

## PRC Priority List

Updated June 22, 2016

For discussion at July 13, 2016 PRC meeting.

Shaded items are completed and will be removed from list.

<b>Top Ten List (NOT in order of most votes)</b>	<b>Notes</b>
Investigation into BPD response on Dec. 7 & 8, 2014	Subcommittee formed and meeting.
Revision of General Orders, incl. C-64, U-2, M-2	Subcommittee formed and meeting.
Body worn and dash cameras (for 7.19 Council Work Session, due to clerk 6.16)	DONE: PRC approved policy 6.8.16; staff submitted to Council 6.15.16.
Fair and Impartial Policing (includes racial profiling concerns; evaluation and review of recently-released stop data; review of CPE analysis, when released)	Subcommittee formed. First meeting 7.18.16.
Policy review re Identification of race on traffic citations	Assign to F&I Policing Subcommittee.
G.O. W-1: Right to Watch	BPD revision presented at 2.24.16 meeting; discussion 3.9 and 3.23. NEW: request to BPD 4.13 to adopt SFPD's G.O. 5.07
BPD acquisition of non-military armored vehicle	To be agendized.
Review of BOI procedures and underlying authority (Copley Press, PSOBRA, BPA v. COB, etc.)	Staff to prepare memo.
Review of pending regulation changes, and discussion of possible actions, including promulgation and implementation of agreed upon regulation changes and report to Council	Agendized for 3.23.16 meeting. NEW: Standard of Proof inquiry sent to City Manager 4.19.16.
City Council directive of 1.26.16 to work with BPD on recommendations from reports re response to Dec. 2014 protests.	Items not referred to General Orders or Media Credentialing Subcommittees agendized for 3.23 meeting. [need to re-agendize]
<b>High priority; other action</b>	
General Order regarding treatment of Transgender Persons	Proposed new G.O. agendized for 5.11 meeting – DONE: PRC approved and sent to BPD
Evaluation of City policies regarding seizure and storage of homeless persons' property, arising out of Liberty City dismantling.	Hearing on Liberty City, incl. presentation by BPD. Scheduled for 4.27 meeting; postponed to 5.11. DONE: hearing held.
<b>Additional items to be agendized</b>	
McKinley Ave. Staging – policy review	Capt. Greenwood presented at 3.23 and 4.13.16 meetings. NEW: revised U-4 to be presented.

**PRC Priority List**

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Propose all BPD Use of Force Reports be sent to PRC within 21 days	Inquiry to City Attorney from PRC Officer 1.22.16. C.A. opinion received 5.31; agendized for discussion at 6.22 meeting
Request for Intelligence report from Chief Meehan, as required under General Order C-1, for at least the last three years	DONE. 1 <sup>st</sup> agendized for 3.9 meeting and considered at 3.23 meeting.
Commissioner training on law and police procedures	Begin Spring 2016.
Evaluation of "Protest 101" guide on BPD website	To be considered at 5.11 meeting. DONE

<b>Remaining items</b>	
Outreach – community awareness of who the PRC is and what it does	
Policy review re Smoking Control Ordinance	On 7.15.15, PRC authorized further action as memorialized in 8.7.15 letter from PRC Officer to Chief expressing concerns and making requests.
Policy review of Citations to bicyclists running red lights	(A. Bernstein would like to add "Idaho stop" issue.)
How to read CAD reports	
Achieving agreement with BPD regarding consultation on all new and changes to G.O.s	
BPD budget review	
BPD preparedness and capacity	Comm. Roberts' item.
Media credentialing policy	Subcommittee formed but activity on hold (per discussion 1.27.16).



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
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kworthington@ci.berkeley.ca.us

### ACTION CALENDAR

July 12, 2016

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

Subject: Community Control of Surveillance Equipment

#### RECOMMENDATION:

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

#### BACKGROUND:

Santa Clara County Board of Supervisors unanimously approved Ordinance No. NS-300.897 which governs surveillance equipment used by police and other law enforcement officials - such as drones, license plate readers, cellphone trackers - including a broad public debate prior to equipment implementation, board approval of a Surveillance Use Policy that safeguards civil liberties and civil rights, and ongoing accountability including an annual audit. This law is vital in assuring civil liberties are not hindered and that there is the utmost transparency between law enforcement officials and the citizens which they serve. Santa Clara County Supervisor Joe Simitian spearheaded this effort because there would be a great deal of transparency and accountability.

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

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

#### FINANCIAL IMPLICATIONS:

Minimal.

#### ENVIROMENTAL SUSTAINABILITY:

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

#### CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170



Supplement to Council Agenda item #6 on July 7, 2016  
Action calendar

**The top ten reasons why Berkeley needs police accountability reform: by Kriss Worthington**

1. The system is so fatally flawed that Civil Rights and Civil Liberties attorneys tell clients it's not worth it to file complaint cases with the Police Review Commission.
2. Complainants report that restrictive rules leave them feeling violated and disrespected when they pursue their complaints.
3. Unfortunately, racial profiling is alive and well in Berkeley. The statistics generated by the Fair and Impartial Policing Policy provide substantial documentation that ethnic minorities appear to be disproportionately stopped by Police.
4. The media, students, and the General Public across all ethnicities report excessive use of force against both protestors and bystanders during the December Black Lives Matter protests. The police were seen beating and using CS on the crowd.
5. The media reports that other jurisdictions respond to Public Record Act requests about police accountability with far more details.
6. Blindfolded by restrictions on their access to documents such as tapes and video recordings, PRC commissioners cannot make fully informed decisions.
7. Berkeley trails behind other Bay Area jurisdictions, such as Alameda County, BART, San Francisco and Oakland, who have been adopting reforms to hold police accountable.
8. Many qualified PRC commissioners are frustrated to find the system full of severe rules and practices that prevent full review of facts. Commissioners who have promoted reform have seen them delayed many months and years.
9. In the 1970's Bell Bottoms were fashionable and the Berkeley Police Review Commission structure was forward thinking. But in the 21<sup>st</sup> century, the US Department of Justice's recommendations, and regional best practices have evolved from decades of experiences with new technologies and a multicultural society.
10. The PRC system is 43 years old. Isn't it time for a change?

**Berkeley needs a comprehensive overhaul of our Police Review Commission. Community members and groups have called for meaningful reform. This year multiple nearby cities are seeking changes, including Oakland's newly proposed Charter Measure. The changes being proposed in Berkeley seek to identify the basic reform principles that are necessary to ensure police accountability and guarantee fair treatment for all members of the Berkeley community.**

**The central reform is for the commission to be independent, with the following characteristics:**

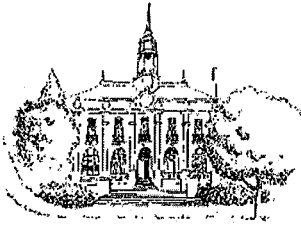
- **A clearly defined set of powers, including enforceable subpoena power, to ensure accountability from the department and individual officers.**
- **Visible and available to groups most affected by police discourtesy, mistreatment and violence; including but not limited to religious minorities, people of color, low income, LGBTQIA+, homeless, and the disabled communities.**
- **A sufficient sustainable budget for staff, attorneys, and investigations along with adequate resources to widely publicize the Commissions existence and the services it provides.**
- **Complainants must legally be listened to, be entitled to a voice and taken seriously, and have a designated advocate to assist them in navigating the system.**
- **The commission must have uninhibited access to an independent counsel, who may freely conduct investigations, and compel compliance with the Public Records Act and other authorities.**
- **The community must be actively involved in the annual priority setting process for the commission, including use of force, racial profiling, and ensuring fair and proper treatment of protesters. The commission shall have an open session and allow collaboration with the public.**

- The Commission must be able to hire and/or fire the Chief of Police, along with the authority to discipline officers when appropriate and allowed by law.

PRC's letter to Council with its suggestions for revisions to enabling ordinance, dated June 14, 2016, was included in Supp. to Council. (Attached to PRC's June 22, 2016 agenda packet - pp. 143-144.)







## Kriss Worthington

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**ITEM #6**  
**ACTION CALENDAR**  
July 7, 2016

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

Subject: Ballot Measure to Increase Police Accountability - Additional Information

### ADDITIONAL INFORMATION:

In the original June 14 Item, we included for information purposes a copy of an Oakland City Council proposal. Because the Oakland city council has had significant discussion about these issues there have been multiple new draft forwards. We are sharing the latest draft and an additional compromise version that have been submitted.

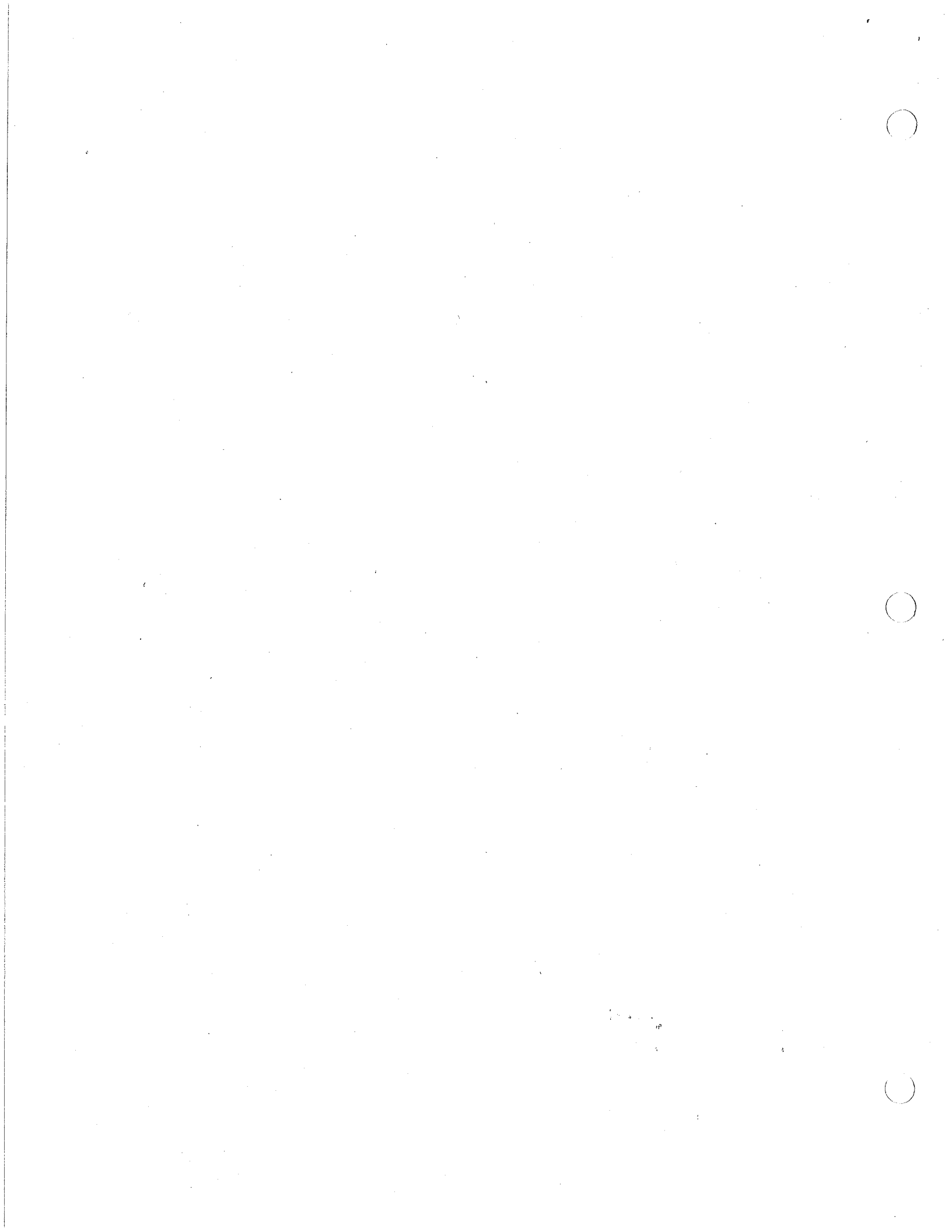
The Agenda Report has highlighted text in yellow and blue. The text highlighted in yellow is the preferred language that could be added to Berkeley's Police Review Commission Ordinance. This language is similar to one that was proposed by the PRC. The text highlighted in blue in the Agenda Report document is the wording similar to the policy changes that Councilmember Worthington's office is proposing. These changes in wording and language are necessary in order to ensure police accountability and guarantee fair treatment for the Berkeley community. In addition to this, the "Police Commission Requested Amendment" Document contains an amendment that is being proposed by Vice Mayor Annie Campell Washington, City Councilmember Abel Guilen, and President Pro Tempore Larry E. Reid. There is an added amendment section titled "Section 7: Community Engagement" that we feel should be added in the Berkeley Police Review Commission Ordinance. Establishing community engagement and facilitating dialogue between the Commission and the community is essential for building community trust.

In response to community concern, Oakland City Councilmembers has proposed two potential models of how to do a charter amendment. They have set a great example of police accountability reform. We are sharing these to show examples to consider for Berkeley taking reform actions. It is highly encouraged that Berkeley takes action to reform Berkeley's Police Review Commission to make police accountability a priority to be strengthened.

CONTACT PERSON: Councilmember Kriss Worthington 510-981-7170

### Attachments:

1. Agenda Report <sup>ONLY</sup> including The Police Commission Charter Amendment Measure and Companion Ordinance dated June 2, 2016
- 2) The Police Commission Requested Amendments to the Agenda Report.
- 3) Latest Police Commission Charter that will be voted at the next Oakland Council meeting





FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

16 JUN -3 AM 9:00

## AGENDA REPORT

**TO:** Chair Desley Brooks, other City Councilmembers, and members of the Public

**FROM:** Noel Gallo and Dan Kalb Councilmembers

**SUBJECT:** Police Commission Charter Amendment Measure and Companion Ordinance

**DATE:** June 2, 2016

### RECOMMENDATION

ADOPT A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 8, 2016 STATEWIDE GENERAL ELECTION 1) A PROPOSED AMENDMENT TO THE CITY CHARTER TO CREATE THE OAKLAND POLICE COMMISSION, THE COMMUNITY POLICE REVIEW AGENCY, AND A PROCESS FOR POLICE DISCIPLINE AND 2) A PROPOSED ENABLING ORDINANCE RELATING TO THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY, AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE ELECTION

### SUMMARY

This legislation is being offered to enhance police accountability and improve public trust in Oakland's police department. The legislation consists of a ballot measure that is proposed to be placed before the voters for this year's November election. The primary component of the measure is a Charter Amendment which would establish a police commission that balances independence with checks and balances. The Charter Amendment:

- Establishes a 7-member Police Commission and provides its role, powers, duties, and parameters for meetings, rules, and procedures;
- Provides the law governing Police Commissioner appointment, terms, vacancy, and removal, including that three Commissioners would be appointed by the Mayor and 4 by a 9-member Selection Panel appointed by the City Council and Mayor, with all Commissioners subject to Council confirmation;
- Empowers the Police Commission to (1) oversee the Police Department and (2) review and comment on Department policies, procedures, customs, and General Orders, as well as propose, amend, or reject changes to the latter if governing particular issues (use of force, use of force review boards, profiling based on any protected characteristics, First Amendment assemblies), provided however that any changes made by the Commission to the Chief of Police's policy decisions may be overruled by the City Council;
- Requires annual reporting by the Chief and the Commission;

Item: 3  
Public Safety Committee  
June 14, 2016

- Both empowers and makes more accountable the Chief of Police, by changing hiring, firing and supervision as follows:
  - (1) In lieu of hiring by the City Administrator, the Chief is hired by the Mayor from a list of recommendations vetted by the Commission;
  - (2) In lieu of supervision by the City Administrator, the Chief reports to both the Mayor and the Commission;
  - (3) In lieu of the City Administrator being able to terminate the Chief at will, the Commission, by a vote of 5 or more Commissioners, may terminate the Chief for cause, or the Mayor may terminate the Chief at will;
  - (4) Replaces the imposition of final discipline of sworn officers by the City Administrator to final discipline as determined by the Chief, subject to further discipline reform provisions described below;
- Disbands the Citizen's Police Review Board and re-assigns its staff to a new Community Police Review Agency, with the Executive Director of the Board becoming the new (Interim) Director of the Agency;
- Requires Agency staffing to include no fewer than one line investigator for every one hundred sworn officers, with at least one being a licensed attorney; this budget set-aside may be suspended only if there is an extreme fiscal necessity as determined by City Council resolution;
- Requires additional staffing, including assignment of one full-time equivalent Deputy City Attorney to the Agency and the hiring of a new civilian Inspector General that reports directly to the Commission, subject to the same hiring and removal provisions as the Agency Director;
- Requires background checks for all Agency investigators;
- Prohibits current or former sworn OPD employees, and current or former employees, officials, and representatives of employee associations representing sworn police officers from holding staff positions in the Agency or the Commission;
- Empowers the Agency to conduct investigations of complaints of police misconduct, allows the Commission to direct the Agency to initiate such investigations, and mandates that Agency must investigate all complaints of misconduct involving use of force, in-custody deaths, profiling based on protected characteristics, and First Amendment assemblies;
- When reasonable belief exists that a sworn OPD employee has committed a crime, requires the Agency, after consultation with the Commission, to forward the information to the Alameda County District Attorney;
- With regard to investigations, requires the Agency to forward complaints to OPD's Internal Affairs Division, provides the Agency with the same access to City records as Internal Affairs, and empowers the Agency, upon completion of an investigation, to independently make findings and propose discipline;
- Establishes a police discipline process that consists of the following:
  - (1) If the Chief agrees with the Agency findings and proposed discipline, he or she shall notify the officer of the intent to impose discipline;
  - (2) If the Chief disagrees with the Agency, the disagreement shall be submitted to a rotating Discipline Committee comprised of three Commissioners, which shall resolve the dispute between the Chief's and Agency's findings and proposed discipline, after which the Chief shall notify the Officer of the discipline;

- (3) Eliminates binding arbitration as the final method for officers to appeal discipline, where, after imposition of discipline has become final, the subject officer may instead appeal the discipline to the Commission as adjudicatory body, and empowers the Commission to employ hearing officers to conduct the evidentiary hearings; [Note: We have submitted in the packet an alternate adjudication section that allows for appeals by arbitration if identified in a collective bargaining MOU.]
  - (4) Establishes a preponderance of the evidence standard of proof for establishing that discipline is warranted;
  - (5) Requires evidence sharing between the City and the union representatives of the subject officer;
  - (6) Permits the Commission to offer alternative dispute resolution.
- Enables the City Council to establish enabling legislation, after a comment period provided to the Commission.

In addition, the Charter proposal includes an alternate adjudication section that allows for arbitration, but with the arbitrator pool being selected by the Commission.

Furthermore, the measure includes a companion enabling ordinance for the new Charter section, which consists of two new Municipal Code Sections, one for the Police Commission and the other for the Community Police Review Agency.

#### **BACKGROUND / LEGISLATIVE HISTORY**

On April 15, 1980, the City Council established the Citizens' Police Review Board ("CPRB") with jurisdiction to review certain complaints alleging Oakland Police Department officer and park ranger misconduct, to conduct fact-finding investigations, and to make advisory reports to the City Administrator. On July 30, 1996, the City Council expanded the CPRB's jurisdiction to include complaints involving the excessive use of force, and bias based on an individual's legally protected status (race, gender, national origin, religion, sexual orientation or disability). In 2002, the City Council further expanded the CPRB's jurisdiction to include all complaints filed against police officers and park rangers, and expanded the Board's size from nine (9) members to twelve (12) members. The City Council also granted the CPRB the option of holding evidentiary hearings using three-member panels and permitted Board members to review confidential Oakland Police Department ("OPD") records in closed session. On November 12, 2002, the City Council passed Ordinance No. 12454 C.M.S., which further refined the CPRB's powers to include making recommendations to the City Administrator regarding litigated cases, and enlarged the amount of time for the CPRB to complete its investigations. The CPRB is *not* empowered to oversee OPD policy, impose discipline or adjudicate disciplinary appeals; and

In January 2003, the City entered into a negotiated settlement agreement ("NSA") with multiple plaintiffs who sued the City, alleging that OPD officers violated plaintiffs' civil rights. Since implementation of the NSA, a federal monitoring team has audited – and continues to audit – OPD's progress in complying with each of the fifty-one (51) tasks identified in the NSA; and

Public perception persists that OPD is insufficiently transparent and does not effectively hold its officers accountable, as indicated in part by the Coalition for Police Accountability's February 8, 2016 notice of intent to circulate a petition for placing before the voters an initiative to amend the

City Charter "for the purpose of creating a more robust and credible system of holding the Oakland Police Department accountable for providing the highest level of service to the residents of Oakland." The public perception that OPD and the City do not effectively hold its officers accountable stems, in part, from the inconsistent and unpredictable results obtained in police officer discipline proceedings under the current administrative appeal process. Such varied results lead to an erosion of public trust in this process.

According to the City Attorney's "First Quarterly Report from the City Attorney Regarding Recent Arbitration Decisions, Efforts to Support the Police Discipline Process, and Recent Developments in Police Discipline" (May 17, 2016), there have been 15 binding arbitration decisions in police discipline cases since December 30, 2014. Of those 15 cases, only 7 resulted in the City's discipline being upheld and, in both cases in which the City terminated an officer, the City's discipline was overturned and changed to only a suspension. The report cites to a November 21, 2014 Wall Street Journal report noting that, nationwide, police officers win reversals or modifications in more than 60% of the disciplinary cases that go to arbitration.

### ANALYSIS

While complaints against Oakland officers decreased in the wake of Oakland's early adoption of a body worn camera program and OPD has made notable progress in recent years regarding compliance with certain NSA requirements, public mistrust in our police force remains significant and there are still challenges that need to be addressed.

There is widespread belief, both in Oakland, the greater Bay Area, and across the state and the country, that police officers are frequently not held accountable for misconduct. Maintaining public trust and confidence in OPD is necessary for the Department to be able to provide the highest level of service to the community. In order to increase the public trust and confidence in OPD, improvements should be made to the processes for providing OPD oversight and accountability.

Appointing qualified members of the public to a Police Commission, entrusting the Commission with oversight of OPD, and requiring the Commission to hold public hearings on policy matters, would increase public transparency, which in turn would build a higher level of trust and confidence in the services provided by OPD. In addition, Oakland's residents and police officers alike deserve the most thorough and fair system possible for adjudicating administrative appeals of police discipline decisions so that the results of such appeals are as predictable and consistent as possible. Such an appeals process would also build a higher level of trust and confidence in the services provided by the Department.

Major cities across the country, such as New York City, Los Angeles, and San Francisco, have civilian police commissions with varying degrees of oversight authority over their police departments. In recent years, more and more law enforcement jurisdictions have involved citizens in their review systems, and highly publicized incidents of alleged or actual police misconduct and the years-in-the-making widespread public outrage over police misconduct, especially in African American communities, has brought the issue of citizen oversight to center stage in the United States.

The National Association for Civilian Oversight of Law Enforcement, a nonprofit trade association dedicated to promoting greater police accountability through the establishment or improvement of citizen oversight agencies, provides various resources on its website, including recommended standards and practices, which include the Police Oversight Principles of European Partners Against Corruption, which provides numerous recommendations for police oversight bodies including that they:

- (1) have independence from the executive branch of government;
- (2) are sufficiently separate from the hierarchy of the police subject to their oversight;
- (3) are governed by persons who are not currently serving as police officers;
- (4) have adequate finances and resources to perform their functions;
- (5) have full investigative powers regarding police misconduct allegations; and
- (6) are representative of a diverse population.

In Oakland, the Chief of the Police oversees OPD and in turn is hired and can be fired by the City Administrator, who in turn is hired and can be fired by the Mayor. In addition, when the City, via the Chief of the Police as approved by the City Administrator, imposes discipline against an officer, the officer may appeal the discipline to binding arbitration. The Memorandum of Understanding for the Oakland Police Officers' Association (OPOA) has long provided that final discipline imposed by the Chief of the Police and the City Administrator may be appealed to binding arbitration.

In light of the above, the recommended legislation has the objectives of:

- (a) providing a civilian Commission comprised of residents with significant policy authority over OPD in areas of heightened public concern (use of force, First Amendment assemblies, etc.), balanced with a check by the democratically accountable City Council;
- (b) providing supervisory authority over the Chief, balanced with direct supervision by the Mayor, including, upon a vacancy, recommending a list of candidates to the Mayor for hiring, and having the Mayor and the Commission both being able to fire the Chief, but the Commission being able to do so only for cause and if approved by a super-majority of the Commission;
- (c) providing a Commissioner selection model that is not dominated by one particular elected official;
- (d) enhancing real time transparency of final appeal decisions in police discipline cases;
- (e) transferring the staff of the advisory CPRB into an agency with investigatory authority concurrent with and equivalent to that of OPD Internal Affairs and with enhanced independence from the main City hierarchy; and
- (f) reform of the appeals process for police discipline.

The major reforms of the police discipline process that this legislation would achieve are:

- (a) establishing the evidence standard of proof that the City must meet to impose discipline to be preponderance of the evidence (currently, application of this standard in the arbitration process is vague and subject to inconsistent application between different arbitrators);

- (b) mandating evidence sharing between the City and the OPOA in discipline appeals cases; and
- (c) replacing binding arbitration process with appeals to the Police Commission as the adjudicatory body\*\*.

\*\*In addition, the proposal includes an alternate appeal process that would allow retention of binding arbitration but where the Police Commission selects the arbitrator pool. Requiring final appeals to be heard directly by either a Police Commission or arbitrators selected by a Police Commission, rather than a list of arbitrators mutually selected or negotiated by the City Attorney's office and the OPOA, provides an adjudicatory system that is much closer to the judicial model and more accountable to the general public.

Establishment of an Oakland Police Commission that is not entirely composed of appointees of the Mayor, changing supervision of the Chief of Police, and implementing lasting reform of the police discipline system that cannot be summarily eliminated by future City Councils each necessitate placing a Charter Amendment before the voters. In addition, the legislation includes enabling ordinances for the Police Commission and Community Police Review Agency, which includes technical implementation procedures for the new body and agency that are best reserved for the municipal code and may require enhancements by the City Council over time. These ordinances are also included for voter approval because they are contingent upon passage of the Charter Amendment and provide assurance to the voters that new system will include robust fulfillment of the new Charter provisions.

### **FISCAL IMPACT**

In addition to one-time costs from placing the measure on the ballot and some intermittent training costs for new Commissioners, the legislation would result in additional ongoing staff costs associated with the hiring of 5 full time staff, including: (1) civilian Inspector General; (2) Deputy City Attorney; (3) Police Auditor; and (4) two more investigators above the number currently budgeted for the CPRB.

Overall long term savings are anticipated, due to (1) increased police accountability reducing police misconduct lawsuits and (2) enhanced community oversight institutionalizing gains from the NSA as well as accelerating completion of the NSA and the resulting cessation of the City's costs from the ongoing judicial oversight.

### **PUBLIC OUTREACH / INTEREST**

The development of the legislation was initiated at the request of the Coalition for Police Accountability. The Coalition includes a diverse array of local community organizations and leaders. The Coalition was consulted with in the development of the legislation. Input on the details of the legislation was also obtained from representatives of the Oakland Police Officers' Association and Make Oakland Better Now, as well as from individual residents who expressed interest in this important topic.



**COORDINATION**

The City Attorney's office was extensively consulted in the development of the legislation. The authors of the legislation also obtained input and/or information relevant to the legislation from the Executive Director of the CPRB, Chief of Police, City Administrator, and Mayor.

**SUSTAINABLE OPPORTUNITIES**

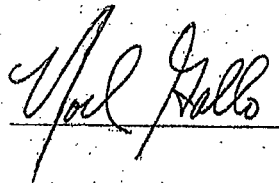
**Economic:** There are no significant economic opportunities associated with this report.

**Environmental:** There are no environmental opportunities associated with this report.

**Social Equity:** Establishment of a Police Commission would result in increased civilian oversight of the Police Department and provide more access to residents for providing input on police matters. Providing increased accountability in the police discipline process is responsive to widespread, repeated requests from the public for reform, especially from disadvantaged communities with a history of extensive police contact.

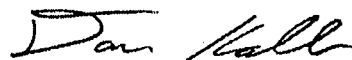
For questions regarding this report, please contact Oliver Luby, Policy Manager, at 510-238-7013.

Respectfully submitted,



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Noel Gallo  
Councilmember, District 5



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Dan Kalb  
Councilmember, District 1

Prepared by:  
Oliver Luby, Policy Manager  
Office of Councilmember Dan Kalb

**Attachment:**

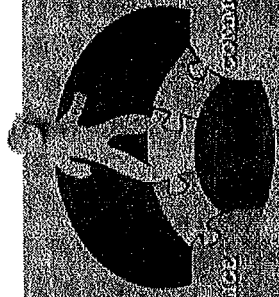
How Can Civilian Oversight Of Law Enforcement Help You? (Infographic); National Association  
for Civilian Oversight of Law Enforcement

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### Supports Effective Policing



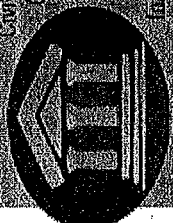
Memoranda and reports between police and communities are critical to effective law enforcement. Civilian oversight increases public trust in police by assuring the public that investigations have been done fairly, thoroughly, and objectively. This improved trust leads to greater public cooperation with law enforcement and ultimately improves public safety.



### Builds Bridges

Effective policing must be responsive to community standards, values, and needs. Civilian oversight builds bridges between communities and the police forces that serve them by communicating and cooperating with community and law enforcement leaders and other major stakeholders by assuring the public that investigations of police misconduct have been completed fairly, thoroughly, and objectively and by conducting independent investigations and reviews to assure constitutional policing practices. Civilian oversight further acts as a bridge by connecting the concerns and needs of the community to the police and reporting to the community how the police are performing, which allows the public to trust the police department and its officers and to view them as honest, reliable, and trustworthy. Civilian oversight practitioners are generally not directly involved with police officers, but they do have a direct impact on police officers' behavior and attitudes. Civilian oversight is a vital component of a community's law enforcement system.

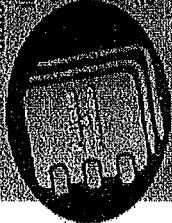
### Protects Civil Rights



Civilian oversight is a developing area of civil rights protection. Oversight practitioners are at the forefront of investigating, reviewing, and training individual cases to prevent or potential civil rights violators. Areas such as racial profiling, biased policing, the use of deadly force, illegal searches, excessive force, and unlawful arrests.

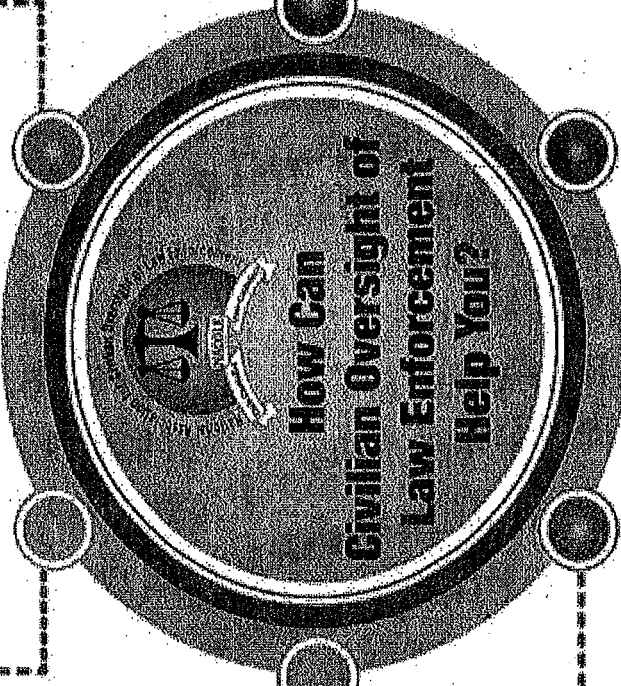
### Ensures Greater Accountability

One of the primary goals of civilian oversight is to advance fair and professional law enforcement that is responsive to community needs. This is accomplished in large part by promoting constitutional policing. Oversight focuses on assessing officers and departmental compliance with local policies as well as state and federal law and administrative and professional standards. It also aids in evaluating the integrity and effectiveness of internal police accountability systems.



### Helps Manage Risk

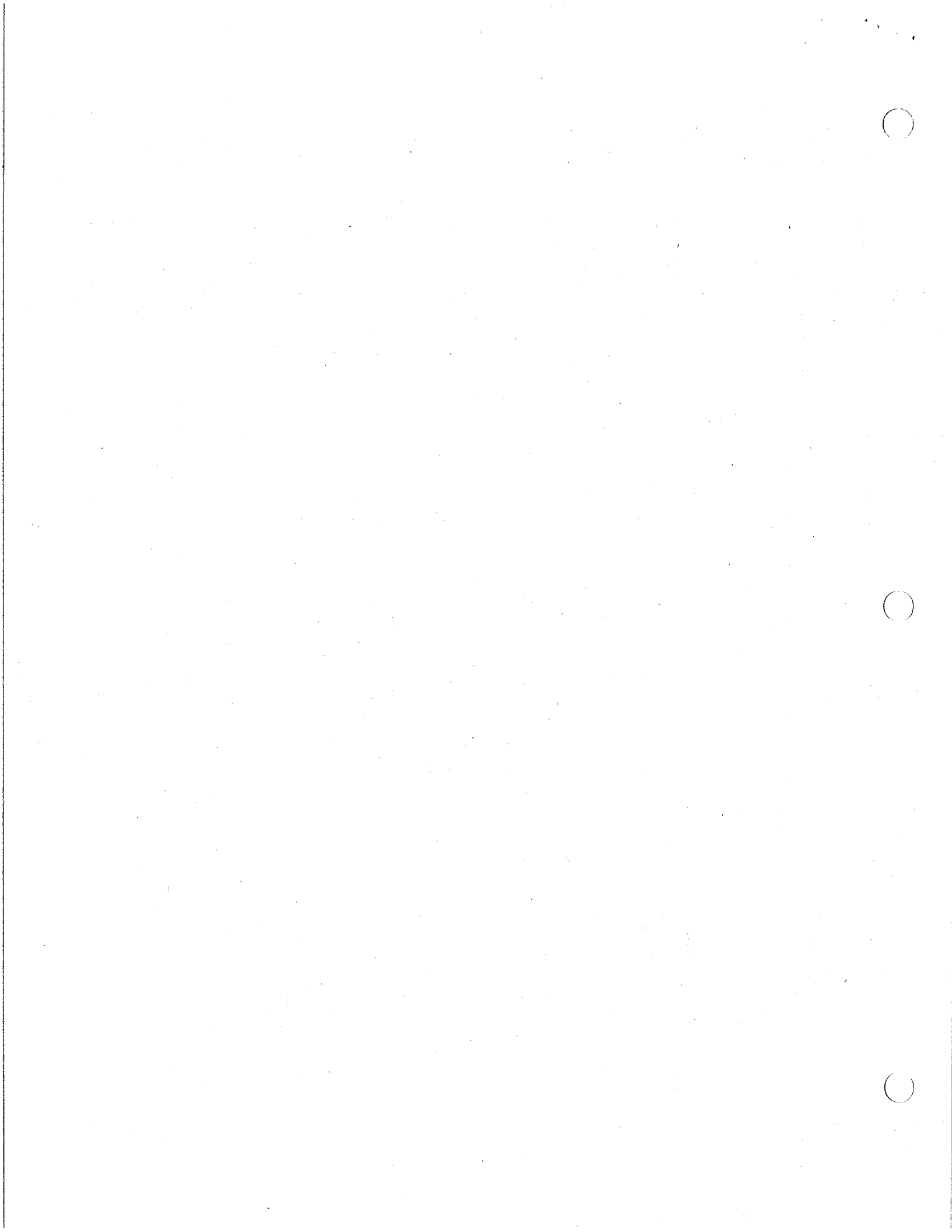
Civilian oversight is critical to managing a municipality's exposure to risk from lawsuits claiming that actions by individual officers in departmental matters to supervise or train officers. Oversight accomplishes this by ensuring that individual officers who engage in questionable or inappropriate and excessive use of force, language and profanity, or other misconduct are held accountable and that the police department and its officers are held to a high standard of performance.

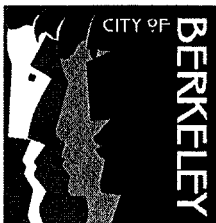


### Increases Confidence in Police

Civilian oversight works to increase public trust and confidence in the police by conducting independent reviews and audits of police policies and practices and by assuring that investigations of police misconduct are fair and thorough. This is done by providing a transparent and accessible process for the community to trust that the police are held accountable for their actions and that the police are held to a high standard of performance.







Office of the City Manager

WORKSESSION

July 19, 2016

To: Honorable Mayor and Members of the City Council

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

Submitted by: Michael K. Meehan, Chief of Police

Subject: Body Worn Camera Recommendations

INTRODUCTION:

Over the last several years the use of body-worn cameras (BWC's) has expanded substantially throughout the law enforcement profession. Studies show that this technology provides quality evidence in criminal cases, mitigates complaints, and delivers greater police accountability. Based on these factors the Berkeley Police Department, Berkeley Police Association and Police Review Commission see the value of this equipment and support implementing its use in Berkeley.

The department evaluated the potential and viability of a body worn camera program in Berkeley, researched equipment and implementation strategies, consulted with stakeholders, and created a model policy which was reviewed and approved by the City Attorney.

Based on this work, I am recommending we implement the use of body-worn cameras in Berkeley by immediately beginning a one-year pilot program. This approach will allow the city to develop and roll out a program in a fiscally responsible way and give the department adequate time to transition to this technology. This one year pilot program will include twenty cameras to be deployed by patrol officers at an approximate cost of \$45,000. The Berkeley Police Department is prepared to begin a pilot program immediately.

BACKGROUND:

On February 10, 2015 Council directed the Police Review Commission to research BWCs and provide a report and recommendations to Council based on their review. Council also directed the PRC to work with the Berkeley Police Department throughout this process to ensure that their input was considered and incorporated into their recommendations.

The Body-worn & Dash Camera Subcommittee met regularly from January through May 2016 and focused exclusively on writing a policy that would control all aspects of the camera use in the department.

PROCESS:

The Berkeley Police Department representative provided the subcommittee with a draft BWC policy based on one created by Lexipol. Lexipol is the company that provides vetted model policies to law enforcement agencies throughout California and the United States. Many Bay Area agencies, including BART and Richmond use Lexipol policies. Berkeley Police Department policy is based upon Lexipol for the following reasons:

- Berkeley Police Department is in the process of adopting Lexipol for all of its policies.
- Lexipol represents a majority of agencies in California and its BWC policy is consistent with best practices and industry standards.
- Much of the Lexipol BWC policy is in line with ACLU and US Department of Justice policy recommendations.

The Subcommittee reviewed the policy recommendations provided by the Police Department and made changes and recommendations. Through a series of discussions and collaboration between the department representative and committee members a recommended policy came together that addressed many of the needs and concerns of both the police department and the commission. The end result was a policy in which the police department and the PRC share a lot of common ground.

There was consensus on most of the topics with a few important differences remaining. These differences impede the successful implementation of the pilot program. A more detailed accounting of these issues is outlined below:

#1. Video Review

The department's position is to treat video like any other evidence during an investigation. To that end, officers would be entitled to review their video when preparing criminal reports as well as when documenting lower level uses of force. During an officer involved shooting or in-custody death investigation officers would be required to provide a preliminary statement prior to reviewing their own video, after which they would then be given the opportunity to provide a follow up statement to account for any memories that were triggered by the review as well as to address any differences between their perception of the events that the video captured.

The Commission position is to require this protocol for all use of force incidents no matter how small. This position is not an industry standard or best practice.

PRC research showed that 22 out of 24 agencies allowed officers to review video when making preliminary reports (the other two agencies did not specifically address video review in their policy). When considering video review, it is also important to note that some other department's policies allow officers to review videos prior to providing statements in all circumstances, including officer involved shootings and in-custody deaths. This is not our recommendation.

There are a number of reasons the department advocates following industry standards in this case:

- This recommendation accounts for the differences between an officer involved shooting or in-custody death investigation and all other cases. In an officer involved shooting or in-custody death the officer is the subject of an investigation. As such they are not allowed to talk to witnesses or other involved parties, they cannot review evidence, and are not responsible for documenting the crime they were investigating prior to the incident. Their only responsibility as it relates to the investigation is to provide a statement to investigators.

In all other circumstances, including lower level uses of force, officers are required to completely investigate and document crime(s) associated with the call for service. Current practice is that officers are allowed to review all evidence in these cases, including audio and external video recordings. This approach supports efforts to thoroughly complete required preliminary investigations and is necessary to write incident reports. A review of all of the evidence, including audio and video records, prior to writing a report is necessary to present the information in a logical, clear, and chronological manner and prevents redundant report writing.

- Multiple studies show that memories are imperfect, and officers may not accurately remember every detail of an encounter. The Alameda County District Attorney's office has confirmed that even minor differences between the initial and supplemental reports will hamper prosecution efforts and discredit officers. Additionally there is a concern among officers that they could be labeled dishonest solely due to a misperception or imperfect memory. Allowing officers to review all relevant evidence associated with their investigation, enables them to prepare a complete and accurate preliminary report and avoids these issues.
- The fact that officers are able to view video in lower level uses of force will not change what the video captures. Officers will still have to articulate why they used the force they did, and show that it was reasonable. Based on the nature of how audio and video captures use of force incidents officers will not be able to tailor their testimony in order to justify a use of force that is not objectively reasonable. In addition to video captured by the acting officer there are checks in the system to ensure a use of force is proper. Multiple videos and officers on scene will provide context; supervisors, commanders, and trainers each review uses of force to determine if they are within the law and policy; and there is a complaint process with both Internal Affairs and the PRC. These checks are reasonable and adequate ways to ensure that officers are using force in a manner that is consistent with law and policy that do not create the issues associated with the PRC's proposed policy.
- Adding a supplemental police report to lower level uses of force would add substantial time to the report writing process. In these incidents each involved

officer would have to write a second police report outlining what they saw in the video as it relates to both use of force and their criminal investigation, account for details that weren't present in their preliminary police report, and address any differences between their preliminary and supplemental report.

For these reasons the Department prefers to follow Lexipol policy and industry standards in this area.

#### #2. Creating Specific Rules for the Release of Video to the Public

There is language in the PRC's proposed policy that discussed when video can be released to the PRC or a private person. For the purposes of public disclosure video is the same as any other record or document generated by the police department; topics that are already addressed in General Orders R-23 Release of Reports and Information Therein and R-23a Guidelines for Release of Reports and Information Therein. These policies, written in concert with the City Attorney, cover the reasons that certain information is, or is not, disclosable.

In addition to the potential significant costs associated with redaction of video evidence, best practices in policy promote the idea that each policy covers a specific topic and is a stand-alone document. This approach ensures that policies are clear, consistent, and concise. It also ensures that modifications that need to be made due to new technology or changes in law are done in one place. Creating specific rules in a BWC policy that direct the processes already covered in other policies creates the potential for confusion and conflict, and hampers the department's ability to manage their policies effectively.

Under R-23, each video that is released, including those to the PRC would need to be reviewed by police staff and footage related to protected categories outlined in the policy would need to be redacted. Examples include footage that includes injuries or medical conditions, or footage that includes personal identifying information.

#### #3 Requiring Officers to Activate BWCs for Every Suspect Interrogation

The PRC policy requires officers to activate their BWCs when conducting interrogations. This creates potential investigatory issues as sometimes an interaction may transition into an interrogation based on the direction of the conversation. Additionally some persons, including witnesses, may not be willing to give a statement with the camera turned on. Based on these factors officers should have discretion regarding the recording of interrogations. The majority of interrogations will likely be recorded due to the fact that it is a valuable source of evidence. For the reasons outlined above officers should retain discretion in this area.

#### #4 Use of Recording Devices other than the BPD Equipment

The PRC policy states that any privately owned recorder can only be used by officers with the explicit permission of the Chief of Police. The Police Department agrees that it would be extremely rare for an officer to need to use their own equipment to capture video footage. In circumstances, including large scale events or natural disasters, the



department should be able to make an exception to this rule and feels that operationally it makes more sense to have the Watch Commander approve and document this.

BERKELEY POLICE BWC IMPLEMENTATION PLAN:

The police department consulted a number of sources including regional agencies, the Police Executive Research Foundation (PERF) and the US Department of Justice (DOJ) and through this process identified the steps necessary to successfully implement a BWC program and are using them as an outline for this program. They have identified program goals, written a draft policy, come up with a budget, and are seeking funding to initiate the program.

In anticipation of moving forward the department has created an Implementation Team run out of the Professional Standards Division. This team is made up of trainers, subject matter experts, as well as representatives from the Berkeley Police Association and command staff. This group has reviewed and supports the department's draft policy. The department has determined the best way to move forward is to implement a pilot program.

Pilot Program:

The implementation team has researched a pilot program for the department and is recommending deploying 20 cameras for one year period among the different patrol teams. This program will cost the city approximately \$45,000. In ramping up the pilot program the department has created a draft policy, and worked with both the District and City Attorney's offices to ensure that this body-worn camera program is lawful and proper. Implementation Team members have also considered the resources needed from IT to support the pilot program and have taken steps to ensure a smooth roll-out.

The implementation team is identifying pilot program participants and will work with the eventual vendor and police department trainers to train them prior to deploying the cameras. The department Public Information Officer is prepared to inform the community about the pilot program as part of the launch process.

Once the program is launched the Implementation Team will regularly meet with participants to evaluate the equipment, processes, infrastructure, workload, and identify and address any issues discovered in the process.

Program Expansion:

At the end of the one year pilot program the Implementation Team will look to expand BWC use to the remainder of the Operations Division. Once funding is secured the department anticipates doing this within a six month period. As part of this process the Implementation Team will work with the vendor and the city's Department of Information Technology to set up the hardware and infrastructure needed to support the program. Implementation Team members will conduct regular evaluations with officers and supervisors to track the program's progress.

The department will continue to evaluate relevant law, technology, and professional trends to ensure that the program remains in line with best practices and industry standards.

CONTACT PERSON

Michael K. Meehan, Chief of Police, Police Department, (510) 981-5700

Attachments:

1. Draft Policy

**DRAFT Berkeley PD Policy**

**Portable Audio/Video Recorders**

**450.1 PURPOSE AND SCOPE**

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings (see the Investigation and Prosecution and Mobile Audio/Video policies).

**450.2 POLICY**

The Berkeley Police Department recognizes that video recording of contacts between Department personnel and the public provides an objective record of these events and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts which can enhance criminal prosecutions and limit civil liability. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for BPD personnel and improve the delivery of police services to the community.

While recordings obtained from video recorders provide an objective record of events, it is understood that video recordings do not necessarily reflect the experience or state of mind of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved member. Specifically, it is understood that the recording device will capture information that may not have been heard and/ or observed by the involved member and that the involved member may see and hear information that may not be captured on video.

**450.3 MEMBER PRIVACY EXPECTATION**

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

**450.3A TRAINING**

Members of the department who are assigned Body Worn Cameras must complete department training in the proper use and maintenance of the devices before deploying them in the field.

**450.4 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member will be responsible for making sure that he/ she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly

report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Officers are not required to obtain consent from members of the public when the officer is lawfully in the area where the recording takes place. For example an officer who lawfully enters a business or residence shall record any enforcement or investigative activity, as set forth in this policy, and is not required to obtain consent from members of the public who may also be present. In addition, officers are not required to play back recordings to allow members of the public to review the video footage.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his/her name, BPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

Members are required to document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. In the event activity outlined in section 450.5 is not captured in whole or in part the member will need to document this and the reason the footage was not captured.

Members are required to upload video footage prior to the end of their shift. If the member is unable to do so the supervisor will perform this function.

#### **450.4.1 SUPERVISOR RESPONSIBILITIES**

Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving an officer-involved shooting or in-custody death, and ensure the data is downloaded (Penal Code § 832.18).

Supervisors shall review relevant BWC recordings prior to submitting any administrative reports.

#### **450.5 ACTIVATION OF THE PORTABLE RECORDER**

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops

(c) Self-initiated activity in which a member would normally notify the Communications Center

(d) Probation or parole searches

(e) Service of a search or arrest warrant

(f) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

During crowd control, protest, or mass arrest incidents members shall use their BWC's consistent with this policy, and when directed by the Incident Commander. The Incident Commander shall document their orders in an appropriate report and provide the orders to all personnel.

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which officers make in an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, officers may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as practicable.

#### **450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

#### **450.5.2 CESSATION OF RECORDING**

Once activated, the portable recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

#### **450.6 PROHIBITED USE OF PORTABLE RECORDERS**

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### **450.7 RETENTION OF RECORDINGS**

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers should occur at the end of the member's shift, or any time the storage capacity is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the portable recorder and be responsible for downloading the data. Officers must properly categorize and tag video recordings any time they are downloaded.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording and document the contact appropriately.

Members are prohibited from intentionally erasing, altering, reusing, modifying, or tampering with audio video recordings.

##### **450.7.1 RETENTION REQUIREMENTS**

All recordings shall be retained for a minimum of 60 days. Incidents involving consensual contacts, aid to citizens and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be

retained for a minimum of two years. Any recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the department's evidence retention policy.

#### **450.8 REVIEW OF RECORDINGS**

When preparing written reports, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

In the event of an officer involved shooting or in custody death officers shall provide an initial interview before they review any audio or video recordings of the incident. An involved officer will have an opportunity to review recordings after the initial statement has been taken, and he or she can be re-interviewed if either the officer or members of the investigating team believe it is necessary.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (e) By training staff regarding incidents which may serve as a learning or teaching tool.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

#### **450.9 COORDINATOR**

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.

(e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.

(f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.

(g) Maintaining logs of access and deletions of recordings.

DRAFT