

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

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

North Berkeley Senior Center
1903 Hearst Avenue, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)
- 4. APPROVAL OF MINUTES**
Regular Meeting of December 14, 2016
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**
Status of complaints; other items.
- 7. CHIEF OF POLICE'S REPORT**
Crime, budget, staffing, training updates, and other items.
- 8. OLD BUSINESS (discussion & action)**
 - a. Report on meeting with BPD regarding Body-Worn Camera policy
From: PRC Officer
 - b. Continue discussion of process for providing PRC review of Lexipol policies.
From: Commission
 - c. Commissioner questions about case law and statutes affecting the Board of Inquiry hearing process
From: Commission

- d. Prioritization of PRC tasks and requests to BPD
From: PRC Officer

9. NEW BUSINESS (discussion & action)

- a. Mutual Aid Pacts
 - i) Explanation of Mutual Aid Pacts approval process.
 - ii) Recommendations from Mutual Aid Pacts Subcommittee for new or revised agreements with: Alameda County DA's Office – Victim/Witness Assistance Division to serve victims of elder abuse; Hayward Police Department and other agencies for Avoid the 21 DUI Program; Bay Area Women Against Rape (BAWAR) to serve survivors of sexual assault; and BNSF Railway for consent to enter property to enforce grade crossing and trespassing laws.
 - iii) Discussion of SARS summary reporting and approval of the single Suspicious Activity report accepted by NCRIC.
From: Mutual Aid Pacts Subcommittee
- b. Police enforcement actions against homeless encampments
From: Commissioner Prichett
- c. Elections of 2017 PRC Chairperson and Vice-Chairperson

10. SUBCOMMITTEE APPOINTMENTS, REPORTS, AND RECOMMENDATIONS (discussion & action)

- a. Fair & Impartial Policing Subcommittee
Update; consider additional appointment; schedule next meeting date.
- b. Mutual Aid Pacts Subcommittee
Consider dissolving.
- c. Media Credentialing Subcommittee
Update; consider additional appointments; schedule next meeting date.
- d. Surveillance and Community Safety Ordinance Subcommittee
Update; schedule next meeting date.
- e. General Orders C-64, etc. Subcommittee
Consider additional appointments; schedule next meeting date.
- f. Body-Worn Cameras Subcommittee
Consider dissolving.
- g. Outreach Subcommittee
Consider additional appointments; schedule meeting date.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS
Attached.

12. PUBLIC COMMENT

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

Closed Session

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

13. REVIEW OF CALOCA DECISION

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

End of Closed Session

14. ADJOURNMENT

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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.

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PRC REGULAR MEETING ATTACHMENTS

January 11, 2017

MINUTES

December 14, 2016 Regular Meeting Page 7

AGENDA-RELATED

Item 8.a – Memo from PRC Commissioners Terry Roberts and Ari Yampolsky, dated December 13, 2016 re Status of Discussions with BPD on a Body-Worn Camera Policy. Page 13

Item 8.a – Memo to the Mayor and Members of the City Council from the Police Review Commission, Worksession July 19, 2016 re Response to City Council Referral Regarding Berkeley Police Department Use of In-Vehicle and Body-Worn Cameras. Page 17

Item 8.a – Memo to the Mayor and Members of the City Council from the City Manager, Worksession July 19, 2016 re Body Worn Camera Recommendations. Page 29

Item 8.b – List of Lexipol policies reviewed by BPD. Page 41

Item 8.d – PRC Priority List updated 12-15-2016. Page 43

Item 8.d – Prioritization of PRC requests to BPD updated 12-15-2016. Page 45

Item 8.d – PRC Subcommittees List updated 1-4-2017 Page 46

Item 9.a.ii – Operational Agreement with Alameda County District Attorney's Office for Unserved/Underserved Victim Advocacy & Outreach Program, and cover letter dated September 21, 2015. Page 47

Item 9.a.ii – Memorandum of Understanding between the City of Hayward Police Department and the Participating Alameda County City Law Enforcement Agencies, dated October 1, 2015. Page 49

Item 9.a.ii – Letter of Agreement from Bay Area Women Against Rape, signed in June 2016. Page 55

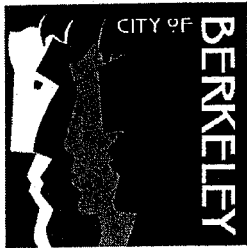
Item 9.a.ii – Letter from BNSF Railway Police to the Berkeley Police Department, dated April 29, 2016 re Mutual Aid Pacts. Page 57

Item 9.a.iii – 2015-2016 Suspicious Activity Report Summaries. Page 59

Item 9.b – Email from PRC Commissioner Andrea Prichett dated December 28, 2016 re police enforcement actions against homeless encampments. Page 61

COMMUNICATION(S)

Letter from the PRC Chair to the City Manager dated December 16, 2016 re Standard of Proof in PRC Board of Inquiry Hearings.	Page	63
BPD Bulletin Notice dated December 20, 2016 re Promotions.	Page	65
BPD Bulletin Notice dated December 23, 2016 re Promotions.	Page	67
Email from a citizen dated December 30, 2016 re article: Why some problem cops don't lose their badges.	Page	69
2016 PRC Semi-Annual Commission Attendance Report for the period July 1 through December 31, 2016.	Page	71
2017 PRC Commission Meeting Dates	Page	75
PRC Standing Rules as of 12-14-2016.	Page	79



Police Review Commission (PRC)

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(unapproved)

Wednesday, December 14, 2016
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR ROBERTS AT 7:07 P.M.

Present: Commissioner Terry Roberts (Chair)
Commissioner Alison Bernstein
Commissioner Kimberly DaSilva
Commissioner George Lippman
Commissioner Andrea Prichett
Commissioner Ari Yampolsky
Commissioner Ben Gould (temporary appointee)

Absent: Commissioner Kad Smith

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood, Lt. Dave Reece, Sgt. Joe Okies (all left 9:45 p.m.) Sgt. Ben Cardoza, Sgt. Sean Ross

2. APPROVAL OF AGENDA

By general consent the agenda was approved with the reordering of business as follows: to first consider Items #8.d., 9.d., 8.b., and 9.e.

3. PUBLIC COMMENT

There were 4 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of November 9, 2016

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

Ayes: Bernstein, DaSilva, Lippman, Roberts, and Yampolsky.

Noes: None Abstain: Gould, Prichett Absent: Smith

5. CHAIR'S REPORT

- Two longstanding members of the Commission have resigned: George Perezvelez and Michael Sherman. Commissioner Bernstein will work with the PRC Officer to produce certificates of appreciation.
- Commissioner Andrea Prichett, a new appointee, was introduced, and she spoke of her interest in police accountability.

6. PRC OFFICER'S REPORT

- Complaint deadlines report was distributed. One new complaint filed since the last meeting. Two complaints (#2403 and #2408) went to mediation; both were completed and are now closed.
- Commissioners are reminded of their obligation to serve on BOIs.
- South Berkeley Senior Center will be closed starting next week through March 2017; meetings will be held at the North Berkeley Senior Center.
- Prior advice re communicating informal complaints to the Commission was erroneous. Per City Attorney, PSOBRA prohibits those complaints from distribution to Commission. Per Commissioner Lippman's request, PRC Officer will ask for a written opinion and for the Assistant City Attorney to attend a PRC meeting.

7. CHIEF OF POLICE'S REPORT

- Working to address a series of street robberies in North Berkeley.
- Staffing: swore in 3 lateral officers last week. 8 new officers very soon, with 5 more after that, and possibly two more laterals. Save the date for Jan. 19 public ceremony at Freight & Salvage for the promotion 2 captains, 2 lieutenants, 2 sergeants and possibly one more of each.
- Willing to look into policy review regarding how changes in law are communicated to officers.

Questions:

- Status of CPE report? Chief: 4 years of data has been given to CPE. Methodology includes climate survey conducted by CPE to measure members' attitudes. Per Capt. Frankel, CPE says report will be done by end of February.
- Presentation by CPE? Chief: speakers he would get are local people who aren't working with Berkeley data.
- Plan for how to approach, if report finds there is bias? Chief: haven't formulated plan; want to see what results are. Have done implicit bias training; and procedural justice classes.
- How preparing for Prop. 64, especially for DUIs? Chief: Professional Standards Div. to address. DUI a concern. Need more training on drug recognition.

8. OLD BUSINESS (discussion & action)

- a. Commendations of BPD personnel January through June 2016.

(Heard following Item #9.e.)

By general consent, the Commissioners singled out the following officers and other BPD staff for special recognition; and asked the PRC Officer to write a letter to the Chief informing him of such.

Ofc. Burcham	Sgt. Fomby
Det. S. Lee (twice)	Ofc. Schulz
Ofc. Hartley	Ofc. M. Jones
Sgt. J Wilson	Ofc. Lui
Dispatcher T. Lopes	Ofc. Nash
Ofc. Hammonds	Capt. Greenwood
Ofc. Collier	Lt. Rateaver
Sgt. Landrum	Ofc. Speelman
CSO Assata	Ofc. Emelson
Ofc. Kishiyama (twice)	Ofc. Peters
Sgt. Hong (twice)	Ofc. Kaplan
Lt. Rolleri	Ofc. Huerta
Ofc. Navarro	Sgt. A. Frankel
Ofc. Mathis	Ofc. Bledsoe
Ofc. Phelps	Ofc. Dozier
Ofc. Rafferty	Ofc. Diaz
Ofc. Shannon	Ofc. R. Andersen
Sgt. K. Reece	Ofc. Seaton
Evidence Tech. J. Schwarck	Ofc. Coats
Sgt. Okies	Ofc. V. Martine

- b. Review draft of response to City Manager's September 12, 2016 letter regarding the standard of proof used in BOI hearings.

(Heard following Item #9.d.)

Motion to forward the letter, as drafted, to the City Manager, with a copy to the City Council.

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

Ayes: Bernstein, DaSilva, Lippman, Prichett, Roberts, and Yampolsky.

Noes: None

Abstain: Gould

Absent: Smith

- c. Review of BPD marijuana enforcement report.

Motion to request that the BPD's next semi-annual marijuana report provide data comparing marijuana arrests and citations to other drug-related arrests and citations, disaggregated by race.

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

Ayes: Bernstein, DaSilva, Gould, Lippman, Prichett, Roberts, and Yampolsky.

Noes: None

Abstain: None

Absent: Smith

- d. Review revised General Order C-64 and Commander's Guide
(Heard following Item #7)

Motion to refer the draft Commander's Guide and General Order C-64 back to the Subcommittee on General Orders C-64, etc.

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

Ayes: Bernstein, DaSilva, Gould, Lippman, Prichett, Roberts, and Yampolsky.

Noes: None

Abstain: None

Absent: Smith

9. NEW BUSINESS (discussion & action)

- a. Establish 2017 Regular Meeting schedule

The proposed 2017 Regular Meeting schedule was adopted by general consent.

- b. Consider amendment to PRC Standing Rules, Section J, Appointment of Members of the Public to Subcommittees, to provide that public members must be residents of the City of Berkeley.

Motion to amend the PRC Standing Rules to add to Section J.1., Subsection a), the requirement that public members be a resident of Berkeley.

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

Ayes: Bernstein, DaSilva, Gould, Roberts, and Yampolsky.

Noes: None

Abstain: Lippman, Prichett

Absent: Smith

- c. Report on meeting with BPD regarding Body-Worn Camera policy
(Item postponed to the next meeting.)
- d. Review list of 25 Lexipol policies reviewed by BPD; identify specific policies for review and/or questions for BPD.
(Heard following Item #8.d.)
After extensive discussion, the Commission agreed to re-agendize this matter for the next meeting.
- e. Presentation of BPD stop data
(Heard following Item #8.b.)
Comm. Lippman made a presentation and answered questions.
- f. Presentation by representative from Center for Policing Equity.
(Item postponed.)
- g. Prioritization of PRC tasks and requests to BPD.
(Item postponed to the next meeting.)

10. SUBCOMMITTEE APPOINTMENTS, REPORTS, AND RECOMMENDATIONS (discussion & action)

(All Subcommittee items postponed to the next meeting.)

- a. Fair & Impartial Policing Subcommittee
Update; schedule next meeting date.
- b. Mutual Aid Pacts Subcommittee
Update; schedule next meeting date.
- c. Media Credentialing Subcommittee
Update; schedule next meeting date.
- d. Surveillance and Community Safety Ordinance Subcommittee
Update; schedule next meeting date.
- e. General Orders C-64, etc. Subcommittee
Consider dissolving.
- f. Body-Worn Cameras Subcommittee
Consider dissolving.
- g. Outreach Subcommittee
Consider additional appointment; schedule meeting date.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS
Attached.

12. PUBLIC COMMENT
There was one speaker.

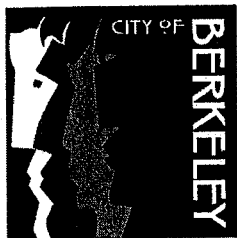
Closed Session

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

13. REVIEW OF CALOCA DECISION
Complaint #2380
(Item postponed to the next meeting.)

End of Closed Session

14. ADJOURNMENT
By general consent, the meeting was adjourned at 10:20 p.m.



Police Review Commission (PRC)

December 13, 2016

To: Police Review Commission
From: Commissioners Terry Roberts and Ari Yampolsky
Re: Status of Discussions with BPD on a Body-Worn Camera Policy

Background: Representatives of the Police Review Commission and the Berkeley Police Department presented their respective draft BWC policies at a Council Worksession on July 19, 2016. PRC and BPD answered Council's questions; Council asked the PRC and BPD to work out their differences on the four main areas of disagreement.

At its July 27, 2016 meeting, the PRC voted to empower a subset of the Commission to sit down with BPD, with the direction to remain firm on three of the issues of disagreement: the use of personal recording devices; recording of interrogations; and release of recordings to the PRC. Regarding the fourth issue, writing a report before reviewing the video in certain use of force situations, the PRC said to get a better understanding of the BPD's position. The PRC asked that the matter be brought back to the full Commission.

PRC and BPD representative met on Sept. 14 and Dec. 7, 2016, and discussed the four points of disagreement. At the latter meeting, an additional point was discovered during our discussion: the use of "should" vs. "shall" language throughout the report. The following is a summary of our positions and our recommendations. (All section references are to the draft policies attached to the Council Worksession reports.)

1. Use of personal recording devices (PRD)

PRC (Sec. 450.6): Any officer issued a BWC shall not use a PRD, except with express permission of the Chief. Rationale: recordings captured on a BWC are secure and trackable, unlike those made with a PRD.

BPD (Sec. 450.6): Use of the PRD is only with the express permission of the Watch Commander, as it is cumbersome and impractical to get the Chief's

permission. PRD use may be necessary if, say, the BWC battery runs out or malfunctions. At the latest meeting, Chief Greenwood expressed that he doesn't think it's necessary to get permission at all; rather, PRD use should require an explanation after the fact as to why a PRD was used instead of the BWC. BPD doesn't want to restrict other ways of gathering evidence. The process presently in place for booking evidence will ensure integrity of PRD recordings.

No agreement reached. Recommendation: That the PRC maintain its position on this issue.

2. Recording interrogations

PRC (Sec. 450.5(b)): BWC must be activated during all interrogations.

BPD (Omitted from list in Sec. 450.5): Many situations in which a consensual encounter or interview turns into an interrogation, but turning on the camera mid-conversation would have a chilling effect on the person being interviewed. BPD is willing to include interrogations in the list of situations where the BWC should (rather than shall) be on, when a person in custody is being interrogated.

No agreement reached, and another issue discovered (see #5 below).
Recommendation: That the PRC maintain its original position.

3. Release of recordings to the PRC

PRC (Sec. 450.8(a)): Recordings are to be released to the PRC in conjunction with its investigation of a civilian complaint.

BPD (not included): Original position was that release of this evidence should be governed by General Order R-23, setting forth rules for release of other police records.

At the Dec. 7 meeting, Chief Greenwood said he would support allowing BOI commissioners to view relevant BWC footage at the BPD, in the presence of an IA sergeant. PRC staff would have similar access during their investigation. This way, BPD retains custody and control of the recordings.

The Chief's proposal is a step in the desired direction, but ideally, the video should also be available during the BOI hearing, so that Commissioners can ask the complainant or officer questions about what they see.

Recommendation: While we agree with the Chief's latest proposal, we also think the video should be made available to PRC staff and BOI Commissioners before and during a BOI. We should continue to work with the Chief on the details.

4. When can officers review video before writing a report

PRC (Sec. 450.7.2): All cases except where reportable use of force or grave bodily injury occurs. In such use of force cases a report would be written by the officer prior to reviewing the video.

BPD (Sec. 450.8): All cases except officer-involved shootings and in-custody deaths.

PRC explained the importance of getting a "state-of-mind" report: what did the officer perceive before using force? We don't think it's an unreasonable burden on the BPD if required in roughly 40-50 cases yearly. Also, any variances between the initial report and video can be reconciled through the officer's supplemental report. The intent is to improve transparency in use of force cases.

BPD strongly opposed, indicating that it seems like a way to create a "gotcha" for the officer (intentionally trying to catch an officer doing something wrong), if the initial report varies from what video shows. BPD has not demonstrated a pattern of significant misconduct, so the PRC's proposal is an expression of distrust with little value.

No agreement reached. Recommendation: That the PRC maintain its original proposal.

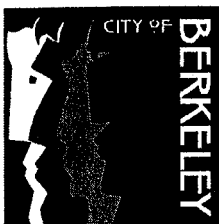
5. Mandatory v. discretionary activation of the BWC.

PRC (Sec. 450.5): The BWC "shall" be activated – i.e., activation is mandatory – in specified situations.

BPD (Sec. 450.5): The BWC "should" be activated – i.e., activation is discretionary – in specified situations.

This is a significant difference. Under the BPD's proposed policy, activating the BWC is entirely optional at all times, despite the language that "Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident." We believe that this amount of discretion undermines the value of the BWC, as civilians would view officers as having the ability to selectively record. Furthermore, this discretionary language is at odds with the body-worn camera policies adopted by the Oakland, Richmond, BART, and San Francisco Police Departments, all of which delineate circumstances in which the camera must be turned on.

No agreement was reached on this issue, although it was raised for the first time at the Dec. 7 meeting. Recommendation: That the PRC maintain its original, mandatory language.



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: 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 Recommended Policy for Berkeley Police Department Use of Body-Worn Cameras (Proposed General Order)

**PRC Recommended Policy for Berkeley Police Department Use of Body Worn Cameras
(Proposed General Order)**

450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWC) by members of this department while in the performance of their duties.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes.

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, limit civil liability, increase transparency, and enhance professionalism in policing. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel and will 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 capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. 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.

450.2a Confidentiality and Proper Use of Recordings.

Body Worn Video use is limited to enforcement and investigative activities involving members of the public. The recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, and other proceedings protected by confidentiality laws and Department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

450.2b Training Required.

Officers who are assigned BWC's must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWC's under this policy. The department shall make an annual report to the PRC regarding the outcome of this review

450.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each member who is assigned to wear a BWC will be responsible for making sure that he or 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 to record from members of the public when the officer is lawfully at the location where the recording takes place.

Upon the approval of the police chief or his or her designee, non-uniformed members may use an approved portable recorder. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use and notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his or 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 if 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.

450.4.1 SUPERVISOR RESPONSIBILITIES

Supervisors shall take immediate physical custody of a BWC when the device may have captured an incident involving a use of force, an officer-involved shooting or death or other serious incident, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy.(Penal Code § 832.18).

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

450.5 ACTIVATION OF THE BWC

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the recorder as required by this policy or at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations.
- (b) Interrogations.
- (c) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (d) Self-initiated activity in which a member would normally notify the Communications Center.
- (e) Probation or parole searches.
- (f) Service of a search or arrest warrant.
- (g) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
- (h) Transporting any detained or arrested person, any time the member expects to have physical contact with that person.

Members shall 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 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 or her safety in order to activate a BWC or change the recording media. However, the BWC should be activated in situations described above as soon as practicable.

450.5.1 ACTIVATION IN CROWD CONTROL SITUATIONS

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 (e.g. Operations Plan or After Action Report).

The limitations outlined in General Order C-1, governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

450.5.3 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.

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

450.5.4 CESSATION OF RECORDING

Once activated, the BWC should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria required herein 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/video 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.

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. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

The department-assigned BWC shall be the only mobile video recorder allowed for department employees while on duty. Any other mobile video recorders shall be used only with the express permission of the Chief of Police.

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

450.7 PROCESSING AND HANDLING 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 must occur at the end of the member's shift, and any time the storage capacity of the recorder 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 uploading the data. Officers must properly categorize and tag video recordings any time they are uploaded.

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

- a) 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 and one month. 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.
- b) Recording caused by either testing or accidental activation may be deleted after 60 days.

450.7.2 REVIEW OF RECORDINGS BY A MEMBER

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

A. Incidents that involve use of force.

A member involved in a use of force shall not review or receive an accounting of any related body camera video footage prior to completing any required initial reports and statements regarding the recorded event. An involved member will be given the opportunity to supplement his or her statement in a separate document, a separate section of the report, or in a separate version of the same document if the earlier document(s) can be easily accessed. In no case shall a member alter a report made prior to reviewing the recording.

B. Incidents that result in grave bodily injury.

1. In the event of an officer-involved incident that results in grave bodily injury, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. Involved members are not to access or obtain their footage of the incident. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident.
2. Personnel uploading secured BWC video files shall not view the files unless authorized.
3. No member involved in the incident may view any video recordings prior to being interviewed by the appropriate investigative unit and receiving command approval.
4. Once a member's report(s) has been submitted and approved and the member has been interviewed by the appropriate investigator, the involved member will have an opportunity to review the recordings prior to the conclusion of the interview process and to provide additional information to supplement his or her statement in a separate document or separate section of the report. In no case shall a member alter a report made prior to reviewing the recording.

C. Investigatory Review

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

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.

Personnel assigned to investigatory units are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict public disclosure of the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

D. Recorded files may also be reviewed by training staff regarding incidents that may serve as a learning or teaching tool.

450.8 RELEASE OF RECORDINGS

Recorded files will be released:

(a) To the Police Review Commission in conjunction with the PRC's investigation of a civilian complaint.

(b) In compliance with a public records request, as permitted under General Order R-23 (RELEASE OF PUBLIC RECORDS AND INFORMATION), R-23 does not authorize release of documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy." However, all subjects of any footage or their next of kin may authorize its release unless prevented by other city policy, law or the courts.

(c) To media personnel or the general public with permission of the Chief of Police or authorized designee, subject to privacy protections indicated in this policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy).

BPD may share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

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 uploading, storing and security of recordings, including for video recordings made using personally-owned recording devices .

(b) Designating persons responsible for uploading 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.

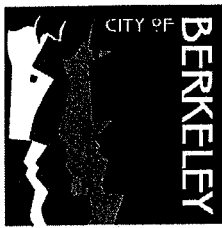
(e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.

(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.

450.10 SURVEILLANCE

The use of facial recognition and other biometric technologies by BPD in conjunction with body camera images is prohibited until a BPD policy is adopted addressing the uses of such technologies.



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

The Lexipol Primary Working Group (PWG) consists of the following members:

1. Lt. Dave Reece
2. Lt. Dan Montgomery
3. Lt. Mike Durbin
4. Sgt. Emily Murphy
5. Sgt. Spencer Fomby
6. Sgt. Joe Okies
7. Sgt. Peter Hong
8. Sgt. Dave Lindenau
9. Sgt. Sam Speelman

		Lexipol Policy	Expert Consulted	Edits? Y/N
1.	100	Law Enforcement Authority		
2.	101	Chief Executive Officer		
3.	102	Oath of Office		
4.	204	Electronic Mail		
5.	309	Officer Response to Calls		
6.	313	Adult Abuse	Peter Hong	
7.	318	Victim and Witness Assistance	Amber Phillips	
8.	319	Hate Crimes		
9.	320	Department Use of Social Media		
10.	323	Report Preparation		
11.	329	Major Incident Notification		
12.	330	Death Investigation	Peter Hong	
13.	333	Private Persons Arrest		
14.	401	Racial or Bias-Based Profiling		
15.	402	Briefing Training		
16.	408	Response to Bomb Calls	Brandon Smith	
17.	411	Cite and Release Policy		
18.	423	Watch Commanders		
19.	424	Mobile Data Terminal Use		
20.	426	Public Recording of Law Enforcement Activity		
21.	429	Foot Pursuit		
22.	504	Impaired Driving and Evidence Collection	Jen Tate	
23.	508	Crossing Guard		
24.	602	Asset Forfeiture	Scott Salas	
25.	800	Crime Analysis	Ryan Andersen	

The PWG has vetted the policies listed above. Please review and make any suggested edits on the actual document. Please return the binder to me by Friday 10/21/16. If no binder is received, it will be presumed that you agree with the policy. Please email or call with any questions!

Thanks!

Sgt. Sam Speelman

PRC Priority List

Updated December 15, 2016

Top Priorities	Notes
Revision of General Orders, incl. C-64, U-2, M-2	Subcommittee recommendations conditionally approved by full Commission 9.21.16 pending review of Commanders Guide. On 12.14.16, CG referred to Subcomm.
Body-worn camera policy	PRC and BPD met twice to see if policy differences can be reconciled. Report of meetings on 1.11.17 agenda.
Fair and Impartial Policing (includes policy review re race designation on traffic citations)	Subcommittee active.
<i>Standard of proof in BOI hearings</i>	<i>On 12.14.16, letter to CM with CC to Council authorized. Sent 12.16.16.</i>
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 to be agendized.
Develop Ordinance on Surveillance and Community Safety	Subcommittee active.
Outreach – to explore effective ways of reaching target audience	Subcommittee formed 9.21.16.
Mutual Aid Pacts – annual review	Subcommittee recommendations on 1.11.17 agenda.
Media credentialing policy	Subcommittee semi-active.
Achieving agreement with BPD regarding consultation on all new and changes to G.O.s	Discussion with Chief about Lexipol process at 12.14.16 meeting; to be continued 1.11.17.

Pending items	
McKinley Ave. Staging – policy review	BPD to present revised G.O. U-4, Unusual Occurrences. (Per 4.13.16 meeting)
Investigation into BPD response on Dec. 7 & 8, 2014	1) Letter to Chief with inquiries sent 8.22.16; 2) 2 issues referred to G.O. C-64 etc. Subcommittee.
Policy review re Smoking Control Ordinance	On 7.15.15, PRC authorized further action as memorialized in 8.7.15 letter from PRC Officer to Chief expressing concerns and making requests. Re-sent to current Chief 1.4.17.

PRC Priority List

Updated December 15, 2016

Pending items	
G.O. M-3: Monthly Management and Annual Reports	7.18.16 letter to CM and Chief re why reports not generated. CM on 8.1.16 said Chief to respond. 9.14.16 authorized request to Chief for his recommendations to M-3.

Remaining items	
Information about ABC enforcement action by BPD and others in South Campus Fall 2016	To be agendized.
How BPD conducts police officer recruitment.	To be agendized.
Commissioner training on law and police procedures	Tactical de-escalation training presented 8.10.16. Additional training?
BPD acquisition of non-military armored vehicle	(To be agendized.) <i>Now moot?</i>
Policy review: citations to bicyclists running red lights	Accepted policy complaint 10.14.15. (A. Bernstein would like to add "Idaho stop" issue.)
How to read CAD reports	PRC Officer item.
BPD budget review	
BPD preparedness and capacity	Comm. Roberts' item.

Pending from staff	
Review of BOI procedures and underlying authority (Copley Press, PSOBRA, BPA v. COB, etc.)	Staff's memo on significant laws and court cases affecting PRC discussed at 10.26.16 meeting. Further discussion re applicability to BOI process agendized for 1.11.17 meeting.
Policy review: search of vehicle and person based on marijuana smell when driver is authorized user	Assigned to staff 10.13.16. In progress.
Non-publication of informal complaints	Staff to obtain written opinion from City Attorney's office and have representative attend PRC meeting.

Updated December 15, 2016

Prioritization of PRC requests to BPD

Date/form of request	Request	Status/Notes
GROUP I		
1.26.16 Council action	Council directive to PRC and BPD to work on recommendations following review of December 6, 2014 response	Most are being handled in G.O. C-64 etc. Subcommittee
12.9.15 oral	Center for Policing Equity analysis of stop data – when?	Per Chief on 12.14.16, possibly end of February 2015.
7.18.16 letter	General Order M-3, BPD reports to City Manager et al.: 1) Urge reporting to occur; 2) Discuss at meeting with CM 8.1.16	2) Discussed with Chief/CM: Chief to reply. (per 9.14 PRC action, further request to Chief forthcoming)
GROUP II		
12.9.15 oral	Analysis of new beat plan – when?	At 12.9.15 meeting, Chief said would be another 4 – 6 months.
1.5.16 letter	3 new ordinances to “improve conditions on community sidewalks”: any plan to issue G.O., T&I Bulletin, or Captain’s Instructions?	
4.13.16 meeting	Provide Revised G.O. U-4, Unusual Occurrences, for review.	
8.22.16 letter	Respond to questions regarding BPD response on Dec. 7-8, 2014	
GROUP III		
8.27.15 letter	Smoking Ordinance/dissemination of info to officers re new ordinances.	Re-sent request to current Chief 1.4.17.
1.13.16 oral	Cost analysis to carry out recommendations in Dec. 2014 post-incident review?	

For possible prioritization:

Review of Lexipol policies

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 1-4-17**

Subcommittee	Commissioners	Chair	BPD Reps / Others
Body-worn & Dash Cameras Formed 12-9-15	Lippman Roberts Yampolsky	Lippman	Capt. David Reece Lt. Joseph Okies
General Orders on Crowd Control C-64, U-2, M-2 Formed 1-13-16	Bernstein Lippman	Bernstein	Lt. Michael Durbin
Fair & Impartial Policing Formed 1-13-16	Lippman Roberts Smith <i>Public members:</i> Christina Murphy Paul Kealoha-Blake Elliot Halpern	Lippman	Lt. Michael Durbin
Media Credentialing Formed 1-13-16	Smith	Smith	
Mutual Aid Pacts Re-formed 7-13-16	Bernstein DaSilva		Sgt. Samantha Speelman
Surveillance and Community Safety Ordinance Formed 9-14-16	Bernstein DaSilva Yampolsky Roberts <i>Public members:</i> Tracy Rosenberg Brian Hofer Juliet Leftwich	Yampolsky	Capt. David Reece
Outreach Committee Formed 9-21-16	Bernstein DaSilva		

CFM

Office of the District Attorney
Alameda County
Nancy E. O'Malley, District Attorney



Rene C. Davidson Courthouse
1225 Fallon Street, Suite 900
Oakland, CA 94612

September 21, 2015

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

Dear Chief Meehan,

The Unserved/Underserved Victim Advocacy & Outreach Program of my office is required by law to provide services to the citizens of Alameda County who become victims of crime. Included in these services is the requirement that the unit process all claims for reimbursement for out of pocket medical, wage loss, mental health therapy, and funeral/burial expenses incurred by victims of crime and their families under the State Compensation Law. Funding for the operation of the unit is provided through the California Governor's Office of Emergency Services (Cal OES) and Victim Compensation and Government Claims Board (VCGCB).

Cal OES requires that my office have in place, a signed operational agreement to work cooperatively with police jurisdictions in the county who receive referrals of victims of crime regardless of whether the suspect is known or apprehended.

Your department has had a long-standing cooperative relationship with the Victim/Witness Assistance Division and I am asking for your continued support and signature on the enclosed operational agreement. Please return it in the enclosed envelope as soon as possible.

Thank you for your continued cooperation.

Sincerely yours,

NANCY E. O'MALLEY
District Attorney

Tasia Wiggins
By: Tasia Wiggins
Director

RECEIVED
SEP 28 2015
OFFICE OF THE CHIEF



OPERATIONAL AGREEMENT

The Operational Agreement stands as evidence that the Alameda County District Attorney's Office Victim/Witness Assistance Division, Unserved/Underserved Victim Advocacy & Outreach Program and the **Berkeley Police Department** to work together toward the mutual goal of providing maximum available assistance for elder crime victims residing in the County of Alameda. Both agencies believe that implementation of Unserved/Underserved Victim Advocacy & Outreach Program will further this goal. To this end, each agency agrees to participate in the program, if implemented, by coordination and providing the following services.

1. The Alameda County District Attorney's Office, Victim/Witness Assistance Division, Unserved/Underserved Victim Advocacy & Outreach Program will closely coordinate the following services with the **Berkeley Police Department** through:
 - a. Unserved/Underserved Victim Advocacy & Outreach Program staff being readily available to the **Berkeley Police Department** for service provision through personal contact, telephone consultation and referral, and on-site visits to victims upon referral from the **Berkeley Police Department**.
 - b. Meeting between the Unserved/Underserved Victim Advocacy & Outreach Program staff and the **Berkeley Police Department** staff to discuss strategies, implementations and coordination of outreach activities to senior citizens.

Specifically:

- The Unserved/Underserved Victim Advocacy & Outreach Program will collaborate with the **Berkeley Police Department** to develop brochures, public service announcements for dissemination throughout Alameda County and to develop and present informational training to law enforcement and mandated reporters of elder abuse throughout Alameda County.
- Both agencies will jointly attempt to better the utilization of resources to maximize the victim participation in the criminal justice system and minimize any residual or secondary trauma to the elder victim and/or his or her caregiver(s) involved in the victim's involvement in the criminal justice system.
- c. The Unserved/Underserved Victim Advocacy & Outreach Program will fully participate with the County Elder Abuse Working Group addressing issues surrounding Elder Domestic Violence, Elder Sexual Assault, and Elder Financial Abuse.

We, the undersigned, as an authorized representative of the Alameda County District Attorney's Office, Unserved/Underserved Victim Advocacy & Outreach Program and the **Berkeley Police Department** do hereby approve this document on this 7 day of OCTOBER, 2015

This Operational Agreement will be in effect from fiscal year 2015 - 2018.

Tasia Wiggins
Tasia Wiggins
Director
Victim/Witness Assistance Division

Michael Meehan
Michael Meehan
Chief of Police
Berkeley Police Department

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE CITY OF HAYWARD POLICE DEPARTMENT AND THE
PARTICIPATING ALAMEDA COUNTY CITY LAW ENFORCEMENT
AGENCIES**

**AVOID THE 21 DUI CAMPAIGN – ALAMEDACOUNTY
OTS GRANT #AL 1620**

FUNDED BY

THE STATE OF CALIFORNIA OFFICE OF TRAFFIC SAFETY

THIS MEMORANDUM OF UNDERSTANDING, entered into this 1ST day of October 2015, by and between the CITY OF HAYWARD POLICE DEPARTMENT, hereinafter called "Hayward" and the participating Alameda County Law Enforcement Agencies, hereinafter called "Alameda LEAs," related to the Avoid the 21 DUI Campaign – Alameda County, hereinafter called "Avoid the 21 Program" funded by the State Office of Traffic Safety, hereinafter called "OTS."

WHEREAS, it is necessary and desirable that Alameda LEAs be retained for the purpose of performing professional services for the Avoid the 21 Program; the Alameda LEAs participating include the Police Departments from the cities of Alameda, Albany, Berkeley, Fremont, Livermore, Newark, Oakland, Pleasanton, San Leandro, Union City, the Alameda County Sheriff's Department, CSU East Bay Police Department, East Bay Regional Parks Police Department, B.A.R.T. Police and the California Highway Patrol.

WHEREAS, Hayward is one of the participating Alameda LEAs in the Avoid the 21 Program;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Services to be Performed by Hayward and all Alameda LEAs.

During the term of this agreement all Alameda LEAs participating in the Avoid the 21 Program shall provide DUI enforcement staff on an overtime basis, as staffing levels allow, during the approved enforcement deployments. All Alameda LEAs commit to participate in the annual campaign as staffing levels allow and to encourage officers to emphasize DUI enforcement during all phases of the grant. All Alameda LEAs will ensure that 50% of the officers deployed at every Avoid the 21 operation will be SFST certified. Each of the Alameda LEAs hosting a DUI

Checkpoint will ensure the Officer in Charge (OIC) has taken the DUI Checkpoint Management Class sponsored by OTS. Alameda LEAs agree to adhere to the OTS grant programmatic, financial and statistical reporting and understand that adhering to the requirements is necessary to be reimbursed for DUI enforcement activities conducted during the time periods of October 01, 2015 through September 30, 2016.

2. Payment.

- A. Maximum Amount. In full consideration of the services provided during enforcement periods, the amount that Hayward shall be obligated to pay for services rendered under this Memorandum of Understanding shall not exceed the dollar amounts set forth in the Avoid the 21 grant for the term of this Memorandum of Understanding. Funds are to be used solely for reimbursement of personnel overtime incurred while staffing DUI Enforcement activities in support of the Avoid the 21 Program during the specified enforcement periods of October 01, 2015 through September 30, 2016.
- B. Rate of Payment. All Alameda LEAs will receive reimbursement for personnel overtime through the Avoid the 21 Program for a total sum not to exceed the dollar amounts set forth in the Avoid the 21 grant \$140,000.00 for the term of this Memorandum of Understanding. The amount all participating Alameda LEAs will receive will be based on actual personnel hours worked on DUI enforcement for the Avoid the 21 Program and as invoiced in accordance with Paragraph C, Invoice Requirements as stated below. Funding is solely for reimbursement of personnel overtime incurred during DUI enforcement activities conducted during the Avoid the 21 enforcement period. Only "paid" overtime shall be eligible for reimbursement. Overtime accrued as "comp time" cannot be reimbursed under this grant.
- C. Invoice Requirements. Invoices shall be submitted on the provided form and include dates and hours worked, personnel names, overtime salary rate, number of hours worked, and total dollars requested for overtime reimbursement.
- D. Time Limit for Submitting Invoices. All Alameda LEAs shall submit an invoice for services to Hayward. Invoices

are due to Hayward no later than the 20th day of the month following the end of the quarter. Invoices received after this date will result in forfeiture of that quarter's funding. Hayward will not be obligated to pay any Alameda LEA for the services covered by any invoice if the Alameda LEA presents the invoice to Hayward more than forty-five (45) days after the close of the grant period. For invoices received within the established time limits, payment shall be made to Alameda LEA's by the last day of the quarter following the quarter for which services were rendered.

3. Statistical Reporting

All Alameda LEAs shall collect and report to Hayward all efforts in support of the Avoid the 21 Program. This is to include, but not limited to DUI/DL checkpoints reporting: number of vehicles passing through checkpoint, number of vehicles screened, number of field sobriety tests conducted, number of DUI arrests, number of criminal arrests, number of citations issued and number of vehicles impounded; Saturation patrols reporting: number of vehicle stops, number of field sobriety tests conducted, number of DUI arrests and number of vehicles impounded; Warrants served reporting: number of attempts and total number served.

Alameda LEAs shall submit daily statistical reports to Hayward for all identified Avoid the 21 enforcement deployments, regardless of whether or not funding for the deployment is received under this grant. Statistical reports not submitted by the 7th day following each Avoid the 21 deployment will result in suspension of future funding.

4. Availability of Funds.

Payment of all services provided pursuant to this Memorandum of Understanding is contingent upon OTS funding the Avoid the 21 Grant with Hayward. In the event that OTS does not fund Hayward's grant, Hayward shall not be liable for any payment whatsoever. Hayward may terminate this Memorandum of Understanding in accordance with the provisions of Section 8 below for unavailability of OTS funds.

5. Alteration of Memorandum of Understanding.

This Memorandum of Understanding is complete and contains all of the terms and conditions agreed upon by the parties. No alteration or variation shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

6. Records.

A. Documentation. Alameda LEAs will maintain all supporting documentation necessary to substantiate submitted invoices as required in the current OTS Grant Program Manual.

B. Access. Alameda LEAs agree to provide to Hayward, to any Federal or State department having monitoring or reviewing authority, to authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all records and documents necessary to determine compliance with relevant Federal, State and local statutes, rules and regulations and this Memorandum of Understanding, and to evaluate the quality, appropriateness and timeliness of services performed, for a period of at least three (3) years from the termination date of this Memorandum of Understanding, or until audit findings are resolved, whichever is greater.

C. Retention. Hayward and Alameda LEAs shall maintain and preserve in its possession all records relating to this Memorandum of Understanding for a period of at least three (3) years from the termination date of this Memorandum of Understanding, or until audit findings are resolved, whichever is greater.

7. Compliance with Applicable Laws.


All services to be performed by Hayward and all Alameda LEAs pursuant to this Memorandum of Understanding shall be performed in accordance with all applicable Federal, State, County and Municipal laws, ordinances and regulations.

8. Term of the Agreement.

Subject to compliance with the terms and conditions of this Memorandum of Understanding, the term of this Memorandum of Understanding shall be from of October 01, 2015 through September 30, 2016. This Memorandum of Understanding may be terminated by Hayward or any Alameda LEAs at any time upon thirty (30) days written notice to the other party.

In witness whereof, the parties have executed this Memorandum of Understanding on the day and year last written below.

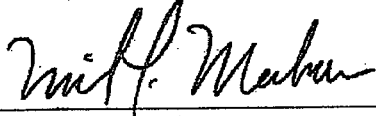
HAYWARD POLICE DEPARTMENT



Diane E. Urban
Chief of Police

Date: 9-17-15

Berkeley Police Department



Michael K. Meehan
Chief of Police

Date: 10/07/2015



bawar
bay area women against rape

BAY AREA WOMEN AGAINST RAPE
Serving Alameda County Since 1971

LETTER OF AGREEMENT

To Whom It May Concern:

Bay Area Women Against Rape and Berkeley Police Department hereby agree to continue to constructively and effectively work together to serve survivors of sexual assault in Alameda County.

BAWAR assumes responsibility for operation of all baseline services, including a 24-hour crisis line, SART, accompaniment and advocacy, in-person and group counseling, and community awareness/prevention.

Berkeley Police Department assumes responsibility for law enforcement services to survivors of sexual assault including SART participation. Will also inform survivors of their right to have a sexual assault counselor or support person of their choice present during the interview process. We will also participate in cross-training of staff and volunteers when appropriate.

BAWAR and Berkeley Police Department also agree to an annual review/evaluation of services provided.

This Operational Agreement will be in effect from fiscal year 2016 – 2019.

SIGNED:

For: Bay Area Women Against Rape

For: Berkeley Police Department

June 10, 2016

Date

JUNE 28, 2014



Steven Wells
Chief Special Agent

BNSF Railway Police
740 E. Carnegie Drive
San Bernardino, CA 92408

AG

Phone (909) 386-4183
Fax (909) 386-4717
Email Address: Steven.Wells@bnsf.com

April 29, 2016

Berkeley Police Department
ATTN: Chief Michael Meehan
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Dear Chief Meehan:

BNSF Railway have found that dealing with trespassers quickly is an effective means of preventing vandalism, theft, and other criminal acts committed on trains and railroad infrastructures. We consider most, if not all, crimes on the railroad start with a trespasser. Vandalism of shipments such as automobiles and company property, theft ranging from customer lading to wire that supports our infrastructure, and of course, trespassing which also puts the subject at risk. All offenses begin with the single act of trespassing on BNSF property illegally.

BNSF Police and Homeland Security teams have developed internal programs for employee reporting such as our On Guard program which encourages employees to report suspicious persons or activities to our internal dispatch center, the Resource Operations Call Center (ROCC) or local authorities.

As part of our effort to support local law enforcement's authority to investigate and respond to criminal activity, this letter will serve as consent for officers of the Berkeley Police Department to enter BNSF property to enforce grade crossing and trespassing laws through arrest, citation, or other lawful means. This consent shall remain in effect until revoked in writing by BNSF.

There are moving trains or other railroad equipment at most BNSF facilities; as such, we urge your officers to use extreme caution while on railroad property. If your officers have any questions or concerns about coming on specific railroad property in a safe manner, they should contact the BNSF Railway Police ROCC at 800-832-5452 or local management.

The BNSF Railway Company and BNSF Railway Police appreciate the efforts of the Berkeley Police Department in this community. We look forward to continued cooperation and interaction with your department.

We would also like to introduce you to an application for first responders called "AskRail". This safety tool provides first responders with immediate access to accurate and timely data about what type of hazardous materials a railcar is carrying so they can make an informed decision about how to respond to a rail emergency. The link can be found at: BNSFhazmat.com/askrail/. The application takes approximately three (3) minutes to fill out and we encourage every member of your department to sign up.

Sincerely,

Steven Wells

Steven L. Wells
Chief Special Agent

RECEIVED
MAY 06 2016
OFFICE OF THE CHIEF



9/14/15: An individual was contacted during a "suspicious vehicle" call for service. The person provided the officer with identification in the form of a "World Passport." The individual later identified himself as a sovereign citizen. He then provided the officer with his true name, different from the name on the World Passport. According to a records check he has had a prior PC 148, PC 242, PC 415 and PC 602 arrest.

9/15/2015: An individual stated on a Facebook post regarding police ""Dirty Racist MuthaFukas keep Killing Armed Police Officers thats the Only Justice I Feel is when a Armed Police Officer is Killed" and "Fuk You u Live by it U Die by it". The individual lives on the 1300 block of Channing Way and has a Alameda County criminal history.

On 01/28/16: BPD officers arrested an individual for 273.5PC. During the booking process, he claimed to be a Sovereign Citizen, and made several threats to BPD officers including, "Punk ass bitch! Let me catch you without your uniform," and "Don't let me catch you outside by yourself." During the booking process he claimed "I see you guys every day from my balcony." The individual has an extensive and violent criminal history including but not limited to domestic violence, 422 PC, 417 PC, 148 PC, 1361. PC, 273a (a) PC, and 261.5 PC. He has been convicted of 148 PC, 243(a) PC, 459 PC, 273.5 PC, and 12021 (c) PC. He has served state prison time. He is a self-admitted Rolling Crip out of Los Angeles.

Lee, Katherine

From: Andrea Prichett <prichett@locrian.com>
Sent: Wednesday, December 28, 2016 12:59 PM
To: PRC (Police Review Commission); Lee, Katherine
Subject: Agenda item for January 11, 2017

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Kathy,

I hope that you are well and have had some time to be with your family and to take a break from all of the responsibilities that you shoulder so well in your daily duties. I am writing to you to alert you to the fact that the agenda item: "Police enforcement actions against homeless encampments" may well be of interest to many people and we may want to plan to have some extra chairs in the room. We may also want to consider allowing extra time for public comment and provide for the showing of video during this agenda item.

I would appreciate it if you could forward these links to the other commissioners for their information before the meeting. These video links are from a November 4th raid and the others are from raids that happened on December 21st. I believe that they raise serious questions about how these raids are being conducted, how the ADA is being implemented, and how the new "Right To Watch" policy is being implemented.

<https://www.youtube.com/watch?v=nqyFA8Wq1Tk> Testimony by homeless
people and members of the press first raid Dec 21

<https://www.youtube.com/watch?v=ATpGzUX4W6s> Testimony by homeless
people at second raid on Dec 21

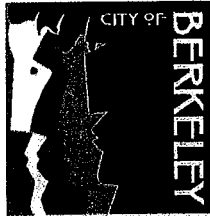
<https://www.youtube.com/watch?v=z4iTWhS-jw> Interaction with Lt.
Montgomery regarding right to watch Dec 21

<https://www.youtube.com/watch?v=wR-TNm5oGtl> Police implementing the
Americans with disabilities act (ADA), right to watch and

passive resistance Nov. 4, 2016

I do not expect that we will receive complaints about these incidents. I will not be filing a complaint. However, I do think that we should examine how these raids are conducted and review documentation created by the BPD in order to make sure that the actions of the police are representative of best practices.

Thanks fr your consideration.



Police Review Commission (PRC)

December 16, 2016

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

Re: Standard of Proof in PRC Board of Inquiry Hearings

Dear Ms. Williams-Ridley,

Thank you for your response of September 12, 2016, to our inquiry regarding your decision during the meet and confer process to abandon the PRC's amendment to the standard of proof used in our Board of Inquiry. Although we appreciate you taking the time to respond, there are a number of things in your response that we find deeply troubling. We are concerned that the current policies and practices of the City Manager's office are a grave disservice to the spirit and letter of the PRC enabling ordinance, and greatly impede our ability to operate as an independent, fact-finding body.

Section 10, subsection (f) of the 1973 PRC enabling ordinance states:

The Commission established by this Ordinance shall have the following powers and duties:

...

f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this Ordinance and its general purposes.

It is not clear to the Commission how every proposed change to PRC regulations would properly be subject to meet and confer under the applicable law. For your administration to so hold, without reservation, seems to us to directly contradict the will of the voters as expressed in the above noted section of the Ordinance. This position does real damage to the independence of the PRC by subjecting changes to our internal operations to approval by the BPA.

Your letter also fails to acknowledge the significant policy reasons that underscore the need for the change in the standard of proof. To be clear, the PRC passed this change because we believed it was vital to our ability to carry out our mandate. We have

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 website: www.cityofberkeley.info/prc/

Dee Williams-Ridley
Standard of Proof in PRC Board of Inquiry Hearings
December 16, 2016
p. 2

repeatedly explained how the use of the clear and convincing standard is both inconsistent with the standard used across California, and indeed the country, when evaluating allegations of misconduct by governmental employees. We have also pointed out the inherent unworkability of having a single arbiter balance and consider fact-finding of the same incident from two different bodies –Internal Affairs and the PRC - when each employs a different standard of proof. Your letter addresses none of these concerns.

Most critically, you fail to explain why the City should continue to insist that the PRC employ a standard that as a policy matter gives more weight and importance to police officers' job security than to addressing the alleged wrong suffered by a member of the community. To force the PRC to hold to an unreasonably high standard of proof above the state and national norms unnecessarily deprives the BPD of a carefully considered and well-regulated independent input into the disciplinary process. It also frustrates community sentiment at a time when more, not less, of such independent input is required. If we, as a City, are to truly embrace procedural justice, we must certainly insure that the system for civilian review and accountability reflects the values of our community and has a process that is fair to all parties. The clear and convincing standard of proof does neither.

The members of the PRC voted at its December 14, 2016 meeting to send you this letter, with a copy to the Mayor and City Councilmembers, by the following vote: Ayes – Bernstein, DaSilva, Lippman, Prichett, Roberts, and Yampolsky; Abstain – Gould (temporary); Absent – Smith.

Respectfully,



Terry Roberts
Chairperson
Police Review Commission

cc: Mayor and City Councilmembers
Mark Numainville, City Clerk
PRC Commissioners

Bulletin Notice

Date: December 20, 2016
To: All BPD Employees
From: Andrew R. Greenwood, Int. Chief of Police
Subject: Promotions



The following provisional promotions will go into effect shortly, with precise dates to be determined, but likely within the next two weeks. These promotions are provisional, in order to cover for the positions created due to my appointment as Interim Chief:

Lt. David Reece is being promoted to Captain.

Sgt. Angela Hawk is being promoted to Lieutenant.

Ofc. Chris Bonaventure is being promoted to Sergeant.

I hope to make another round of promotions as we are able to move forward with a re-organization to include a 4th Captain's position. The timeline on that is still undetermined, but we are working on it.

Bulletin Notice

Date: December 23, 2016
To: All BPD Employees
From: Andrew R. Greenwood, Int. Chief of Police
Subject: Promotions



As you know, we have been working on getting a fourth Captain's position in place, so that we can move with some re-organization of Command responsibilities in 2017. We were able to get approval for this position late yesterday afternoon.

We anticipate making some structural changes in January. As we make those changes, the following promotions will go into effect, with precise dates to be determined, but likely within the next month:

Lt. Alyson Hart is being promoted to Captain.

Sgt. Joe Okies is being promoted to Lieutenant.

Ofc. Veronica Rodrigues is being promoted to Sergeant.

These promotions will be provisional, and those announced earlier this week will become permanent. The provisional status is needed in order to cover for the positions created due to my appointment as Interim Chief.

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Tuesday, January 03, 2017 9:28 AM
To: Lee, Katherine
Subject: FW: Why some problem cops don't lose their badges

Follow Up Flag: Follow up
Flag Status: Flagged

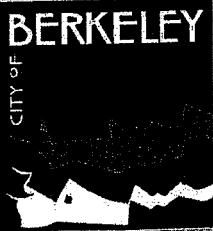
From: Bravin, Jess [mailto:jess.bravin@wsj.com]
Sent: Friday, December 30, 2016 12:27 PM
To: PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>
Subject: Why some problem cops don't lose their badges

Dear PRC -- thought this report from The Wall Street Journal might be of interest.

Why some problem cops don't lose their badges
<http://www.wsj.com/articles/why-some-problem-cops-dont-lose-their-badges-1483115066?emailToken=JRrzdP95ZH2Qi9Y9bcwj1Extda4NBqqRXFTdKH3Pf0PLrGeQreWn2+AxcgMC65H+vSEdgotoN42EyXnil3DoxBZbMw+Ah>

All best from Washington,

Jess Bravin
(former PRC commissioner)



Commissioner Attendance Report

For the Period July 1 through December 31, 2016

(Scroll down for information on completing this form.)

Commission Name Police Review Commission

Secretary Name Katherine J. Lee

Commissioner Name	# of Meetings Attended	# of Meetings Not Attended/Absent	% of Meetings Attended	Meetings Absent (List dates, ex. 1/8)	Excused Absences (List dates, ex. 1/8)
1. Bernstein, Alison	6	2	75%		
2. Lippman, George	8	0	100%		
3. Roberts, Terry	8	0	100%		
4. Smith, Kad	6	2	75%		
5. Yampolsky, Ari	7	1	88%		
6. DaSilva, Kimberly	7	1	88%		
7. Prichett, Andrea	1	0	100%		
8.					
9.					

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

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

Instructions for Completing the Form

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

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

In the "# of Meetings Attended" column, input the number of meetings the commissioner attended (ex. "2"). In the "# of Meetings Not Attended/Absent" column, input the number of meetings the commissioner did not attend or was absent (ex. "4"). *These two columns added together should equal the total number of meetings held during the reporting period (ex. 2 + 4 = 6). Please input "0" where appropriate.* This information must reflect each current commissioner's physical presence or absence (excused or not) at regular meetings.

If the "% of Meetings Attended" column reflects 50% or less, input the applicable dates in the "Meetings Absent" and "Excused Absences" columns.

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

Additional Attendance Rules

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

2017 Commission Meeting Dates

Name of Commission: PRC Commission

Commission Secretary: Katherine J. Lee

2017 Meeting Dates

Month	Meeting Day and Date	Time
January 2017	Wednesday 1/11/17	7:00 pm
	Wednesday 1/25/17	7:00 pm
February 2017	Wednesday 2/08/17	7:00 pm
	Wednesday 2/22/17	7:00 pm
March 2016	Wednesday 3/08/17	7:00 pm
	Wednesday 3/22/17	7:00 pm
April 2017	Wednesday 4/12/17	7:00 pm
	Wednesday 4/26/17	7:00 pm
May 2017	Wednesday 5/10/17	7:00 pm
	Wednesday 5/24/17	7:00 pm
June 2017	Wednesday 6/14/17	7:00 pm
	Wednesday 6/28/17	7:00 pm

Month	Meeting Day and Date	Time
July 2017	Wednesday 7/12/17	7:00 pm
	Wednesday 7/26/17	7:00 pm
August 2017	(RECESS)	
September 2017	Wednesday 9/06/17	7:00 pm
	Wednesday 9/27/17	7:00 pm
October 2017	Wednesday 10/11/17	7:00 pm
	Wednesday 10/25/17	7:00 pm
November 2017	Wednesday 11/15/17	7:00 pm
December 2017	Wednesday 12/13/17	7:00 pm

KJL:mgm

PRC Meeting Dates 2017

January 2017						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

1-2: New Year's Day; NY Holiday
16: M L King Day

May 2017						
S	M	T	W	T	F	S
18	19	20	21	22	23	24
25	26	27	28	29	30	31

19: Malcolm X's Birthday Obs.
29: Memorial Day

September 2017						
S	M	T	W	T	F	S
35	36	37	38	39		

4: Labor Day
6: *1st Wednesday

February 2017						
S	M	T	W	T	F	S
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

13: Lincoln's Birthday Obs.
20: Washington's Birthday Obs.

June 2017						
S	M	T	W	T	F	S
22	23	24	25	26	27	28
29	30					

October 2017						
S	M	T	W	T	F	S
40	41	42	43	44		

9: Indigenous People's Day

March 2017						
S	M	T	W	T	F	S
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

4: Independence Day

July 2017						
S	M	T	W	T	F	S
26	27	28	29	30	31	

4: Independence Day

November 2017						
S	M	T	W	T	F	S
44	45	46	47	48		

10: Veterans' Day Observed
15: *3rd Wednesday
23-24: Thanksgiving + Day After

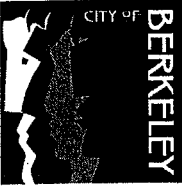
April 2017						
S	M	T	W	T	F	S
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

August 2017						
S	M	T	W	T	F	S
31	32	33	34	35		

No meetings this month

December 2017						
S	M	T	W	T	F	S
48	49	50	51	52	1	2

25: Christmas Day



Police Review Commission Standing Rules

(As of 12/14/2016)

A. PURPOSE

These Standing Rules are established by the Police Review Commission to ensure transparency and efficiency of our operations.

B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Police Review Commission, except that the Commission may not adopt rules that conflict with the enabling Ordinance, Commissioners' Manual, or Regulations for Handling Complaints Against Members of the Police Department.

C. AGENDA ITEMS – REGULAR MEETINGS

Individual commissioners shall submit agenda items to the commission secretary by 12:00 noon one week before the meeting date. (This will almost always be a Wednesday.)

D. COMMUNICATIONS

Individual commissioners shall submit communications to be included in the agenda packet to the commission secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed in hard copy at the meeting, and may also be distributed to commissioners via email. If communications are received after 3:00 p.m. on the meeting day, the commission secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

E. MEETING PROCEDURES

1. Agenda items shall be introduced by the commission member or staff member who proposed the item. The Chair shall allow an initial period for discussion. When a motion is introduced and seconded, the Chair may set a time limit of no less than two minutes for each commissioner for additional comments before putting the matter to a vote.
2. A pending motion may be modified by a "friendly amendment"; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.

3. During discussion of a motion, the Chair shall make every attempt to allow alternating positions to be heard.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall ask the commission secretary to repeat the motion before the action.
5. Guest speakers who are not on the agenda may address the commission only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert's Rules of Order.

F. PUBLIC COMMENT

1. The Chair, subject to the consent of the commission, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

G. POLICY COMPLAINTS AND REVIEWS

1. An inquiry into a policy, when initiated by a civilian filing a policy complaint form, is a "policy complaint."
 - a) The procedures for handling a policy complaint are set forth in Section II.A.4.b. of the Regulations for Handling Complaints Against Members of the Police Department.
 - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Commissioners may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the commission.
2. A commission-initiated policy review may commence upon a majority vote of the commissioners.
 - a) Commissioners shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as whole commission, assigning a commissioner to research the issue, asking staff to investigate or research, or establishing a subcommittee. If a

subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full commission.

- b) The full commission may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action.

H. REGULAR MEETINGS

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The commission shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at the South Berkeley Senior Center and other locations as may be determined by the commission.

I. ELECTIONS

1. Annual elections for PRC Chair and Vice-Chair will be agendized for the first regular meeting in January and, whenever possible, this item will be agendized as the final item under New Business.
2. The election of the Chair will precede the election of the Vice-Chair, and the following nomination and election process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A commissioner nominates another commissioner (no commissioner may nominate him/herself).
 - c) The nomination is seconded (the nomination fails if there is no second)
 - d) The presiding Chair declares the nomination process closed, when there are no further nominations.
 - e) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - f) Commissioners pose questions to each candidate.
 - g) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
 - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.

- iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The PRC Secretary will assign "heads" and "tails."
3. The PRC Secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the PRC Ordinance, the Chair may appoint members of the public to subcommittees in which they have expressed an interest, subject to approval of the commission. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; and b) present themselves at a commission meeting before or at the time of the appointment and speak on the public record on intent to serve and what they will bring to the subcommittee work and deliberations.
2. Members of the public appointed to subcommittees shall enjoy the same voting rights and privileges on the subcommittee, as that of PRC commissioners appointed to the subcommittee, except that public members may not be selected to be the subcommittee Chair.
3. Commission members must constitute a majority of the membership of any subcommittee, but a subcommittee may convene and conduct business even if commissioners are not a majority of subcommittee members present.
4. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the commission.
5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the commission, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.

7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a commission meeting.

K. MUTUAL AID AGREEMENTS

The commission shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the pacts between the BPD and other law enforcement entities.

L. ANNUAL REPORT

The commission secretary shall endeavor to present the annual report for the commission's approval no later than June 1 of each year. The Foreword shall be written by the commissioner who served as Chair in the year of the report.

M. FAMILIARITY WITH BERKELEY POLICE DEPARTMENT

Within the first 6 months of their appointment, newly-appointed commissioners shall endeavor to:

- 1) complete a ride-along with a sworn police officer, and
- 2) meet with Chief of Police and his/her command staff.

N. KNOWLEDGE OF APPLICABLE LAWS AND RULES

Commissioners should be generally knowledgeable of the Police Review Commission's enabling Ordinance (Ordinance No. 4644-N.S.; B.M.C. Chapter 3.32), the Regulations for Handling Complaints Against Members of the Police Department, and these Standing Rules. They should also bring copies of these documents to all commission meetings.

