

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, January 25, 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 January 11, 2017
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**
Status of complaints; other items.
- 7. CHIEF OF POLICE'S REPORT**
Crime, budget, staffing, training updates, and other items.
- 8. OLD BUSINESS (discussion & action)**
 - a. Police enforcement actions against homeless encampments: report back with information.
From: PRC Officer
 - b. Mutual Aid Pacts
 - i) Review agreement with Northern California Regional Intelligence Center (NCRIC).
 - ii) Review agreement with Department of Homeland Security for Urban Areas Security Initiative (UASI) program.

From: Commissioner Lippman

- c. Report on meeting with BPD regarding Body-Worn Camera policy
From: PRC Officer
- d. Continue discussion of process for providing PRC review of Lexipol policies.
From: Commissioner Bernstein
- e. Commissioner questions about case law and statutes affecting the Board of Inquiry hearing process
From: PRC Officer
- f. Prioritization of PRC tasks and requests to BPD
From: Commissioner Bernstein

9. NEW BUSINESS (discussion & action)

- a. Open a policy investigation into police enforcement action on homeless encampments, to include an inquiry that identifies who is issuing the directive to conduct enforcement; who are the parties involved in deciding to issue such a directive; what costs (personnel, equipment, and other) has the BPD incurred to undertake the enforcement actions; and whether the BPD's enforcement actions were lawful and appropriate, including, but not limited to, the following areas: BPD involvement in seizure of property (or supervising such seizure); BPD compliance with and accommodations made for the Americans with Disabilities Act (ADA); allowing the public the Right to Watch under General Order W-1, compliance with First Amendment protections of free speech during extended protests. Determine next steps for investigation, including possible formation of a subcommittee.
From: Commissioner Prichett
- b. Request for a moratorium on police enforcement actions on homeless encampments.
From: Commissioner Vicente
- c. Initiate a review of policies and practices that impact the Right to Watch and First Amendment protections of this activity specifically regarding General Order W-1.
From: Commissioner Prichett

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

- a. Fair & Impartial Policing Subcommittee
Update; consider additional appointments; 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.)*

14. MEMORANDUM FROM CITY MANAGER REGARDING EXCUSING OFFICERS FROM BOARDS OF INQUIRY

End of Closed Session

15. ADJOURNMENT

Communications Disclaimer

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

 **Communication Access Information (A.R.1.12)**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

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

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

PRC REGULAR MEETING ATTACHMENTS

January 25, 2017

MINUTES

January 11, 2017 Regular Meeting Page 7

AGENDA-RELATED

Item 8.a – BPD Training and Information Bulletin number 220, dated September 21, 2009: Trespassing/Lodging on Private Property, Public Property, and Parks. Page 13

Item 8.a – Resolution No. 63,906 – N.S. Amending Resolution No. 61,042-N.S. Reaffirming Homeless Human and Civil Rights (HHCRR). Page 19

Item 8.a – BPD General Order T-19 dated January 1, 2000, re Americans with Disability Act. Page 21

Item 8.b – Letter to Berkeley City Council dated November 23, 2015 re PRC's recommendations to the City Council regarding the 2015 Mutual Aid Agreements Compendium (Mutual Aid Pacts). Page 39

Item 8.b.i – BPD Agreements, Letters and Understandings re Mutual Aid, etc. Item #3.12: Northern California Regional Intelligence Center (NCRIC). Page 43

Item 8.b.i. – Suspicious Activity Report. Page 51

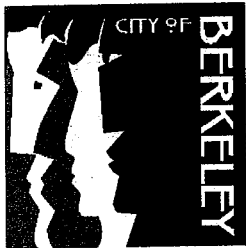
Item 8.b.ii - BPD Agreements, Letters and Understandings re Mutual Aid, etc. Item #3.6: Department of Homeland Security, Urban Area Security Initiative (UASI) Program. Page 53

Item 9.c – BPD General Order W-1 dated November 10, 2016 re Public Recording of Law Enforcement Activity. Page 71

Item 10 – PRC Subcommittees List & Status (1-19-17). Page 75

COMMUNICATION(S)

- Email from a former PRC Commissioner dated December 30, 2016 re *Why some problem cops don't lose their badges*. Page 77
- Memo from the PRC to the BPD Chief dated January 6, 2017 re: Reporting of Marijuana Enforcement Activity. Page 79



Police Review Commission (PRC)

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

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

North Berkeley Senior Center
1903 Hearst Avenue, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR TERRY ROBERTS AT 7:25 P.M.

Present: Commissioner Terry Roberts (Chair)
Commissioner Alison Bernstein
Commissioner Kimberly DaSilva
Commissioner George Lippman
Commissioner Andrea Prichett
Commissioner Ari Yampolsky
Commissioner George Perezvelez
Commissioner Bulmaro Vicente

Absent: None

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andrew Greenwood, Lt. Angela Hawk, Sgt. Katherine Smith,
Sgt. Samantha Speelman, Sgt. Sean Ross

2. APPROVAL OF AGENDA

By general consent, Item #s. 9.a. and 9.b. were moved ahead of Old Business, and Item #8.c. was postponed to the next meeting.

3. PUBLIC COMMENT

There were 6 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting of December 14, 2016

Moved/Seconded (Bernstein/Yampolsky) Motion Carried

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

Noes: None

Abstain: Perezvelez

Absent: None

5. CHAIR'S REPORT

- Kad Smith resigned today. He was unable to continue serving to due many other responsibilities.
- Michael Sherman was acknowledged with a certification of appreciation for his 14 years of service on the PRC.

6. PRC OFFICER'S REPORT

- One new complaint filed since the last PRC meeting. BOI to be held this Friday.
- Commissioners please take note of PRC meeting schedule and Standing Rules sent with packet.

7. CHIEF OF POLICE'S REPORT

- Homicide occurred recently; suspect arrested in Southern California.
 - Now have 175 officers of 181 authorized. Lot of new people being hired; also looking at laterals. 20+ new officers by the end of the year.
 - In mid-December, command staff met for a 3-day workshop. Worked on a Mission, Vision, Values statement. Will give every BPD member a touchstone that informs their actions. Will discuss at next PRC meeting.
 - All are invited to a promotion ceremony on January 19 at 1:00 p.m. at Freight & Salvage.
 - Re-structuring Dept. to better handle workflow. Looking to add a 4th captain. New Support Services Division
- Comm Center was part of Operations. New div Support Services: A Hart: comm. Center, jail, property room spiller investigation, Louis operations, Reece Professional Standards. Also want to improve management of how BPD works on PRC assignments. Increased accountability.

Questions:

- Who comprises command staff? Chief, 4 captains, 9 lieutenants, the budget manager, and the Communications Center manager
- How many officers typically on the street? Ideally 7-8 teams. Generally 6 teams from 10 a.m. to 2 a.m. and then fewer after 2 a.m. Also 2 sgts. and a watch commander.
- Total number of patrol officers? If fully staffed, 79 officers and 16 sgts.

8. OLD BUSINESS (discussion & action)

- a. Report on meeting with BPD regarding Body-Worn Camera policy
(Postponed to the next meeting.)
- b. Continue discussion of process for providing PRC review of Lexipol policies.
(Postponed to the next meeting.)

- c. Commissioner questions about case law and statutes affecting the Board of Inquiry hearing process
(Postponed to the next meeting.)
- d. Prioritization of PRC tasks and requests to BPD
(Postponed to the next meeting.)

9. NEW BUSINESS (discussion & action)

Heard following Item 9.b.

a. Mutual Aid Pacts

i) Mutual Aid Pacts approval process explained.

ii) **Motion to accept the recommendation of the Mutual Aid Pacts Subcommittee to approve the 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.**

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

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

Noes: None

Abstain: Vicente

Absent: None

iii) The Mutual Aid Pacts Subcommittee felt the sole SAR submitted last year was appropriate in that it met the requirements of G.O. N-17: there was predicate criminal activity and was not based on speech alone.

b. Police enforcement actions against homeless encampments 50-ish
(Heard following Item #7.)

Motion that the PRC open a policy investigation into whether there should be a policy specifically about police engagements on homeless encampments and protests vigils, i.e., 24-hour protests; including but not limited to: how is BPD ADA complaint when telling someone get out of their tent; how is property being handled and receipts given and why is it confiscated from the person when they are not cited; why is the perimeter almost a block wide when the allegations are sleeping; rationale for staffing levels; revisit the Right to Watch general order; how will access of press to these operations be managed.

Moved/Prichett

Substitute motion: Ask the PRC officer to get the information enumerated below by the next meeting and bring it back, with goal of the Commission being better informed as to what if any policy investigations should be made:

- Is the directive to do the raids coming from the BPD itself or from above the Department?
 - Who is at the table deciding the scope of the enforcement action?
 - Regarding the seizure of property by the Dept. of Public Works: how is BPD involved, and why is there still this illegal practice of seizing property without receipts?
 - Were operational actions written before each raid, and were and After Action reports written after?
 - What protocols are in place on detaining disabled people?
- Moved/Seconded (Bernstein/Perezvelez)

Vote to accept the substitute motion:

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

Noes: None Abstain: Prichett Absent: None

Vote on the substitute motion:

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

Noes: None Abstain: Prichett Absent: None

c. Elections of 2017 PRC Chairperson and Vice-Chairperson

Motion to nominate Alison Bernstein for PRC Chairperson
Moved/Seconded (Roberts/Perezvelez)

Motion to nominate George Lippman for PRC Chairperson
Moved/Seconded (Vicente/Prichett)

Vote:

- Bernstein - Bernstein
- Da Silva - Bernstein
- Lippman - Lippman
- Perezvelez - Bernstein
- Prichett - Lippman
- Roberts - Bernstein
- Vicente - Lippman
- Yampolsky - Bernstein

Alison Bernstein was elected PRC Chairperson

Motion to nominate Kim DaSilva for PRC Vice-Chairperson
Moved/Seconded (Perezvelez/Bernstein)

Motion to nominate George Lippman for PRC Vice-Chairperson
Moved/Seconded (Vicente/Prichett)

Vote:

Bernstein – DaSilva
Da Silva - DaSilva
Lippman - Lippman
Perezvelez - DaSilva
Prichett - Lippman
Roberts - DaSilva
Vicente - Lippman
Yampolsky - DaSilva

Kim DaSilva was elected PRC Vice-Chairperson

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

(All action except that in Item #10.d. was postponed to the next meeting.)

- a. Fair & Impartial Policing Subcommittee
- b. Mutual Aid Pacts Subcommittee
- c. Media Credentialing Subcommittee
- d. Surveillance and Community Safety Ordinance Subcommittee

Motion to adopt the subcommittee's recommendation that the PRC have the PRC Officer draft a letter to the City Council informing them that the Surveillance & Community Safety Ordinance Subcommittee began reviewing the proposed surveillance ordinance, and learned that the Fire Department has more equipment that would fall under the proposed ordinance than the BPD has; therefore, the PRC recommends that the Disaster & Fire Safety Commission review the Ordinance before PRC does; that the PRC's work thus far should be passed along to the Disaster & Fire Safety Commission; that that when that Commission completes its work, to refer the matter back to the PRC. The Subcommittee further recommends that its work be suspended for the time being.

Moved/Seconded (DaSilva/Bernstein) Motion Carried

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

Noes: None

Abstain: Lippman, Vicente

Absent: None

- e. General Orders C-64, etc. Subcommittee
- f. Body-Worn Cameras Subcommittee
- g. Outreach Subcommittee

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

There were 2 speakers.

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.*)

(*Postponed to the next meeting.*)

End of Closed Session

14. ADJOURNMENT

By general consent, the meeting was adjourned at 10:12 p.m.

BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: September 21, 2009

NUMBER: 220

SUBJECT: TRESPASSING/LODGING ON PRIVATE PROPERTY,
PUBLIC PROPERTY, AND PARKS

PURPOSE

The purpose of this bulletin is to provide direction regarding enforcement of laws governing trespass/lodging on private property (including store front alcoves), and lodging on public property and in parks.

STATE AND LOCAL STATUTES

Trespass

PC §602(m):

Statute: (Willful commission of a trespass by) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

Discussion: Prohibits the entry and occupation of property of another. It should not be used in simple trespass cases because it has been interpreted by the courts to apply only to long-term squatters.

PC §602(o):

Statute: Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or

*Highlighted text is new.

structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

Discussion: Provides that it is a trespass for a person to refuse to leave private property not open to the public upon being requested to do so by the owner, the owner's agent or the occupants, or by a police officer acting on their behalf. A police officer making the request must inform the person that the officer is acting at the request of the owner, agent or occupant, and must give the person a chance to leave. **Further, the officer must** receive a specific case-by-case complaint from the owner/occupant prior to enforcement, unless one of the following two exceptions apply:

- A single request for police assistance with trespassers can cover a **thirty (30)** day period if there is a fire hazard on the property or the occupant will be absent; or,
- A single request for police assistance with trespassers can cover a **six (6)** month period if the property is closed to the public and posted as being closed.

BMC §13.52.010 [Entering upon posted property prohibited]:

Ordinance: It is unlawful for any person to enter or go upon or pass over or remain upon any land of another where the owner of said property, or the person entitled to the possession thereof for the time being, or the authorized agent of either, has posted or caused to be posted upon said land printed notices that the said land is private property and warning all persons from trespassing thereon.

Discussion: BMC §13.52.010 streamlines the elements of a **PC §602(o)** trespass violation. Under this section, if the property owner, agent or occupant posts "Private Property No Trespassing" signs, any person *entering* the property without consent is trespassing. There is no requirement regarding a complaint, request to leave, or refusal to leave. While there is no requirement for a complaint under BMC §13.52.010, as a matter of **protocol**, a "No Trespassing" letter, good for **one** year, should be on file when the officer is using BMC §13.52.010. If there is no letter on file, it is preferable for the officer to have a complaint from the owner/occupant with a Citizen Arrest form signed.

When enforcing BMC §13.52.010 officers should ensure that the property is adequately posted so that a reasonable person would know that they are trespassing. Large properties or properties with multiple entrances or access points should have multiple signs. The Community Services Bureau has a supply of "No Trespassing" signs that can be given to property owners who want to post their property.

While it is not required under BMC §13.52.010, it is often preferable for officers to warn persons and give them an opportunity to leave before citing them under this section. It is reasonable and sometimes faster to resolve the issue with a warning when

trespassers are cooperative and willing to leave the property on their own.

BMC §13.52.020 [Entering upon property after being personally forbidden to do so prohibited]:

Ordinance: It is unlawful for any person to enter or go upon or pass over or remain upon any land of another after being personally forbidden to do so by the owner of said property, or by the person entitled to the possession thereof for the time being, or the authorized agent of either. **The provisions of this section shall not apply when its application would:**

- (1) **Violate the Unruh Civil Rights Act, or any other provision of law relating to prohibited discrimination against any person on account of color, race, religion, creed, ancestry, or natural origin;**
- (2) **Violate laws allowing for peaceful labor picketing or other lawful labor activities; or**
- (3) **Impinge on the lawful exercise of the constitutionally protected rights of freedom of speech or assembly on outdoor property owned and controlled by a public entity during the time the property is open to the public.**

Discussion: BMC §13.52.020 is entirely separate from BMC §13.52.010. It defines trespass much the same way as PC §602(o), but it applies in a broader set of circumstances for the following reasons:

- BMC §13.52.020 prohibits "entering" after being warned; PC §602(o) only prohibits "refusing to leave" after being warned. Thus, under BMC §13.52.020, one warning is sufficient to prohibit a person from "entering" the property at any subsequent time, whereas under PC §602(o), a new warning and a refusal to leave is required each day prior to enforcement.
- Unlike PC §602(o), a "No Trespassing" letter requesting assistance will serve as a standing complaint for one year.
- Unlike PC §602(o), the officer is not required to state that he or she is acting on behalf of the owner or occupant.

Like State trespass laws, violations of BMC §13.52.010 and §13.52.020 are misdemeanors. However, BMC §1.20.020 provides that these violations may be charged as infractions at the discretion of the enforcing officer. Officers should consider citing these offenses as infractions, unless the trespasser has had multiple prior citations or other circumstances justify charging as a misdemeanor.

Lodging / Public Property

PC §647(e):

Statute: (Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:) Who lodges in any building, structure, vehicle, or place,

whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

Discussion: During their November 27, 2007 meeting, the City Council approved Resolution No. 63,906 to amend Resolution No. 61,042 which adopted standard operating procedures for enforcement of PC §647(e). The revised Resolution now provides only one verbal warning, not two, is required before taking enforcement action, and no complaint is required. Enforcement of PC §647(e) is a low priority between 10:00 p.m. and 6:00 a.m., except when a complaint has been lodged, when there has been notification of lodging without consent, or when there is a history of chronic problems of lodging without consent at a specific location.

Based on the interpretation of the City Attorney's Office, PC §647(e) prohibits lodging outside overnight on city property, such as sidewalks, parks and other strips of city land. While PC §647(e) applies to parklands, there is another BMC section that is more specific to parks (see Park Curfew Violations below).

PC §647(e) does not prohibit sleeping on public property during the daytime. Thus, it is lawful for persons to sleep in City parks during the hours that the park is open. Rather, PC §647(e) applies when there is probable cause to believe that the person is lodging outside for the entire night on public property. Officers should consider taking enforcement action for violations of PC §647(e) only when the person is on non-park property owned or controlled by the City such as public sidewalks and small strips of City land and there is probable cause to believe the person is camping.

Factors to consider in deciding whether to cite for violation of PC §647(e) include whether the person:

Is on or in a sleeping bag or bedroll;

Is sleeping;

Has other belongings clustered around and/or otherwise appears to be staying for the entire night;

Appears or is reported to have been at the location for an extended period of time; **and/or,**

There is a history of continuous or chronic violations of PC §647(e) at a particular location or by a particular individual.

Prior to any arrest or citation for PC §647(e), the officer shall issue **one** verbal warning as directed by Council Resolution. **A complaint is no longer required prior to enforcement.**

Keep in mind that the Council Resolution only applies to public areas. If an officer responds to a citizen complaint regarding private property where the owner/authorized agent demands a citizen arrest, that request will be honored in accordance with State law and Departmental policy.

Trespass and Lodging / Private Property, Storefront Alcoves

A storefront alcove recessed from the public sidewalk is private property. Therefore, persons may be prohibited from lodging in an alcove overnight when the elements of one of the trespass laws outlined above are present. Commercial property owners or occupants who wish to have persons removed from their alcoves when the business is closed may post "No Trespassing" signs on a door or window facing the alcove. This sign may also be part of their "Closed" sign. Posting such a sign, along with a trespass letter on file, allows officers to take action and enforce BMC §13.52.010 without case-by-case complaints by the owner or occupants.

Trespass only occurs when there is a complaint or a no trespassing sign. If a person has permission from the owner or occupant to lodge in an alcove, the person in the alcove is not violating any existing law. Officers should be aware that some property owners give individuals permission to sleep in their alcoves.

Lodging / City Park Curfew Violations

BMC §6.32.020 [Park Hours]:

Ordinance: (a) No person shall enter upon or otherwise remain within City parks, or portions thereof, between the hours or for the period specifically posted as closure hours at the entrance to the particular park and, where applicable, adjacent to any portion of a park being closed.

(b) Where no hours are posted, a park shall be closed between the hours of ten p.m. and six a.m., except that parks equipped with user operated lights shall be closed between the hours of eleven p.m. and six a.m.

Discussion: Under BMC §6.32.020, all City parks are closed for all purposes at night (usually from 10:00 p.m. to 6:00 a.m.) and a person sleeping in a park during those hours may be cited under BMC §6.30.020. BMC §6.32.020 only applies to City parks.

Whenever possible, officers should make every effort to coordinate services with **Health and Human Services (HHS) Department** workers and Parks and Recreation Department staff in taking a team approach to providing services to those who are camping/lodging in City parks. HHS workers will often make several visits to warn those who have set up long-term encampments in City parks before referring the matter to the police for enforcement.

REQUIRED PRE-ARREST WARNING

Officers are required by Council policy to give a warning when enforcing **Penal Code §647(e) PC [lodging in public]**. According to law, **a warning must also be given before enforcing trespassing on unposted private property (ref. PC §602(o) and Berkeley Municipal Code §13.52.020)**. Whenever practical, officers should also give a warning when enforcing a trespassing violation on posted private property **under BMC §13.52.010**.

Gaining compliance through warnings and referrals is part of the City's social service approach to **responding to complaints regarding** the indigent, mentally ill, and chronic substance abusers.

SOCIAL SERVICE REFERRAL

There have been persistent and increasing complaints from property owners about people trespassing on private property without their consent. There are also persistent complaints from homeless people that when the shelters are full there is no place that they can legally sleep in Berkeley. In keeping with the City's policy to address homelessness issues from a social service perspective, whenever possible, referrals should be made to the Health and Human Services Department.

There are two programs that provide outreach services to the indigent, the mentally ill, and chronic substance abusers that are homeless in Berkeley: **Homeless Outreach and the Mobile Crisis Team.**

Homeless Outreach: Two full-time Homeless Outreach Workers are available during the day, Monday – Friday. [Note: the new outreach worker may have evening and Saturday hours; still being determined]. These workers assist individuals by making contacts in the field, at shelters, and at the Multi-Agency Service Center, which offers counseling, emergency services, and makes referrals to other appropriate providers. **The best way to reach the Homeless Outreach Workers is by telephone:**

Eve Ahmed, (510)502-1829

Jeff Buell, (510)542-3229

Via the Mental Health Division, (510)981-5254.

Mental Health Mobile Crisis Team (MCT): The MCT is available from 11:00 AM to 10:00 PM daily. They conduct follow-up on their own caseload and respond to mental health crisis situations as they occur. They also provide services, counseling, and make necessary referrals. The MCT is available through the police radio.

Both Homeless Outreach Workers and MCT members can provide information to residential and commercial property owners regarding services available for the homeless, as well as trespass laws and enforcement options.

For the purpose of this Bulletin, Homeless Outreach Workers and the Mobile Crisis Team will be referred to as "HHS Workers".


Douglas N. Hambleton
Chief of Police

References: Penal Code §§602(m), 602(o) and 647(e)
Berkeley Municipal Code §§1.20, 6.32 and 13.52
City of Berkeley Council Resolution No. 63,906

RESOLUTION NO. 63,906-N.S.

AMENDING RESOLUTION NO. 61,042-N.S. REAFFIRMING HOMELESS HUMAN AND CIVIL RIGHTS (HHCRR)

WHEREAS, the Universal Declaration of Human Rights declares that everyone has the human right to life, liberty, and security of person; as well as to housing and to necessary social services; and

WHEREAS, the City of Berkeley Municipal Code Chapter 1.22.010 states that the City of Berkeley shall promote universal respect for, and observance of, human rights and fundamental freedoms for all; and

WHEREAS, the City of Berkeley has declared itself a Human Rights City and adopted the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights; and

WHEREAS, the County of Alameda Board of Supervisor's has declared a housing state of emergency for extremely low income people; and

WHEREAS, there are an insufficient number of emergency shelter beds and permanent supportive housing units in Berkeley; and

WHEREAS, policies of citing, fining, incarcerating, and harassing individuals for sleeping outside only complicate the personal struggle for self-sufficiency and exacerbate the social problem and costs of homelessness.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley:

- 1) Reaffirms our commitment to guaranteeing and protecting the civil and human rights of all homeless families and individuals who reside in Berkeley, and
- 2) Adopts as standard operating procedure for the Berkeley Police Department that enforcement of Penal Code 647j shall be a low priority between the hours of 10:00 p.m. and 6:00 a.m., except when the City is notified of persons lodging without consent, or there is a history of chronic problems of persons lodging without consent at a specific location. There shall be one (1) verbal warning before any enforcement under Penal Code 647j.

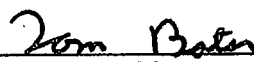
The foregoing Resolution was adopted by the Berkeley City Council on November 27, 2007 by the following vote:

Ayes: Capitelli, Moore, Olds, Wozniak and Bates.

Noes: Anderson, Spring and Worthington.

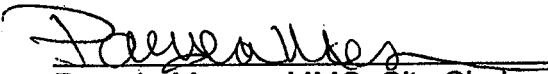
Abstain: Maio.

Absent: None.



Tom Bates, Mayor

Attest:



Pamyla Means, MMC, City Clerk

BERKELEY POLICE DEPARTMENT

DATE ISSUED: January 1, 2000

GENERAL ORDER T-19

SUBJECT: AMERICANS WITH DISABILITY ACT

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PURPOSE

1. Quality Services and Compliance

The purpose of this policy is to establish guidelines for Berkeley Police Department employees to provide quality services to people with disabilities, by which to comply with provisions of the Americans with Disabilities Act, Section 504 of the 1973 Rehabilitation Act, and state law as amended from time to time, (collectively, "ADA").

The intent of this policy is to address the requirements of the Americans with Disabilities Act (and similarly, Section 504) which state in part: "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." This policy and its guidelines are to be implemented consistent with those requirements.

POLICY

2. Access to Programs and Services

It shall be the policy of the Berkeley Police Department to ensure that a consistently high level of police service is provided to all members of the community, including people with disabilities who may require accommodations, auxiliary aids or services, modifications to procedures or practices, or other consideration in order to access these services.

The department will modify its policies, practices, and procedures and provide other accommodation necessary under the ADA, to avoid discriminating based on disability, to the extent such modifications are reasonable, do not fundamentally alter the nature of the services provided, and do not create an undue financial or administrative burden. Nothing in this order is intended to require, or shall be interpreted to require, greater or lesser accommodations than required by the ADA

It is the policy of this Department to afford people with disabilities an opportunity to access its programs and services provided to non-disabled citizens. In its breadth, this policy includes, but is not limited to, services such as first-responder recognition of the nature and characteristics of various disabilities; appropriate physical, communication, and emotional support to people with disabilities who seek to access police services or who come into contact with the police.

Examples include, but are not limited to:

- a. Access to police information, programs, services, and publications for people who have vision impairments, hearing impairments, or impaired cognitive abilities; or other disabilities;

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- b. Recognition of the difference between disability-related characteristics and the characteristics of criminal behavior or of intoxication;
- c. Recognition of symptoms and appropriate medical and emotional support for people experiencing seizures;
- d. Understanding of and appropriate physical support in aiding people who have mobility impairments;
- e. Prompt access to interpreters for people with hearing, cognitive, or speech disabilities who have a need to communicate with police personnel;
- f. Prompt around-the-clock access to professional support systems for people with mental disabilities;
- g. Other accommodations to ensure service and access to all people with visual, mental, emotional and medical disabilities including any invisible disabilities such as diabetes, epilepsy, multiple sclerosis, loss of hearing and others.

3. Overview of the Guidance

No single policy or procedure can address every detail of police response to all situations involving people with disabilities. It is the intent of this policy and procedure to guide employees in responding to and assisting those people with disabilities with whom they will have the most contact in the performance of their duties and responsibilities. This policy and procedure addresses common police interactions with people with disabilities including those who are complainants, victims, witnesses, arrestees, members of the community who desire to participate in department-sponsored programs, people seeking information, and uninvolved bystanders.

In all cases, employees must take steps necessary to assist people with disabilities in accessing the full range of immediate and follow-up services provided by this Department. Consideration must be given to those steps that will lead to a positive outcome while, at all times, maintaining employee or public health or safety.

OVERVIEW OF SPECIFIC DISABILITIES

4. Introduction

"Disability" means a physical or mental impairment which substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. "Qualified individual with a disability" means an individual with a disability that meets the essential eligibility requirements for receiving the Department's services, or participating in the Department's programs or activities, with or without accommodation.

*Entire text is new.

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It is not the intent of this policy to provide detailed information on all disabilities. The Department will continue to make information available to employees, through training and other sources, on various disabilities. It is incumbent on all employees to become aware of the characteristics of various disabilities and the needs of people who have them. Employees also should be aware that many people have multiple disabilities or one or more hidden disabilities.

The following section provides a brief overview of several general categories of disabilities and how the Department and its employees should respond to the needs of people with these disabilities.

5. Visual Disabilities

One of the most difficult issues facing people who are blind or vision impaired is identifying police officials. Employees should offer, at the initiation of a contact, detailed information in identifying themselves as members of the Department. Whenever possible, if the presence of a visual disability is known, officers may have dispatch contact the victim or complainant to verify to him or her that a member of the Department has arrived. If needed, badges may be offered to the individual to verify the officer's identity.

Knowing what not to do is as important as knowing what to do to assist a person who is vision impaired. Employees do not need to raise their voice when speaking. To lead a blind person in a particular direction the officer should offer an elbow, if needed, the individual will take the officer's arm for guidance and the officer can proceed a half step ahead of the person being guided.

People with vision impairments may not be able to read printed or other visual materials presented to them, such as a citation or a form that must be signed. Officers should provide alternative format materials or clearly read the material aloud, when necessary for the individual to effectively participate in what is being communicated. See "Effective Communication" and Appendix A

6. Mental, Emotional and Psychological Disabilities

The terms "mental illness," "emotional illness," and numerous other terms describe various disabilities causing psychological disturbances in thinking, feeling, and relating. An estimated ten percent of the population of the United States has some type of mental illness.

Providing accessibility to police services for people with mental, emotional, and psychological disabilities usually involves providing the same general types of assistance anyone might need. At times, exceptional police service and safe custodial care may be required.

When aware of a person's disability, employees must ensure that people with mental, emotional, or psychological disabilities are assisted in accessing agency services, which may require time and patience beyond that usually provided. For

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example, time spent on a call for service may have to be extended in order to reassure the individual, sort facts, interact with family members and others, and bring the call to successful resolution.

When an employee knows that a person taken into custody has a mental, emotional, or psychological disability, the employee must make reasonable efforts, where consistent with appropriate precautions, to use the least restraint necessary, and to protect the arrestee from self-injury.

Frequently, a family member or friend is of great value in calming an individual exhibiting unusual behavior as a result of mental or emotional impairment.

Officers must become familiar with appropriate government agencies, nonprofit agencies, volunteer organizations, and emergency medical services available to provide assistance to people with mental, emotional, and psychological disabilities. If needed, steps should be taken to gain placement for the individual in an appropriate emergency medical, health care, or shelter facility. Appendix A lists some appropriate resources.

Officers must remain familiar with appropriate emergency commitment/detention procedures to be used when providing shelter care and related support to people with mental, emotional or psychological disabilities. These procedures include California Welfare and Institutions Code Sec. 5150.

7. Cognitive Disabilities

Cognitive disabilities are a group of conditions affecting the abilities for knowing (cognition), which encompasses a broad range of developmental disabilities, learning disabilities, impairments associated with aging, traumatic brain injuries, and other impairments of mental ability. Cognitive disabilities and mental illness are distinct conditions, with different causes, although an individual might experience both.

The disabilities in this group vary from mild to profound. Some cognitive impairments are transient and the person recovers function, as from a seizure or mild stroke; some conditions can be progressive, such as Parkinson's or Alzheimer's disease; and some are ongoing and stable, as with mental retardation.

Employees should recognize that people who have cognitive disabilities have varied degrees of intelligence and of limitations to intellectual functioning. The largest percentage of people with mental retardation, for example, is in the ranges termed "mild" or "moderate." When interacting with individuals known to have a cognitive disability, employees should avoid being patronizing. Ask short questions, be patient when waiting for answers, repeat questions and answers if necessary, have individuals repeat the question in their own words, and provide reassurance, if appropriate.

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In many situations, and particularly when dealing with someone who is lost or has run away, the employee may gain improved response by accompanying the person through a building or neighborhood to seek visual clues. In responding to the needs of people with severe or profound cognitive disabilities, the aid of family, friends, and neighbors also may be invaluable.

8. Mobility Impairments

Among the disabilities that are the most visibly identifiable are mobility impairments. People with mobility-related impairments include those who have difficulty walking, those who use a wheelchair or other mobility aid, and those who are immobile. Causes of impairments include spinal cord injuries, back injuries, amputation, arthritis, and numerous other conditions.

In a critical or emergency situation, employees should be aware of the safest and most effective methods for assisting people with mobility impairments to avoid causing them unnecessary strain, pain, or injury. Where circumstances permit, officers should ask the individual directly about his or her equipment and how to provide effective assistance. Officers should be alert for the presence of disability-related aids such as respirators, which can easily become disconnected and need to be re-attached or may signal the need for additional care.

In an arrest encounter, mobility devices (such as a cane) may or may not pose a danger to an officer. Since a mobility-impaired individual relies on the device to be able to go places, or simply for seating or for breathing, the device may remain with the individual, if consistent with appropriate precautions against danger. Once an arrestee with a mobility impairment is secure in a cell and the immediate presence of danger is diminished, consideration should be given to returning use of any mobility aids (wheelchair, cane, etc.) so the arrestee has normal mobility in the situation. However, see A Section 17(b) for more detail.

To the extent required by the ADA, Department facilities should be kept accessible to people with mobility impairments. Entrances, interior routes, stairs, drinking fountains, rest rooms, and telephones should accommodate people with mobility impairments, including those who use wheelchairs. Therefore, furniture arrangement and stored materials/equipment must be maintained so they do not create barriers to accessibility. However, nothing in this policy shall require structural changes to existing facilities which are not required by the ADA, i.e., where the Department's service, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

9. Hidden Disabilities

Many disabilities are difficult to notice. An officer's failure to recognize characteristics associated with certain invisible disabilities could have serious consequences for the person with the disability. For example, epilepsy generally has no outward signs unless the person with this disability experiences a seizure.

*Entire text is new.

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An officer's patience and understanding of the characteristics commonly associated with invisible disabilities will lead to a successful outcome. An inaccurate assessment may lead to unnecessary confrontation, injury, and denial of needed medication and/or medical treatment.

As with all types of disabilities, an employee is obligated to protect a disabled individual from unnecessary harm to the extent consistent with employee and public health and safety and the Department's performance of its duties. Standard police procedures, especially the use of weapons, force, or handcuffs, may be more likely to injure a person who has a disability than someone who does not. The individual with a disability has a right to ask that procedures be modified and the officer must consider such a request and respond appropriately.

People with diabetes may have reactions from either too little insulin or too much insulin. Low blood sugar reactions are common and are usually treated by ingesting sugar or taking other nutrition. Care should be taken when detaining someone known to have diabetes so that they are not prevented from getting needed sugar.

Officers should realize that involuntary behavior associated with some invisible disabilities may resemble behavior characteristically exhibited by intoxicated or, less frequently, combative individuals. For example, a person experiencing a mild seizure may appear incoherent and physically unbalanced or may resist an officer if grabbed. These responses are transitory. There are also permanent conditions, such as cerebral palsy, brain injury, or multiple sclerosis that can result in a gait that resembles intoxication.

When aiding a person experiencing a seizure, protection from obstacles, a calm reassuring manner, and patience are important responses. The first procedure should always be to ask the individual involved, if responsive, what the problem is and how to manage it. Persons with seizure disorders often carry information, such as a wallet card or Medi-alert bracelet; officers should look for such a card or bracelet. Refer to Training and Information Bulletin #251, "Seizure-Recognition and Response."

Additionally, family members and friends should be sought to provide information and assistance. Their presence may prove invaluable in understanding the needs of the person with the disability and guiding the officer's actions.

10. Speech and Hearing Disabilities

As with some other invisible disabilities, officers may confuse the behavior of individuals with hearing and speech disabilities with those of people who intentionally refuse to cooperate or those who abuse legal or illegal substances. Officers should be aware that an individual's failure to comply with or respond to verbal orders does not always constitute defiance, but may be the result of that individual's inability to hear the officer or respond verbally.

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Before committing to a course of action, officers should, when there is a reasonable opportunity to do so, attempt to identify whether or not they are dealing with a person who has a communication-related disability. If an individual indicates that he/she has a communication impairment, the officer must ensure that effective communication is provided so both people understand what is communicated. It is essential that officers take extra measures to protect the rights of suspects who are known to be deaf or hard of hearing, or may not have communications comprehension levels sufficient to fully understand, for example, the basic Miranda rights. See "Effective Communication," Section 12.

RESPONSIBILITY OF EMPLOYEES

11. Gaining Knowledge and Showing Respect

People with disabilities may be suspects or arrestees and require detention, transport, and processing. Employees must familiarize themselves with the guidelines in this and related orders and training and information bulletins; see Appendix B. Employees must know and use the proper methods of transport, arrest, and detention to ensure officer safety while providing all reasonable support to an arrestee with a disability.

Employees should develop the ability to recognize the characteristics of various disabilities, including symptoms and physical reactions.

Employees should also recognize that actions or responses of people with certain disabilities might resemble those of people who have abused substances such as alcohol or drugs. At times, people with diabetes, epilepsy, multiple sclerosis, cerebral palsy, speech or hearing impairments, or other disabilities may exhibit such apparent behavior.

Employees should be able to identify and apply appropriate responses, such as emergency medical aid, protecting and/or calming the individual, securing professional medical attention, locating and enlisting support of family and friends, and rendering proper physical support.

No employee should jeopardize his or her safety or that of others in an attempt to accommodate a person with a disability. Nonetheless, individuals with disabilities may present unique issues that require an officer to be open and creative in order to provide the Department's services safely and effectively.

Officers should be able to identify and apply appropriate restraint to a person with a disability, if needed to facilitate an arrest or an emergency response. When affecting an arrest and when assisting in an emergency of a person with a disability, officers should be able to access the support systems necessary to secure the rights of the individual. This may include use of interpreters, personal attendants, and legal guardians.

Keeping in perspective the safety of officers and the public, officers should strive

*Entire text is new.

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to be professional. The professional officer always treats persons with disabilities with as much respect as that offered any other individual.

12. Effective Communication

Successful police contact with citizens -- whether it is a suspect, victim, witness, or complainant with whom the officer is talking -- requires good communication. Effective communication equals accessibility for people who are hearing impaired or who have other communication disabilities. Good communication is a key to gathering information about cases, ensuring public and individual health and safety, and engendering good community relations. Refer to Training and Information Bulletin #237, "Stop and Release Situations in the Field."

Employees should use their total available skills and resources to effectively communicate (total communication) and should employ auxiliary aids and services as needed. Observational skills, awareness of other people's modes of communicating, and knowing when to seek assistance are important methods for understanding and being understood. Officers should address the disabled individual directly, i.e., when an interpreter is used to communicate with a hearing-impaired individual.

Auxiliary aids and services include Interpreters¹, Qualified Interpreters², written materials, note pads, computer-assisted real-time transcription, computers or typewriters, and other effective methods of making orally delivered materials available to individuals with - hearing impairments. Auxiliary aids and services for individuals with vision impairments include tape cassettes, computer diskettes, Braille or large print materials, verbal descriptions, or other effective alternatives to visually delivered materials.

When determining whether auxiliary aids and services are needed, the employee must judge whether communication is truly working without the aid or service. The employee should ask the individual if he or she wants or needs an Interpreter or other auxiliary aid or service of his or her choice. Where an auxiliary aid or service is required to ensure effective communication, primary consideration shall be given to the method requested by the individual. However, if another effective method of communication exists, the Department may provide it instead. Other considerations include the immediacy of need to communicate, the health and safety of the individual or others, whether the aid or service the individual has requested is readily available or would fundamentally alter the service or create an undue financial or administrative burden, and the possibility of completing the communication at another time. Whether an interpreter,

¹ Anyone relied upon to interpret for a hearing-impaired individual must be able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary ("effective communication").

² "Qualified Interpreter" means an Interpreter certified as competent by an organization approved by the Judicial Council, per the California Evidence Code. See Appendix A for sources of Qualified interpreters.

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Qualified Interpreter, or alternative auxiliary aids should be provided, if requested, depends on the length, complexity, and importance of the conversation.

When a deaf individual wants a friend or family member to interpret, whether or not certified as a Qualified Interpreter, the officer must first determine that he/she can provide effective communication, it is not a conflict for the person, and emotional/personal involvement will not impede the communication. When an interpreter or other requested auxiliary aid is not reasonably available, the employee still must obtain the most effective communication under the circumstances by using other auxiliary aids, or services, such as another employee with signing skills, computer or typewriter, a TDD, or paper and pen, or must set a time to meet later when aids or services are available.

An Interpreter, preferably a Qualified Interpreter, should be provided in situations such as the following, keeping in mind that an inaccurate interpretation or ineffective communication may nullify ability to rely upon statements obtained:

- a. If, after a situation is stabilized and a hearing-impaired individual is arrested, an officer is unable to convey to the arrestee the nature of the criminal charges by communicating on a note pad or by using another means of communication;
- b. if an officer needs to interview a suspect with a hearing impairment to determine if there is probable cause to make an arrest;
- c. if an investigating officer interviews a victim or critical witness with a hearing impairment unless the individual indicates that he/she does not need or want to use an Interpreter;
- d. if an officer cannot effectively inform a hearing impaired arrestee of the Miranda warnings³, or is seeking to interrogate a hearing impaired arrestee; Officers should secure the services of an Interpreter to communicate accurately prior to any interrogation of a hearing-impaired individual.

In these circumstances where a Qualified Interpreter cannot, despite a good faith effort, be obtained (i.e., the circumstances do not permit delay), another Interpreter or means of effective communication such as exchanging writings may be used.

In circumstances where no Qualified Interpreter is secured, efforts made to obtain such must be recorded in the police report.

When completing a report about a situation in which an interpreter or other auxiliary services were provided for effective communication, all identifying

³. See section 17(1) regarding Miranda warnings and the hearing impaired.

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information on the Interpreter must be included in the report, including the Interpreter's name, an address and phone number of the Interpreter or the agency supplying the Interpreter, the time the Interpreter/agency was called, and his/her time of arrival and departure. All written questions and responses between and among police officers and persons with hearing impairments must be treated as evidence and handled accordingly. A copy of the written questions and responses must be forwarded with the police report, and the originals must be placed into evidence.

DEPARTMENT RESPONSIBILITIES

13. Administration and Complaint Procedures

The Department shall responsibly administer this policy consistent with overall City of Berkeley ADA compliance efforts. The Department will endeavor to assign adequate resources for this purpose, including but not limited to: designating an employee as ADA service coordinator, resolving complaints in a timely manner, providing appropriate training and information, and including budget line items to fund accommodations. The Commission on Disability shall review revisions or amendments to this order.

Responses to requests for accommodation under this policy shall be made as routinely as practicable. Whenever possible and consistent with the factors discussed above, the employee receiving such a request should respond by promptly providing the

accommodation if reasonable. If appropriate, the employee should consult with a supervisor as a next step. The supervisor should call on the assistance of the ADA, service coordinator or the City's Disability Compliance Coordinator whenever a request cannot be satisfied at the line or division level.

Denial of any specific request for accommodation must be authorized by a Patrol Division Watch Commander or in his/her absence, a supervising sergeant, who shall report it to the Department's ADA service coordinator within twenty-four hours of the denial.

Pursuant to the City's ADA Grievance procedure (AR 1.91, as it may be amended from time to time) the Department shall investigate any complaint against the Department or its employees which alleges denial of accommodation or non-compliance with disability-related civil rights laws with respect to the Department's services and programs. AR 1.91 should be referred to for more details. Generally, however, any individual who disputes a disability-related action or omission of the Department or of an employee of the Department may discuss his/her complaint with the service coordinator. The ADA Service Coordinator may consult with the City's Disability Compliance Coordinator. The ADA service coordinator shall maintain on file for a period of three years a record of the dispute, any findings, the recommendation(s), and the outcome.

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If the dispute is not resolved to the complainant's satisfaction, he or she may file a complaint with the City's Disability Compliance Coordinator. Pursuant to BMC Ch. 3.32.090, as it may be amended from time to time, such complaints may also be filed with the Police Review Commission.

14. A.D.A Service Coordinator

The Department has designated an officer whose duties include those of ADA service coordinator, whose office location, name, and number are listed in Appendix A. The designated person coordinates the Department's efforts to comply with the Act and carry out its responsibilities under this order, including informal investigation of any complaint communicated to the Department alleging noncompliance with disability-related civil rights laws with respect to access to the Department's services and programs. The designated person ensures that the Department's information, equipment, and resources are in place to help implement this order. The designated person collaborates with and serves as liaison to the City's Disability Compliance Coordinator, and, when necessary, to other departments and the public on Departmental disability-related issues.

15. Training and Information

The Department will provide training and information, including this General Order, to all its employees about recognizing of various disabilities and providing appropriate police services to people with disabilities. The Department will provide training, including this General Order, to all officers on appropriate response to both non-arrest and arrest situations involving people with disabilities.

In establishing the need for additional training, if any, the Department will consider requests from employees, the community, the Commission on Disability, and other commissions and departments. Training will use Departmental and outside resources appropriate for the subject and will involve affected persons with disabilities to the maximum extent feasible. Training will be conducted periodically as necessary to maintain the Department's professional skills and knowledge, keep pace with changing disability issues, and help make Berkeley a model in delivery of services to persons with disabilities.

In order for employees to provide the highest level of service or safe custodial care to people with disabilities, the Department, in conjunction with the City's Disability Compliance Program, will develop and regularly update a list of agencies available to provide guidance, support, and direct assistance. The list is Appendix A -

The Department will maintain a roster of support agencies and individuals that may be contacted on a 24-hour-per-day basis to provide support in situations involving people with disabilities. The Department will provide reasonable accommodation to all qualified individuals who have disabilities by contacting

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these agencies when resources within the Department cannot provide a necessary accommodation. The Department will inform staff of appropriate budget codes to pay for accommodations.

16. Routine and Emergency Interaction

In providing routine and emergency services, the Department and its employees will promote and practice equality in response, support, and protection to all people including those with disabilities. Officers will make every effort to access appropriate disability-related support organizations when needed.

a. Communications accessibility

All dispatchers will act as coordinators for communication accessibility and will be trained to recognize characteristics of people whose disabilities may require

special communications techniques and to find methods for providing service. The Department will maintain TDD services for deaf and hearing impaired people and provide direct access to telephone emergency systems for individuals who use TDD's, voice carryover, hearing carryover, or relay services. If the dispatcher or other employee returns a call to someone who initially called via TDD, the employee will call back using a TDD or the California Relay Service. The Department's current TDD number is (510) 644-6565.

b. Access to Department programs

Crime prevention programs such as neighborhood watch, youth programs, inschool programs, and other programs will be made accessible to people with disabilities through outreach, location of accessible facilities, modified program schedules or locations, use of interpreters or other auxiliary aids and services, and other efforts to reasonably accommodate special needs. Planned meetings will offer effective communication appropriate to the expected needs of participants, such as making available, upon request, an assistive listening system or computerassisted real-time transcription for hearing impaired participants. Announcements of public meetings should include information about the availability of auxiliary aids and advise who should be contacted, and by when, to arrange for accommodations.

c. Routine calls for service

People with disabilities may have special needs that may have to be met in order for Department employees to provide the best possible routine police response to calls for service. Officers should be able to identify specific needs of people with disabilities and, first and foremost, should ask the individual what those needs might be.

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Employees should be sensitive to the fact that some people with disabilities may be targeted as crime victims as a direct result of their disability.

Employees should be familiar with techniques they may employ at a scene (during the initial call for service and as part of follow-up) to provide support to people with disabilities. All reasonable steps should be taken to aid people with disabilities in bringing calls for police service to successful completion, which may entail providing auxiliary aids and services including qualified interpreters, written materials, note pads, etc. See "Effective Communication," Section 12.

d. Emergency calls for service

Employees should be able to identify characteristics common to specific disabilities in a crisis or emergency so that appropriate action may be taken to render aid and assistance. Rather than assuming knowledge of how to render aid, employees should seek information from the disabled person. If the person with the disability is unable to communicate clearly by speaking, by writing or pointing, or by using auxiliary aids or services, employees should seek a medical alert bracelet, an instructive wallet card, or similar form of ID, as well as input from family, witnesses, and others to aid in identifying the nature of the disability.

As first responders, all employees should be aware of emergency medical techniques applicable to various disabilities.

e. Criminal activity

Some people with disabilities commit crimes. Generally, people with disabilities who commit crimes or purposely engage in disorderly conduct should not receive preferential treatment. See Section 17, below, for details regarding interaction with disabled suspects and arrestees.

f. Disruptive-appearing behavior

Officers should be aware of the variety of disabilities, which may manifest in ways that appear disruptive, such as Tourette's syndrome involving rude outbursts. An officer should attempt to determine whether conduct that seems disorderly is the manifestation of a disability, which should not, in and of itself, be treated as criminal activity, and may need to be addressed as a medical call, instead of an arrest situation.

An officer should recognize seizure symptoms, which in rare cases include running, spitting, shouting, or flailing movements. Actions during a seizure are undirected and not under conscious control. Do not expect a response from a person during a seizure episode. Realize the person may be easily agitated and may struggle with no hostile intent when grabbed or

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restrained. A calm, nonthreatening tone - is best when talking to someone whose consciousness is impaired. If seizure activity creates a direct threat to that individual or others, or to move a person away from a hazardous or crowded area, a gentle, shepherding motion is most likely to avoid a struggle or subsequent injury. Refer to Training and Information Bulletin #237, "Seizure-Recognition and Response."

In all such situations, officers should take reasonable precaution to protect themselves and others from real harm. Conduct that is the result of a seizure may require medical assistance. Conduct that results from a mental disability, may require help from the mobile crisis team.

17. Arrest and Incarceration

Employees should utilize appropriate precautions and safety techniques in arresting and incarcerating all people, whether or not they have a disability. Officers should follow all policies and standard techniques for arrest and incarceration when taking a person with a disability into custody.

Consideration should be given to the special needs of some people with known disabilities in an arrest situation. Response in these situations requires discretion and will be based on information given by the individual with a disability and, in great part, on the officer's knowledge of characteristics and severity of the disability, the level of resistance exhibited by the suspect, and immediacy of the situation. In arrest and incarceration situations, employees must consider the following:

- a. A person whose disability affects the muscular and/or skeletal system may not be able to be restrained using handcuffs or other standard techniques which may be unnecessarily painful or even injurious; refer to General Order H-6. Officers should consider, where it is safe and effective to do so, restraining deaf persons who use sign language in a manner that does not prevent using their hands for communication; refer to General Order H-6. Alternative methods of safe and accessible transport or restraint (transport vans, seat belts) should be sought for these situations.
- b. Unless there are objective reasons to incarcerate a non-ambulatory arrestee, such as a threat to public safety or a risk of flight, the Department should cite-release non-ambulatory arrestees. Refer to General Order C-10 Citation Releases. For physically disabled persons who are not cite-released, the City shall make its best efforts to expedite the scheduling of an arraignment.
- c. Some people with disabilities require physical aids (for example, canes, wheel chairs, leg braces, breathing or life-support equipment, service animals, eyeglasses) to maintain their mobility. Once the immediate presence of danger has diminished and the suspect is safely incarcerated,

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consideration should be given to returning mobility aids that have been taken. If mobility aids must be withheld, the prisoner must be closely monitored to ensure that his or her needs are met, to prevent injury, and to determine whether changes in the situation warrant return of the mobility aids. The Department will withhold any physical aid it reasonably concludes poses a health or securities risk.

- d. Every reasonable effort should be made to ensure that arrestees dependent on particular local services for healthcare or communication are not transferred to other facilities while under the jurisdiction of the Berkeley Police Department. Non-ambulatory and other disabled persons may require local incarceration to continue to receive personal assistance or sign language services or other crucial supports. Non-ambulatory prisoners shall generally be incarcerated in the , Berkeley jail in an accessible detention room. See section f below, for exceptions. The same (or better) amenities or programs will be provided to non-ambulatory prisoners as provided to other prisoners detained in the Berkeley jail. Prisoners shall be allowed to meet with visitors and attorneys in private and to have interpreters present, in their detention rooms if other accessible facilities are not available, subject to observation sufficient to ensure security.
- e. Persons with disabilities who require medical care solely as a result of their disability and who require use of attendants to provide that care shall be incarcerated in the City's facility and not transferred to another facility if their necessary attendant(s) consent in writing (1) to be incarcerated with the prisoner who has a disability during the period needed for attendant care and (2) to give a minimum of two-hours notice of any withdrawal of said consent. Under such circumstances, necessary attendants giving such consent may, at the disabled prisoner's request, be incarcerated with the prisoner during the period needed for attendant care, so long as the City determines they do not pose a health or security risk. If a disabled person who is arrested needs to contact one or more attendants for assistance, he or she shall be accorded a reasonable opportunity to do so.

If necessary, arrestees will be allowed to contact "Easy Does It" or other appropriate services which are available to arrange for attendant services.

- f. Exceptional circumstances may arise in which it is appropriate to transfer a non-ambulatory prisoner to another facility. Such circumstances might include behavior (as opposed to speech) that objectively creates a risk of security; violent behavior; or a natural disaster, the prisoner requires services that can only be provided at another facility; or the accessible detention areas of the City's facility are occupied by other disabled prisoners. If a non-ambulatory prisoner who would otherwise be detained in the City's facility is transferred for any other reason, a written report shall be provided to the Chief of Police and the prisoner within twenty-four

*Entire text is new.

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hours detailing the reasons and justification for such transfer. Two hours is generally the minimum time adequate to make arrangement for other attendants or for transportation of the prisoner to another facility. The prisoner transferred shall be provided with disabled-accessible transportation to the vicinity of the Berkeley jail upon release from the other facility, or returned to his/her residence, so long as it is in Berkeley if that is the prisoner's wish.

- g. Reasonable accommodation shall be made for arrestees who use portable medical equipment and durable medical goods needed and provided by the disabled arrestee, subject to legitimate security concerns.
- h. Prescribed medication, including Oxygen, may be required at regular intervals by people with certain disabilities, for example, diabetes or epilepsy. Upon learning that such medication is required, if adequate information cannot be obtained from the disabled prisoner, then medical personnel (the suspect's physician, on-call medical staff, emergency room medical staff) should promptly be contacted to determine the importance of administering the medication, potential for overdose, etc. Non-ambulatory prisoners who use prescription drugs shall have them administered in the same manner such drugs are administered to non-disabled prisoners in the Berkeley jail.
- i. Some people with disabilities may not understand their individual rights in an arrest situation, particularly if they have a communication or cognitive impairment. (For example, there is no sign language for the term "waive" in regard to the Miranda rights. Yet, in an effort to be cooperative, a suspect who is deaf may acknowledge that he or she is willing to give up his or her rights.) Officers must take extra care to ensure that the rights of the accused are protected. Refer to the MIRANDA WARNING.

Additionally, the Department will insure that deaf detainees have access to telephones on the same basis as other detainees. A TDD is available to deaf detainees to insure equal telephone access. Hearing impaired individuals who require quiet surroundings or amplification in order to use the telephone, will be given such accommodations.

- j. Lack of speech or other speech impairment may make it difficult for a suspect to notify the arresting officer or jailer of an urgent need. Frequent cell checks should be conducted, and instructions given to staff on incoming shifts, to ensure that the jailer knows when any urgent need arises.
 - 1. The Department will make reasonable efforts to notify other entities involved with a disabled arrestee or prisoner, such as the Public Defender's office, a hospital, jail, or other facility to which the individual is transferred, a court before which the individual is

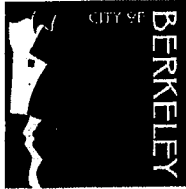
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scheduled to appear, of that individual's known needs for accommodation.

References: California Welfare and Institutions Code Section 5150
Training and Information Bulletin Number 251, "Seizures- Recognition and Response"
Training and Information Bulletin Number 237, "Stop and Release Situations in the Field"
Training and Information Bulletin Number 133, "Miranda Warning"
City of Berkeley Administrative Regulation 1.91
General Orders C-10 and H-6



Police Review Commission (PRC)

November 23, 2015

Berkeley City Council
Civic Center Building
2180 Milvia Street
Berkeley, CA 94704

Re: PRC's recommendations to the City Council regarding the 2015 Mutual Aid Agreements Compendium (Mutual Aid Pacts)

Dear Mayor and Members of the City Council,

Each year, the Police Review Commission forms a Mutual Aid Pacts Subcommittee, which is tasked with reviewing the year's annual compendium of the Berkeley Police Department's (BPD) Mutual Aid Pacts. Working with representatives from BPD, the subcommittee reviews all new Mutual Aid Pacts, and any existing mutual aid pacts that any member of the subcommittee wishes to address. The Subcommittee's recommendations are then presented to the full Commission for consideration.

This year, the Mutual Aid Pact Subcommittee's recommendations were discussed and voted on at several PRC meetings.

New or amended agreements

The PRC passed the following motion on October 8, 2015:

Recommend to City Council that the City Council approve the four new or amended Mutual Aid Pacts with these entities: Alameda County District Attorney's Office Violence Against Women/Domestic Violence Project; Alameda County District Attorney's Office; A Safe Place; and University of California, Berkeley, Police Department. Moved/Seconded (Perezvelez/Sherman) - Motion Carried. Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Rogers, and Sherman. Noes: None. Abstain: None. Absent: Bartlett, Yampolsky.

Agreement with the Dept. of Homeland Security, Urban Area Security Initiative (UASI) program

On October 8, the Mutual Aid Pacts Subcommittee also recommended that the PRC urge the City Council to end BPD's participation in the annual Urban Shield exercise, which is funded by the Department of Homeland Security's UASI program. The vote was postponed so that BPD could make a presentation about

the Urban Shield exercise, and have the appropriate command staff representative present to answer questions from the Commission regarding the department's participation in Urban Shield. At its October 21, 2015 meeting, the Commission heard from both the BPD and from many members of the public denouncing Urban Shield's encouragement and emphasis on increased militarization of the police, and demanding that the City withdraw its participation in this annual exercise. Commissioners were allowed to ask questions of both BPD and representatives of the loose coalition who opposed ongoing participation in Urban Shield. After careful deliberation, a majority of the Commission disagreed that the BPD should withdraw from participating in the Urban Shield activity, and passed this motion:

Recommend, as an alternative to the Mutual Aid Pacts Subcommittee's recommendation: the Berkeley PRC continues to support BPD's involvement in Urban Shield, but it asks BPD to work with the PRC to decrease militarization, and encourages BPD to do outreach to the community to explain the benefits of Urban Shield. Moved/Seconded (Rogers/Sherman) - Motion Carried. Ayes: Bartlett, Bernstein, Perezvelez, Roberts, Rogers, and Yampolsky. Noes: Javier, Lippman. Abstain: Sherman. Absent: None.

Subsequently, Commissioners realized that their recommendation did not address the mutual aid pact with the Department of Homeland Security for the UASI program. Therefore, at its November 18, 2015 meeting, the PRC voted to clarify its intent regarding the DHS mutual aid pact:

Regarding the recommendation that the Commission adopted on October 21, as reflected on page 2, Item 6.a. of the meeting minutes, it is the understanding of the Commission that when this was voted on, it contemplated the inclusion of the continuation of the mutual aid pact with the DHS for the UASI program as part of the motion. Moved/Seconded (Sherman/Bernstein) - Motion Carried. Ayes: Bernstein, Roberts, and Sherman. Noes: Javier, Lippman, Abstain: None. Absent: Perezvelez, Rogers, Yampolsky.

Agreement with the Northern California Regional Intelligence Center (NCRIC)

In previous years, summaries of Suspicious Activity Reports (SARs) that the BPD sent to NCRIC were submitted to the City Council along with the compendium of mutual aid pacts submitted for the Council's review and approval. The PRC has had a long-held concern that the submission of some SARs may be inappropriate, resulting in the unnecessary sharing of private information or infringement on 1st Amendment activity. Rather than proposing that the BPD sever the relationship with NCRIC completely, it was suggested that the SARs summaries be provided before the PRC and Council were asked to approve the NCRIC pact. Thus, at its October 8, 2015 meeting, the PRC voted to:


Recommend that the City Council not approve the Mutual Aid Pact with the Northern California Regional Intelligence Center (NCRIC) until the Council and the PRC have had an opportunity to review the Suspicious Activity Reports. Moved/Seconded (Lippman/Sherman) - Motion Carried.

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Rogers, and Sherman.
Noes: None. **Abstain:** None. **Absent:** Bartlett, Yampolsky.

Suspicious Activity Report (SAR) summaries for the prior reporting year were furnished to the PRC on November 16, 2015. Thereafter, at its November 18, 2015 meeting, the PRC passed the following motion:

Given that there are only two SAR summaries for the preceding 12 months, and that they do not contain reports involve profiling, racial, ethnic, religious, or political abuses, or infringement on 1st Amendment activity, the Commission recommends approving the mutual aid pact with NCRIC. Moved/Seconded (Bernstein/Roberts) - Motion Carried. Ayes: Bernstein, Javier, Roberts, and Sherman. **Noes:** Lippman. **Abstain:** None. **Absent:** Perezvelez, Rogers, Yampolsky.

Sincerely,


Alison Bernstein, Chair
Police Review Commission

CITY COUNCIL REVIEW/APPROVAL BINDER

BERKELEY POLICE DEPARTMENT AGREEMENTS, LETTERS AND UNDERSTANDINGS RE MUTUAL AID, INFORMATION SHARING AND COOPERATION WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES, AND PRIVATE SECURITY ORGANIZATIONS (Berkeley Municipal Code §2.04)

Item #	3.12
Title:	FEDERAL: NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER (NCRIC)
Type:	Written Policy – General Order N-17
Approvals:	Initial: April 10, 2010 / Current: October 15, 2013
Summary:	<p>The NCRIC, a partnership between federal, state and local public safety agencies, and coordinated with the FBI's Bay Area Joint Terrorism Task Force, facilitates the legal sharing of terrorism and criminal-oriented information. In this effort, NCRIC:</p> <p>produces/disseminates intelligence; conducts training; and, provides investigative and analytical case support to federal, state and local law enforcement agencies. The NCRIC strives to ensure the protection of privacy and civil liberties of citizens in its assistance to local, state and federal agencies with their mission of protecting the communities they serve from the threats and dangers of terrorist, gang, narcotics and organized criminal activities. Local Terrorism Liaison Officers (TLOs) facilitate information sharing and investigative collaboration.</p> <p>The Police Department may receive and share confidential or 'law enforcement sensitive' public safety-oriented information with NCRIC to facilitate criminal investigation or to promote the safety of the community and/or law enforcement. The Police Department has designated TLO as a specialized duty assignment, and has appointed three sworn employees to TLO service collateral to their normal assigned duties.</p>
Rationale:	Police Department cooperation and information exchange with this Federally-coordinated partnership promotes public safety and serves the law enforcement mission.
Cost:	<p><i>If Approved:</i> Cost will be neutral. Approval will continue to support current law enforcement activity, funded in existing budget.</p> <p><i>If Not Approved:</i> Effect on cost cannot be calculated. Absence of or reduced interaction would inhibit investigations and impact successful prosecution. Public and employee safety would be adversely affected. Increased local enforcement responsibility would increase local costs.</p>
Recommendation:	Continued Approval
Implementation:	The Police Department will continue to operate in accordance with all City Council and Department general orders and policies as applicable.

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ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

**SUBJECT: SUSPICIOUS ACTIVITY REPORTING AND RELATIONSHIP WITH THE
NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER**

PURPOSE

- 1 - The terrorist attacks of September 11, 2001, and subsequent attacks throughout the world have demonstrated the necessity of an organized and integrated information sharing system at all levels of law enforcement. In order to prevent, prepare for, respond to, and investigate potential acts of terrorism and other violent criminal threats, it is necessary to establish an efficient system of communication whereby critical information can be quickly disseminated within the Berkeley Police Department (BPD) and to various local, state and federal law enforcement agencies.
- 2 - National guidelines have been developed and implemented throughout the United States through the National Criminal Intelligence Sharing Plan, the Findings and Recommendations of the Suspicious Activity Report Support and Implementation Project and the Nationwide Suspicious Activity Reporting Initiative (NSI) to establish a means for the sharing of information, known as Suspicious Activity Reporting (SAR). The information sharing plan was developed by law enforcement agencies to establish an all-crimes approach to gathering, processing, reporting, analyzing, and sharing of suspicious activity related to potential terrorism and crime. By maximizing information from citizens, law enforcement, and public safety officials, criminal acts can be detected and disrupted and incidents that have occurred can be properly investigated.
- 3 - The Berkeley Police Department will continue to attempt to detect crime before it occurs, including terrorism, through various means such as Suspicious Activity Reporting (SAR). The SAR program will provide a format for the Department to accurately and appropriately gather record, analyze and share suspicious activity or, in cases of named or identified individuals or groups, information that gives rise to a reasonable suspicion of criminal activity, including those activities related to foreign or domestic terrorism.

LIMITATIONS

- 4 - If the information gathered is developed into criminal intelligence, the Department will ensure that the information privacy and legal rights of all persons will be recorded and maintained in strict compliance with existing federal, state and Department guidelines regarding criminal intelligence systems as defined in (28 Code of Federal Regulations (CFR), Part 23 including subsections 23.20 (a) and 23.20(b)), the California Constitution and the California Attorney General's Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities and the California State Threat Assessment System Concept of Operations.

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- (a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.
 - (b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.
- 5 - Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.
 - 6 - SARs must not be submitted based on ideology, social or political opinion or advocacy of religious beliefs or association with a particular group. Criminal activity that would not ordinarily result in a SAR does not become worthy of a SAR when the subject's speech or expression indicates a particular ideological viewpoint or association.

POLICY

- 7 - Effective immediately, all sworn BPD personnel will document incidents with an actual or potential terrorism nexus or other suspected criminal activity and submit those proposed Suspicious Activity Reports as outlined in this policy. All Department members will adhere to the procedures and responsibilities described in this policy whenever potential terrorism related activity is encountered, observed or reported.

DEFINITIONS

- 8 - Suspicious Activity: Behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, or criminal activity. Suspicious behavior must have a criminal predicate (defined below), and must rise to the level of reasonable suspicion (defined below) in order to be reportable as a SAR in circumstances involving a named or identified individual or group.
- 9 - Criminal Predicate: The standard by which the determination as to whether information may be used to create a SAR is made in circumstances involving a named or identified individual or group. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount

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to a misdemeanor or felony.

- 10 - **Reasonable Suspicion:** Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization is involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.

PROCEDURES

- 11 - Examples of behaviors that could be reported as a SAR are as follows (all of these behaviors have been verified as behaviors which have preceded and been linked to actual terrorist incidents as well as common criminal acts):

DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY	
ISE-SAR CRITERIA GUIDANCE Category Description	
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Theft/Loss/Diversion	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents {classified or unclassified}, which are proprietary to the facility).
Sabotage/Tampering/ Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Aviation Activity	Operation of an aircraft in a manner that reasonably may be interpreted as suspicious, or posing a threat to people or property. Such operation may or may not be a violation of Federal Aviation Regulations.

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POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT INFORMATION DURING INVESTIGATION¹	
Eliciting Information	Questioning individuals at a level beyond mere curiosity about particular facets of a facility's or building's purpose, operations, security procedures, etc., that would arouse suspicion in a reasonable person.
Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.

- 12 - **Examples of behavior which cannot be reported as a SAR unless:** 1) the activity rises to the level of criminal conduct, or 2) the person taking part in the activity is not identified, and therefore, not subject to possible investigation by state and federal investigative agencies:

Recruiting	Building of criminal operations teams and contacts, personnel data, banking data or travel data
Photography	Taking pictures or video of facilities, buildings, or infrastructure in a manner that would arouse suspicion in a reasonable person. Examples include taking pictures or video of infrequently used access points, personnel performing security functions (patrols, badge/vehicle checking), security-related equipment (perimeter fencing, security cameras), etc.

- 13 - **Employee's Responsibilities:** All personnel are reminded that Constitutional rights will be honored at all times and nothing in this policy diminishes Constitutional protections. Personnel are specifically reminded of Fourth Amendment protections and that persons cannot be arrested without probable cause, detained without reasonable suspicion, and that evidence cannot be seized except pursuant to a warrant or an existing recognized exception to the warrant requirement. Any BPD employee receiving any information regarding suspicious activity potentially related to terrorism shall:

- (a) Notify their direct supervisor.

¹ Note: These activities may be considered First Amendment-protected activities and should not be reported in a SAR or ISE-SAR absent articulable facts and circumstances that support the source agency's suspicion that the behavior observed is not innocent, but rather reasonably indicative of criminal activity associated with terrorism, including evidence of pre-operational planning related to terrorism. Race, ethnicity, national origin, or religious affiliation should not be considered as factors that create suspicion (although these factors may be used as specific suspect descriptions).

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- (b) Notify a department Terrorism Liaison Officer (TLO)
 - (c) Document the incident as described in this policy.
- 14 - Responsibilities of Supervisors: Upon notification that personnel have received information regarding a potential SAR, the BPD Supervisor shall:
- (a) Determine if any further law enforcement response is needed, will consult with a BPD (TLO) if available and determine if immediate notifications to the Chief of Police, and/or the City Manager or his/her designee is required.
 - (b) Provide the information in written form to the TLO for consideration of SAR submittal.
 - (c) Review the reports and ensure the proper reporting has been completed.
- 15 - Responsibilities of the TLO and TLO Coordinator (TLOC): Terrorism Liaison Officers (TLOs) have received training in the identification, handling and reporting of potential terrorism related incidents. TLOs will be available as a resource for SAR related incidents.
- (a) TLOs will review proposed SARs from officers, and supervisors, and forward them to the TLO Coordinator (TLOC) for further review. If the report meets sufficient criteria for submission as a SAR, the TLOC will submit it to the Operations Division Commander or his designee for submission approval.
 - (b) The TLOC shall maintain a written log of all SARs submitted, and prepare an annual report to be provided to City Council.
- 16 - Responsibilities of the Operations Division Commander:
- (a) Review of proposed SARs, and approval/rejection as appropriate.
 - (b) Forward all SARs to the City Manager and Chief for review
 - (c) Ensure that a written log is maintained and an annual report prepared by the TLOC.
- 17 - Responsibilities of the NCRIC: It is the policy of the NCRIC to make every effort to accurately and appropriately gather, record, analyze, and disseminate information that could indicate activity or intentions related to threats to homeland

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security and submit such information to the Federal Bureau of Investigation – Joint Terrorism Task Force (FBI-JTTF) and the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) in the form of an NSI suspicious activity report. These efforts shall be carried out in a manner that protects the information and the privacy, civil rights, and civil liberties of individuals. Suspicious activity information shall be recorded and maintained in strict compliance with existing federal and state guidelines.

- 18 - The NSI has established a unified process for reporting, tracking, and assessing terrorism-related SARs throughout the nation. The NSI adheres to the guidelines established by the Intelligence Reform and Terrorism Prevention Act and the Information Sharing Environment Suspicious Activity Reporting (ISE-SAR) Functional Standard. These guidelines call for all terrorism-related suspicious activity reporting to be routed through designated fusion centers for appropriate vetting and review before the information can be shared within the nationwide system. The NCRIC as a component of California's State Threat Assessment System has been designated as the review agents for all terrorism-related suspicious activity reporting in the region.
- 19 - The NCRIC will then make the decision to share the SAR information with the NSI based on the standards established by the NSI. The NCRIC is also responsible for ensuring that all TLOs, line officers and other first responders in the region have received appropriate training in the collection and reporting of terrorism-related suspicious activities and the responsibilities related to protection of privacy, civil rights and civil liberties of individuals. The NCRIC also works closely with the NSI Program Management Office to ensure a statewide implementation of suspicious activity reporting.
- 20 - Reporting a SAR: All Suspicious Activity Reports (SARs) will be submitted through the www.ncric.org website. When the SAR involves a criminal act or attempted criminal act, a written BPD police report shall be submitted (and BPD case number created) identifying the suspected criminal behavior and referencing the systems and personnel notified of the SAR.



Hart, Alyson L.

From:
Sent: Wednesday, February 03, 2016 4:41 PM
To: DutyOfficer
Subject: NCRIC SAR-Officer Safety-Berkeley Police Department Berkeley Alameda

Submitter's First Name:*
Stephanie
Submitter's Last Name:*

Agency / Organization Name:*
Berkeley Police Department
Agency / Organization Name Other:

Best Contact Number: *

Email Address: *

Information redacted is protected
from public disclosure by
California Government Code
6254 (f), (k).

Incident Date:* 1/28/2016 **Time:** 9:11:0 AM

Description of Activity : *
 Officer Safety

Brief summary: *

On 01/28/16, BPD officers arrested [redacted] for 273.5PC. During the booking process, [redacted] 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."

Case or Incident Number:
16-5230

Name of Subject(s):

CITY COUNCIL REVIEW/APPROVAL BINDER

BERKELEY POLICE DEPARTMENT AGREEMENTS, LETTERS AND UNDERSTANDINGS RE MUTUAL AID, INFORMATION SHARING AND COOPERATION WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES, AND PRIVATE SECURITY ORGANIZATIONS (Berkeley Municipal Code §2.04)

Item #	3.6
Title:	FEDERAL: DEPARTMENT OF HOMELAND SECURITY, URBAN AREA SECURITY INITIATIVE (UASI) PROGRAM
Type:	Written Agreement
Approvals:	Initial: April 10, 2010 / Current: October 15, 2013
Summary:	<p>The Department of Homeland Security manages the UASI Program a grant funds program supported via the Federal Emergency Management Agency (FEMA). The funds are provided to state and local agencies to support development and implementation of homeland security-related operations/activities.</p> <p>The Police Department has in force grant agreements that support annual regional preparedness training programs and emergency response equipment acquisitions.</p>
Rationale:	The Police Department's relationship with the regional affiliate (Bay Area UASI) of this Federal agency promotes public safety and serves the law enforcement mission. It facilitates local and regional preparedness and responses to disasters and acts of violence.
Cost:	<p><i>If Approved:</i> Cost will be neutral. Approval will continue to support current law enforcement activity, funded in existing budget.</p> <p><i>If Not Approved:</i> Effect on cost cannot be calculated. Absence of interaction would prevent the investigation of certain crimes, inhibit multi-agency/regional mutual aid activities, and increase hazard to public safety amid responses to high-risk incidents. Reduced cooperation would have similar adverse effects on investigation outcomes and public safety. The net effect would be added burden of enforcement and related activity upon the Police Department, costs for which would be borne locally.</p>
Recommendation:	Continued Approval
Implementation:	The Police Department will continue to operate in accordance with all City Council and Department general orders and policies as applicable.

**AGREEMENT BETWEEN THE CITY AND COUNTY OF
SAN FRANCISCO AND THE CITY OF BERKELEY
FOR THE DISTRIBUTION OF FY 2007 UASI REGIONAL FUNDS**

THIS AGREEMENT is made this OCTOBER 12, 2007, in the City and County of San Francisco, State of California, by and between the CITY OF BERKELEY ("Berkeley") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("San Francisco"), in its capacity as fiscal agent for the SUASI Approval Authority, as defined below, acting by and through San Francisco's Department of Emergency Management ("DEM").

RECITALS

WHEREAS, The United States Department of Homeland Security ("DHS") consolidated the separate San Jose, Oakland, and San Francisco Urban Areas into a combined Bay Area Urban Area ("SUASI Region") for the purposes of application for and distribution of federal Urban Areas Security Initiative ("UASI") Program grant funds; and

WHEREAS, The Bay Area SUASI Region Approval Authority ("Approval Authority") was established as the Urban Area Working Group ("UAWG") for the SUASI Region, to provide overall governance of the homeland security program across the SUASI Region, to coordinate development and implementation of all UASI Program initiatives, and to ensure compliance with all UASI Program requirements; and

WHEREAS, The SUASI General Manager is responsible for implementing and managing the policy and program decisions of the Approval Authority, directing the work of the SUASI Management Team personnel, and performing other duties as determined and directed by the Approval Authority; and

WHEREAS, San Francisco has been designated as the grantee for UASI funds granted by the DHS through the California Governor's Office of Homeland Security ("OHS") to the SUASI Region, with responsibility to establish procedures and execute subgrant agreements for the distribution of UASI grant funds to jurisdictions selected by the Approval Authority to receive grant funding; and

WHEREAS, San Francisco has been designated to serve as the Fiscal Agent for the Approval Authority, and to establish procedures and provide all financial services for distribution of UASI grant funds within the SUASI Region; and

WHEREAS, Pursuant to grant distribution decisions by the Approval Authority, the SUASI Management Team has asked San Francisco to distribute a portion of the regional UASI grant funds to Berkeley on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 **Specific Terms:** Unless the context requires otherwise, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

(a) **"ADA"** shall mean the Americans with Disabilities Act (including all rules and regulations thereunder) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

(b) **"Authorized Expenditures"** shall mean expenditures for those purposes identified and budgeted in Appendix A.

(c) **"Event of Default"** shall have the meaning set forth in Section 7.1.

(d) **"Grant Funds"** shall mean any and all funds allocated or disbursed to Berkeley under this Agreement.

(e) **"Grant Plan"** shall mean the plans, performances, events, exhibitions, acquisitions, personnel, services or other activities or matter described in Appendix A, any budget attached hereto as part of Appendix A, and the Grant Assurances in Appendix B.

(f) **"Indemnified Parties"** shall mean: (i) San Francisco, including DEM and all commissions, departments, agencies, and other subdivisions of San Francisco; (ii) San Francisco's elected officials, directors, officers, employees, agents, successors, and assigns; and (iii) all persons or entities acting on behalf of the foregoing.

(g) **"Losses"** shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(h) **"Reimbursement Request"** shall have the meaning set forth in Section 3.9(a).

1.2 **Additional Terms:** Unless expressly stated otherwise, the terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement, or permission of DEM. Unless expressly stated otherwise, the terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of DEM. Unless expressly stated otherwise, the terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, or acceptable to, or satisfactory to DEM. Unless expressly stated otherwise, the terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation." Unless expressly stated otherwise, the use of the term "subcontractor," "successor" or "assign" herein refers only to a subcontractor ("subgrantee"), successor or assign expressly permitted under Article 8.

1.3 **References to this Agreement:** References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 10.2. References to articles, sections, subsections or appendices refer to articles, sections or

subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," herein or "hereto" refer to this Agreement as a whole.

ARTICLE 2
ALLOCATION AND CERTIFICATION OF GRANT FUNDS;
LIMITATIONS ON SAN FRANCISCO'S OBLIGATIONS

2.1 **Risk of Non-Allocation of Grant Funds.** This Agreement is subject to all federal and state grant requirements and guidelines, including DHS and OHS UASI requirements, guidelines and instructions, decisionmaking of the OHS and the Approval Authority, and to the extent applicable the San Francisco Charter. The Approval Authority shall have no obligation to allocate or direct disbursement of funds for this Agreement in lieu of allocations for new or other agreements. Berkeley acknowledges that UASI grant decisions are subject to the discretion of the OHS and Approval Authority. Berkeley assumes all risk of possible non-allocation of funds, and such assumption is part of the consideration for this Agreement.

2.2 **Certification of Controller: Guaranteed Maximum Costs.** No funds shall be available under this Agreement until prior written authorization certified by the San Francisco Controller. In addition, as set forth in Section 21:10-1 of the San Francisco Administrative Code:

(a) San Francisco's obligations hereunder shall not at any time exceed the amount approved by the Approval Authority and certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by San Francisco ordinances governing emergency conditions, San Francisco and its employees and officers are not authorized to request Berkeley to perform services or to provide materials, equipment and supplies that would result in Berkeley performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. San Francisco is not required to pay Berkeley for services, materials, equipment or supplies that are provided by Berkeley that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by San Francisco.

(c) San Francisco and its employees and officers are not authorized to offer or promise to Berkeley additional funding for this Agreement that would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. San Francisco is not required to honor any offered or promised additional funding that exceeds the maximum provided in this Agreement that requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

(d) The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

2.3 **SUPERSEDURE OF CONFLICTING PROVISIONS.** IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER

DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

**ARTICLE 3
PERFORMANCE OF THE AGREEMENT**

3.1 **Duration of Term.** The term of this Agreement shall commence on **OCTOBER 12, 2007** and shall end at 11:59 p.m. San Francisco time on **SEPTEMBER 30, 2009.**

3.2 **Maximum Amount of Funds.** In no event shall the amount of Grant Funds disbursed hereunder exceed **TWO HUNDRED FIFTY-SIX THOUSAND SIX HUNDRED SIXTY-ONE Dollars (\$256,661).**

3.3 **Use of Funds.** Berkeley shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in Appendix A only, and for no other purpose. Berkeley shall expend the Grant Funds in accordance with the Budget, if any, and shall obtain the prior written approval of the SUASI Management Team before transferring expenditures from one line item to another within any Budget.

3.4 **Grant Assurances; Cooperation with Monitoring.** Berkeley shall comply with all Grant Assurances included in Appendix B. Berkeley shall promptly comply with all standards, specifications and formats of San Francisco and the SUASI Management Team, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and shall cooperate in good faith with San Francisco and the SUASI Management Team in any evaluation, planning or monitoring activities conducted or authorized by OHS, San Francisco, the Approval Authority, or the SUASI Management Team.

3.5 **Record-Keeping.** Berkeley shall establish and maintain property, programmatic and financial records in accordance with the grant record requirements, and:

(a) Maintain financial management systems that support grant activities in accordance with federal requirements, including but not limited to Title 28, Code of Federal Regulations (CFR), Part 66.20, and DOJ Financial Guide, Part II, Chapter 3.

(b) Maintain an equipment tracking system that complies with federal requirements, including but not limited to the components identified in 28 CFR Parts 66.32 and 66.33, and DOJ Financial Guide, Part III, Chapter 6.

(c) Retain records in accordance with retention requirements contained in the following: (i) U.S. Department of Homeland Security FY2007 Homeland Security Grant Program: Program Guidance and Application Kit, dated January 2007, including but not limited to Section III.I.1 Administrative Requirements, Freedom of Information Act; and (ii) California Governor's Office of Homeland Security FY2007 Homeland Security Grant Program, California Supplement to Federal Program Guidance and Application Kit, revised June 1, 2007.

3.6 **Procurement Requirements.** Berkeley shall follow its own procurement requirements as long as those requirements comply with all applicable federal statutes, regulations, policies, guidelines and requirements, including those specified in the Grant Assurances, Appendix B, paragraph 26.

3.7 **Certification Requirements.** Berkeley shall ensure that any subgrantees or contractors with which Berkeley enters any agreement that involves expenditure of Grant Funds comply with the certification requirements under 28 C.F.R. part 67, *Government-wide Debarment and Suspension (Non-procurement)*; 28 C.F.R. part 69, *New Restrictions on Lobbying*; and 28 C.F.R. 83, *Government-wide Requirements for Drug-Free Workplace (Grants)*. Berkeley shall independently verify that any subgrantee, contractor or other entity receiving Grant Funds is not debarred by the federal government.

3.8 **Monitoring Grant Performance.** DEM and the SUASI Management Team are both equally and independently authorized to perform periodic reviews of Berkeley's grant performance, including on-site visits and verifications of grant activities. These reviews may include, but are not limited to:

- (a) Eligibility of expenditures;
- (b) Comparing actual grant activities to those approved by the Approval Authority and specified in Appendix A and/or the Budget;
- (c) Ensuring that any advances have been deposited in an interest bearing account and disbursed in accordance with applicable guidelines; and
- (d) Confirming compliance with Grant Assurances; information provided on performance reports and payment requests; and needs and threat assessments and strategies.

3.9 **Disbursement Procedures.** San Francisco shall disburse Grant Funds to Berkeley as follows:

(a) The SUASI Management Team shall serve as the primary contact for Berkeley regarding any Reimbursement Request. Berkeley shall submit to the SUASI Management Team, in the manner specified for notices pursuant to Article 9, a document ("Reimbursement Request") substantially in the form attached as Appendix C. With each Reimbursement Request, Berkeley shall include documentation verifying expenditures and services, and supporting the reimbursement request, including but not limited to purchase orders, vendor invoices, cancelled checks indicating payment, functional timesheets, and state approvals for training. Berkeley must submit all Reimbursement Requests under this Agreement before the termination of this Agreement as specified in Section 3.1.

(b) Berkeley and the SUASI Management Team shall agree upon a mutually acceptable schedule for Berkeley to submit Reimbursement Requests. In addition, at any time, SUASI Management Team may request that the Berkeley submit a Reimbursement Request within 30 calendar days of the request by the Management Team.

(c) The SUASI Management Team will review all Reimbursement Requests for compliance with all applicable guidelines and requirements. The SUASI Management Team will return to Berkeley any Reimbursement Request that is submitted and not approved by the SUASI Management Team, with a brief statement of the reason for the rejection of the Reimbursement Request.

(d) The SUASI Management Team will submit any Reimbursement Request that is approved by the SUASI Management Team to DEM. DEM shall review the Reimbursement Request for compliance with all applicable guidelines and requirements. DEM shall return to

the SUASI Management Team any Reimbursement Request that is not approved by DEM, with a brief explanation of the reason for the rejection of the Reimbursement Request.

(e) If a rejection relates only to a portion of the expenditures itemized in any Reimbursement Request, DEM shall have no obligation to disburse any Grant Funds for any other expenditures itemized in the Reimbursement Request unless and until Berkeley submits a Reimbursement Request that is in all respects acceptable to the SUASI Management Team and to DEM.

(f) For Reimbursement Requests approved by both the SUASI Management Team and DEM, DEM shall disburse Grant Funds by check payable to Berkeley, sent via U.S. mail in accordance with Article 9, unless DEM otherwise agrees in writing, in its sole discretion. DEM shall make reasonable efforts to disburse Grant Funds to Berkeley within 45 days of DEM's final approval of the Reimbursement Request.

3.10 **Disallowance.** Berkeley agrees that if it claims or receives reimbursement from DEM for an expenditure that is later disallowed by the state or federal government, Berkeley shall promptly refund the disallowed amount to DEM upon DEM's request. At its option, DEM may offset all or any portion of the disallowed amount against any other payment due to Berkeley hereunder. Any such offset with respect to a portion of the disallowed amount shall not release Berkeley from Berkeley's obligation hereunder to refund the remainder of the disallowed amount.

ARTICLE 4 REPORTING REQUIREMENTS; AUDITS

4.1 **Regular Reports.** Berkeley shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by DEM, in form and substance satisfactory to DEM. Such reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

4.2 **Notification of Defaults or Changes in Circumstances.** Berkeley shall notify the SUASI Management Team and DEM immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 5 to be false or misleading at any time during the term of this Agreement.

4.3 **Books and Records.** Berkeley shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds during the term of this Agreement. Without limiting the scope of the foregoing, Berkeley shall establish and maintain accurate financial books and accounting records relating to Authorized Expenditures and to Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. Berkeley shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final disbursement under this Agreement or until any final audit has been fully completed, whichever is later.

4.4 **Inspection and Audit.** Berkeley shall make available to the SUASI Management Team and to DEM, and to SUASI Management Team and DEM employees and authorized representatives, during regular business hours all of the files, records, books, invoices,

documents, payrolls and other data required to be established and maintained by Berkeley under Section 4.3. Berkeley shall permit the SUASI Management Team and DEM, and SUASI Management Team and DEM employees and authorized representatives, to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of the SUASI Management Team and DEM pursuant to this Section shall remain in effect so long as Berkeley has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Berkeley represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

5.1 **No Misstatements.** No document furnished or to be furnished by Berkeley to the SUASI Management Team or to DEM in connection with this Agreement, any Reimbursement Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

5.2 **Eligibility to Receive Federal Funds.** By executing this Agreement, Berkeley certifies that Berkeley is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Berkeley acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

ARTICLE 6 INDEMNIFICATION AND GENERAL LIABILITY

6.1 **Indemnification.** Berkeley shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by Berkeley's performance of this Agreement, including, but not limited to, the following: (a) a material breach of this Agreement by Berkeley; (b) a material breach of any representation or warranty of Berkeley contained in this Agreement; (c) any personal injury or death caused, directly or indirectly, by any act or omission of Berkeley or its employees, subgrantees or agents; (d) any loss of or damage to property caused, directly or indirectly, by any act or omission of Berkeley or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by Berkeley, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Berkeley by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Berkeley is responsible under Section 10.4; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and San Francisco's costs of investigating any claims against San Francisco.

6.2 **Duty to Defend; Notice of Loss.** Berkeley acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 6.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 6.1, regardless of whether the allegations asserted in

connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Berkeley by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Berkeley prompt notice of any Loss under Section 6.1 and Berkeley shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of Berkeley if representation of such Indemnified Party by the counsel retained by Berkeley would be inappropriate due to conflicts of interest between such Indemnified Party and Berkeley. An Indemnified Party's failure to notify Berkeley promptly of any Loss shall not relieve Berkeley of any liability to such Indemnified Party pursuant to Section 6.1, unless such failure materially impairs Berkeley's ability to defend such Loss. Berkeley shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Berkeley contends that such Indemnified Party shares in liability with respect thereto.

6.3 **Incidental and Consequential Damages**. Losses covered under this Article 6 shall include any and all incidental and consequential damages resulting in whole or in part from Berkeley's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

6.4 **LIMITATION ON LIABILITY OF SAN FRANCISCO**. CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE GRANT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

7.1 **Events of Default**. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement**. Any statement, representation or warranty contained in this Agreement, in any Reimbursement Request, or in any other document submitted to the SUASI Management Team or to DEM under this Agreement is found by the SUASI Management Team or by DEM to be false or misleading.

(b) **Failure to Perform Other Covenants**. Berkeley fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by Berkeley as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(c) **Failure to Comply with Applicable Laws**. Berkeley fails to perform or breaches any of the terms or provisions of Article 12.

(d) **Voluntary Insolvency**. Berkeley (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for

relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Berkeley or of any substantial part of Berkeley's property or (v) takes action for the purpose of any of the foregoing.

(e) **Involuntary Insolvency.** Without consent by Berkeley, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Berkeley or with respect to any substantial part of Berkeley's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Berkeley.

7.2 **Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default, DEM may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** DEM may terminate this Agreement by giving a written termination notice to Berkeley and, on the date specified in such notice, this Agreement shall terminate and all rights of Berkeley hereunder shall be extinguished. In the event of such termination, DEM will pay Berkeley for Authorized Expenditures in any Reimbursement Request that was submitted and approved by the SUASI Management Team and by DEM prior to the date of termination specified in such notice.

(b) **Withholding of Grant Funds.** DEM may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether Berkeley has previously submitted a Reimbursement Request or whether the SUASI Management Team and/or DEM has approved the disbursement of the Grant Funds requested in any Reimbursement Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to Berkeley after cure of applicable Events of Default shall be disbursed without interest.

(c) **Return of Grant Funds.** DEM may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by Berkeley in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

7.3 **Remedies Nonexclusive.** Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to DEM at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

ARTICLE 8 ASSIGNMENTS

8.1 **No Assignment by Berkeley.** Berkeley shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Berkeley hereunder without the prior written consent of DEM; provided, however, that those subcontracts specifically referenced in Appendix A shall not require the consent of DEM. This Agreement shall not, nor shall any interest herein, be assignable as to

the interest of Berkeley involuntarily or by operation of law without the prior written consent of DEM. A change of ownership or control of Berkeley or a sale or transfer of substantially all of the assets of Berkeley shall be deemed an assignment for purposes of this Agreement.

8.2 **Agreement Made in Violation of this Article.** Any agreement made in violation of Section 8.1 shall confer no rights on any person or entity and shall automatically be null and void.

8.3 **Berkeley Retains Responsibility.** Berkeley shall in all events remain liable for the performance by any assignee, subgrantee or contractor of all of the covenants terms and conditions contained in this Agreement.

ARTICLE 9 NOTICES AND OTHER COMMUNICATIONS

9.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below):

If to DEM or San Francisco:

San Francisco Department Of Emergency Management
1011 Turk Street
San Francisco, CA 94102
Attn: Executive Director
Facsimile No. (415) 558-3864

If to the SUASI Management Team:

SUASI Management Team
1011 Turk Street
San Francisco, CA 94102
Attn: Director of Strategy and Compliance
Facsimile No.: (415) 503-2098

If to Berkeley:

Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704
Attn: Sergeant David Frankel
Facsimile No. (510) 981-5819

9.2 **Effective Date.** All communications sent in accordance with Section 9.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

9.3 **Change of Address.** From time to time any party hereto may designate a new address or recipient for notice for purposes of this Article 9 by written notice to the other party and the SUASI Management Team.

ARTICLE 10 MISCELLANEOUS

10.1 **No Waiver.** No waiver by DEM or San Francisco of any default or breach of this Agreement shall be implied from any failure by the Approval Authority, SUASI Management Team, DEM or San Francisco to take action on account of such default if such default persists or is repeated. No express waiver by DEM or San Francisco shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by DEM or San Francisco of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by DEM or San Francisco of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

10.2 **Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

10.3 **Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

10.4 **Berkeley to Pay All Taxes.** Berkeley shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Grant Plan, the Grant Funds or any of the activities contemplated by this Agreement.

10.5 **Headings.** All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

10.6 **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. The following Appendices are attached to and a part of this Agreement:

- Appendix A, Authorized Expenditures
- Appendix B, Grant Assurances
- Appendix C, Form of Reimbursement Request

10.7 **Certified Resolution of Signatory Authority.** Upon request of San Francisco, Berkeley shall deliver to San Francisco a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of Berkeley.

10.8 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.10 **Successors: No Third-Party Beneficiaries.** Subject to the terms of Article 8, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 6, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

10.10 **Survival of Terms.** The obligations of Berkeley and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 4.3 and 4.4, Article 6, this Article 10, and the Grant Assurances of Appendix B.

10.11 **Further Assurances.** From and after the date of this Agreement, Berkeley agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

ARTICLE 11 INSURANCE

11.1 **Types and Amounts of Coverage.** Without limiting Berkeley's liability pursuant to Article 6, Berkeley shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident.

(b) Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

11.2 **Additional Requirements for General and Automobile Coverage.** Commercial General Liability and Business Automobile Liability insurance policies shall:

(a) Name as additional insured City and its officers, agents and employees.

(b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that

insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

11.3 **Additional Requirements for All Policies.** All policies shall provide at least thirty (30) days' advance written notice to City of cancellation or reduction in coverage mailed to City's address for notices pursuant to Article 9.

11.4 **Required Post-Expiration Coverage.** Should any of the insurance required hereunder be provided under a claims-made form, Berkeley shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

11.5 **General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs.** Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

11.6 **Evidence of Insurance.** Before commencing any operations under this Agreement, Berkeley shall furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Before commencing any operations under this Agreement, Berkeley shall do the following: (a) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request.

11.7 **Effect of Approval.** Approval of any insurance by City shall not relieve or decrease the liability of Berkeley hereunder.

11.8 **Authority to Self-Insure.** Nothing in this Agreement shall preclude Berkeley from self-insuring all or part of the insurance requirements in this Article. However, Berkeley shall provide proof of self-insurance, in a form acceptable to San Francisco, in the amounts of each line of self-insurance.

ARTICLE 12 COMPLIANCE

12.1 **Nondiscrimination.** In the performance of this Agreement, Berkeley agrees not to discriminate against any employee, San Francisco employee working with Berkeley or any subgrantee of Berkeley, applicant for employment with Berkeley or subgrantee of Berkeley, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

12.2 **Conflict of Interest.** Through its execution of this Agreement, Berkeley acknowledges that it is familiar with the provisions of Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify DEM if it becomes aware of any such fact during the term of this Agreement.

12.3 **Compliance with ADA.** Berkeley acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. Berkeley shall not discriminate against any person protected under the ADA in connection with all or any portion of the Grant Plan and shall comply at all times with the provisions of the ADA.

12.4 **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Berkeley may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Berkeley agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by San Francisco's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, San Francisco may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Berkeley from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Berkeley's use of profit as a violation of this section.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

CITY AND COUNTY OF SAN FRANCISCO:

CITY OF BERKELEY:

SAN FRANCISCO DEPARTMENT OF EMERGENCY MANAGEMENT

By: *Vicki Hennessy*
VICKI HENNESSY
ACTING EXEC. DIRECTOR

By: *Douglas N. Hambleton*
DOUGLAS N. HAMBLETON
CHIEF OF POLICE

Federal Tax ID #: 94-6000299

Approved as to Form:

Dennis J. Herrera
City Attorney

By: *Patricia O'Connell*
Deputy City Attorney.

Registered by:

Ann Marie Hogan 11-17-08
Auditor

Appendix A — Authorized Expenditures

ENTITY: CITY OF BERKELEY

SUASI Project Title	Solution Area	Program Description	Amount
<u>Project A</u> Training and Exercise	Exercise	Urban Shield	Not to exceed: \$30,000
<u>Project B</u> CBRNE	Equipment	Equipment- one bomb robot	Not to exceed: \$217,329
<u>Project B</u> CBRNE	Training	Approved Training and Backfill Expenses	Not to exceed: \$9,332
		TOTAL ALLOCATION	NOT TO EXCEED: \$256,661

Descriptions of authorized expenditures under the Solution Areas of PLANNING, TRAINING, EQUIPMENT & EXERCISE are in the following documents:

- *FY 2007 Homeland Security Grant Program, Program Guidance and Application Kit*
http://www.homeland.ca.gov/pdf/fy07_hsgp_guidance.pdf
- *California Supplement to Federal Program Guidance and Application Kit*
http://www.homeland.ca.gov/pdf/FY07_HSGP-StateSupplement6-1-07.pdf
- *Authorized Equipment List*
<https://www.rkb.us/>
- **All equipment purchased under this Agreement must match the SUASI 2007 Grant Application Workbook. Any modification to the inventory list in that Workbook must receive prior written approval from by the Bay Area SUASI Program Manager.**
- **No Management and Administrative expenses are allowed.**

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 10, 2016

GENERAL ORDER W-1

SUBJECT: PUBLIC RECORDING OF LAW ENFORCEMENT ACTIVITY

PURPOSE AND SCOPE

- 1- This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities that involve members of this department. In addition, this policy provides guidelines for situations where the recordings may be evidence.

POLICY

- 2- The Berkeley Police Department recognizes the right of persons to lawfully record members of this department who are performing their official duties. Members of this department will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.
- 3- Officers should exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

RECORDING LAW ENFORCEMENT ACTIVITY

- 4- Members of the public who wish to observe and / or record law enforcement activities are limited only in certain aspects.
 - (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).
 - (b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:
 1. Tampering with a witness or suspect.
 2. Inciting others to violate the law.
 3. Being so close to the activity as to present a clear safety hazard to the officers.
 4. Being so close to the activity as to interfere with an officer's effective communication with a suspect or witness.
 - (c) The individual may not present an undue safety risk to the officers, him/herself or others.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 10, 2016

GENERAL ORDER W-1

OFFICER RESPONSE

- 5- Officers should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, officers should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.
- 6- Whenever practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or behavior to be unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an officer could advise the person that he/she may continue observing and recording from the sidewalk across the street.
- 7- If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

SUPERVISOR RESPONSIBILITIES

- 8- A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior. The supervisor should review the situation with the officer and:
 - (a) Request any additional assistance as needed to ensure a safe environment.
 - (b) Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded.
 - (c) When practicable, allow adequate time for individuals to respond to requests for a change of location or behavior.
 - (d) Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
 - (e) Explain alternatives for individuals who wish to express concern about the conduct of Department members, such as how and where to file a complaint.

SEIZING RECORDINGS AS EVIDENCE

- 9- Officers should not seize recording devices or media unless (42 USC § 2000aa):
 - (a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 10, 2016

GENERAL ORDER W-1

necessary for prosecution of the person.

1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
- (b) There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.
 2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible. Another way to obtain the evidence is to transmit a copy of the recording from a device to a department-owned device.

PRC SUBCOMMITTEES LIST & STATUS (1-19-17)

Subcommittee	Commissioners	BPD Reps / Others
<p>Body-worn & Dash Cameras Formed 12-9-15</p> <p><i>Work completed; consider dissolving subcommittee.</i></p>	<p>Lippman (Chair) Roberts Yampolsky</p>	<p>Capt. David Reece Lt. Joseph Okies</p>
<p>General Orders on Crowd Control C-64, U-2, M-2 Formed 1-13-16</p> <p><i>Originally charged with working with the Dept. to redraft the general orders relating to crowd control. That work is mostly completed. What remains is review of the newly developed "Commanders' Guide," and working with the Dept. to evaluate any changes that the commission may feel are necessary.</i></p>	<p>Bernstein (Chair) Lippman</p>	<p>Lt. Michael Durbin</p>
<p>Fair & Impartial Policing Formed 1-13-16</p> <p><i>This subcommittee's main project is a report that will include: analysis of BPD demographic data on police stops, summary of testimony from community members, literature review, and policy/practice recommendations.</i></p>	<p>Lippman (Chair) Roberts DaSilva Vicente</p> <p><i>Public members:</i> Christina Murphy Paul Kealoha-Blake Elliot Halpern</p>	<p>Lt. Michael Durbin</p>
<p>Media Credentialing Formed 1-13-16</p> <p><i>Formed in response to concerns raised by the press after the December 2014 protests. Subcommittee has not yet met. (Original members no longer on PRC.) Subcommittee would be reviewing BPD general orders regarding press access.</i></p>		
<p>Mutual Aid Pacts Re-formed 7-13-16</p> <p><i>The work of this subcommittee is completed for 2016. Recommend dissolving.</i></p>	<p>Bernstein DaSilva</p>	<p>Sgt. Samantha Speelman</p>

<p>Surveillance and Community Safety Ordinance Formed 9-14-16</p> <p><i>Subcommittee began review of a proposed surveillance ordinance referred by the City Council. Has paused its work to allow the Disaster & Fire Safety Commission to review the draft ordinance, as the Fire Department will be more impacted by the ordinance than the Police Department.</i></p>	<p>Bernstein DaSilva Yampolsky (Chair) Roberts</p> <p><i>Public members:</i> Tracy Rosenberg Brian Hofer Juliet Leftwich</p>	<p>Capt. David Reece</p>
<p>Outreach Committee Formed 9-21-16</p> <p><i>Subcommittee has not yet met. Scope of work is to come up with an outreach plan to insure that the local community is aware of the PRC and how we work. Established in response to a report last year from Internal Affairs reflecting that more people file IA complaints than PRC complaints.</i></p>	<p>Bernstein DaSilva</p>	

Lee, Katherine

From: Lee, Katherine
Sent: Tuesday, January 03, 2017 3:05 PM
To: Lee, Katherine
Subject: FW: Why some problem cops don't lose their badges

Categories: For Agenda

Dear Commissioners,

I am forwarding at the request of a former PRC Commissioner.

-Kathy

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

From: PRC (Police Review Commission)
Sent: Tuesday, January 03, 2017 9:28 AM
To: Lee, Katherine <KLee@ci.berkeley.ca.us>
Subject: FW: Why some problem cops don't lose their badges

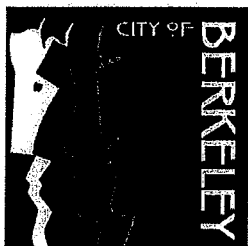
From: Bravin, Jess [<mailto:jess.bravin@wsj.com>]
Sent: Friday, December 30, 2016 12:27 PM
To: PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>
Subject: Why some problem cops don't lose their badges

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=JRrzdP95ZH2Qi9Y9bcwj1Ext4NBqgRXFTdKH3Pf0PLrGeQreWn2+AxcgMC65H+vSEdgotoN42EyXnil3DoxBZbMw+Ah>

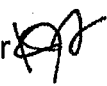
All best from Washington,

Jess Bravin
(former PRC commissioner)



Police Review Commission (PRC)

January 6, 2017

To: Interim Chief Andrew Greenwood
From: Katherine J. Lee, Police Review Commission Officer 
Re: Reporting of Marijuana Enforcement Activity

The Police Review Commission takes great interest in your Department's semi-annual reporting of marijuana enforcement activity, as required under Berkeley Municipal Code section 12.24.070. While the Commission appreciates the report that you provide, it believes that the information supplied is not sufficient to allow the Commission to gauge whether the BPD is complying with the mandate of BMC Chapter 12.24 to make enforcement of marijuana laws the lowest priority. The Commission feels it can do its job adequately only by evaluating marijuana-related enforcement in the context of all drug-related enforcement.

For that reason, at its December 14, 2016 meeting, the PRC voted unanimously to request that in the next semi-annual report the BPD provides under BMC sec. 12.24.070, you also furnish data regarding other drug-related arrests and citations for the same time period; additionally, the Commission requests that you include the race of each arrestee.

Thank you for your consideration.

cc: PRC Commissioners

