

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, April 12, 2017
7:00 P.M.**

North Berkeley Senior Center
1901 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 March 22, 2017 *(to be delivered)*
- 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. ELECTION OF COMMISSION VICE-CHAIRPERSON (discussion & action)**
- 9. SUBCOMMITTEE REPORTS (discussion & action)**
Report of activities and meeting scheduling for all Subcommittees, and additional discussion and action as noted for specific Subcommittees:
 - a. Fair & Impartial Policing Subcommittee

b. Media Credentialing Subcommittee

Renewal of subcommittee, resolution of scope of work of subcommittee and role of the PRC and BPD in determination of who is a member of the media, given the language of General Order P-29

c. Surveillance and Community Safety Ordinance Subcommittee

d. General Orders C-64, etc. Subcommittee

e. Outreach Subcommittee

Approve community engagement activities by the subcommittee, including having informational booths at community events

f. Homeless Encampment Subcommittee

10. OLD BUSINESS (discussion & action)

a. Consider language that the PRC Officer and Chief of Police negotiate regarding these aspects of Body-Worn Camera policy: Use of personal recording devices; Release of recordings to the PRC.

From: PRC Officer

b. Determine scope of policy review of General Order W-1, Public Recording of Law Enforcement Activity (Right to Watch), addressing whether current BPD policies and practices violate First Amendment protections afforded those viewing police conduct, as recognized in the case law.

From: Commissioner Prichett

(See materials attached to March 22, 2017 packet.)

c. Next steps in policy review initiated on February 22, 2017, assessing whether BPD's establishment of a perimeter around homeless encampments during enforcement actions violates General Order W-1; and if a violation is found, how the policy should be revised.

From: Commission

d. Review City Attorney's opinion classifying communications complaining about specific officer conduct as "informal complaints" and prohibiting their disclosure to the full Police Review Commission, and consider procedures for handling "informal complaints," as suggested by City Attorney, including possible amendment to PRC Regulations.

From: Commissioner Bernstein

(See materials attached to March 22, 2017 packet.)

e. Whether to open a review of the Police Department's policy or procedures for determining when a school should be advised to shelter in place.

From: Commissioner Prichett

- f. Prepare annual Commission Work Plan, as directed by City Council.
From: City Clerk
(See materials attached to March 22, 2017 packet.)

11. NEW BUSINESS (discussion & action)

- a. Amendment of Standing Rules to provide a mechanism whereby Commissioners can view motions in writing before voting.
From: Commission
- b. Establish subcommittee or other process for amending PRC Regulations for Handling Complaints Against Members of the Police Department on the subjects of: 1) Challenge of BOI Commissioner (Section VI.C.) and 2) Summary Disposition (Section VII.C.3.)
From: Commissioner Bernstein

12. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

13. 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:

14. REPORT OF PRC OFFICER

Complaint #2412 – Status of Report of Investigation.

End of Closed Session

15. REPORT OF ACTION TAKEN IN CLOSED SESSION

16. 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

April 12, 2017

MINUTES

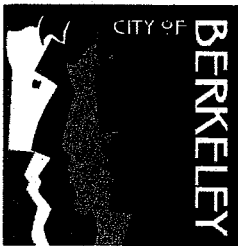
March 22, 2017 *Regular Meeting Minutes (to be delivered)*

AGENDA-RELATED

- Item 9.b** – Letter dated October 6, 2016 to Media Credentialing Subcommittee re: Background Information and Materials for Subcommittee Work. Page 7
- Item 9.b** – BPD General Order P-29: Public / Media Relations, dated August 17, 2009. Page 9
- Item 10.a** – Email from Chief Greenwood dated April 4, 2017, re draft Body-Worn Camera policy. Page 19
- Item 10.a** – PRC Officer's suggested language re use of personal recording devices and release to PRC. Page 21
- Item 10.a** – BPD 4-4-17 draft BWC policy (red-lined). Page 23
- Item 10.a** – BPD 1-21-16 draft BWC policy. Page 29

COMMUNICATION(S)

- Consent Calendar dated April 4, 2017 from the City Manager to the Mayor and Members of the City Council re Appointment of Police Chief. Page 35
- Memo dated March 30, 2017 from the Law Offices of James B. Chanin to the Mayor and Councilmembers re Appointment of new Berkeley Chief of Police. Page 39
- Consent Calendar dated March 28, 2017 from Councilmembers Susan Wengraf, Lori Droste, and Kriss Worthington to the Mayor and Members of the City Council re Security Camera Database. Page 43
- Letter dated March 31, 2017, from the PRC Officer to the Interim Chief of Police re: Commendations of BPD employees June – December 2016. Page 47



Police Review Commission (PRC)

October 6, 2016

To: Media Credentialing Subcommittee

From: Katherine J. Lee, PRC Officer 

Re: Background Information and Materials for Subcommittee Work

In its post-incident review of the BPD's response to the December 6, 2014 protests, the Department made the following recommendations under the heading of "Media":

• **Recommendation #29**

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

• **Recommendation #30**

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

The PRC responded to both recommendations as follows:

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

The Commission adopted this recommendation at its October 8, 2015 meeting. It received written comment from representatives of the Media Alliance and the National Lawyers Guild; then-Commissioner Ann Rogers submitted a response; they are enclosed in this packet for your information.

Finally, I am enclosing BPD General Order P-29 Public/Media Relations, for your reference.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 17, 2009

GENERAL ORDER P-29

SUBJECT: PUBLIC / MEDIA RELATIONS

PURPOSE

- 1 - The purpose of this General Order is to establish policies and procedures regarding contacts and relations with media organizations and their representatives, and responsibilities for the release of information by the Public Information Officer (PIO) and other authorized department representatives.

POLICY

- 2 - It is the policy of this department to provide accurate and timely information about crime, public safety and departmental activities to the news media and public.
 - (a) Within the confines of practicality and in accordance with law, it is the Department's intention to keep the community informed of and engaged in public safety issues relevant to their lives.
 - (b) In accordance with information release policy set forth in General Order R-23, consideration shall be given to the confidentiality, integrity and security of investigations (e.g., reference to/discussion of suspect statements), compliance with applicable law, and the privacy rights of victims, witnesses and suspects prior to release of any information.
- 3 - As used in this Order, "Media" shall mean entities, their employees and official agents, whose primary service and professional purpose is the communication of news and information to the general public via print, radio, television or digital/electronic means.

PROCEDURES

Categories of Information

- 4 - Categories of information that may be released to the media are:
 - (a) Routine: These are reports of incidents of human interest which would not affect normal police operations, and information about available police services.
 - (b) Major: These are reports of incidents that impact normal police operations and create a large volume of media interest, information about which is disseminated via the department's PIO, in conjunction with involved investigators.
 - (c) Policy News Release: These are reports about the internal operations of the Police Department, which originate from the Office of the Chief.

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- (d) Publicity Releases: These are reports about incidents and programs designed to arouse public interest, understanding, or involvement, dissemination of which are coordinated by the PIO upon the approval of the Chief of Police.
- (e) Newsworthy Events: These are reports of major crimes, arrests, disasters, unusual occurrences, or traffic accidents which would be of interest to the media, including, but not limited to:
 - (1) Any information necessary to obtain public assistance in the investigation of a crime or apprehension of a criminal suspect.
 - (2) Any information warning the public of danger, or of the nature and frequency of crime in the community.

General

- 4 - Cooperation: As authorized by Police Regulation 226, and within the parameters of relevant General Orders, employees shall cooperate with members of the media.
 - (a) A media inquiry that cannot be answered or is inappropriate for response by an employee shall be referred to the PIO or a superior officer.
- 5 - Information Release: Employees shall follow policy set forth in General Order R-23 regarding release of police reports, official department documents, and information contained therein.
- 6 - Opinion: Employees representing this department shall refrain from offering any opinion as to an arrestee's guilt or innocence, the merits of a particular case, or the existence, nature or value of evidence unless expressly authorized by the Chief of Police to issue such official comment.
- 7 - Persons In-Custody, Intentional Exposure to Media: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being photographed or televised.
- 8 - Persons In-Custody, Media Interviews: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being interviewed by such representatives, except if all of the following conditions exist:
 - (a) The prisoner requests or consents to an interview after being informed adequately of the right to consult with counsel and of the right to refuse to grant an interview.
 - (1) A prisoner's consent to a media interview shall be obtained in writing.

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- (b) If the prisoner has legal counsel, the attorney affirms his/her client's request or consent to a media interview, and authorizes said activity.
 - (1) Whenever practical, the attorney's affirmation and authorization should be obtained in writing.
 - (2) When represented by legal counsel, any request by the media to interview or photograph a person in-custody shall be referred to the prisoner's attorney.
 - (c) Unless unavoidable, department employees shall not appear in authorized and facilitated photographs or filming of prisoners.
- 9 - Media Conferences: Media conferences shall only be called by the City Manager, Assistant City Manager, Chief of Police or individuals serving in those capacities (ref. City of Berkeley Administrative Regulation (AR) 1.14.)
- (a) The department's PIO will act as a liaison between the media and the department in arranging for, or coordinating media conferences.
- 10 - During non-business hours, the on-duty Patrol Division Watch Commander, or in his/her absence the senior on-duty Patrol Division supervisor, shall be responsible for media relations and related notifications.
- 11 - Unless dissemination is authorized by policy and appropriate given the circumstances of the inquiry, media requests for information concerning any incident under investigation shall be referred to the PIO.
- (a) When an employee of this Department provides information to the media, that employee shall, as soon as practical, inform the PIO of the scope of media's inquiry and of the information provided.
- 12 - When the Communications Center receives a media inquiry for routine matters including, but not limited to, traffic conditions in Berkeley, Communications Center personnel shall furnish the information requested.
- (a) Specific or general media requests for information on newsworthy cases, (e.g., rape, major burglaries or robberies, felony assaults/batteries, cases involving death, etc.) received by the Communication Center shall be referred to the PIO (normal business hours) or Patrol Division Watch Commander (non-business hours.)
- 13 - Media inquiries regarding department policy, personnel, or administrative investigations should be handled in accordance with General Order R-23 and, as appropriate, forwarded to the Office of the Chief of Police.

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- 14 - "Media Releases" or other official media-directed documents shall be disseminated by the PIO, Patrol Division Watch Commander, or the Office of the Chief of Police in accordance with department information release policy.
 - (a) A press release of high media and public interest should be forwarded by the PIO to the City Manager's Office, when feasible, for review prior to public dissemination.
 - (b) Publications intended for the media which require significant Department time and effort (e.g., in-depth articles, feature stories, etc.) should be prepared by the PIO.
- 15 - Documents intended for distribution to media representatives may be left at the Front Counter of the Public Safety Building.
- 16 - Employees are encouraged to collaborate with the PIO to develop media releases regarding outstanding service performed by members of this department, significant events, community participation, and proactive projects that enhance the quality of life in Berkeley.
- 17 - A request for information received from a private person concerning police operations, procedures, authority, or concerning interpretation of the law shall be referred to the on-duty Patrol Division Watch Commander, or, if necessary, the Office of the Chief of Police.

Public Information Officer

- 18 - The PIO shall be a department employee appointed by the Chief of Police to serve as the primary liaison with representatives of the media.
 - (a) The PIO is responsible for providing relevant, timely, and accurate information to the media at disasters, major crime scenes, catastrophes, special events, and unusual occurrences.
- 19 - During normal business hours when the PIO is absent, or on-duty but unavailable, the PIO's supervisor shall either serve as Acting PIO or designate a trained subordinate to temporarily serve in that capacity.
- 20 - The PIO shall coordinate the preparation and release of factual information regarding all major Departmental incidents, major crimes, or other newsworthy events.
- 21 - The PIO shall be notified as soon as practical of the following offenses/situations:
 - (a) Arson (e.g., major events, series, offense with injuries).
 - (b) Bombing and explosions.

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- (c) Escapes.
 - (d) Kidnapping.
 - (e) Homicide.
 - (f) Deployment of the Barricaded Subject Hostage Negotiation Team.
 - (g) In all other offenses/situations, when a Patrol Division command officer determines circumstances warrant PIO notification.
- 22 - Subsequent to notification of an event described in paragraph 21 of this Order, the PIO shall determine the proper actions to be taken in accordance with department policy to insure that good media relationships are maintained.
- 23 - When the PIO receives a media request for information, he/she shall:
- (a) Obtain and review a copy of the police report(s).
 - (b) Review the facts of the case with the investigating officer or Detail prior to release of information concerning an ongoing criminal investigation.
 - (1) Unless precluded by law, policy or direction of a command rank officer, employees shall provide information requested by the PIO without delay.
 - (c) Provide the requesting media representative relevant information permitted by law and department policy.
- 24 - When known or advised, the PIO should regularly report contacts with representatives of the media to his/her chain of command.
- (a) The PIO will be responsible for notification of the City Manager's Office regarding non-routine contacts with media representatives as required by AR 1.14.

Involved Party's Request for "No Release"

- 25 - "No Release" shall be requested sparingly, and only when it is necessary for the successful investigation or prosecution of a case or the security of principals, witnesses, or the premises involved, when disclosure of event information would subject the victim to serious embarrassment or mental distress, or when required by law (e.g., PC §293).
- (a) Any officer requesting "No Release" shall include at the end of his/her report full justification for the request.

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- (b) In the event a request for "No Release" is, or appears to be, for purely personal reasons, and does not fall within the provisions of paragraph 25, the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.
- (1) In situations noted in paragraph 25(b), the officer may include at the top of his/her report, " Request No Release."

In-Field Media Management

- 26 - Whenever the media is present at a police scene, a Patrol Division Watch Commander, supervisor, or a designated liaison officer may release appropriate factual information about an incident and/or police activity in accordance with the information release policies described in this Order and General Order R-23.
 - (a) Whenever necessary or appropriate, the PIO may be called to an incident scene by the Patrol Division Watch Commander to perform in-field media liaison duties.
- 27 - In the event of a major disturbance, disaster, or state of emergency, a second PIO may be designated to assist the primary PIO with media relations and public dissemination of information.
- 28 - In the event the National Incident Management System (NIMS) is employed, the PIO will report to the Incident Commander (Command Section) and perform media liaison activities in support of the PIO Branch.
 - (a) If a Joint Information Center (JIC) is activated, the department PIO, or his/her designee, will report to that location to coordinate information management with other involved agency PIOs.

Media Relations at Multi-Agency Incidents

- 29 - For incidents involving the mutual efforts of the Berkeley Police Department and any other department or agency, the ranking department employee present at the scene shall confer with the ranking personnel from all other involved agencies to determine which agency shall be responsible for the release of information to the media.
 - (a) Unless upon mutual agreement or when necessary, the agency having primary jurisdiction over an incident shall be responsible for the dissemination of information to the media.

Media Access to Disaster or Accident Scenes

- 30 - Employees involved in the management of a disaster, accident, or riotous civil disturbance shall not prohibit duly authorized media representatives from entering and remaining in any area closed to the public pursuant to Penal Code

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§409.5.

- (a) Authorized media representatives are those persons possessing valid press passes issued by any bona fide law enforcement agency, or other suitable identification establishing regular news media affiliation or employment.
 - (1) While the Berkeley Police Department does not issue "Press Passes", official press documents issued by other law enforcement agencies shall be honored.
 - (2) Reporters or photographers who are not affiliated with or employed by established media entities (i.e., "Freelance") will not be considered authorized media representatives for the purpose of this policy.
 - (b) Authorized media representatives shall be permitted free movement in police-controlled or otherwise publicly restricted areas as long as they do not hamper, deter, or interfere with law enforcement or public safety functions.
 - (c) Employees allowing the entry of an authorized media representative shall advise that person of any known danger existing within the restricted area.
 - (d) Employees should not provide general escort services to media representatives into, through, or out of dangerous areas.
 - (e) Employees shall not refuse to to rescue media personnel who are in danger, providing such assistance can be provided with reasonable effort and without unnecessary hazard to rescuers.
- 31 - Employees shall not take action which would prohibit media aircraft from flying over disaster scenes.
- (a) Notwithstanding the exemption afforded to media aircraft, law enforcement officers may employ Federal regulations to stop both commercial and civilian aircraft from flying over a disaster scene.
 - (1) To implement over-flight control at a disaster scene in Berkeley, the request shall be made to the Federal Aviation Administration (FAA) Office at Oakland Airport.

Media Access to Crime Scenes

- 32 - Employees involved in a criminal investigation may prohibit media access to a crime scene.

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- (a) Media representatives shall be kept sufficiently distant from a crime scene to ensure officer safety and preservation of evidence.
 - (b) A crime scene located in an area of public access may be opened for media inspection after the area is secure and any search for, preservation, and processing of evidence has been completed.
- 33 - Employees shall, upon request of a private property owner or agent thereof, prohibit media access to private property wherein a crime scene is located.
- (a) Regarding access to crime scenes located on private property, media representatives have no right of access greater than the general public and, therefore, are subject to any access restrictions established by the owner or person in charge of the property.
- 34 - The immediate area (i.e., inner perimeter) of an in-progress critical incident, including, but not limited to, a hostage situation or barricaded subject, is deemed a "crime scene" and shall be subject to the media access restrictions set forth in this Order.
- (a) Authorized media representatives may be permitted access to areas within the outer perimeter of a critical incident, subject to any restrictions established by the Incident Commander.
- 35 - Department employees shall not jeopardize public or officer safety in order to accommodate media access or inquiry, but reasonable effort shall be made to keep the media informed of the progress of police activity.

Suggested Changes to Media Relations Policy

- 36 - Any suggestion for significant change in department policy and/or procedure concerning media relations received from a media representative shall be forwarded in writing to the Chief of Police via the recipient employee's chain of command.
- (a) The Chief of Police shall be responsible for evaluating the suggested change and, if appropriate, directing its implementation.
 - (b) The PIO shall be responsible for advising the involved media representative of any changes and/or actions taken by the Department in response to their suggestion.

CONDUCT OF MEDIA REPRESENTATIVES

- 37 - An employee having a complaint regarding the conduct of any media representative should submit the complaint in writing to the Community Service Bureau Lieutenant.

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- 38 - The CSB Lieutenant shall investigate the allegation and, if appropriate, forward the results and action recommendation to the Chief of Police via the chain of command.
- 39 - Any official action that may effect the involved media representative, including, but not limited to, communication of the complaint to the person's media organization, shall be taken only at the direction of the Chief of Police.

References: *South Coast Newspapers, Inc. vs. City of Oceanside* (160 Cal.App.3d 261 (1984))
T.N.G. vs. Superior Court, (4 CA, 3rd 767)
14 CFR §91.137 (Federal Aviation Administration Regulations)
Penal Code §§409.5 and 832.7
City of Berkeley Administrative Regulation 1.14
General Order R-23
Police Regulation 226
"ABA Standards for Criminal Justice: Fair Trial and Free Press" (3rd Ed., 1992), a publication of the American Bar Association

Lee, Katherine

From: Greenwood, Andrew
Sent: Tuesday, April 04, 2017 3:59 PM
To: Lee, Katherine
Subject: Draft Camera Policy4 Post PRC clean040417
Attachments: Draft Camera Policy Okies 1-21-16 (002).docx; BWCs to discuss with Chief 3-21-17 v2.docx; Draft Camera Policy4 Post PRC clean040417.docx

Kathy,

Attached is the policy draft with our language addressing the concerns, esp around using other recording devices, and how video will be shared with the PRC Investigators and through the BOI process as well.

Given there's some question as to draft version, and in the interest of 100% transparency, I'm including an earlier draft from Lt. Okies, so you can compare the two using Word's "compare" feature. *1-21-16*

Our current draft includes, in red, changes I believe Lt. Okies made in response to feedback, as well as the newer language we prepared to address the recording devices and how we will show video to the investigator and BOI. *040417*

At this point, my sense is that this is as close to final as we can get, given that (a) the BPA has not yet reviewed the policies, and (b) our actual technology and final implementation plans could have some effects.

We're still underway with Finance to ensure our procurement work is on the right track. Once we get that nailed down, we should be able to go to Council with the OK to make the purchase. As we prepare the item, we should be able to produce a timetable to get a good sense of acquisition, implementation, training and roll-out. I continue to be fully committed to a full implementation, as quickly and smartly as we can.

Please let me know if you have any questions.

Best regards,

Andrew Greenwood
Int. Chief of Police
Berkeley Police Department
(510) 981-5700

From: Reece, David K.
Sent: Tuesday, April 04, 2017 3:09 PM
To: Greenwood, Andrew <AGreenwood@cityofberkeley.info>
Cc: Reece, David K. <DReece@cityofberkeley.info>
Subject: Draft Camera Policy4 Post PRC clean040417.docx

Latest version w/ changes in red.

ISSUE #1: Use of personal recording devices

- BPD draft (redlined)

450.6 PROHIBITED USE OF PORTABLE RECORDERS

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

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

Members are prohibited from using personal owned recording devices while on-duty ~~without the express consent of the Watch Commander~~ except if the portable recorder malfunctions or becomes otherwise inoperable, e.g., the battery has run out. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

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

ISSUE #2: Release of recordings to the PRC

- BPD draft (redlined)

450.8 REVIEW OF RECORDINGS

(Contains no language governing release to the Police Review Commission. BPD's original position was that release of video to the PRC would be treated the same way as other BPD reports and information under the Records Maintenance and Release Policy [currently R-23, Release of Public Records and Information].)

...

Recorded files may also be reviewed:

...

(f) By PRC staff in connection with its investigation of a civilian complaint, and, if PRC staff decides any of the video should be viewed at a PRC Board of Inquiry hearing, by a PRC Commissioner assigned to that Board of Inquiry in advance of the hearing date. Such viewing by staff or a commissioner shall take place at the Department under the supervision of an Internal Affairs Sergeant at a mutually agreed-upon date and time.

(g) By PRC Commissioners at a BOI hearing, with the Department maintaining possession and control of the recording at all times.

Portable Audio/Video Recorders

450.1 PURPOSE AND SCOPE

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

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

450.2 POLICY

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

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

450.3 MEMBER PRIVACY EXPECTATION

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

450.3A TRAINING

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

450.4 MEMBER RESPONSIBILITIES

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

Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

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

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

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

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

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

450.4.1 SUPERVISOR RESPONSIBILITIES

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

Supervisors shall review relevant body worn camera recordings prior to submitting any administrative reports.

450.5 ACTIVATION OF THE PORTABLE RECORDER

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

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

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify the Communications Center

(d) Probation or parole searches

(e) Service of a search or arrest warrant

(f) Custodial Interviews

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

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

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

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

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

450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

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

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

450.5.2 CESSATION OF RECORDING

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

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

450.6 PROHIBITED USE OF PORTABLE RECORDERS

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

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

Members shall utilize their department-issued body worn camera as specified in this policy. Members may additionally use personally owned recorders (e.g. cell phone) to document contacts in addition to the departmentally issued body worn camera, or in lieu of the departmentally issued BWC, where the issued device fails and/or is not functioning (e.g. malfunction, broken or battery dead). Regardless, if a member is using a department-issued body worn camera, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from the department-issued body worn camera, the member shall document and explain the use in their police report (e.g. the body worn camera failed and evidence needed to be captured at that moment in time).

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

450.7 RETENTION OF RECORDINGS

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

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

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

450.7.1 RETENTION REQUIREMENTS

All recordings shall be retained for a minimum of 60 days. Incidents involving consensual contacts, aid to citizens and cold reports will be retained for one year. Recordings of incidents involving the use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years. Any recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged and be done in line with the department's evidence retention policy.

450.8 REVIEW OF RECORDINGS

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

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

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

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (e) By training staff regarding incidents which may serve as a learning or teaching tool.
- (f) By Police Review Commission Investigators and Board of Inquiry Members investigating a specific complaint where body worn camera footage is available. For purposes of the investigation, video review should take place at the police department, and will be conducted by an Internal Affairs Sergeant, or other designee as directed by the Chief of Police. For purposes of the Board of Review, where video review is deemed necessary by the PRC Investigator, or by commission members, the Department shall facilitate such viewing, at the meeting site for the Board of Inquiry, and which will be conducted by an Internal Affairs Sergeant, or other designee as directed by the Chief of Police. No one shall be allowed to make a copy of the video, or to otherwise record the video being shown, except as noted in other provisions of this policy. The department retains custody and control of the recordings, and content of the video will be subject to the confidentiality requirements of the Police Officer Bill of Rights (POBAR).

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

450.9 COORDINATOR

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

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

DRAFT Berkeley PD Policy

Portable Audio/Video Recorders

450.1 PURPOSE AND SCOPE

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

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

450.2 POLICY

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

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

450.3 MEMBER PRIVACY EXPECTATION

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

450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/ she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

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

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

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

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

450.4.1 SUPERVISOR RESPONSIBILITIES

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

450.5 ACTIVATION OF THE PORTABLE RECORDER

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

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

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify the Communications Center
- (d) Probation or parole searches
- (e) Service of a search or arrest warrant

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

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

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

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

450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

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

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

450.5.2 CESSATION OF RECORDING

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

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

450.6 PROHIBITED USE OF PORTABLE RECORDERS

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

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

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

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

450.7 RETENTION OF RECORDINGS

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

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

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

450.7.1 RETENTION REQUIREMENTS

The Berkeley Police Department has twelve (12) categories to tag and retain our cases in Evidence.Com. Each one is listed below with the current retention cycle. It should be noted that retention times can be extended at any time by a Supervisor, Internal Affairs Bureau, Id Technician, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee. Categories can also be added if needed.

- (a) 01) INFRACTION VIOLATIONS 2 YEARS
- (b) 02) DETENTIONS 2 YEARS
- (c) 03) AID TO CITIZEN 1 YEAR
- (d) 04) COLD REPORT 1 YEAR
- (e) 05) ARREST (AT STATUTE OF LIMITATIONS)
- (f) 06) OUTSIDE ASSIST 1 YEAR

- (g) 07) CONSENSUAL CONTACTS 1 YEAR
- (h) 08) SICK OR INJURED COMMUNITY MEMBERS 3 YEARS
- (i) 09) STATEMENTS (AT STATUTE OF LIMITATIONS)
- (j) 10) USE OF FORCE (UNTIL MANUALLY DELETED)
- (k) 11) UNATTENDED DEATH / HOMICIDE (UNTIL MANUALLY DELETED)
- (l) 12) TESTING / ACCIDENTAL 30 DAYS

450.8 REVIEW OF RECORDINGS

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

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

Recorded files may also be reviewed:

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

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

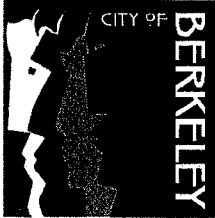
In the event of an officer involved shooting or other incident involving the death of a subject officers shall provide an initial interview before they review any audio or video recordings of the incident. An involved officer will have an opportunity to review recordings after the initial statement has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

450.9 COORDINATOR

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

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

DRAFT



Office of the City Manager

CONSENT CALENDAR

April 4, 2017

To: *DWR* Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Subject: Appointment of Police Chief

RECOMMENDATION

Adopt a Resolution confirming the appointment of Andrew Greenwood as Police Chief to be effective April 9, 2017.

FISCAL IMPACTS OF RECOMMENDATION

The salary and benefits for the Police Chief are included in the Fiscal Year 2017 Department Budget. The position is paid 100% from the General Fund (budget code 010-6901-420.11-01). The monthly salary is \$19,192.

CURRENT SITUATION AND ITS EFFECTS

In September 2016, former Police Chief Michael Meehan announced his retirement from the Berkeley Police Department after almost seven years of service. On September 25, 2016, I appointed Captain Andrew Greenwood as Interim Police Chief.

In accordance with the City Charter, Section 28(b) of Article VII, I am submitting my selection for the Police Chief to the City Council for confirmation. I have selected Andrew Greenwood for appointment to the vacant Police Chief position, to be appointed with a monthly salary of \$19,192. I am requesting confirmation of this appointment so that I may formally offer this regular at-will benefited department head position to Mr. Greenwood to be effective April 9, 2017.

BACKGROUND

The Police Chief is responsible for overall policy development, program planning, fiscal management, administration, and operations of the Police Department. The Police Department has a long history as one of the most progressive and innovative law enforcement agencies in the country. The Police Chief, through subordinate division heads, directs all City police functions, including: crime investigation, community services, Internal Affairs, operation of the City jail, Communications Center, maintenance of police records and related support services. The Police Department implemented Community Involved Policing in 1994 and continues to use the philosophy of engaging the community in crime prevention and law enforcement. The Department currently employs 172 sworn and 84 non-sworn personnel and has a current annual operating budget of approximately \$65.8 million. The Office of the Chief

oversees the four major Department Divisions: Operations, Investigations, Professional Standards, and Support Services.

RATIONALE FOR RECOMMENDATION

Andrew Greenwood has dedicated 31 years to serving the Berkeley community with the Berkeley Police Department, beginning his law enforcement career in 1986 as a Police Trainee and rising through the ranks to Police Captain, to his current appointment as Interim Police Chief. He became a Police Officer in 1987 and served on various Patrol Teams before becoming a Detective, and then a Field Training Officer. He was promoted to Police Sergeant in 1994, and his assignments included supervision of the Field Training Program, which oversees the training of all new police officers, the Fleet and Equipment Division, and the Communications Center. In 2006, he was promoted to Police Lieutenant and oversaw the Community Services Bureau, which is responsible for crime prevention efforts and community engagement. As a Lieutenant, he was also a Patrol Watch Commander, responsible for managing various Patrol Teams. In 2012, he was promoted to Police Captain and oversaw the Operations and Investigations Divisions. In his tenure, he has held different assignments within the department and served as the Project Manager of several new projects, involved in planning and implementing new applications and systems used within the department. He is an exceptional commander and is well-respected by his peers.

In the last six months as Interim Police Chief, he led the Command Staff Team to develop new Mission, Vision, and Values Statements and included the community in discussions of the department's strategic priorities. He has been proactive in his efforts to increase and improve communication with the public and with internal staff. He reorganized the Department Divisions and the Patrol Beats to increase efficiency. He continues to demonstrate the highest professionalism, leadership skills, dedication and commitment to the Berkeley community.

In addition to his extensive law enforcement experience, Andrew Greenwood obtained his B.A. in Social Science with an emphasis in Criminal Justice from San Francisco State University and is a graduate of the Sherman Block Supervisory Leadership Institute, the California Commission on Peace Officer Standard and Training (POST) Command College, and the Police Executive Research Foundation's Senior Management Institute for Police. He has also attended numerous POST trainings and seminars to further develop his abilities.

Andrew Greenwood is a life-long Berkeley resident, who attended Berkeley Public Schools. He is deeply connected to Berkeley and understands the unique public safety issues facing our community. His extensive public safety background, history of success, and many years of experience in serving the Berkeley community makes him well suited for this leadership role in the Police Department. I am confident in his ability to lead the Police Department in the permanent position.

Appointment of Police Chief

CONSENT CALENDAR
April 4, 2017

ENVIRONMENTAL SUSTAINABILITY

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office, 981-7000
Sarah Reynoso, Director of Human Resources, 981-6800

Attachment:

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONFIRMING THE APPOINTMENT OF ANDREW GREENWOOD AS POLICE CHIEF

WHEREAS, Andrew Greenwood has 31 years of law enforcement experience with the Berkeley Police Department, beginning his law enforcement career as a Police Trainee and rising through the ranks to Police Captain, and is currently serving as Interim Police Chief for the past six months; and

WHEREAS, Andrew Greenwood has extensive public safety experience having commanded several units and Divisions of the Berkeley Police Department including Operations, Investigations, Support Services; and

WHEREAS, as Interim Police Chief, Andrew Greenwood led the Command Staff Team to develop new goals and has improved communication with the public and internal staff, as well as reorganized the department to improve efficiencies; and

WHEREAS, Andrew Greenwood continues to perform exceptionally well as the Interim Police Chief and exhibits the highest professionalism, leadership skills, dedication and commitment to the Berkeley community; and

WHEREAS, in addition to his extensive law enforcement experience, Mr. Greenwood has obtained a Bachelor of Arts in Social Science with an emphasis in Criminal Justice from San Francisco State University and is a graduate of the Sherman Block Supervisory Leadership Institute, POST Command College, and the Police Executive Research Foundation's Senior Management Institute for Police.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby confirms the City Manager's appointment of Andrew Greenwood as the Police Chief with a monthly salary of \$19,192 on the same terms and conditions as other, regular at will employees, as set forth in the Unrepresented Employee Manual effective April 9, 2017.

LAW OFFICES OF
JAMES B. CHANIN
3050 SHATTUCK AVENUE
BERKELEY, CALIFORNIA 94705
(510) 848-4752
FAX (510) 848-5819

March 30, 2017

VIA EMAIL ONLY

To: Mayor Arreguin and the Berkeley City Council
cc: City of Berkeley Clerk, City of Berkeley Manager,
Berkeley Police Department, Kathy Lee
Re: Appointment of new Berkeley Chief of Police
From: Jim Chanin, Esq., and Rachel Lederman, Esq.

Dear Mayor Arreguin and Honorable City Councilpersons,

It is our understanding that the City Manager is nominating Andrew Greenwood to be the new permanent Chief of Police for the City of Berkeley.

This is the probably the most important appointment in the City of Berkeley, next to the City Manager. Therefore, prior to making this decision, we think it is necessary to evaluate the Berkeley Police Department concerning some very critical issues.

We also want to comment on the current status of the Berkeley Police Review Commission. While some may think the selection of a Police Chief is unrelated to the current status of the Berkeley Police Review Commission, we disagree. The PRC has been greatly weakened by a City Manager very different from early City Managers in Berkeley, who supported the PRC to the maximum extent allowed by the Charter. To cite only one example, in the 1970s, the Berkeley Police Chief, Wesley Pomeroy, with the consent of the City Manager, gave PRC commissioners the right to attend Internal Affairs Board of Review hearings. The Berkeley Police Association sued, but the commissioners' right to attend Board of Review hearings was upheld by the Alameda County Superior Court and the Court of Appeals.¹ Today, the current City Manager refuses to allow PRC Commissioners to look at Internal Affairs, interviews, etc., much less attend Board of Review hearings. Now this same City Manager is urging the appointment of Chief Greenwood with no input from the Berkeley Police Review Commission and very little open process at all.

¹ Berkeley Police Association v. City of Berkeley (1977) 76 Cal.App.3d 931, 143 Cal.Rptr. 255.

The Berkeley Police Department has many fine officers who work hard and do a good job. However, they have Use of Force Policies which lag behind other Police Departments in the Bay Area and are not up to contemporary law enforcement standards.

General Order U-2 lists Use of Force/Reporting Requirements. Berkeley Police Officers do not have to write Use of Force Reports when an officer strikes a subject with his/her fist or open hand and the subject does not complain of injury or the officer does not perceive that the subject was injured. This is unlike most departments where such uses of force (and others) do have to be reported. Moreover, until the settlement of our lawsuit against the BPD in February 2017, officers who used force in an "Unusual Occurrence" (See BPD General Order U-4), such as a political demonstration, did not have to write a police report under any circumstances unless they arrested someone. This is why there were no police reports by Berkeley Police at the Black Lives Matter demonstration in Berkeley in December 2014, where the other Police Departments who were in Berkeley during that demonstration (Oakland, Hayward, and Alameda), all wrote police reports. It is also why the Berkeley Police at that incident were unable to account for who used less lethal weapons in what amounts and who used CS gas in what amounts.

This failure to report uses of force means BPD supervisors are unable to account for many of the critical actions of their subordinates, and that BPD is unable to accurately account for their uses of force.

BPD officers also have lower standards for the use of less lethal weapons. In San Francisco, these weapons have not been used for years. In Oakland, there are great limitations on the use of less lethal weapons: "Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive...[but] may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury." The current Berkeley policies on gas and less than lethal weapons both allow for the use of these weapons, and lack the critical specificity of the Oakland policies.

BPD has also done little or nothing to deal with the problem of racial profiling. While the department's own civilian stop statistics have shown a stark pattern of racial disparities for two years, it has never acknowledged the disparities, has out-sourced responsibility for analyzing if there is a problem to an external agency, and has taken no affirmative action to remedy this festering problem, at serious risk to the people of Berkeley.

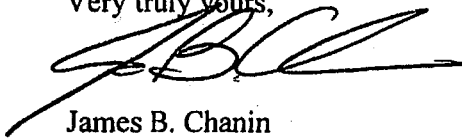
Furthermore, neither the Berkeley Police Department nor the City Council has committed to a schedule for full implementation of a camera program even though the BPD was part of a settlement agreement in United States District Court, which stated that "BPD commits to full implementation of a camera program, and not a pilot program, subject to City Council approval." In Oakland, complaints dropped 40% following implementation of widespread use of cameras, and the camera program has been embraced by most police officers there as something that will

protect them against "frivolous complaints" and will often serve to establish an accurate reflection of exactly what happened in a specific incident involving police and citizens.

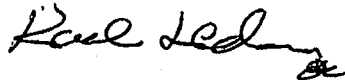
Chief Greenwood may be an effective leader, and he is well liked by many Berkeley police officers. However, the Berkeley City Council should carefully consider whether a broader search for candidates should be made prior to deciding if Chief Greenwood should be a permanent Chief of Police. At a minimum, Chief Greenwood should go on the record to provide a timeline by which the policies and practices referenced above will be brought in line with contemporary law enforcement standards.

Thank you for your attention to this matter.

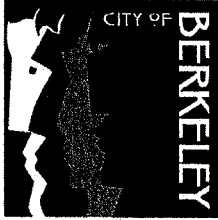
Very truly yours,

A handwritten signature in black ink, appearing to read "James B. Chanin". The signature is stylized with a large, sweeping initial "J" and "C".

James B. Chanin

A handwritten signature in black ink, appearing to read "Rachel Lederman". The signature is written in a cursive style.

Rachel Lederman



Susan Wengraf
Councilmember District 6
Lori Droste
Councilmember District 8

CONSENT CALENDAR
March 28, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmembers Susan Wengraf, Lori Droste, and Kriss Worthington
Subject: Security Camera Database

RECOMMENDATION

Request that the City Manager return to Council with an update on the referral to create a voluntary database of security cameras in Berkeley.
With an increase in crime, residents are anxious to help the Berkeley Police Department solve cases and arrest the perpetrators.

FINANCIAL IMPLICATIONS

Minimal

BACKGROUND

Almost 3 years ago, at the June 3, 2014 City Council meeting, the City Manager was asked to report on the possibility of setting up a database that would allow individuals to register their private security cameras with the City of Berkeley. The database would serve as a resource to help the police solve serious crimes. The item was also referred to the Police Review Commission for their input. (Attachment 1).

The January 15, 2015 Council Agenda included an Information Item from the PRC in response to the Council referral. The PRC found the concept of a registry appealing and voted unanimously to "inform the Council of the Commission's general support of the creation of a voluntary registry of existing video cameras to be maintained by the Police Department, provided that it is not contemplated that the Department maintain custody of videos or that the Department have access to live feeds." (Attachment 2)

Many cities throughout the country have found voluntary security camera databases to be extremely helpful in quickly identifying criminals and making arrests. (Attachments 3, 4, 5)

ENVIRONMENTAL SUSTAINABILITY

NA

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160

Attachments:

1: [http://www.cityofberkeley.info/Clerk/City_Council/2014/06 Jun/Documents/2014-06-03 Item 21 Security Camera Database.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2014/06_Jun/Documents/2014-06-03_Item_21_Security_Camera_Database.aspx)

2: [http://www.cityofberkeley.info/Clerk/City_Council/2015/01 Jan/Documents/2015-01-27 Item 26a Security Camera Database.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/01_Jan/Documents/2015-01-27_Item_26a_Security_Camera_Database.aspx)

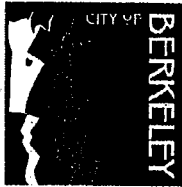
3: <http://www.mercurynews.com/2014/09/09/san-jose-police-can-tap-into-volunteer-residents-cameras-under-newly-approved-program/>

4: <http://www.sanramon.ca.gov/police/citizensview.htm>

5: <http://www.nola.gov/nopd/our-beat/september-2016/nopd%E2%80%99s-security-camera-database-is-helping-detecti/>

Council Consent Items

- 21. Signage Ordinance, Amending BMC Chapter 20.20.020**
From: Councilmembers Hahn, Bartlett, and Davila
Recommendation:
1. Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 20.20.020 to allow new signage at the Tarea Hall Pittman South Branch Library to be installed.
 2. Send a letter to the Board of Library Trustees (BOLT) requesting that BOLT help expedite fabrication and installation of the MLK Jr. Way sign as quickly as possible, and maintain existing Tarea Hall Pittman signage on Russell St.
 3. Request that BOLT Trustee/Councilmember Hahn report once a month to Council on progress of MLK Jr. Way sign installation.
- Financial Implications:** Minimal
Contact: Sophie Hahn, Councilmember, District 5, 981-7150
Action: Councilmember Harrison added as a co-sponsor. 1. Adopted first reading of Ordinance No. 7,538–N.S. as revised in Supplemental Reports Packet #2 to amend Section 20.16.090 instead of 20.20.020. Second reading scheduled for April 4, 2017. 2. Approved recommendation with revised letter in Supplemental Packet #2. 3. Approved recommendation.
- 22. Security Camera Database**
From: Councilmembers Wengraf, Droste, and Worthington
Recommendation: Request that the City Manager return to Council with an update on the referral to create a voluntary database of security cameras in Berkeley. With an increase in crime, residents are anxious to help the Berkeley Police Department solve cases and arrest the perpetrators.
Financial Implications: Minimal
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
Action: Moved to Action Calendar. 9 speakers. M/S/C (Worthington/Wengraf) to approve the recommendation amended to include direction that the guidelines have provisions to protect privacy and avoid misuse of camera footage.
Vote: Ayes – Maio, Bartlett, Harrison, Wengraf, Worthington, Droste, Arreguin; Noes – Davila; Abstain – Hahn.
- 23. Support AB 1316 (Quirk and Weber) Childhood Lead Poisoning Prevention**
From: Councilmembers Wengraf and Davila
Recommendation: Send a letter to President pro Tempore Kevin de Leon, State Senator Nancy Skinner, and Assemblymembers Tony Thurmond, Bill Quirk and Shirley Weber in support of AB 1316 (Quirk and Weber), to require that all children in California be tested for lead exposure.
Financial Implications: Minimal
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
Action: Councilmember Bartlett added as a co-sponsor. Approved recommendation.



Police Review Commission (PRC)

March 31, 2017

Andrew Greenwood, Interim Chief of Police
City of Berkeley
2100 Martin Luther King, Jr. Way
Berkeley, CA 94704

Re: Commendations of BPD employees June - December 2016

Dear Chief Greenwood:

At its February 22, 2017 meeting, the members of the Police Review Commission reviewed the numerous letters and emails of thanks and praise for members of your staff, which your department received from June through December 2016. The Commissioners singled out a number of Police Department employees whose actions were worthy of specific mention. They are:

Sgt. K. Smith	Ofc. Bejarano	PSD Salem
Vilma Garcia	Ofc. Hunt	Ofc. Muniz
Ofc. Burcham	Ofc. Bold	Ofc. Diaz
Ofc. Tu (twice)	Ofc. Neff	Ofc. Gibbs
Ofc. Murray (3 times)	Ofc. Cerletti	Ofc. Collier
Ofc. Li (twice)	Ofc. McDougall (twice)	Ofc. Driscoll
Ofc. Dozier (twice)	Ofc. J. Smith (twice)	Ofc. Coria
Ofc. S. Johnson	Ofc. Mathis	Ofc. Hogan
Ofc. G. Brown	Ofc. Andersen	Ofc. P. Lee (twice)
Lt./Capt. Louis (twice)	Ofc. J. Jones (2x)	Ofc. Grant (twice)
Lt. D. Reece	Ofc. Flores	Ofc. K. White
Sgt. Durbin	Of. Valle	Ofc. Warren
Sgt. Okies	Ofc. De Bruin (twice)	Ofc. Nabozny
Sgt. Fomby	Ofc. Hom	Ofc. Coats
Sgt. Frankel	Ofc. Nash	Ofc. Bartalini
Sgt. Ross	Ofc. Breaux (twice)	Lolita Cueva
Sgt. Stines	Ofc. Scott	PEO S. Davis
Sgt. Cummings	Ofc. Haney	Sgt. Friedman
Sgt. K. Reece	Ofc. Loelinger	Sgt. Jung
Ofc. Tillberg	PSD Lockhart	Sgt. Melero
Ofc. Yu (twice)	PSD Houston	Sgt. Rittenhouse
Ofc. Radey	PSD Saechao	Sgt. D. Lindenau
Ofc. Kleppe	PSD Calhoun	Sgt. C. Lindenau (twice)
Ofc. Castle (twice)	PSD Parker	Sgt. Hong
Ofc. Valle	PSD S. Smith	Sgt. B. Wilson
Ofc. Rodrigues	PSD Netz	Ofc. Salas

1947 Center Street, 1st Floor, Berkeley, CA 94704 • Tel: 510-981-4950 • TDD: 510-981-6903 • Fax: 510-981-4955
Email: prc@cityofberkeley.info Website: www.cityofberkeley.info/prc/

Int. Chief Andrew Greenwood
Commendations of BPD employees June – December 2016
March 31, 2017
Page 2

Ofc. Kacelek
Ofc. Ledoux
Ofc. Castle
Ofc. Kishiyama
Ofc. Lathrop

Ofc. Hammonds
Ofc. Shannon
Ofc. Bonaventure
Ofc. Muratovic
Ofc. S. Martinez

Ofc. Waite
Ofc. Perkins
Ofc. Driscoll

Some of the words of praise for the officers, responding to a wide range of situations, were: "patient," "efficient," "empathetic," and "caring." The phrases "professional" and "well-trained" came up repeatedly. Please let these members of your staff know that the PRC recognizes and appreciates their exemplary actions.

The letters and emails that the PRC relied on are enclosed for your information.

Sincerely,



Katherine J. Lee
PRC Officer

Enclosures

cc: PRC Commissioners (w/o encls.)