing the Department's efforts for a Calendar year.

All personnel are expected to complete the required reports for their Division, Bureau, or Unit within the guidelines of this Order.

- (a) **Unless otherwise directed by the Division Commander, all Bureaus, Units and Details in every Division shall submit a monthly report to their Division head.\***

### PROCEDURES

- 3 - All Monthly Management Reports shall be submitted to the Chief of Police, via the Administrative Division Captain. **After review, these reports will be routed to the Administrative Division Sergeant,\* who shall have the responsibility for preparing the final report to the City Manager.\***
  - (a) Reports shall be submitted no later than the **10th\*** day of the following month. If the **10th\*** coincides with a weekend or holiday, the report shall be submitted on the first working day thereafter.
  - (b) **All reports will be done in WordPerfect word processing format, the City of Berkeley's standard, for consistency and ease of manipulation.\***
  - (c) **The original, one (1) copy and a disk copy of the report shall be submitted by each Division, Bureau, or unit.\***
  - (d) **The report for the City Manager, etc., shall be submitted no later than the 20th of the month.\***
- 4 - Division Commanders are responsible for timely submission of reports and for content, accuracy, and adherence to format.

\* Highlighted text is new

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 30, 1997

GENERAL ORDER M-3

- 5 - The format/process for reports is as follows:
- (a) Reports shall be written in the third person; proper names of Department personnel and other City personnel and officials shall not be used; in these instances only titles should be utilized; **reports shall not include the name(s) of victim(s) or arrested person(s).**
    - (1) **An exception is made for outstanding performance or recognition, etc. In those instances officer(s) name(s) can be used.\***
  - (b) When speaking of persons outside of the Department or City, it is proper to use their names and titles, and refer to them thereafter by surname.
- 6 - The following subtitles outline information to be included by submitting Divisions, Bureaus, or units. Though section(s) that do not apply for a particular Division, Bureau or Units, either in general or for a specific month should show the notation "n/a" (for not applicable).
- (a) **I.\* Administrative Activities -**

This section encompass meetings with public officials, organized groups and significant committee meetings which may affect Department direction or deal with matters of concern to the City. It can also include information as needed concerning the manner of measurement of and adherence to the Performance Management System pertaining to the effectiveness and efficiency of the Police Department in attaining mandated goals and objectives.
  - (b) **II.\* Crime Trends\* -**

This section should contain information regarding:

    - (1) crime increase or decrease
    - (2) special crime problems
    - (3) statistical crime trends on a current and comparative basis
    - (4) specific crime trends which may be developing
    - (5) deployment of personnel and tactics employed to address crime problems
    - (6) investigations pending



**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: July 30, 1997**

**GENERAL ORDER M-3**

(7) significant crimes or offenses such as homicides, serious assaults, rapes, robberies, and serial crimes, **as well as matters/arrests of major importance, of notable or prominent individuals, of serious offenders and other pertinent information.\***

a. **No more that two incidents per unit, except for homicides.\***

(8)\* **juvenile and gang activities containing information pertaining to significant juvenile or gang group problems.**

(9)\* **narcotics/vice activities which should contain information regarding narcotics trafficking, prostitution, liquor, gambling, locations, etc.**

(c) **III.\* Personnel Management -**

This section may incorporate information regarding:

- (1) total strength of Division, Bureau or Unit and any needed replacement of personnel, vacancies, retirements, hiring, terminations and/or resignations
- (2) significant personnel concerns **which impacts delivery of services.\***
- (3) number of sick days used collectively by assigned employees
- (4) absences caused by work-related injuries
- (5) number of vacation days used

(d) **IV.\* Working With Other Agencies**

This section shall contain information pertaining to cooperative and coordinated efforts with other departments and agencies toward achievement of Department goals and crime reduction efforts.

(e) **V.\* Community-Involved Policing -**

This section shall encompass all reported community concerns, problem areas, specific police responses and problem-solving solutions **which affect the quality of life of Berkeley citizens\***; meetings held with neighborhood groups, community organizations, service clubs and other related activities.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 30, 1997

GENERAL ORDER M-3

(f) **VI.\* Materials and Equipment -**

This section shall address effective utilization of Department resources and communicate need for additional or other types of material.

(g) **VII.\* Training -**

This section shall capture information concerning training administered, collectively or individually, to Department personnel. It should include:

- (1) perceived training needs
- (2) seminars, conferences and schools attended by Division, Bureau or Unit personnel
- (3) staff meetings, supervisors' meetings, counseling sessions and topics covered therein
- (4) comment on the effectiveness of training administered and whether conducted outside or in house.

(h) **VIII.\* Miscellaneous -**

This section may be used to comment on any topic not already covered on which concerns, needs and desires shall be communicated.

### CHARTS/STATISTICAL TABLES

- 7 - Because the Monthly Management Report and the Annual Report are shared with city officials and members of the community, it is important that submitting Divisions, Bureaus and Units employ charts, graphs, diagrams, and tables depicting statistical and other data whenever possible. Such items make it easier for people to understand monthly or yearly comparisons.
- 8 - All reports completed should include a review procedure which insures that the format/process outlined is followed.\*

### MONTHLY MANAGEMENT REPORT FOR CITY MANAGER

- 9 - Several of the original Monthly Management Reports are sent to the City Manager with a summary report. Among the reports which may be submitted at the discretion of the Chief of Police are:
- (a) Administrative Division report
  - (b) Community Service Bureau report
  - (c) Crime Analysis Unit report

\* Highlighted text is new

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 30, 1997

GENERAL ORDER M-3

- (d) Internal Affairs Bureau report
  - (e) Patrol Division report
  - (f) Special Enforcement Unit report
  - (g) Support Services Division report
  - (h) Traffic Bureau report\*
- 10 - The summary Monthly Management Report to the City Manager is prepared by the Administrative Division Sergeant. The summary report contains and may take the outline form of:\*
- (a) Crime Trends\*: covers brief descriptions of Part 1 crimes, whether they are up/down, major series and trends.
  - (b) Cases of Interests\*
  - (c) Review of Community Involved Policing Issues:\*
  - (d) Administrative/Personnel Issues\*: summarizes progress as noted in the monthly Department/Division Performance Measures tracking system; describes major projects being completed in the Police Department or issues of concern; summarizes personnel issues, staffing concerns and personnel strength; summarizes range projects such as Community Involved Policing, Accreditation, and Management or Capital Improvement Projects reported via the City's Project Management System.

### ANNUAL HIGHLIGHTS REPORT

- 11 - During December's Monthly Management Report, each Division, Bureau or Unit shall complete an Annual Highlights Report.

This report shall be contained in the Miscellaneous section, and shall recap the highlights and events of the year.

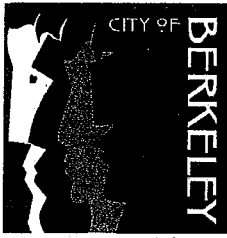
### ANNUAL REPORT

- 12 - The Chief of Police shall assign the responsibility for completing the Annual Report at the end of each calendar year. The Annual Highlights Report will serve as the framework for completion of the Annual Report. Divisions, Bureaus, and Units may be assigned to complete various portions of the report.

References: CALEA Standards  
Special Order 1945-83)

\* Highlighted text is new





City Clerk Department

June 3, 2016

To: Commission Secretaries  
From: *MN* Mark Numainville, City Clerk  
Subject: Results of City Council Referral Prioritization Process

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On May 24, 2016 the City Council approved the final weighted rankings of all outstanding Council referrals to the City Manager. These rankings are the result of a process that the Council approved in March 2016 called Re-Weighted Range Voting (RRV). The RRV process uses a formula to incorporate the weighted ratings that the Councilmembers assign to the referrals.

The purpose of providing this list to your commission is to inform them of what the Council views as its top priorities at this time. It was recommended by the Council that commissions may wish to use this list to inform or align its annual workplan with that of the Council and the department that staffs the commission. Please agendaize this topic for discussion by the commission.

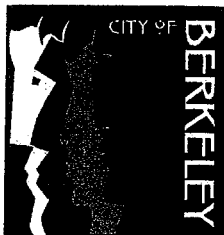
The complete staff report and attachments is included with this memo. I have also attached the final rankings as a separate document for easier review.

Please contact me directly if you have any questions.

Enc.

cc: Dee Williams-Ridley, City Manager  
Department Heads





Office of the City Manager

**ACTION CALENDAR**  
May 24, 2016

To: Honorable Mayor and Members of the City Council  
From: *DWR* Dee Williams-Ridley, City Manager  
Submitted by: Mark Numainville, City Clerk  
Subject: City Council Referral Prioritization Process Using Re-Weighted Range Voting

**RECOMMENDATION**

- 1) Review the completed Re-Weighted Range Voting rankings for all outstanding City Council referrals;
- 2) Approve the removal of referrals that have been marked as rescinded by the sponsoring Councilmember;
- 3) Adopt a Resolution approving the list of prioritized referrals to city staff.

**FISCAL IMPACTS OF RECOMMENDATION**

There are no direct fiscal impacts related to the review and approval of the referral list.

**CURRENT SITUATION AND ITS EFFECTS**

Currently there are 79 outstanding referrals from January 17, 2012 – April 5, 2016 that have not yet been completed by staff. At its March 8, 2016, meeting, the City Council adopted a system of Re-weighted Range Voting (RRV) to prioritize City Council referrals to staff. The RRV system enables City Council to provide direction to staff on which referrals are highest priority and should be completed first.

The Mayor and Council have assigned a rating to each outstanding referral and the RRV spreadsheet shows the raw ratings of each Councilmember (Attachment 1). Staff has pre-ranked the referrals based on the raw scoring using the RRV formula. These pre-ranked results will be used to guide the staff in the order that the referrals will be addressed. Some flexibility in the order in which the referrals are assigned will need to be exercised by the City Manager to ensure that the work is more evenly distributed among departments and that staff in each department has the available capacity to start work on the highly rated referrals.

During the scoring process, Councilmembers had the option to mark an "X" for the referrals they sponsored to indicate that the referral is no longer needed and should be removed from the prioritization process (Attachment 2). The full Council will have an opportunity to vote to remove or retain the referrals that were marked with an "X" by sponsoring Councilmembers.

Reweight Range Voting (RRV) is a proportional representation voting system designed for a blend of fairness and consensus, meaning that it ensures some representation for minority views as well. It accomplishes this by reducing the influence of Councilmembers in proportion to the points they have awarded to the referrals prioritized thus far.

Under RRV, Each Councilmember rates every referral on a scale of 0-5 (zero being the least support and five being the most support) using a basic scoresheet. There is no limit to repeat scores (i.e. a Councilmember could give every referral a five). When the scores are tallied, the referral with the highest total score becomes the 1st priority. Once the first referral is assigned, the scores for the remaining referrals are reweighted based on how much influence each Councilmember has had up to that point (based on the score they assigned, 0-5). If a Councilmember assigns high scores to several referrals, they use up the strength of their weighted vote more quickly and exercise diminishing influence when the scores are reweighted for subsequent referrals. This guarantees equal influence throughout the full list.

Councilmembers rated each referral by placing a number from 0 (low priority) – 5 (high priority) in the “RRV Rating” column. If a Councilmember did not rate a referral, the default score was set to zero.

There were two instances wherein the scores for items were the same value. The first instance was Items 41 and 42. In this case, staff ranked the oldest referral above the newer referral.

6/24/2014	Imposing Fees When Multifamily Properties are Destroyed Due to Fault of Property Owner
10/21/2014	Fair Chance Ordinance

The second instance of a tie, was Items 48 and 49. In this case staff ranked the public safety item ahead of the warning label item.

11/3/2015	City Manager Referral: Campus National Night Out to Reduce Crime
11/18/2014	Fuel Station Carbon Dioxide Labels

### **BACKGROUND**

The spreadsheet in Exhibit A to Attachment 3 includes all referrals adopted by City Council from January 17, 2012 – April 5, 2016 that have not yet been completed by staff. Any referral that was already completed by staff or that will be completed within the next approximately three months is not listed in the spreadsheet, because complete or near-complete referrals do not need to be included in the RRV prioritization process.



The spreadsheet includes a basic staff analysis of each adopted referral based on the following criteria:

- Staff time required to complete the referred project
- Cost required to complete the referred project, including cost of staff time
- Benefit of the referred project, including potential cost savings and how broadly the benefit would be experienced across the community

For each referral, staff gave the criteria a value of 1 – 5 (Note that for “staff time” and “cost,” 1 is low and 5 is high, whereas for “benefit,” 1 is high and 5 is low. Thus, the lowest possible score would be 3, which would be referral that can be completed with the least staff time and cost and highest benefit). The analysis is qualitative and based on the knowledge and experience of senior staff. The analysis was intended as a helpful reference as Council rated the adopted referrals.

Under the new referral prioritization system, the following steps will occur:

- Staff will schedule an annual meeting for City Council to review and approve its prioritization of adopted referrals.
- Staff will provide an interim status report between annual prioritization meetings on the referrals that have been completed and which new referrals have been taken up by staff.
- “New” referrals adopted in between annual referral prioritization sessions will go into a holding position until they are prioritized at the next annual prioritization session, unless Council designates the referral as urgent to protect life safety or to avoid losing time-sensitive funding, or unless staff designates the referral as “short-term,” meaning that it can be addressed within approximately three months.
- To assist Council to prioritize referrals, staff will provide City Council with a basic score of each referral based on estimated staff time, cost, and benefit of the referred work.
- Sponsoring City Councilmembers will have an opportunity to identify any referrals that are no longer needed and that should therefore be removed from the referral prioritization process.
- Once the Berkeley Strategic Plan is completed, all referrals should have a nexus to the Strategic Plan.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

This recommendation carries out the direction of the Council to implement a prioritization process for City Council referrals to staff.

**ALTERNATIVE ACTIONS CONSIDERED**

Council may decide to forgo a prioritization process and continue the referral process with no structured tracking or prioritization of referrals.

**CONTACT PERSON**

Mark Numainville, City Clerk, 981-6900

**Attachments:**

- 1: Complete ratings provided by the Mayor and each Councilmember
- 2: List of referrals marked by sponsoring Councilmember for removal
- 3: Resolution

Exhibit A: RRV Prioritized Referral List *(Pages 1-8 only)*

Meeting Date	Meeting Title	Recommendation	Council District #	Responsible Department/Division	Rank
10/27/2015	27. Green Affordable Housing Package (Continued from October 6, 2015)	Refer that the Planning Commission and City Manager investigate the following two policies as ways to reduce barriers for the creation of affordable housing. City Council requests that commissions and staff address and propose solutions and/or an implementation plan using the recommendations in the report by September 1, 2016. Policy 1: Designate units and funding for affordable housing by prioritizing housing over parking spaces in new developments. Policy 2: Remove the structural and procedural barriers to creating more housing.	8	Planning	1
4/5/2016	Analyzing All City-Owned Properties for Potential for Housing Development	Request that the City Manager explore the opportunity for the City of Berkeley to build housing on city-owned property: conduct an inventory of city owned properties and return to City Council as soon as possible with an evaluation and analysis of those properties that are appropriate for the development of affordable housing.	6	HHCS	2
4/5/2016	Neighborhood Preference in Affordable Housing to Reduce the Impact of Displacement and Ellis Act Evictions (Continued from March 29, 2016)	Refer to the City Manager and Planning Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within ½ mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-in or (Measure Y) <small>eviction</small>	1, 2, 5, 8	Planning	3
2/10/2015	Berkeley Police Department Use of Police Vehicle In-Vehicle and Body-Worn Cameras	Refer to the City Manager to develop a plan to implement the use of dash cameras and body-worn cameras for the Berkeley Police Department. The report should be presented to the City Council within 3 months.	4, 1, 2	Police	4
1/26/2016	Customer Service Improvements to Land Use Permit Process	Direct staff to make structural improvements to the Zoning Ordinance, communication improvements to better explain complex technical and procedural elements to the public, and organizational improvements to the Land Use Planning Division; and authorize the issuance of a request for proposals (RFP) for the selection of consultants to make structural improvements to the Zoning Ordinance and develop graphic communication elements in an amount not to exceed \$300,000.	CMO	Planning	5



Referrals in Ranked Order

11/17/2015	<p>Protecting our Parks from Unsafe, Unsanitary Conditions</p>	<p>Request the City Manager to implement the following recommendations for Ohlone Park and utilize them for other parks where appropriate.</p> <ol style="list-style-type: none"> <li>1. Increase nighttime enforcement and enable police to enter the parks at night with their cars (being sensitive to landscaping), to enforce park rules and ordinances.</li> <li>2. (Requires further discussion.)</li> <li>3. Consider the presence of needles, traces of drugs like meth and heroin, human feces, a public health threat and involve the Health Department to cordon off areas of encampment for the purpose of clearing the areas of contamination and insuring the areas are safe for public use. Monitor areas used for encampment for public health risks to enable additional action.</li> <li>4. Determine where additional signage is needed regarding camping rules, park hours, and use of the park especially in locations where encampments frequently occur.</li> <li>5. Place covered trash and recycling receptacles in high use areas in Ohlone, such as at McGee/Hearst. Determine other areas where such receptacles are needed.</li> <li>6. Assess Ohlone Park for need of additional porta potties. Northwest area of park at Grant and Hearst has been reported as "public bathroom."</li> </ol>	1	City Manager	6
10/21/2014	<p>City Manager Referral: Consider Potential Additional Ambulances a High Priority for an Amendment to This City Budget</p>	<p>Refer to the City Manager to consider the addition of new ambulances to the Berkeley Fire and EMS Services as a high priority for an amendment to the city budget if determined necessary by the Fire Chief and City Manager.</p>	7	Fire	7
3/29/2016	<p>Multi-Departmental Homelessness Working Group</p>	<p>1. Establish a Multi-Departmental Homelessness Working Group (modeled after the City Sustainability Working Group)</p> <p>2. Initiate a public process to develop a comprehensive plan to address homelessness in Berkeley, taking into consideration all of the ideas put forward by the Homeless Commission and Homeless Task Force, with the goal of creating more transitional and permanent housing for our city homeless population</p>	4	Health, Housing & Community Services	8

Referrals in Ranked Order

11/17/2015	<p>Improve Conditions on Our Community Sidewalks; Amending Berkeley Municipal Code Chapters 13.36 and 14.48</p>	<p>Discuss and refer the following services and ordinances to the City Manager for implementation, and adopt first reading of three Ordinances:                      1. Adding Section 13.36.085 to the Berkeley Municipal Code prohibiting urination and defecation in public places. 2. Amending Sections 14.48.020 and 14.48.170 of the Berkeley Municipal Code regulating use of sidewalks.                      3. Adding Section 13.36.040 to the Berkeley Municipal Code prohibiting obstruction of City-owned planters and trees. Additional Services: 1. Create a secure storage facility for personal belongings; bins must be of adequate size, of reasonable number (estimate of 50 – 100 at the outset) and ensure reasonable access, with posted hours. 2. Provide additional bathrooms in the Downtown and Telegraph areas. 3. Provide mobile showers and bathrooms for public use.</p>	1, 5, 8	Health, Housing & Community Services	9
11/18/2014	<p>City Manager Referral: Implement the PayByPhone Parking Technology as Used by San Francisco and UC Berkeley</p>	<p>Refer to the City Manager to examine the feasibility of implementing the PayByPhone parking technology as used by the City of San Francisco and UC Berkeley.</p>	7, 8	Public Works	10
7/14/2015	<p>Referral to Planning Commission: Guiding Development on San Pablo Avenue</p>	<p>Refer to the Planning Commission the development of a Plan to guide development on San Pablo Avenue.</p>	1, 2	Planning	11
1/19/2016	<p>City Manager Referral: Streamline the Permit Process for Housing Projects with a Majority or More Affordable Units</p>	<p>Refer to City Manager to create an ordinance that will streamline the permit process for housing projects with a majority or more affordable units if it includes at least 20 percent of units at 50% AMI, after consideration of Austin and Santa Fe policies and policies proposed in San Francisco.</p>	7	Planning	12
1/26/2016	<p>Condition of Approval for Major Development Projects</p>	<p>Refer to the City Manager to generate an ordinance requiring all projects that include new construction of greater than 30,000 square feet and that are not subject to local, state or federal prevailing wage requirements or do not have a valid Project Labor or Community Workforce Agreement to adhere to the requirements as outlined below. The City Manager is requested to provide a history of the wage theft problem in Berkeley.</p>	5, 2, 7, 1	Attorney	13

Referrals in Ranked Order

1/20/2015	Referral to Planning Commission to Amend Zoning Ordinance	Refer to the Planning Commission an amendment to the Zoning Ordinance to create a use permit process to allow non-commercial use on the ground floor where commercial might otherwise be required.	6	Planning	14
10/6/2015	Referral to the City Manager: Prioritize Climate Action Plan's Policy to Redesign/Rebuild the Berkeley Transfer Station and Material Recovery Facility into a State of the Art Zero Waste Facility	Referral to the City Manager: Prioritize the City of Berkeley's Climate Action Plan's policy to redesign/rebuild the Berkeley Transfer Station and the material recovery facility into a state of the art Zero Waste facility.	7	Planning	15
9/9/2014	Creating Additional Administrative Powers of Zoning Officer to Grant or Recommend New Permits as Related to Code Enforcement	Refer to the City Manager and Berkeley Planning Commission to explore the creation of a mechanism that would explicitly allow staff new discretionary powers to prevent applicants from being granted new residential permits until they have abated outstanding noncompliance issues or code violations in other buildings they own in Berkeley within a reasonable time frame or taken good faith measures to commence doing so.	Commission	Planning	16
9/15/2015	Mandatory Green Stormwater Infrastructure in New Developments	Refer to the City Manager and Planning and Community Environmental Advisory Commissions to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.	4	Planning	17
1/26/2016	Response to PRC Report on BPD Response to December 6 Protests, Revision of Police Crowd Management Policies (Continued from December 15, 2015)	Direct the City Manager to have the Berkeley Police Department collaborate with the Police Review Commission to further develop mutually agreed upon revisions to the Berkeley Police Department's policies and procedures regarding response to protest activity and to report back to the Council within 180 days for an update.	CMO	Police	18
2/9/2016	City Manager Referral: Expanding Gun Safety Measures in Berkeley	Refer to the City Manager to consider the following ordinances: 1. Banning Unsecured Firearms And Ammunition Located In Unattended Vehicles In The Public Right Of Way And "Public Places" As Defined In The Ordinance; and 2. Requiring That City-Issued Firearms In Unattended Vehicles Be Secured.	7, 6	City Manager	19


Referrals in Ranked Order

12/1/2015	City Manager Referral: Implementation of Tier One Recommendations from the Homeless Task Force (Continued from November 17, 2015)	Refer to the City Manager to develop a plan to implement the Tier One Recommendations of the Homeless Task Force, which involve expanding the city's Homeless Outreach Team and Mobile Crisis Team, increasing funding for the Crisis Intervention Training (CIT), increasing the number of public restrooms, and providing additional storage spaces and warming centers for the homeless population.	4	City Manager	20
1/19/2016	Declare a Homeless Shelter Crisis in Berkeley and Potential Implementation Strategies	Adopted Resolution No. 67,357--N.S. amended to include direction that the City Manager review the resolution for accuracy and have the power to add or subtract from the resolution, to make whatever changes are necessary to maximize our chances for additional funding.	7	City Manager	21
7/8/2014	Support Selected NAACT Housing Recommendations	Refer the HAC recommendation "Remove the R-4 requirement that new residential buildings must provide one parking space per 1000 square feet of floor space" to the Planning Commission	1	Planning	22
9/29/2015	City Council Referral to Develop a Comprehensive Plan for Funding the Undergrounding of Utility Wires on All Major and Collector Streets in Berkeley (Continued from July 14, 2015)	Postpone implementation of a Utility Undergrounding Work Plan and direct the City Manager to return to Council in Fall 2015 with a report detailing the budget and staffing required to implement a Utility Undergrounding Work Plan and Special Commission. The report would also identify projects in the City's adopted Work Plan that would be delayed in order to implement the Commissions' recommendations.	CMO	Public Works	23
9/30/2014	City Manager Referral: Implementing BigBelly Solar Compactor Bins	Refer to the City Manager to examine the feasibility of procuring BigBelly Solar Compactor Bins to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	7, 8	Public Works	24
11/19/2013	9. Portable Sign Pilot Program	Refer to the City Manager, the Commission on Disability, and the Transportation Commission for consideration the expansion of the existing portable sign program that enables businesses to place portable signs on sidewalks and medians.	4	Public Works	25
12/15/2015	Explore the Feasibility of Installing Utility-Free Restrooms in Cesar Chavez and Aquatic Parks	Refer to the City Manager to explore installing utility-free restrooms at Cesar Chavez and Aquatic Park.	2	City Manager	26

Referrals in Ranked Order

2/9/2016	Restrict Parking in the Hills Hazardous Fire Area (Continued from January 12, 2016)	Refer to staff the design of a parking restriction program in the Hills Fire Zone to ensure access for emergency vehicles and to allow for safe evacuations in an emergency and to hold public meetings to get community input in the design of such a program.	6	Public Works	27
2/23/2016	Public Restrooms in City Parks	Refer to the City Manager and the Parks and Waterfront Commission the idea of constructing permanent public restrooms in all parks with one or more acres that are maintained by the City of Berkeley and ensure that existing permanent public restrooms are maintained to an adequate standard.	4	City Manager	28
9/15/2015	Refer to the City Manager, Disability Commission, and Planning Commission to Develop an Ordinance Requiring New Residential Buildings to Provide Auto-door Openers and Roll-in Showers	Refer to the City Manager, Disability Commission, and Planning Commission to require new residential buildings in Berkeley to include essential wheelchair-accessible modifications such as auto door openers and roll-in showers.	7	Planning	29
12/11/2012	21. Streamlining Enforcement of Zoning and Municipal Code Violations and Public Nuisance Abatement Procedures	Direct the City Manager to propose methods of enforcing the zoning and municipal codes that would result in more timely compliance of problematic uses, including those in undisputable violation of our laws, and/or propose ways in which to streamline the nuisance abatement procedure and return with a report and suggestions to improve the process in 6 months.	5, 1, 2, 6	City Manager	30
7/8/2014.	31. City Manager Referral: Refer CPTED Streetscape for Action and Exploration of Grant or Other Funding Opportunities to Find the Funds to Construct the Proposed Improvements	Refer the Crime Prevention Through Environmental Design (CPTED) streetscape to the City Manager for action and exploration of grant or other funding opportunities to find the funds to construct the proposed improvements.	7, 8	Public Works	31



<p>2/10/2015</p> 	<p>Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid) and U-2 (Use of Force)</p>	<p>Refer to the Police Review Commission (PRC) and City Manager the attached changes to BPD General Orders C-64, M-2, U-2, and request that they return to the City Council with recommended revisions to the General Orders. The proposed changes are modeled after the Oakland Police Department's recent amendments to their Crowd Control Policy and address issues raised with the police response to the December 6, 2014 Ferguson protests. 2. Adopt a motion declaring as a temporary City of Berkeley policy that the use of chemical agents (tear gas etc.), Specialty Impact Less-Lethal Weapons ("projectiles" or rubber bullets, wooden dowels, stinger grenades, rubber bullets) and over the shoulder baton strikes, are prohibited uses of force in responding to crowd situations, until such time as an investigation is conducted as to the Police response to the December 6, 2014 protests, and a review of General Orders C-64, M-2, and U-2 is completed.</p>	<p>4</p>	<p>Police</p>	<p>32</p>
<p>7/14/2015</p>	<p>Referral to Planning Commission: Clarifying Front and Rear Units</p>	<p>Refer to the Planning Commission a request to clarify the relationship (height, bulk) between front and rear units when a rear unit is proposed for the rear yard.</p>	<p>1</p>	<p>Planning</p>	<p>33</p>
<p>12/16/2014</p>	<p>Referral to Planning Commission and City Manager Regarding the Feasibility of Requiring the Installation of Water Fountains/Filling Stations for New Commercial Development Projects</p>	<p>Refer to the Planning Commission and the City Manager the development of an ordinance requiring all new commercial development projects and remodels above a specified amount to incorporate a publicly available drinking fountain and/or water bottle filling station or locations on the premises where one may be installed without additional cost to the city for piping water to the location. Report back to council within 6 months.</p>	<p>5</p>	<p>Planning</p>	<p>34</p>
<p>12/17/2013</p>	<p>36. Revising the Berkeley Municipal Code to More Effectively Address Illegal Dumping</p>	<p>Direct the City Manager to propose potential revisions to the Berkeley Municipal Code to better address illegal dumping in the city.</p>	<p>2</p>	<p>Public Works</p>	<p>35</p>

Referrals in Ranked Order

11/19/2013	19. Referral to City Manager: Changes to the Municipal Code Regarding Affordable Housing Requirement Implementation	<p>Refer to the City Manager and Housing Advisory Commission: 1. The proposed changes to Berkeley Municipal Code (B.M.C.) Section 22.20.065, relating to affordability requirements and implementation of the Affordable Housing Mitigation Fee. Request that the City Manager and HAC review these concepts and provide a recommendation to the City Council on possible changes to the ordinance. 2. Requesting a report from the City Manager about how staff implement the provision allowing for reductions or waiver of fees, B.M.C. Section 22.20.080, including: a. What information is requested of the applicant to provide "satisfactory factual proof" that the waiver/reduction is a "hardship"? b. What process does city staff go through to determine how fee requirements make a project "infeasible"? What standard does the city use to determine "infeasibility"? The report should also explore requiring that the applicant pay for a third party to evaluate financial information to determine how the fees affect financial feasibility. The City of San Carlos requires the applicant to pay for a third party to evaluate their pro forma to determine whether the fee would make the project infeasible.</p>	4, 5	Planning	36
1/17/2012	Referral to the Commission on the Status of Women (PDF)	<p>Refer to the Commission on the Status of Women the alleged offensive treatment of women in custody at Santa Rita Jail, as reported below with the aim of ensuring that searches of women not be conducted in the presence of men (be they male officers or inmates) and any other changes in protocol that might be needed to ensure appropriate policies are followed during searches of women in custody.</p>	1	Health, Housing & Community Services	37
12/17/2013	48. City Manager Referral: Preparations to Apply for Telegraph Pedestrian Safety Funds (Continued from December 3, 2013)	<p>Refer to the City Manager to apply for Telegraph Ave pedestrian safety funds and to produce a preliminary plan for Telegraph pedestrian safety improvements as requested by the Telegraph Merchants Association.</p>	7	Public Works	38
1/27/2015	Request that the City Manager work with Caltrans to upgrade the intersection at San Pablo and Cedar	<p>Request the City Manager analyze the subject intersection and work with Caltrans to make improvements to prevent long back-ups at the intersection of San Pablo and Cedar, particularly focused on the need to create a left-turn lane onto San Pablo heading north.</p>	1	Public Works	39
10/21/2014	City Manager Referral: Consider Implementing a Neighborhood Notification System for the City of Berkeley	<p>Refer to the City Manager to look into a mass communication system for the City of Berkeley as a way for Berkeley's government departments to send residents important notifications through text messages, email, and the web.</p>	7, 8	Information Technology	40

**Lee, Katherine**

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**From:** PRC (Police Review Commission)  
**Sent:** Tuesday, June 07, 2016 7:25 PM  
**To:** Lee, Katherine  
**Cc:** Norris, Byron  
**Subject:** FW: Public comment at meeting of the Berkeley Police Review Commission  
**Attachments:** Michaela Jones Letter to BPRC re expansion of its jurisdiction.doc; Michaela Complaint to Berkeley Citizens' Police Review Board.doc1.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** For Agenda

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**From:** Peter [mailto:phaberfeld@hotmail.com]  
**Sent:** Tuesday, June 07, 2016 6:10 PM  
**To:** PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>  
**Subject:** Public comment at meeting of the Berkeley Police Review Commission

**To:** BPRC  
**From:** Peter Haberfeld, member of the public

**Re:** A proposal to expand the PRC's definition of an "aggrieved person" entitled to submit a Complaint regarding police conduct to include a member of the public who personally observed the conduct of which s/he complains

Please review the two documents attached here: Letter to PRC, dated June 7, 2016; and Letter of Complaint, dated February 17, 2016.

Sincerely,

Peter Haberfeld



June 8, 2016

To: Berkeley Police Review Commission  
From: Member of Public, Peter Haberfeld

Re: Public Comment regarding my proposal that BPRC expand its jurisdiction to include complaints by members of public who witness and object to police conduct

Dear Members of the Berkeley Police Review Commission:

On August 31, 2016, I witnessed an incident at the intersection of Shattuck and Alcatraz in Oakland that involved uniformed and armed police officers of the Berkeley Police Department. They stopped, detained, and arrested four Black youngsters. Their conduct included violently attacking one of the youths, a slight built 19 year old girl, while she was observing, videotaping and commenting on the way police officers were treating two of her friends. Additionally, it included a violent attack on her friend while he attempted to retrieve her cell phone from the pavement after it was knocked from her hand by the police when they threw her violently to the ground.

On February 17, 2016, I addressed a letter to the Berkeley Police Review Commission that included a description of the incident I had observed as well as my conclusion that the BPD officers violated the rights of the four youngsters in several ways. I also complained in that letter that the BPD denied my written request of November 6, 2015 for information to which I am entitled by the California Public Records Act. I had asked for the date on which each of six officers was trained, the name of the training academy, and the content of the training materials. I attached the letter to the PRC Complaint form. It is attached here for your review.

The BPRC responded to my Complaint in two ways.

1. It granted a hearing that was held on June 6, 2016 regarding the allegations that the BPD violated my CPRA rights when it denied my request for information
2. It pointed out that it had no authority to investigate and resolve my complaint regarding the police conduct I observed because I am not an "aggrieved person" as that term is defined in its enabling legislation. Members of the public who are not direct victims of the police conduct do not have a right to file a complaint. Only one or more of the four young people at whom the police directed their actions could file a PRC Complaint.

Regrettably, the four youngsters chose not to file a complaint. They do not believe that filing a complaint would have any consequence other than making their future relationship with the BPD more problematic. They decided to direct their efforts to defending themselves against criminal charges and recouping their financial losses. Consequently, the PRC has had no opportunity to investigate the incident.

The Legislature and Courts have recognized that the existence of police departments that deploy armed officers who are allowed to direct violence against members of the public in limited

circumstances poses a potentially serious problem for public safety. The purpose underlying the creation of the BPRC appears to be to oversee the manner in which the police function is carried out by the BPD. The Commission is charged with ensuring members of the public that their tax dollars are spent in a manner consistent with constitutional and statutory requirements that are designed to protect members of the public from abuse.

The current definition of the term “aggrieved person” is too limited to enable the PRC to fully accomplish its purpose. Ironically, under the present definition, it is the direct victim of police abuse who alone must shoulder the responsibility of ensuring that its City police department carries out its function properly. Yet, such victims may be the least likely group in the community to initiate the confrontation that arises by filing a Complaint. In many cases, the members of the community who the police stop, detain and arrest are the most marginalized by income, type of employment, neighborhood, education, health and race. They do not possess the experience, skills, and confidence of the dominant majority that they can effectively represent their interests in the formal setting of the PRC. They are highly unlikely to initiate PRC Complaints.

It is also rare, too rare, that members of the public who observe misconduct will file a complaint with the PRC. There were ten to fifteen members of the public who stopped at the intersection of Shattuck and Alcatraz that evening, several of whom had been traveling by car, to observe the behavior of the police. Several of the observers video-recorded the police conduct. They expressed shock and disapproval about what they saw.

Only I appear to have filed a formal Complaint. Perhaps it is because, as a lawyer, I know that not only must the police treat those it stops with respect and decency but it is against the law to use unnecessary and excessive force to “establish their authority.” I believe that the PRC should have the opportunity to consider my observations and to decide to investigate and resolve complaints about police misconduct.

As an additional rationale for expanding jurisdiction to hear more complaints, the PRC will be able to identify patterns of conduct that need further scrutiny. As an example, I spoke with a public defender about what I had observed. He sees many cases and reviews many police reports in the course of his work. He confirmed several of my suspicions about the conduct I observed and the reports I reviewed.

- Penal Code section 148 (obstructing, delaying and interfering with a police officer while s/he is performing official duties) is used as the pretext for arrest when a stop and detention do not produce information that any other crime was committed. The officer claims that the arrested person failed to follow a direction s/he gave during the interrogation.
  - On August 31, 2015, the police stopped and detained one of the four youngsters claiming that he met the description of a young black man who attempted to steal a cell phone. The claimed justification however presented two problems: first, the description by the victim described the wrongdoer as having short hair, but he had long dreadlocks; second, when the police transported him to be observed by the victim, the latter said he had nothing to do with the attempted theft.

- One of the officers who wrote a report about the incident I observed claimed the young man refused a command to put his backpack on the ground. (Another officer claimed that he refused a command that he not put the pack on the ground.) The police arrested him for a PC 148 violation. He spent two days in jail and incurred the cost of a bail bond. The DA did not file charges.
- Boilerplate language is used by the police as they write their reports to make up facts that are designed to make the conduct appear more egregious. The public defender volunteered that reports seeking to justify a PC 148 arrest often claim the defendant “assumed a fighting stance.” One of the officer’s report claimed that the young woman ” assumed a fighting stance,” ostensibly while she was video recording his conduct.
- The officer describes language s/he attributes to the “subject” that the accused denies uttering. The words are in the vernacular for the apparent purpose of portraying the person as the “other” who uses the ghetto or street talk of the uneducated and, by implication, lowly folks who are not entitled to respect and decent treatment.

Respectfully submitted,

Peter Haberfeld  
(Cal. St. Bar #41723)  
(510) 990 4377  
phaberfeld@hotmail.com





February 17, 2016

Berkeley Civilian Police Review Commission  
1947 Center Street, 3<sup>rd</sup> Floor  
Berkeley, California 94704

Re: Complaint concerning conduct by employees of the Berkeley Police Department operating in Oakland by agreement with Berkeley

Dear Members of the Berkeley Civilian Police Review Commission:

This complaint concerns conduct by members of the Berkeley Police Department that violates protections guaranteed by the State and Federal Constitutions as well as California statutory law. More specifically, it concerns two types of laws that are designed to protect the public in Oakland:

- 1) protection against unlawful detention and arrest; being subjected to unreasonable and excessive force and violence by police officers; and being prohibited and punished for observing, video recording and commenting on police conduct; and,
- 2) Protection of the public's right of access to public records under the California Public Records Act.

I. Unlawful police conduct toward a young Black woman and her three young Black men friends:

My presentation summarizes the incident I observed on August 31, 2015 that involved five officers of the Berkeley Police Department when they entered Oakland and arrested two young Black people for crimes they believed were committed in Berkeley, and then arrested their two young friends who had arranged to meet them at the intersection of Shattuck and Alcatraz. (Peo. v. Johnson and Jones, Complaint # 608895-2B) My complaints about the police conduct are based on my observations, witness interviews, reports filed by some of the officers involved in the detention and arrest of the four young people, and the laws that are to protect individuals against police abuse.

The incident occurred at the intersection of Shattuck and Alcatraz Avenues in Oakland, California. It began with the stop, detention and arrest of two young black men (Trevor Johnson and Janye Waller) who the police approached as suspects of two separate crimes that had been reported to them: a battery and attempted theft of a cell phone from Victim 1 by two young Black men and an attempted theft of a pizza from Victim 2 by one young Black man. The victims said that those crimes occurred in Berkeley a few blocks away from the Oakland intersection.

Later, after the officers placed the two young men in handcuffs, they took them to be seen by Victim 1. He told police that they had nothing to do with the incident he had complained about to the police.

Had the police respected the constitutional rights of the two young men and abided by principles of California law, they would not have detained or arrested them. Nor would they have beat up their two friends and then arrested them for interfering, obstructing or delaying police officers carrying out their duties.

A reasonable interview of the two young men by the police would have informed them that Janye and Trevor had taken a bus from downtown Berkeley to the corner of Shattuck and Alcatraz Avenues in Oakland where they had arranged to meet their friends Michaela Jones and Dominique Johnson. It would have been impossible logistically for them to have carried out that arrangement from downtown and at the same time be anywhere near the locations described by the victims of the two crimes.<sup>1</sup>

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<sup>1</sup>The City of Oakland's involvement in the incident: The Oakland Police Department (OPD) was involved in the incident described above in several ways even though the arresting officers were employed by the Berkeley Police Department (BPD).

- (1) The arrest occurred in OPD's jurisdiction. Oakland is party to an agreement with Berkeley that it may arrest people in Oakland who they believe committed a crime in Berkeley.
- (2) OPD officers participated in the incident. BPD officers had summoned them.
- (3) It is my information and belief that the five BPD officers involved in the arrests were trained by Alameda County Sheriff's Police Training Academy. I have tried unsuccessfully to verify that by filing a California Public Records Act request with the Berkeley Police Department in November 2015. It has also refused to provide me with a copy of the training materials used to train the officers involved in the incident described here on the ground that the materials used in the training course fall within the personnel files exemption of the Act.
- (4) Further, the Alameda County Sheriff's Police Training Academy appears to have continuing responsibility for the training of its graduates concerning the enforcement of amendments to the California Penal Code. In July 2015, the California State Legislature amended PC 148 to include PC 148(g). The amendment codifies the guarantee by the Federal and State Constitutions that individuals have the right to observe, video record and comment on the police engaged in the performance of their duties.
- (5) The City of Oakland is obligated to protect all persons while they are in its jurisdiction, specifically their right to be free from unlawful detentions and arrests, the unreasonable and excessive use of force, and to exercise their constitutional rights of freedom of speech. That includes protecting them against the conduct of the police it permits to operate within its borders under limited circumstances.

The police did not bother to ask Janye or Trevor how they arrived at the intersection, how long they had been there, where they had been during the previous hour, or for what purpose they were standing on the corner. The police did not explain to the young men anything about why they stopped them or inform them of their Miranda rights. Nor did they take into account their physical characteristics that differed from the descriptions given them by victims of the two reported crimes or the different clothing and back packs they were wearing. There appears to have been no effort by police to find evidence that supported the presumption of innocence to which Janye and Trevor were entitled. Rather, the fact that Victim 1 complained of the conduct of two young black men, one of whom was wearing a grey hoodie, was deemed sufficient to justify their stop, detention and arrest. The police did not conduct a reasonable investigation under the circumstances.

The detention and arrest of Janye and Trevor led also to the violent arrest of two of their friends. When Michaela Jones and Dominique Johnson (Trevor's brother) arrived by car to meet Trevor and Janye at the intersection, they saw that the police were detaining them at the southeast corner of the intersection. Michaela immediately parked her car. Michaela and Dominique got out and she began to video record the police activity on her cell phone.

Officer Edwards ordered Michaela to leave the area, to cease exercising her constitutional and statutory right to observe, video-record and comment on the police conduct. She continued to video record the officers and verbally denounced their actions towards her friends. Without warning, he grabbed her and threw her to the pavement in the parking lot several yards from where he had first confronted her. The officer climbed on her and wrestled with her until he was able to force her arms behind her back and he could place handcuffs on her wrists. She began to scream that he should get away from her and yelled repeatedly questioning why he was doing that to her.

As the officer took Michaela down, he knocked the cell phone from her hands. It fell on the ground, and skidded around from place to place as a result of the officer's physical attack. Dominique Johnson, with his back to the take-down of Michaela, attempted to retrieve the phone that had recorded the police's interaction with Michaela and her three friends. As he tried to grab the phone, Officer Hogan, without warning, grabbed at Dominique from behind and succeeded in knocking him off his feet.<sup>2</sup> As Dominique

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<sup>2</sup> The police picked up Michaela's cell phone after they arrested her and did not return it to her when they released her from physical custody. Law enforcement may not search without a warrant the contents of a cell phone seized from someone who has been arrested absent an emergency situation. See United States Supreme Court's unanimous decision in in 2014 in Riley v. California. (The California State Legislature's Electronic Communication Privacy Act (Senate Bill 178), when passed, will codify the Supreme Court's holding in Riley.) Officers did not obtain a warrant before they seized Michaela's phone. In early September 2015, at the time of Michaela's arraignment, her attorney submitted a written request to the District Attorney that the police return Michaela's cell phone to her. The prosecutor refused to return the phone for several months.

fell to the parking lot pavement, the officer pinned his arms behind his back, handcuffed him and placed him under arrest.

The combination of the unprovoked and gratuitous violence directed at both young people and the terror Michaela expressed when she was attacked by the police was extremely upsetting. The comments and facial expressions that I exchanged with other community members who had gathered on the intersection sidewalk in response to the police conduct revealed that my shock, dismay and disapproval was shared by other observers.

The police placed each of the four young people in separate squad cars and transported the three young men (Dominique, Trevor and Janye) to a location at which the police presented them to Victim #1. After he told the police that none of the three young men had anything to do with the incident he had complained about, the police released Trevor without charges.

Police jailed Janye for allegedly violating California Penal Code section 148 (interfering, delaying and obstructing an officer engaged in the performance of lawful duties). Two officers wrote contradictory accounts of Janye's alleged crime. One officer wrote in his report that Janye refused an order to set down his backpack; the other officer wrote that Janye refused an order **not** to set down his backpack. The District Attorney did not charge Janye for violation of PC 148; he was cited, however, for possessing a small quantity of marijuana by the officer who claimed in his report that he could smell it in Janye's back pack when he transported him to jail.

Police charged Michaela and Dominique with interfering, obstructing and delaying police officers who allegedly were lawfully engaged in the performance of their duties. Additionally, the police charged Dominique with a misdemeanor battery on a police officer for allegedly pushing away the hands of the officer who, unseen, took him down from behind.

Michaela, Dominique and Janye, who now have an arrest record as a result of this incident, remained in jail until they posted bail two or three days later.

There are no facts to suggest that anyone interfered with, delayed or obstructed the officers as they detained and arrested Trevor and Janye. The officers who were detaining and arresting Janye and Trevor proceeded without interruption. Janye, standing amidst the officers, told them that he had not committed any crime. Trevor appeared not to engage the officers in conversation. They were placed in handcuffs and stood on the street with the officers until police transported them to their field "line-up".

My wife Victoria Griffith and I were driving north on Alcatraz, and saw that a growing number of police officers had detained two young black men at the south east corner of Alcatraz and Shattuck. Victoria pulled into the driveway off Shattuck, parked a short distance away from where Michaela had parked her car. Both of us got out. We saw a number of civilians stopping at the intersection. Some, like my wife, began to video tape the police activity with their cell phones.

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An officer told Victoria to move away with her cell phone camera. She replied that she had a legal right to record his activity, he had plenty of room, and she had no intention of interfering with his activity. In contrast to the manner in which the police responded to Michaela's identical behavior, the officer thereafter ignored my wife's continued presence and activity. She is a 54-year old Caucasian.

To justify the **detention** of a suspect in California, police officers must have a **"reasonable suspicion"** that a crime was committed by the detainee. The police reports recount that two separate complaints had been made to police officers within the hour prior to their interaction with Janye and Trevor. The reports of Officer Kacalek, who took a report from Victim #1, and Officer Salazar, who took a report from Victim 2, contain those individuals' physical descriptions of the persons who committed crimes against them.

The police detentions of Janye Waller and Trevor Johnson were not supported by evidence apparent to the officers that could have supported **"reasonable suspicion"** on their part that the two young men had committed the crimes described by Victims #1 and #2. The officers stopped when they observed two young Black men at the Oakland street corner, one of whom, Trevor, was wearing a grey hoodie, which was one of the characteristics Victim #1 described in his statement to Officer Kacalek. However, the police did not take into account the physical characteristics, as well as the clothing and back packs of the two young men, that did **not** match the descriptions provided by victims #1 and #2.

- 1) Officer Edwards wrote that he was looking for a suspect, involved in the cell phone incident, who had a "scruffy beard." Yet the description that victim #1 (attempted robbery of cell phone) gave to officer Kacalek, and was passed on to other officers, did not claim that suspects had facial hair. Trevor's facial hair was **not** a characteristic that tied him to the crime described by Victim 1.
- 2) Victim 2 said that one young Black man tried to steal his pizza and he wore a goatee. Neither Trevor, Janye nor Dominique wore a goatee. Trevor's facial hair was not a characteristic that tied him to the crime described by victim 2. That neither Trevor nor Janye wore a goatee should have been taken into account by the officers as evidence that they were **not** connected to the attempted theft of the pizza
- 3) Victim #1 described two Black men with short hair. The officers should have viewed evidence that Janye had long dread locks as evidence that he was **not** connected to either of the crimes described by Victims 1 and 2.
- 4) Neither Trevor's, Janye's nor Dominique's clothing met Victim #1's description. The suspect who police claimed matched Trevor's description wore grey jeans. Yet, Trevor wore dark jeans. The officers should have viewed their clothing and back packs as evidence that they were **not** connected to the crimes they were investigating.
- 5) The back packs of the two young men did not match the descriptions of either victim. Officer Edwards said he was looking for a suspect with a grey backpack. Yet, Trevor had a black pack.

Janye did not have a grey back pack either. Yet the officers did not view this evidence as supporting the conclusion that they were **not** the suspects described by the victims.

- 6) Victim #1 described the second suspect as wearing a yellow t-shirt and blue jeans. Yet, Trevor wore a grey hoodie. Janye wore a black shirt and black pants. Dominique wore a white t-shirt. The officers failed to view these differences from the descriptions by the victims as evidence that the young men they detained and arrested were **not** involved in the crimes alleged by the victims.
- 7) Victim 2 told officer Salazar that the individual he believed sought to steal his pizza wore a black shirt and, black/red hat, and a black/red backpack. Trevor had a black back pack. He did not wear a hat or black shirt. Janye did not wear a hat, or black/red back pack. Dominique had no facial hair or hat and wore a white shirt. None of them was alone when confronted by the police. Similarly, the police did not take these differences into account.

Further, as is explained above, the police who accosted Janye and Trevor at the street corner failed to investigate in a reasonable manner whether they were connected to the crimes committed against Victims #1 and #2. Had the police conducted a reasonable interview when they stopped the young men, or a reasonable investigation when they detained them, the officers would have elicited information that the two young men had caught a bus a few miles away in downtown Berkeley and had just arrived at the intersection to meet Michaela and Dominique. That information should have led them to conclude that Janye and Trevor were **not** the individuals described by the victims.

Without taking into account the characteristics that were different from those described by the victims and without conducting a "reasonable" interview or "reasonable" investigation, whatever suspicion the officers harbored about the young men they arrested was not a "reasonable" suspicion.

To justify an **arrest** of a suspect in California, police officers must have "**probable cause**" to believe that a crime has been committed by the arrestee. The arrests of Janye Waller and Trevor Johnson were not supported by evidence apparent to the officers that could have justified a conclusion that there was "probable cause" to believe that they had committed a crime. Nothing occurred during the officers' detention of Janye and Trevor to add to their insufficient justification for detention. The arresting officers continued to ignore evidence apparent to them that the physical appearance of Trevor and Janye, and the items they wore, differed from the description given to them by Victims #1 and #2. The officers continued to fail to conduct a reasonable interview. A reasonable investigation, in contrast, would have revealed that the young men the officers arrested did not match the descriptions given to them by the victims, and that they had no opportunity to commit the crimes described by the victims because they had been in downtown Berkeley, miles away from the location of the alleged offenses and were traveling on the bus when they allegedly occurred.

Police officers often use Penal Code Section 148 (obstructing, delaying and/or interfering with an officer in carrying out their lawful duties) to enforce their subjective notion of what behavior they consider "appropriate" on the part of civilians with whom they interact. The vagueness of the terms of that

provision invites the police to sweep up persons they consider "undesireable" in much the same way that police historically have used vagrancy and loitering statutes. The courts however, have made clear that there are objective standards that limit police discretion.

The prosecution must present proof **beyond a reasonable doubt** that the arresting officer was **lawfully performing or attempting to perform his duties**. There are three bases for finding that the officers were **not** engaged in the lawful performance of their duties and therefore cannot justify the arrests of Michaela and Dominique who the police arrested for violation of Penal Code section 148..

- 1) An officer is not lawfully performing his duties when he detains an individual without reasonable suspicion or arrests an individual without probable cause." Nuno v. County of San Bernardino (C.D. Cal. 1999) 58 F.Supp. 2d 1127, 1134. (Also see jury instruction that an officer is not lawfully performing his duties if he unlawfully arrested or detained defendant. (Judicial Council of California Criminal Jury Instructions CALCRIM 2670)) As explained above, officers had neither reasonable suspicion to detain Janye and Trevor nor probable cause to arrest them. Consequently, observing, recording and commenting on their arrest could not have met the legal standard of interference, obstruction, or delay of police officers lawfully performing their duties.
- 2) Nor is an officer lawfully performing his duties if s/he used unreasonable or excessive force while arresting defendant. (Judicial Council of California Criminal Jury Instructions CALCRIM 2670). The officers suddenly physically attacked Michaela and Dominique. The police had not informed them of the place and manner in which they could continue to exercise their constitutionally guaranteed free speech activity of observing, recording and commenting on the police conduct. They did not warn them that they believed the young people to be engaged in unprotected, unlawful activity and that they would arrest them for a criminal offense unless they discontinued their conduct. Nor did the police attempt first to place them in custody by peaceful means. Neither Michaela nor Dominique resisted the officers' efforts to physically subdue them. The violence directed at the two young people constituted excessive and unreasonable force under the circumstances.
- 3) The courts are vigilant to ensure that an arrest for violation of PC 148 is not a subterfuge for quelling protected First Amendment activity, specifically the exercise of the freedom to speak. An officer is not lawfully performing his duties if they arrest a person for protected speech. A person's words only can be stripped of their First Amendment protection "where such advocacy is directed at inciting or producing imminent lawless action and is likely to incite or produce such action." Reseck v. City of Huntington Beach (9<sup>th</sup> Cir. 2002) 2002 WL 1418270, at 1. The content of Michaela's speech was protected. Her utterances during her observation and video recording of the police conduct toward her friends Janye and Trevor were not directed at inciting or producing lawless action. Nor was it likely to incite or produce such action. It was **speech** that was entitled to protection by the police. Although several people present verbally expressed their disapproval of the police activity, the four young people and the community

members who spontaneously stopped near the intersection to observe, and in some cases, video recorded the police activity, did not engage in hostile conduct.

The conduct of video recording is considered equivalent to an exercise of free speech. The 2015 amendment to Penal Code Section 148 (section 148(g)) is termed the Right to Record Act. It establishes that an individual has a right to video the conduct of a police officer as part of that individual's First Amendment right of free speech. It states explicitly that the act of video-recording the conduct of a police officer does not in and of itself constitute unlawful interference, obstruction or delay of police officer.

Courts have acknowledged that law enforcement officers have an incentive to repress opposition because they are granted substantial discretion that may be used to deprive individuals of their liberties. Glick v. Cunniffe (1<sup>st</sup> Cir. 2011) 655 F.3d 78, 82-83. ). The use of police authority against individuals to deter protected speech, which includes photography, is unconstitutional. Police officers may not use their power to retaliate against individuals for their free speech. Duran v. City of Douglas (9<sup>th</sup> Cir. 1990) 904 F.2d 1372, 1375-1378. Also see. Beck v. City of Upland (9<sup>th</sup> Cir. 2008) 527 F.3d 853, 871. An individual who is video-recording a police officer has a right to be free from police action motivated by retaliatory animus. Ford v. City of Yakima (9<sup>th</sup> Cir. 2013) 706 F.3d 1188, 1193 quoting Skoog v. City of Clackamas (9<sup>th</sup> Cir. 2006) 469 F.3d 1221, 1231-32; Fordyce v. City of Seattle (9<sup>th</sup> Cir. 1995) 55 F.3d 436, 439. "Retaliation" is conduct that would chill or silence a person of ordinary firmness from future First Amendment activities (Ford, supra, at p. 1193, quoting Skoog, supra, at p. 1231-1232).

The First Amendment means police will have to endure some amount of observation and public, verbal challenge. Likewise, they must endure the critical, documentary eye of a recording. In a narrow set of circumstances, police might be able to justify limiting the time, place and manner of recording, if, for example, they can prove that the act of recording interferes with their ability to do their jobs. (City of Houston v. Hill, 482 U.S. 451(1987); Glik v. Cunniffe, supra.) Uniformed officers may legitimately order citizens to move away if, for example, the recording is clearly provoking the arrestee or other bystanders to become hostile or violent. (Gericke v. Begin, 753 F. 3d 1 (1<sup>st</sup> Cir. 2014); Glik v. Cunniffe, supra.) However, the police do not have a right to impose time, place and manner limitations for the purpose and/or affect of prohibiting the exercise of free speech.

Michaela's conduct did not violate a lawful "time, place, or manner" limitation. There is no evidence that any limitation on the exercise of constitutional rights was warranted under the circumstances as a means of protecting a countervailing public interest. As explained above, there was no intent or likelihood that her speech constituted "incitement."

Although obligated to do so, the officers failed to protect Michaela's constitutional and statutory right to observe, record and comment on their conduct. Officers did not inform Michaela that she could exercise her right to continue her activity in a limited way. The police in effect sought to prohibit Michaela's free speech activity.



Officers Edwards and Duran used excessive and unreasonable force against Michaela and Dominique. Moreover, while we cannot be positive about the officers' motives, a jury could conclude that their excessive and unreasonable force was motivated by retaliatory animus toward the young Black people and was designed to quell their First Amendment activity. Perhaps it was because the officers perceived the young people as behaving or speaking "inappropriately." Or, it arose from the officers' implicit bias against them because of their physical characteristics, their youth, words, neighborhood, or socio-economic class. Possibly the officers acted to establish their authority against what they viewed as unacceptable defiance or disrespect by Michaela and the bystanders.

The officers' conduct constituted unlawful retaliation. The police conduct directed at Michaela and Dominique involved: 1) a violent and terrifying attack on the integrity of their persons, 2) the publicly humiliating experience of being placed in handcuffs and a patrol car, 3) confinement in a jail cell for at least two days, 4) being "extra-judicially" punished by the physical injuries they sustained and fined by the requirement to post bail, 5) a many month- long series of court appearances in which they have to defend against accusations of having committed a crime, and 6) a life-long arrest record that can be used to deny them and their family members various public benefits. That is the type of "conduct that would chill or silence a person of ordinary firmness from future First Amendment activities."

- ii. Unlawful refusal by Berkeley Police Department to allow Oakland resident to review and receive copies of materials used to train police officers operating in the jurisdiction of Oakland:

**Requested Remedy**

**As a remedy, I seek that this Review Commission**

- 1) Conduct an investigation of, and impose discipline on the officers involved in, the incident I have described as occurring on August 31, 2015 that resulted in the violation of the rights of the four young people.**
- 2) Provide to me a copy of the written agreement between the Cities of Oakland and Berkeley that governs the instances in which Berkeley police officers are entitled to carry out duties within the geographical area of the City of Oakland, and any limitations on that right.**
- 3) Provide to me the name and address of the police training academy that trained each of the five officers I describe as having been involved in the incident of August 31, 2015 and the year in which the training occurred.**
- 4) Provide to me a copy of the materials the particular training academy submitted during the year in which each officer was trained by it that resulted in certification by Post to conduct its police training program.**

**Respectfully submitted,**

**Peter Haberfeld (California State Bar #41723)  
6312 Florio Street  
Oakland, California 94618  
(510) 990 4377  
[phaberfeld@hotmail.com](mailto:phaberfeld@hotmail.com)**

**Lee, Katherine**

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**From:** PRC (Police Review Commission)  
**Sent:** Thursday, June 09, 2016 4:49 PM  
**To:** Lee, Katherine  
**Cc:** Norris, Byron  
**Subject:** FW: PRA request regarding the DUI Checkpoint in May  
**Attachments:** PRA Response letter (2).pdf

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**From:** Andrea Prichett [mailto:prichett@locrian.com]  
**Sent:** Thursday, June 09, 2016 4:45 PM  
**To:** PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>  
**Subject:** PRA request regarding the DUI Checkpoint in May

Dear Commissioners,

I am writing to seek your assistance in gaining responses to my PRA requests. I will share with you the information I obtained from BPD once I can get down to the police department after work. However, I would like to raise these questions in relation to my requests:

1. It has become routine for BPD to exceed the legal time limit for responding to PRA requests and I would like your help in understanding why. According to the CPRA, the department has 10 calendar days to respond to any request. You will notice that I sent my request on May 24 and only received a response on June 9th. I have many examples of this disregard for the CPRA.
2. I specifically requested that the information be transmitted digitally. I see no reason for this request to require my in person contact or for this request to incur any expense for copying if the information is available in digital form. Is the BPD online? Why make copies if no one asked for them and, in fact, asked for emailed copies?
3. Is this response credible? Are we really meant to believe that there are NO records which evaluate the operation? No emails? No meeting minutes? If that is true, it is alarming. If it is not, we have a credibility deficit.
4. I protest the arbitrary withholding of Operational Plans and After Action reports. These records have been and are periodically released and the withholding of these records is, I believe, in violation of the spirit of the CPRA and politically motivated. I ask that you consider how we can compel the cooperation of the BPD in basic PRA requests.

Thanks for you consideration,

Andrea Prichett

Berkeley Copwatch

----- Forwarded Message -----

**Subject:** PRA request  
**Date:** Thu, 9 Jun 2016 23:19:39 +0000  
**From:** Brewer, Crystal <CBrewer@ci.berkeley.ca.us>  
**To:** 'prichett@locrian.com' <prichett@locrian.com>

Dear Ms.Prichett,

Attached is the responsive letter regarding your PRA request.

**Crystal Brewer**

Berkeley Police Department  
Professional Standards  
2100 Martin Luther King Jr. Way  
Berkeley, Ca 94704  
'510.981.5998  
✉ [cbrewer@ci.berkeley.ca.us](mailto:cbrewer@ci.berkeley.ca.us)

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ORIGINAL REQUEST

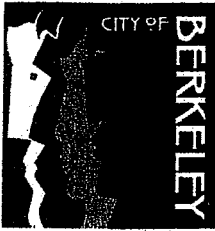
Dear Custodian of Records,

Please respond to this California Public Records Act Request. I would like a digital copy of the following items:

1. **After Action Report and/or any documents, emails, etc. that evaluated the effectiveness of the operation.**
2. **Operational Plan** for the checkpoint collaboration with California Highway Patrol on May 20, 2016
3. The grant proposal that was written in support of the checkpoint operation.
4. Training and Information Bulletin 235 (TIB 235)
5. A copy of any literature routinely distributed to the public regarding how to recover a confiscated vehicle, with fee schedule for storage and towing.
6. Any data/statistics generated as a result of the operation including:
  - \* number of stops
  - \* race/ethnicity of people stopped
  - \* number of searches (person)
  - \* number of sobriety tests
  - \* number of car searches
  - \* number of citations
  - \* number of tows
  - \* number of arrests

Thanks in advance for your cooperation,

Andrea Prichett



Berkeley Police Department

June 8, 2016

[Prichett@locrian.com](mailto:Prichett@locrian.com)

RE: Public Records Act Request

Dear Andrea Pritchett:

This is in response to your Public Records Act Request, received on May 24, 2016 requesting the following:

1. After Action report and/or any documents, emails, etc. that evaluated the effectiveness of the operation.
2. Operational Plan.
3. The grant proposal that was written in support of the checkpoint operation.
4. Training and Information Bulletin 235.
5. A copy of any literature routinely distributed to the public regarding how to recover a confiscated vehicle.
6. Any data/statistics generated as a result of the operation.

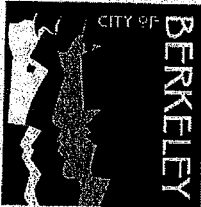
We have located records responsive to your request. Items 3-6 are available for you review. Items 1 & 2 are precluded from release as operational plans and After Action reports are not considered public records under Government Code Sections 6254(f) and 6255 as the planning and strategic material requested is privileged as both investigative and deliberative procedure.

The records requested are available for purchase at a cost of \$0.10 per page. The total cost for this request is \$1.90. You may pick up the records at 2100 Martin Luther King Jr. Way, Berkeley, CA 94704, between the hours of 8am and 4:30pm.

Sincerely,

Cynthia F. Harris  
Captain  
Custodian of Records





Police Review Commission (PRC)

June 14, 2016

To: Honorable Mayor and Members of the City Council  
From: George Perezvelez, Chair, Police Review Commission *GP/1/16*  
Re: Suggestions for Ballot Measure to Amend Current Enabling Ordinance  
Establishing the Police Review Commission (Response to Item #52 on  
the Council's June 14, 2016 agenda.)

The Berkeley Police Review Commission (PRC) was created with the general purpose of providing for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department. (B.M.C. section 3.32.010.)

In the interest of creating a more robust and effective avenue for citizen oversight of the Berkeley Police Department (BPD), the members of the PRC suggest the following changes to the PRC ordinance, to be either approved by the City Council or submitted to the voters in November. We believe these proposed changes will greatly enhance the effectiveness of the PRC, and assure that we are able to fully able to provide meaningful oversight to BPD.

- 1) The PRC shall use the "preponderance of the evidence" as the standard of proof for all decisions.
- 2) The current 120-day limit on the imposition of discipline shall be extended to one year, consistent with existing California law.
- 3) The PRC shall have full discretion to review complaints as to alleged officer misconduct from any person with personal knowledge of the alleged misconduct. Additionally, the PRC shall have the discretion to accept complaints from anonymous sources professing first-hand knowledge of alleged police misconduct, so long as the complainant requests anonymity based upon a credible belief that the complainant will face prosecution or harassment. The determination of whether the request for anonymity is based upon a credible belief shall be made by the a 2/3 vote of the full commission, acting in closed session.
- 4) The Commission shall have the same access to all BPD files and records, in addition to all files and records of other City departments and agencies, as the BPD's Internal Affairs Division. The BPD and other City departments and

1947 Center Street, 1st Floor, Berkeley, CA 94704 Tel: 510-981-4950 TDD: 510-981-6903 Fax: 510-981-4955  
e-mail: [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info) website: [www.cityofberkeley.info/prc/](http://www.cityofberkeley.info/prc/)

agencies shall make every reasonable effort to respond to the Commissioner's requests for files and records within ten (10) days.

5) Upon a sustained finding of misconduct, the Board of Inquiry shall have the authority to suggest appropriate discipline to the Chief and/or City manager.

6) In addition to the training required of all Berkeley City Commissioners, all members of the PRC shall be required to complete training in the following areas: use of force; criminal procedure; Fourth Amendment; BPD general orders and standard operating procedures. This training shall include law, policy and best practices. The training shall be organized annually by the PRC Officer, in consultation with the City Attorney's office, the BPD, the BPA, and other community organizations.

7) Expand the jurisdiction of the PRC to include non-sworn employees of the BPD.

8) Review the Mayor's proposed budget to determine whether budgetary allocations for the Department are aligned with the Commission's approved policies, procedures, customs, and General Orders. The Commission shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the City Council any recommendations for change.

The members of the PRC voted at its June 8, 2016 meeting to send this communication to you by the following vote: Ayes – Bernstein, Lippman, Murphy (temporary appointment), Perezvelez, Roberts, Sherman, Smith, and Yampolsky; Noes – None; Abstain – None; Absent – Javier, Waldman.

cc: Dee Williams-Ridley, City Manager  
Michael Meehan, Chief of Police  
Zach Cowan, City Manager  
Christian Stines, BPA  
PRC Commissioners