

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, November 15, 2017
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)
- 4. APPROVAL OF MINUTES**
Regular Meeting of October 25, 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. SUBCOMMITTEE REPORTS (discussion & action)**
Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:
 - a. General Orders C-64, etc. Subcommittee
 - b. Homeless Encampment Subcommittee
 - c. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting)
 - d. Re-establish Mutual Aid Subcommittee and appoint additional members

9. OLD BUSINESS (discussion & action)

- a. Rescind Standing Rule prohibiting non-Berkeley residents from sitting as community members on PRC subcommittees.
From: Commissioner Lippman
- b. Observations of PRC Commissioners who attended Urban Shield exercise Sept. 8 or 9.
From: Commissioner Lippman
- c. Proposal for BPD Accountability Plan, including professional development/ training of BPD officers, department budget, etc.
From: Commissioner Prichett

10. NEW BUSINESS (discussion & action)

- a. Fair & Impartial Policing Subcommittee
 - i.) Consider and approve report from the Subcommittee, and forward to the City Council, City Manager, and Chief of Police.
 - ii.) Dissolve Fair & Impartial Policing Subcommittee.
 - iii.) Review and consider next steps regarding City Council's November 14 action to address racial disparity in police practices and other short-term reforms.
- b. Review and consider next steps regarding City Council's October 31 action revising the reporting requirements in General Order U-2, Use of Force.
- c. Police Department's timeline for implementation of body-worn camera program, including finalization of General Order governing use of and access to video.
From: Commissioner Lippman
- d. Proposal to create a new subcommittee to identify where more civilian authority and oversight over the police department is warranted, with the goal of recommending changes to or a restructuring of the Police Review Commission.
From: Commissioner Ford
 - i.) Review and consider next steps regarding City Council's November 14 action on broader or longer-term changes to PRC structure and authority.

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 matter(s):

13. REPORT ON STATUS OF COMPLAINT #2424

End of Closed Session

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

15. ADJOURNMENT

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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 981-6418 (V) or 981-6347 (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

November 15, 2017

MINUTES

October 25, 2017 Regular Meeting Minutes Page 7

AGENDA-RELATED

Item 8. – PRC Subcommittees List updated 9-15-17. Page 13

Item 8.d. – Letter to the Berkeley City Council, dated March 13, 2017, re PRC's recommendations to the City Council regarding 2017 Agreements with Other Law Enforcement Agencies, Police Departments, and Private Security Organizations. Page 15

Item 9.a. – Appointment of members of the public to subcommittees. Page 19

Item 9.b. – Commissioner observations of Urban Shield. Page 21

Item 9.c. – Proposal: Good Governance Police Accountability Plan. Page 27

Item 10.a.i.) – “To Achieve Fairness & Impartiality” – Draft Report from Fair & Impartial Policing Subcommittee. Page 29

Item 10.a.iii.) – Supplemental Agenda Material from Mayor Arreguin & Councilmember Hahn, re Analysis of Disparate Outcomes in Police Stop Data; and original Action Calendar Item for November 14, 2017 Council meeting from Councilmembers Worthington, Bartlett, and Harrison, re Refer to the BPD to Address Disparate Racial Treatment and Implement Policy and Practice Reforms. Page 63

Item 10.b. – City Council's action on Berkeley Police Department's Use of Force policy from October 31, 2017 Annotated Agenda. Page 69

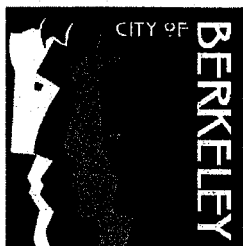
Item 10.d.iii) -- Supplemental Agenda Material from Mayor Arreguin & Councilmember Hahn, re Review PRC Enabling Legislation and Propose Changes to Policies and Authority; and original Action Calendar Item for November 14, 2017 Council meeting from Councilmembers Worthington and Harrison re Referral to the PRC to write a charter amendment ballot measure . . . to reform the PRC structure. Page 71

COMMUNICATION(S)

Memo from PRC Officer to Chief Greenwood, dated Nov. 2, 2017, attaching Recommended General Order W-1, Right to Watch Policy. Page 75

Council Item for Dec. 5, 2017 Action Calendar: Resolution Repealing the Revised Oleoresin Capsicum (Pepper Spray) Policy Passed September 12, 2017.	Page 79
Article from Nixle, dated Oct. 31, 2017: BPD Receives Grant for Traffic Enforcement & Crash Prevention.	Page 85
Email dated Oct. 27, 2017: OPINION: The case against Tasers.	Page 87
Email dated Nov. 2, 2017: Recently established Bay Area legal precedents in Emergency Zoning and Health, with Homeless Shelter issues.	Page 91
2017 Annual PRC Commission Attendance Report for period: Nov. 1, 2016 through Oct. 31, 2017.	Page 93
Email dated Nov. 8, 2017: Special events – ACLU BerkeleyNorth East Bay Chapter.	Page 95

KJL:mgm



Police Review Commission (PRC)

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

**Wednesday, October 25, 2017
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR GEORGE LIPPMAN AT 7:11 P.M.

Present: Commissioner George Lippman (Chair)
Commissioner Gwen Allamby (Vice Chair) (left 9:50 p.m.)
Commissioner Clarence Ford
Commissioner Sahana Matthews
Commissioner Andrea Prichett
Commissioner Ari Yampolsky

Absent: Commissioners George Perezvelez, Terry Roberts

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Lt. Angela Hawk, Sgt. Rashawn Cummings

2. APPROVAL OF AGENDA

With the moving of Agenda Item #9.g. (Annual Report) to the first Old Business item, the agenda was approved by general consent.

3. PUBLIC COMMENT

There was 1 speaker.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of October 11, 2017

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

Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Yampolsky

Noes: None Abstain: None Absent: Perezvelez, Roberts

5. CHAIR'S REPORT

-- The Chair attended, courtesy of the BPD, the International Association of Chiefs of Police (IACP) convention the past weekend in Philadelphia. IACP is about 120

years old; thousands in attendance. Went to many workshops and plenaries. Much dialogue over last several years in aftermath of Ferguson and 21st century policing. Learned a lot more about concepts such as procedural justice, which we should talk about here. Know the Police Dept. is looking forward to training on that.

(Lt Hawk: Dept. is preparing a procedural justice class. Have done training on fair & impartial policing ideas and tenets. 21st century policing is required reading for supervisors and lieutenants.)

-- Chair asks if anyone is interested in hosting a PRC holiday party or to be on a planning committee.

-- On Tuesday [Oct. 31], 3 items before Council of interest to the PRC: One is Use Of Force reporting: item to primarily extend reporting to almost all types of UOF. Revised item has been distributed tonight; among the changes, it calls for submission of the revised General Order to be submitted to PRC. The other two call for short-term changes and long-term changes. Commissioners are encouraged to review the items and attend Council meeting if you can.

6. PRC OFFICER'S REPORT

-- Complaint deadline report distributed. BOI last night. Two new complaints filed since last meeting. One being brought back for administrative closure tonight.

-- Running list of pending agenda items was read.

-- Next two months one meeting each: November 15 and December 13.

-- Surveillance Ordinance and report in system for Nov. 14 Council meeting; they are in packet. (Chair asks that the item be pushed to the Dec. 5 Council meeting.)

-- Supplemental Council agenda item for Oct. 31 re UOF has been passed out.

7. CHIEF OF POLICE'S REPORT

Lt. Hawk reported on behalf of Chief Greenwood:

-- Chief went to IACP conference.

-- Staffing: up to 161, but officer retiring Monday. Several potential hires.

-- Finished response to North Bay fires on Sunday. Tons of positive feedback from the community.

-- Beefing up staffing for Halloween; extra staffing for Russell St.

-- Training next Thurs: Disaster preparedness / urban search & rescue focusing on earthquakes.

Questions:

-- Article about white nationalist group RAM (Rise Above Movement in Pro Publica [reprinted in Berkeleyside today] included comment about their activity in Berkeley. No one been prosecuted despite evidence about what they've done. Lt. Hawk: don't know if members of that group were arrested; prosecution is up to the DA's office.

-- Happy to see After Action Reports, but seeming reluctance to name right wing groups, compared to the left groups that are named. Concern there is a bias. Also, last Friday, Berkeley High incident where dean of attendance, 3 students and one parent were arrested; could we please get a report? Lt. Hawk: Request will be passed along to the Chief.

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Fair & Impartial Policing Subcommittee. Working on the last couple of pieces of report; possible last meeting Nov. 2 at 6:00 p.m.
- b. General Orders C-64, etc. Subcommittee. No one responded to the Doodle poll so PRC Officer will send a new one.
- c. Homeless Encampment Subcommittee. Trouble scheduling meeting because unable to obtain quorum of this subcommittee and Homeless Commission's subcommittee on same date. Need more people on both subcommittees.
- d. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting). Next, and possibly last, meeting to be held Nov. 7.
- e. Mutual Aid Subcommittee. Still no subcommittee yet.

9. OLD BUSINESS (discussion & action)

- a. Provide further direction regarding new Right to Watch General Order adopted October 11, 2017.

Motion to change "should" to "shall" in the second paragraph under "Policy"; and to recommend that the Berkeley Police Department adopt this General Order and ask for their prompt consideration

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

Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Yampolsky

Noes: None Abstain: None Absent: Perezvelez, Roberts

- b. Consider amendments to PRC regulations regarding challenge to a commissioner seated on a Board of Inquiry.

Motion to adopt Commissioner Lippman's proposed change to the PRC Regulations, as amended.

Moved/Seconded (Lippman/Allamby) **Motion Carried**

Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Yampolsky

Noes: None Abstain: None Absent: Perezvelez, Roberts

[The adopted provision, to appear within Section VI.C., and showing the amendment made at the meeting, reads:

Upon the request of any sitting Commissioner, or at the discretion of the PRC Officer, the PRC Officer will provide the full Commission with all information,

unredacted, including confidential information, submitted in relation to a challenge of a BOI commissioner, including but not limited to the challenge, the response to the challenge, materials supporting the challenge and response, and the decision on the challenge. Any confidential information ~~provided to commissioners~~ may be discussed only in closed session and shall be treated as described in Section IV. CONFIDENTIALITY OF PERSONNEL MATTERS of these regulations.]

- c. Observations of PRC Commissioners who attended Urban Shield exercise Sept 8 or 9.

Motion revisit the topic of the PRC's mutual aid pacts recommendation at the November 15 meeting, request that Commissioners who have observations of Urban Shield write them up for the Commission, and that last year's PRC action on the mutual aid pacts be included in the next agenda packet for review.

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

Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Yampolsky

Noes: None Abstain: None Absent: Perezvelez, Roberts

- d. Proposal for BPD Accountability Plan, including professional development/training of BPD officers, department budget, etc.

(Item discussed; to be continued at next meeting.)

- e. Review Council revision of policy banning use of pepper spray in crowd control and resulting changes to General Order U-2; and review response, if any, from Council and staff to PRC's letter of on lack of consultation with the PRC on this and other policy changes.

Motion to recommend to the City Council that it adopt the proposed resolution repealing its September 2017 pepper spray policy change, with the addition of language in the "resolved" paragraph prohibiting use of OC against individuals in a crowd.

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

Ayes: Allamby, Lippman, Matthews, Prichett, Yampolsky

Noes: None Abstain: Ford Absent: Perezvelez, Roberts

- f. Rescind Standing Rule prohibiting non-Berkeley residents from sitting as community members on PRC subcommittees.

(Item continued to the next meeting.)

- g. Review and approval of 2016 Annual Report

(Heard following Item #8.d.)

Motion to add, on p. 4, just before the Mediation section, "The PRC is concerned that the Board of Inquiry process has become weakened over time and looks forward to seeing it strengthened both through

modification of its own regulations and through legislation from the City Council.”

Moved/Seconded (Lippman/Allamby) **Motion Carried**

Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Yampolsky

Noes: None Abstain: None Absent: Perezvelez, Roberts

Motion to approve the 2016 Annual Report as amended.

Moved/Seconded (Lippman/Allamby) **Motion Carried**

Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Yampolsky

Noes: None Abstain: None Absent: Perezvelez, Roberts

10. ANNOUNCEMENTS , ATTACHMENTS & COMMUNICATION

Attached.

11. PUBLIC COMMENT

There was 1 speaker.

Closed Session

12. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2426

By general consent (Comm. Allamby absent), the Commission voted to administratively close Complaint #2426.

End of Closed Session

13. ANNOUNCEMENT OF CLOSED SESSION VOTE

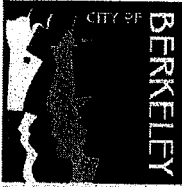
The unanimous vote to administratively close Complaint #2426 was announced.

14. ADJOURNMENT

By general consent, the meeting was adjourned at 10:00 p.m.

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 9-15-17**

Subcommittee	Commissioners	Chair	BPD Reps / Others
General Orders on Crowd Control C-64, U-2, M-2 Formed 1-13-16 Renewed 3-22-17	Lippman Perezvelez Prichett	Perezvelez	Lt. Michael Durbin
Fair & Impartial Policing Formed 1-13-16 Renewed 3-22-17	Allamby Ford Lippman Roberts <i>Public members:</i> Christina Murphy Paul Kealoha-Blake Elliot Halpern	Lippman	Lt. Michael Durbin
Homeless Encampments Formed 2-1-17	Prichett Yampolsky	Prichett	
June 20, 2017 (Review of BPD Response at City Council Meeting) Formed 7-12-17	Matthews Prichett Roberts <i>Public member:</i> Elliot Halpern	Roberts	Chief Andrew Greenwood Sgt. Sean Ross
Mutual Aid Pacts			



Police Review Commission (PRC)

March 13, 2017

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

Re: PRC's recommendations to the City Council regarding 2017 Agreements with Other Law Enforcement Agencies, Police Departments, and Private Security Organizations

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 agreements with other law enforcement agencies, police departments, and private security organizations. Working with representatives from BPD, the subcommittee reviews all new agreements, and any existing agreements 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 Pacts Subcommittee made recommendations on the four new or revised agreements only.

New or revised agreements

The PRC passed the following motion on January 11, 2017:

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

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

As in past years, the full Commission had a robust debate about the problematic aspects of the UASI program, such as the perceived militarization of local policing, versus the advantages of this relationship, which include significant amounts of officer training. At its January 25, 2017 meeting, the PRC ultimately voted to:

- 1) Support the Berkeley Police Department's continued participation in UASI programs, with a more robust requirement for the BPD to report back to the PRC after each UASI-sponsored training; such report is to include, but not be limited to, an accounting of all the money with BPD gets from UASI for equipment and training, and all the costs to BPD associated with BPD's participation in training, including the Urban Shield exercise;**
- 2) Request the inclusion of a PRC member in all UASI-sponsored training; and**
- 3) Request that the BPD inform the PRC when the BPD becomes aware of when the next Urban Shield exercise will take place.**

Moved/Seconded (DaSilva/Bernstein) – **Motion Carried.** Ayes: Bernstein, DaSilva, Perezvelez, Roberts, and Yampolsky. Noes: Lippman, Vicente. Abstain: Prichett. Absent: None.

Agreement with the Northern California Regional Intelligence Center (NCRIC)

The City's relationship with NCRIC is likewise a subject of ongoing concern. The Mutual Aid Pacts Subcommittee did not make a recommendation to the full Commission, but did report that the single Suspicious Activity Report submitted to NCRIC last year was appropriate in that it met the requirements of General Order N-17: there was predicate criminal activity and the SAR was not based on speech alone.

Interim Chief Greenwood informed the Commission that the only NCRIC database the police department accesses is license plate reader data, and that officers regularly use that database as an investigatory resource; occasionally, other information from NCRIC is obtained by telephone. At its March 8, 2017 meeting, the PRC heard from a staff attorney from the ACLU Northern California, who urged the Commission to weigh the privacy and civil liberties concerns implicated by data-sharing through NCRIC against its benefits. (A NCRIC representative was invited, but was unable to attend.)

At its March 8, 2017 meeting, the PRC voted to:

Mayor and Members of the City Council
PRC's recommendations to the City Council regarding the 2017 Agreements with Other Law
Enforcement Agencies, etc.
March 13, 2017
Page 2

Inform the Council that: we approve the MOU with NCRIC based on our understanding that the only information we put into NCRIC are the Suspicious Activity Reports, which are drafted and submitted pursuant to General Order N-17; and, based on the recognition that the Department has been vigilant in the last few years in following G.O. N-17; and, based on our understanding that the license plate reader database maintained by NCRIC is useful to the Department; and, based on an agreement with Department that we will, within the next 90 days, come up with a system for the PRC to receive an audit as to when and how often the NCRIC database is accessed and the cases for which it is accessed (by description not name), and come up with a protocol for other access of information received from NCRIC, that would include an audit component.
Moved/Seconded (Bernstein/Roberts) - Motion Carried. Ayes: Bernstein, DaSilva, Perezvelez, Roberts, and Yampolsky. Noes: Lippman, Prichett, Vicente. Abstain: None. Absent: None.

Sincerely,


Alison Bernstein, Chair
Police Review Commission

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the PRC Ordinance, the Chair may appoint members of the public to subcommittees in which they have expressed an interest, subject to approval of the commission. Members of the public seeking to serve on a

Police Review Commission
Standing Rules
2.22.2017

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

K. MUTUAL AID AGREEMENTS

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

Impressions of Urban Shield

Andrea Prichett

11/5/17

It was very educational and useful to have the opportunity to observe first hand some of the scenarios at the Urban Shield competition for 2017. I offer my thanks to Chief Greenwood for making that possible and to Sgt. Cummings for driving members of the Police Review Commission, the City Council and some of their staff around to the different training locations.

Overall, I became convinced that Urban Shield offers an excellent opportunity for teams of eight people (we only saw men) to practice their tactical skills and to receive feedback on their performance. Overwhelmingly, this was a military style activity and the bulk of the resources and attention were focused on providing this opportunity for SWAT and SRT teams to practice.

We also had the opportunity to view a resource fair, Community Emergency Response Teams, the Emergency Operations Center. While these are not part of the competition, they seem to represent an attempt to broaden the scope of the event.

Observing CERT was a positive experience. These civilians, lead by a few experienced individuals practiced responding to an earthquake and anticipating the needs of their community. Increasingly, in actual disaster situations, more emphasis is being placed on the ability of communities to become first responders and the primary organizational response to natural disasters. We were told that this was the first year of this level of involvement by CERT teams and trainers and it seemed like the kind of necessary skills, topics and training that could actually benefit a community in a crisis.

The Resource Fair that we went to included tables with information about emergency preparedness. It also included the Oath Keepers (who the SPLC has identified as a hate group) and a strong presence by the "Young Marines". This certainly identifies the event as having a strong military influence.

The Training Scenarios

The main event was the 48 hours of competitive field scenarios that the teams were engaged in. Having over 30 individual scenarios that each team must complete ensures that small numbers of officers become very well trained. The two days of role playing provided an excellent opportunity for SWAT officers to maintain and refine their training. Chief Greenwood explained that he expected officers with Urban Shield experience would help to train other officers and in this way share the knowledge.

The scenarios we witnessed were not related to emergency preparedness relative to a natural disaster or even a man made, wide scale catastrophe. They were related to

active shooters, potential shooters or other terrorism type situations. We observed four scenarios:

1. Preparation to dismantle a terrorist training camp
2. Police response to night club shooting
3. Police response to hostage situation (complete with woman chained to a wall and a poster of Guy Fawkes (Anonymous) on the wall.
4. A festival where a person drives a truck into a crowd.

There were other scenarios that we did not observe but overall, what we witnessed looked like military training for military situations. We did not observe medical treatment or de-escalation efforts in these situations.

Effectiveness

1. Emergency Operations Center was not really actively engaged beyond supporting the individual sites and competitors. Football games were on their computer screens, not monitoring situations.
 - a. Was this meant to test regional disaster preparedness? No. The tactical scenarios don't emphasize cooperation or communication beyond the 8 men on the teams.
2. This was not a test of our regional capacity to deal with regional catastrophe. The threat of multiple, simultaneous disasters like Hurricane Harvey presented was not accounted for in this training. Chemical spills, fires and earthquakes are all very possible at the same time, but nothing I saw provided evidence that there was a central command that would be coordinating a regional response.
3. It was surprising that EOC personnel were not actively engaged in monitoring the scenarios and, more surprising, was that the EOC was not running a simultaneous simulation of a widespread disaster (i.e. earthquake) in this area. Deploying assets to simultaneous events, distributing medical attention, search and rescue efforts, as well as water and food to victims most affected should be practiced as well.

Militarization

1. Officers from the Phillipines and Columbian military welcomed us to scenarios. They clearly had a training role of some kind.
2. The teams were well trained. They were briefed before the role play and they debriefed afterwards. In this way they were able to receive valuable feedback on their performance, tactics and implementation of their training.
3. Teams also had the chance to test new police oriented products. We observed a 360o camera by a producer of police weapons and supplies being deployed in one scene.
4. The lack of emphasis on non-military skills is alarming. Communication with civilians as well as intraregional communications compatibility, chain of

command, resource distribution, infrastructure stabilization were seemingly all non-existent at this event.

5. Infusion of politics was
 - a. One scenario with Guy Fawkes (Anonymous) poster where girl was chained up to the wall.
 - b. "Armed protesters" scenario contributes to stereotyping. (When do protesters ever arm themselves?)

Our community has expressed concern that, in the event of a real emergency, they want assistance accessing vital services, tending to the wounded, and providing for the needs of the community. There has been concern raised that we want to avoid the kind of highly militarized, Hurricane Katrina type response that was ineffective at meeting the needs of the people, but which actually caused many people harm and in some cases, death. A comprehensive safety plan must balance the care of the community and the safe guarding of its rights with the need to meet dangerous actors with decisive force.

Overall, I feel that the Urban Shield exercises lack a comprehensive, global perspective on disaster management and are skewed in favor of a very narrow range of scenarios and responses that predominantly involve firearms.

Urban Shield Exercise
September 2017
George Lippman

I attended the Urban Shield 2017 exercise for two days: Friday and Saturday.

On Friday the focus of the event was twofold: the Expo and the lecture hall. The exposition, or trade show, appeared to be relatively restrained compared to what was reported in previous years. Racist imagery was less in evidence.¹ The emphasis in the hall was the sale of police equipment such as armaments, computer and surveillance equipment including facial recognition. An East Bay Express article stated:

One company, Gemalto, showed off its real-time video and facial recognition surveillance system. A representative of the company said the software can analyze thousands of hours of video to quickly pick out people's faces and identify them against government databases.

According to the Gemalto rep, the company wants to install facial recognition systems in jails to scan the faces of visitors. Those with outstanding warrants are identified and arrested.²

The biggest excitement was a raffle of advanced rifles.

Items facilitating de-escalation and peaceful conflict resolution were not significantly present. It is likely that it would be difficult for a vendor to make much profit for such items at a police trade show.

A summary of the trade show could read: "Black Rifles Matter" t-shirts, no; Black rifles, yes.

Lectures took place in a separate hall throughout the day. They were attended primarily by police commanders rather than officers. Topics included use of drone technology, collapse of the Oroville Dam, mass care in San Mateo County, Pulse nightclub shooting, Ghost Ship fire, and rescue task force of Santa Clara Fire.

On Saturday our group of commissioners, council members and their staff attended several "scenarios." Teams from area departments cycled through a number of scenarios designed to test their response to challenging situations. Overall, the focus was on SWAT (in Berkeley, Special Response Team or SRT) action against armed antagonists. I attended three of these scenarios, including a Middle Eastern terrorist attack, a Pulse Nightclub-style active shooter, and an attacker on an Amtrak train. Our group also toured a Castro Valley community preparedness fair organized by Urban Shield and a Emergency Operations Center.

¹ <http://www.eastbaytimes.com/2017/08/25/alameda-county-rejects-urban-shield-vendor-over-perceived-racist-images/>

² <https://www.eastbayexpress.com/SevenDays/archives/2017/09/08/alameda-county-sheriff-hosts-11th-urban-shield-training-for-emergency-responders-and-swat-teams>

The necessity in the scenarios was first to “stop the killing; then, stop the dying.” This imperative usually requires officers to kill the shooter so that shooting victims can be attended to safely. Opportunities to negotiate a non-violent conclusion to such scenarios are very limited. In actual police work, the practice of hostage negotiation has developed beyond the level possible in these scenarios.

The terror attack had disturbing elements. The scenario was far-fetched, with a Hezbollah team traveling to Latin America, then infiltrating up to the Bay Area to take over a remote area on the local reservoir. This scenario played to prejudices about Muslim fanatics and the southern border that, while imaginative, fuel the divisive mentality that Berkeley has attempted to rise above. We also learned that developers of the scenario included not only on-duty Navy Seals, but also Marines from the Colombian military—a force that has been condemned for its record as one of the worst human rights violators in the world.³

The itinerary developed for us by police representatives did not include any fire or natural disaster scenarios.

The community fair was the most positive element of the exercise (though the presence at the Sheriff’s booth of the Oath Keepers, a militant militia group, was very disturbing).⁴ The outreach to the community by the sheriff was commendable. This event was disconnected from the rest of Urban Shield, and there seems no reason that it could not be continued whether or not Urban Shield exists in its present form.

Questions were raised about the interplay of law enforcement and for-profit entities at the Urban Shield exercise. Vendors, some of whom participate in the development of the scenarios and utilize their products, also promote their wares at the trade show. The sheriff’s department strongly encourages police attendees to visit and engage with each booth at the show. One little-discussed aspect of the scenarios is law enforcement and first responder testing of new vendor technologies, leading to vendor modification of technology based on participant feedback at Urban Shield and potential financial incentives for participants, including potential discounts on vendor products. This web should be examined for propriety.

Urban Shield representatives confirmed to our group that its funding source—UASI, the Urban Areas Security Initiative, part of Homeland Security—requires its grantees to have a “nexus to terrorism” as part of all their activities. The imperatives of funding create a structural barrier to the exercise transforming into one that responds to the typical challenges that our department faces.⁶

³ <https://colombiareports.com/southwest-colombia-furious-security-forces-15-killed-massacre/>

⁴ <https://www.eastbayexpress.com/SevenDays/archives/2017/09/15/right-wing-extremist-group-had-booth-at-urban-shield-to-explain-who-they-are>

⁶ <http://www.dailycal.org/2017/09/25/stop-urban-shield-coalition-alleges-urban-shield-is-militarized-in-a-report/>

PROPOSAL:
GOOD GOVERNANCE POLICE
ACCOUNTABILITY PLAN

1. The Police Chief will be responsible for creating annual goals for the department with input from the community that are measurable and related to reducing crime and improving the safety situation in Berkeley.
2. The Police Chief will create an annual training and professional development plan for the department that supports the achievement of the annual goals. This plan will be submitted by the start of each fiscal year.
3. The BPD will create a budget plan that supports the achievement of these identified goals.
4. The Police Chief will **work to** identify data sources, **metrics** and measures that will assist the police department, the City Council, the Police Review Commission and the public in evaluating the effectiveness of the department. Departmental effectiveness will be evaluated annually based on the measures and reported to the PRC, the City Council and the public.
5. The BPD will hire a full time data analyst to work with staff to improve data collection and analysis and to assist in the creation of credible, reliable data that can be used for evaluation of departmental effectiveness, allocation of funds, and the focus of trainings and professional development.
6. The Berkeley Police Department shall commence regular annual or bi-annual departmental audits of assets and expenses

1 ***To Achieve Fairness and Impartiality:***
2 **Report and Recommendations from the**
3 **Berkeley Police Review Commission**

4 Draft presented by the PRC's Fair & Impartial Policing Subcommittee
5 for consideration at PRC's November 15, 2017 meeting
6

7 **Section 1. Introduction**
8

9 In 2014, in response to an upsurge in reports of unwarranted police killings and
10 discriminatory practice, President Obama appointed a Task Force on 21st Century
11 Policing to help mend and strengthen police-community relations. The Task Force's
12 Final Report stated:
13

14 Recent events...have exposed rifts in the relationships between local police and the
15 communities they protect and serve.... In establishing the task force, the President spoke of
16 the distrust that exists between too many police departments and too many communities—
17 the sense that in a country where our basic principle is equality under the law, too many
18 individuals, particularly young people of color, do not feel as if they are being treated
19 fairly....

20 These remarks underpin the philosophical foundation for the Task Force on 21st Century
21 Policing: to build trust between citizens and their peace officers so that all components of a
22 community are treating one another fairly and justly and are invested in maintaining public
23 safety in an atmosphere of mutual respect.¹
24

25 The community and the city government in Berkeley were deeply affected by the national
26 conversation about race and policing. In city council and town hall meetings, and in our
27 civic commissions, residents met to discuss its implications for our own city.
28

29 This report by the City of Berkeley, California Police Review Commission (PRC) is a
30 beginning examination of our own disparate treatment of civilians on a racial basis. Our
31 starting place is the data about police-civilian encounters, available online at the Berkeley
32 Police Department (BPD) website for stops beginning January 2015.² Several
33 independent agencies have reviewed the data and discovered significant racial disparities
34 in stop, search, and "yield rates" (the percentage of enforcement actions stemming from
35 police stops), particularly between White civilians and African American and Latino
36 civilians. These conclusions, from the police department's own data, are corroborated by
37 anecdotal testimony collected by the PRC from a number of civilians of color.
38

39 The BPD engaged the Center for Policing Equity (CPE) to review the stop data from the
40 year 2015. CPE reported in its draft interim report that:
41

42 Although disparities declined over the time period measured, Black and Hispanic drivers,
43 and Black pedestrians, remain much more likely to be stopped by police than their White
44 counterparts. Moreover, BPD data indicated wide and unexplained racial disparities in

¹ https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

² https://www.cityofberkeley.info/Police/Home/Berkeley_PD_s_Stop_Data_Now_on_City_s_Open_Data_Portal.aspx

45 search rates. Black and Hispanic drivers, in particular, were disproportionately likely to be
46 stopped and searched without being arrested.

47
48 Meanwhile, although Asian drivers were less likely than White drivers to be stopped, they
49 were five times more likely to be searched, and four times more likely to be arrested, at a
50 stop. Furthermore, data with respect to stops and searches revealed wide variation in racial
51 disparity among BPD beats. Finally, Black people were subjected to reported use of force at
52 about six times the rate of Whites.

53
54 These disparities are largely unexplained, and warrant further investigation, in particular
55 with respect to the charges filed against drivers of these racial groups.³
56

57 It is the PRC's goal in making this report to the city council, the city manager, and the
58 Berkeley community, to promote the development of trust between the police and
59 communities of color. This trust, as with all relationships, can be built only on the basis
60 of honest self-assessment.

61
62 The Commission recognizes the hard work that police officers do to keep the community
63 secure, and the inherent risk that they take every time they report for work. We present
64 this report in a positive spirit. Our analysis and recommendations are intended to ensure
65 that all segments of the community have the same experience of policing.
66

67 The Commission contends that these statistics and anecdotal reports together raise urgent
68 concerns regarding the progress of the department toward its goal of fair and impartial
69 policing. We urge a sustained examination and remediation plan be launched without
70 delay by the BPD in coordination with the PRC and city leaders. Our summary
71 recommendations include:
72

73 A. Data Collection and Analysis Enhancements

- 74 1. Add specific data elements to those already tracked. Maintain and analyze
75 demographic data. Enhance the current web display for readability.
- 76 2. Report trends regularly to PRC and city council. Report stop data by officer
77 (stripped of identifying information).
- 78 3. Hire a data manager.
- 79 4. Enhance ability to correctly identify ethnicity of individuals.
- 80 5. Report every use of force.

81 B. Address racial disparities shown in the data

- 82 1. Monitor stop, search, and enforcement/disposition outcomes across race.
- 83 2. Determine if disparities are generalized or reside in a subset of the department
84 and develop effective mitigations including policy reviews, staff support,
85 counseling and training, or other as appropriate.
- 86 3. Work closely with PRC to develop mitigations and track progress.
- 87 4. Develop early warning systems to minimize future problems of biased
88 policing.

89 C. Body Worn Cameras

- 90 1. Accelerate full deployment of body cameras.

³ [https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/CPE%20Draft%20Report%2007142017\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/CPE%20Draft%20Report%2007142017(2).pdf)

- 91 2. Use camera footage to train officers and evaluate policies.
- 92 D. Other departmental steps
- 93 1. Partner with academic institutions.
- 94 2. Increase support for officer wellness and safety.
- 95 3. Strengthen informed consent procedures for search.
- 96 4. Strengthen requirements for officers to identify themselves.
- 97 E. Community relations
- 98 1. Prepare detailed action plan to build trust in and accessibility to the
- 99 department, focused on communities of color.
- 100 2. Consult and cooperate with the broader community to develop and implement
- 101 policy and practice reforms.
- 102 3. Increase positive community contact.
- 103
- 104 These recommendations are shown in more detail in Section 7, "PRC Policy and Practice
- 105 Recommendations."

Section 2. Background

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In March, 2014, the Police Review Commission recommended that the City Manager adopt the proposed General Order B-4, Fair and Impartial Policing Policy. The policy was the product of over a year of discussion by the Berkeley Police Department and community stakeholders including the ACLU, NAACP, National Lawyers Guild, and Coalition for a Safe Berkeley.

In 2013, the PRC had formed a subcommittee to develop the policy, working closely with the Berkeley Police Department. The policy that resulted from that effort not only makes it clear the Department explicitly prohibits racial profiling and other biased policing; it also clarifies procedures in the limited circumstances in which the department can consider race, gender and other demographic information of individuals. California Penal Code Section 13519.4(f) also prohibits racial profiling by law enforcement officers. This General Order helps to implement that state law.

This Fair and Impartial Policing Policy was passed by the Berkeley City Council in June 2014 and went into effect in January 2015. The collection of vehicle, pedestrian, and bicyclist stop data began January 26, 2015 and the data was published on the BPD website beginning that summer.

Community groups (Berkeley NAACP, Berkeley Copwatch, ACLU—Berkeley/Northeast Bay, National Lawyers Guild—San Francisco Bay and UC Berkeley Black Student Union) analyzed the demographics of this stop data and published an initial report on September 29, 2015. The BPD at this same time opted to contract with the Center for Policing Equity (CPE) to analyze their stop data, and has made no apparent effort to study its own data and draw its independent conclusions from them. Nearly two years later in July 2017, the BPD, at the direction of the city council, released a draft interim report from the CPE.⁴ Each analysis showed what the community coalition called “stark racial disparities” of a similar scale, with the CPE, having access to professional data analysis tools and a larger base of data, able to explore the subject in greater depth.

BPD Chief Greenwood accompanied the CPE draft report with a five-page introduction. The Chief stresses the department’s compliance with law and policy against racial profiling, details the relevant training given to the officers, and takes issue with several aspects of the draft, many of them methodological. The department has yet to take a position on the meaning of the data: whether the data show a pattern of disparity, what would cause that disparity, how to remediate the root cause.

⁴ A third review has been conducted by the independent company Police Strategies. The company conducted a preliminary analysis of 24,800 stops made by Berkeley PD officers from 2015 to 2016 using data obtained from the City of Berkeley’s Open Data Portal. Access the 5 dashboards here: <https://public.tableau.com/profile/policestrategies#!/vizhome/BerkeleyPoliceDepartment-StopsAnalysis2/LocationTime> (Click on “Stops by Race” for Police Strategies’ visual depiction of “Berkeley PD - Stops, Enforcement Action and Searches by Race of Subject”)

145 The Police Review Commission's mandate, passed by the voters in 1973, states that:

146

147 The Commission established by this Ordinance shall have the following powers and
148 duties: to review and make recommendations concerning all written and unwritten
149 policies, practices, and procedures of whatever kind and without limitations, in relation to
150 the Berkeley Police Department, other law enforcement agencies and intelligence and
151 military agencies operating within the City of Berkeley, and law enforcement generally.

152

153 In 2016, the Commission voted to establish a Fair and Impartial Policing Subcommittee
154 to conduct our own evaluation of the demographic data. This Commission is mandated by
155 the electorate to provide the public, the city council, and the city manager with advice
156 from a Berkeley perspective.

157

158 Three years after the establishment of the Fair and Impartial Policing Policy, and two
159 years after the release of the first batch of stop data, it is time to move forward on the
160 issue of race and policing. It is toward that end that we respectfully submit this report to
161 City leaders and the community.

162

163 **Section 3. BPD demographic data on police stops, 2015**

164
165 A. Overview.

166
167 Pursuant to General Order B-4, Fair and Impartial Policing, the Berkeley Police
168 Department collects and posts stop data on the City's Open Data Portal.

169
170 The BPD overview can be found at <http://ci.berkeley.ca.us/police/>. The department's
171 home page states:

172 In our desire to be open and accountable to our community, the Berkeley Police
173 Department voluntarily collects and publicly shares demographic stop data. Collection of
174 data can assist and contribute to the national policing discussion, focus our attention
175 internally on implicit bias and increase trust by making policing in Berkeley more
176 transparent to the community.

177 On January 26, 2015 the Berkeley Police Department began collecting information for all
178 vehicle (including bicycles) and pedestrian detentions (up to five persons). This stop data
179 is now available for public viewing on the City of Berkeley's Open Data Portal which can
180 be accessed at <https://data.cityofberkeley.info/Public-Safety/Stop-Data/6e9j-pj9p>. The
181 police detention categories on the Open Data Portal are traffic, suspicious vehicles,
182 pedestrian and bicycle stops. You will also find information on the incident number,
183 date, time, location, and the demographic disposition listed in this data.

184 This data contains information on police contacts between January 26, 2015 through the
185 present. The Berkeley Police Department will be updating this information approximately
186 every 60 days.

187 B. Structure of the data

188
189 The following data items are reflected for each traffic, pedestrian, and bicycle stops. See
190 Appendix 1 for more detailed description of each data item.

191
192 Line number

- 193 1. Incident number
194 2. Call date/time
195 3. Location
196 4. Incident type (traffic, pedestrian, etc.)
197 5. Dispositions (race, gender, age range, reason for stop, enforcement action,
198 search/no search)

199
200 The data can be downloaded into MS-Excel or other formats for analysis.

201
202 C. Race-related analysis of the data.

- 203
204 1. Methodology: Technical information.

205
206 The Police Review Commission, along with several community organizations, spent
207 significant time analyzing the data posted on the BPD website, and drafted a report

208 detailing the conclusions that we drew from it. In July 2017, when the Center for
209 Policing Equity released its draft interim report, we found that it covered much of the
210 same ground and came to generally the same conclusions as had the PRC. For the sake
211 of clarity and simplicity, we decided to take the CPE report as our starting point. This
212 means that this PRC report will focus primarily on stop data from 2015, and we will give
213 our feedback on the analysis and recommendations contained in the CPE report.
214

215 We found the BPD database to be very difficult to navigate, and we will share what we
216 learned so that others have an easier time learning from the data.
217

218 In order to produce useful results, certain rows of data must be set aside as they do not
219 provide racial, gender, or age demographics.⁵
220

221 Of the 11,808 rows of data supplied by the BPD for 2015, 10,060 usable rows remain
222 after rows without demographics are discarded, meaning that almost 15% of the data
223 cannot be used for this analysis.
224

225 Also, in some cases, the standard six characters occur two to five times in one row. This
226 occurs when more than one civilian is encountered in one stop. This occurrence is fairly
227 rare, taking place in only 2.5% of the usable data rows (250). Up to this point we have
228 analyzed only the first individual described in a row.
229

230 2. Methodology: the designation of “Race.”

231

- 232 • See Appendix 2 for a brief discussion of the methodological issues of race that the
233 Commission considered. These include the reality that the lens through which
234 race is viewed in the data is the police officer’s perception, and concerns raised in
235 our discussion about opportunities for improvement in the racial categories used
236 by the department.
237

238 3. Racial disaggregation of BPD stop data.

239

240 Disaggregation is defined as separation of a mass of data into its component parts,
241 specifically into racial or ethnic categories.
242

243 The 2015 Agreement between the BPD and the CPE calls for data analysis on “12-
244 months’ worth of pedestrian and vehicle stops using BPD’s current data collection
245 practices.” This scope of study is reflected in this report from the PRC. The CPE report,
246 however, adds several other areas of study including vehicle stops from 2012 through
247 2014, use of force data from 2012 through 2016, and crime data from 2012 through

⁵ As indicated by the department’s explanation of Disposition data above, “additional dispositions may also appear,” such as P, M, AR, 000000, etc. In cases where only these additional characters are present, and there is no Race designator, the row cannot be used for racial demographics, and we discarded it for this purpose. [Unresolved question about whether this footnote is of value.]

248 2015.⁶ This additional data cannot be analyzed by the PRC because the department has
249 not shared it with the commission. The data given to the CPE should be given
250 immediately to the PRC, as the civic commission responsible for advising the City on law
251 enforcement and criminal justice.

252
253 The BPD website provides raw, unanalyzed data, with racial designations provided for
254 each civilian contact, but no breakdown giving subtotals by “race.” In order to look for
255 patterns of racial treatment of various ethnicities, it is important to calculate the racial
256 breakdown for the following aspects of the data.

- 257
- 258 a) Percentages of civilians stopped, for each racial group, compared to the total of all
259 stops.
 - 260 b) Percentage of civilians who are stopped from each racial group, whose stop
261 results in arrest or citation, shown in the BPD data as enforcement. This ratio is
262 known as the “yield rate” or “hit rate” of a stop, or of a search. In this report we
263 will use the term “yield.”
 - 264 c) Percentages of civilians who are stopped from each racial group, who are then
265 subject to a search.
- 266

267 The rest of this report section discusses the CPE report on these three aspects.

- 268
- 269 a) Vehicle and pedestrian stops.
- 270

271 The CPE finds evidence for a strong racial disparity between vehicle stops of African
272 American and white subjects:

273
274 Here, a strong disparity is evident. In an average quarter, 36% of traffic stops involve a
275 Black subject, while only 34% involve a White subject. While these figures are not wildly
276 different, 55% of the Berkeley population is White while only 10% is Black, meaning that
277 a Black driver is nearly six times more likely to be pulled over than a White driver.

278
279 Disparities are also evident with respect to Hispanic drivers: they represent 12% of the
280 stops performed by the department, while they make up approximately 11% of the
281 population, a stop rate nearly double that of Whites.⁷

282
283 Similarly, for pedestrian stops:

284
285 Most pedestrian stops involved either White or Black pedestrians. In 2015, stops of
286 White or Black pedestrians accounted for approximately 82% of all pedestrian stops:
287 50% were of White pedestrians and 32% were of Black pedestrians. This, however, is out
288 of step with the demographic makeup of Berkeley: although only one in every 10
289 Berkeley residents is Black, nearly one third of pedestrian stops involved a Black subject.
290 Relative to population, Black pedestrians were about 3.5 times more likely than Whites to
291 be stopped by police. Hispanics were slightly less likely than Whites and much less likely
292 than Blacks to be stopped by police while on foot.⁸

⁶ [https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/CPE%20Draft%20Report%2007142017\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/CPE%20Draft%20Report%2007142017(2).pdf), p. 10

⁷ CPE report, figures 1a and 1b, p. 14-15

⁸ CPE report, figures 7b, 8, 8, p. 22-24

A note on “residency:”

The Chief has raised concerns about certain assumptions in the CPE report regarding residency, including:

- Discussion of use of force relies on census data, rather than an examination of suspect demographics. Many arrestees are not Berkeley residents.
- The use of the word “resident” is used even though the data does not contain residency information. Berkeley is an active city, with non-residents—and very often non-resident offenders—coming through town at all times, day or night.
- In several instances, community demographics are relied upon in making predictions... this—like labelling everyone BPD contacts, “residents”—can be extremely misleading. (CPE report, Chief’s introduction, p. 4-5)

PRC comment:

It is true that Berkeley has open borders and people go in and out of the city both day and night.

The PRC’s evaluation is that while CPE uses the word resident loosely, the report does examine the issue of residency extensively. For example:

It is important to recall, though, that the people present in Berkeley at any given time may come from other parts of the Bay Area (or of the state, or of the world), whose demographics may be different from those of Berkeley proper. Thus people who are stopped by police in Berkeley may not necessarily be residents of Berkeley. In the data we have, there is no way to ascertain whether the people who were stopped, searched, or upon whom force was used, were or were not Berkeley residents....

At this time, though, there is no way to control for this effect or to benchmark the effective representation of each racial group in the city. As a result, census-based comparisons are essential, but should be viewed with caution. (CPE report, p. 13-14)

To be clear, the size of the Black or African American population of Berkeley has continued to decrease, to 7.4%. (Source: City of Berkeley Public Health Director, Office of Epidemiology and Vital Statistics, U.S Census Bureau) This trend is also clear in Alameda County as a whole, with a Black population of 11.6% in 2016, Contra Costa at 9.6%, and the Bay Area at 9.6% (footnote to Census).

The idea, therefore, that the daytime population of Berkeley is skewed by an influx of African American outsiders, potentially explaining the plurality of stops being conducted on Black motorists, is without merit. This explanation could only be sustained if vastly larger numbers of Black people visit Berkeley compared to White people. Given employment and academic patterns in Berkeley, this is clearly not taking place. The commission remains concerned about this striking disparity in the race of those stopped by Berkeley police.

295 b) Yield rate.

296

297 The most revealing statistic is not the stop rate by race, but the yield rate by race. Again,
298 this is the percentage of civilians who are stopped from each racial group, whose stop
299 results in arrest or citation. Too low a yield rate suggests that a population may be
300 getting stopped without reasonable suspicion or searched without probable cause. The
301 yield rate, when viewed on a large data base such as this one, is a truer test than the stop
302 rate of whether stops are being made without racial bias. This is because focusing on the
303 yield removes the variable of rates of crime in different population groups.

304

305 Here is how CPE explains the significance of the yield rate, which they call the “hit rate:”

306

307 This analysis examines the outcomes of stops once they occur. If officers stop and search all
308 drivers at the same level of suspicion, regardless of race, then arrest rates—the rate at which
309 stops and searches uncover illegal activity—should be similar for each racial group. Where
310 the arrest rate for one racial group is lower than for another group, it suggests that the group
311 with the lower hit rate is being stopped and searched for lesser reason (i.e., at a lower level of
312 suspicion) than a group with a higher hit rate: that is, members of that group are more likely
313 to be stopped while they engaged in no unlawful conduct.

314

315 Hit rates can also be used to assess the efficiency of policing resource allocation: to the
316 extent that searches of a particular group are frequent but yield a low hit rate, officers’ time
317 and attention is being spent on behavior that fails to detect or deter criminal activity.⁹

318

319 The CPE’s evaluation of the 2015 data shows that few of the African Americans stopped
320 by police—less than a quarter (22%)—and only 30% of Latinos, were arrested or cited
321 during a stop, while 44% of white civilians were arrested or cited. These statistics
322 indicate a significant racial disparity in yield rate (a two-to-one gap between Black and
323 White).

324

325 Unfortunately, the meaning of this disparity is not made clear in the CPE report. The
326 problem is that the report’s analysis focuses entirely on the rate of arrests, which are
327 admittedly few (256, or 5.6% of enforcement activity), and overlooks the rate of
328 citations, the overwhelming majority of the enforcement activity (4306, or 94.4%). The
329 only standout in the arrest data is the 4% rate for Asian-Americans; all other groups
330 cluster around 1%. But the disparity in citations indicates that, in CPE’s words, African
331 Americans and Latinos are “being stopped and searched for lesser reason (i.e., at a lower
332 level of suspicion); that is, members of that group are more likely to be stopped while
333 they engaged in no unlawful conduct.”

334

335 c) Search rate.

336

337 The greatest disparities appear with regard to who is searched. CPE states:

338

339 While the overall percentage of stops resulting in a search remained steady at
340 around 10% for the general population, this graph shows that Black and Hispanic
drivers are much more likely to be searched than are drivers of other races. Once

⁹ CPE report, p. 31-32

341 pulled over, Black drivers are about five times more likely to be searched than
342 White drivers, while Hispanic drivers are about 2.5 times more likely.¹⁰

343 For pedestrians, the CPE reports that:

344 In 2015, 14% of Whites who were stopped on foot were searched. Pedestrian search rates
345 for every minority group were close to double the White pedestrian search rate. 25% of
346 Blacks and 26% of Asians were searched at pedestrian stops, while 30% of Hispanic
347 pedestrians who were stopped were searched.¹¹

348 PRC agrees with CPE [and BPD verbally] that BPD should capture and share
349 data on seizure of contraband so that it can be included in calculation of search
350 yield rate.

351 Conclusions:

352 According to the CPE's analysis of data from 2013 and 2014, which the BPD
353 has not shared with the PRC, some disparities have lessened in 2015 and 2016.
354 If these indications are accurate, that is a positive development, and we would
355 like to know if it was due to action by the department or was perhaps
356 circumstantial. Since PRC does not have access to the older data, the use of
357 force data, or the crime data, it is impossible for us to verify the improvement
358 independently. And the disparities remain far too high, as the CPE points
359 out: for example, even after a reported decline of 40% in search disparities
360 from 2013 to 2015, "Hispanic drivers were searched at roughly double the
361 White rate, and Black drivers were pulled over at more than three times the
362 White rate."¹²

363 The following conclusion contained in the CPE report would be good for this
364 community to absorb:

365 "[A] major takeaway of this analysis is that the wide racial disparities observed
366 in BPD stops, searches, arrests and use of force combine to create an
367 experience of policing for Black and Hispanic individuals in Berkeley that is
368 quantitatively different from the experience of Whites.

369 "Compared to Whites and Asians in Berkeley, Black and Hispanic people are
370 much more likely to be stopped and searched by BPD officers without being
371 charged with any criminal offense. Because they are stopped and searched at
372 higher rates (but arrested at the same rate per stop), Black and Hispanic
373 individuals are much more likely to be arrested than Whites. BPD use of force
374 reports indicate that Black individuals are six times more likely than Whites to
375 experience police use of force."¹³

¹⁰ CPE report, figure 3b and Table 4, p. 17-18

¹¹ CPE report, figures 9b, 10 and 13b, and Tables 11 and 12, p. 25-28

¹² CPE report, p. 44

¹³ CPE report, p. 45

376 Civil rights activists in Berkeley have long pointed to the existence of “two
377 Berkeleys” in the realm of law enforcement. These statistics confirm the
378 anecdotal stories told by many African Americans about over-policing and the
379 perception of policing that is not “fair and impartial”—whether intentionally or
380 not. The numbers tell a story that the majority community simply does not see.

381 A finding of systemic or institutional racial disparities does not necessarily presume bias
382 on the part of any individual officer. This demographic analysis is simply a beginning
383 point for our mission to address racial disparities. The intent of the Police Review
384 Commission is to work together with the police department and city and community
385 leaders toward truly fair and impartial policing.

386

387 D. Additional notes.

388

389 BPD provided this explanation of the difference between an Enforcement Action of
390 “Other” as opposed to “Warning.” According to the Berkeley police, “Other” could
391 mean “proves not so,” meaning that there was a suspicion that, on investigation, turned
392 out to be incorrect, with therefore no reason for a warning; or that the civilian fled,
393 leaving no ability for the officer to deliver a warning.

394

395 Further data analysis could be conducted on the BPD-released data, including a
396 demographic examination of yield from searches by racial group based on the
397 enforcement data; stop and search disparity by gender and age; and the subject of
398 multiple civilians stopped and searched in one incident.

399

400 Data points that should be considered for addition beyond those already provided by BPD
401 include: use of handcuffs, contraband yield rate from searches; beat or neighborhood;
402 BPD unit; and a marker for the reporting officer that does not lead to disclosure of his or
403 her identity, but assists in tracking a pattern of disparate behavior.

404

405 Regarding use of force, PRC did not analyze this aspect because we were not provided
406 the relevant data by BPD. CPE states:

407

408 There were more reported use of force incidents for Black residents of Berkeley than
409 there were for White residents. The per-capita use-of-force rate for Black residents was
410 65.2 per 10,000, while that for White residents was only 11.0 per 10,000, suggesting that
411 Black residents were about six times more likely to be subject to use of force.¹⁴

412

413 CPE states further that since BPD does not require officers report use of physical force
414 “unless the officer uses a weapon, the subject was injured, or the subject complains. As a
415 result, incidents of physical force not involving a weapon are not comprehensively
416 reported or tracked by BPD, and are not reflected” in the CPE tables showing quarterly
417 use of force counts. The Chief’s statement that “in 2016, our officers handled over 78,000
418 incidents, conducted over 3,200 arrests, and issued over 5,600 citations... and reported
419 only 32 uses of force (use of a weapon, leaving a visible injury, or where the arrestee

¹⁴ CPE report, figure 14b, p. 30

420 complained of pain)” is therefore disingenuous. We agree with the CPE’s call to begin
421 data collection of all use-of-force incidents, as other departments do both nationally and
422 regionally.
423

Section 4. Anecdotal reports from community members

The incidents listed below give substance to the impersonal data reflected in the previous section. While these accounts have not been litigated, and reflect personal views of the incidents, they bring an important civilian perspective of law enforcement as experienced by communities of color in Berkeley. The issues reflected in this section include racial discrimination and insensitivity, failure to de-escalate, arrest without probable cause, discourtesy, and improper police procedure.

All mentions of "police" refer to BPD officers.

1. 2/23/2015 An African-American resident getting off his bicycle in front of house in South Berkeley was approached by two officers and asked where he was going. Additionally, this person was stopped another evening and asked if he was a parolee.

2. 5/2/2014 10:15pm A group of 3-4 African-Americans were stopped by police for jay-walking in front of the high school. The situation got heated as the detainees protested the stop and four police cars arrived on the scene. Two detainees were arrested. A Caucasian couple had crossed prior to this group and were not stopped by police.

3. 2/2/2014 - 6:30pm An African-American vendor at Ashby Flea Market noted an officer on a bicycle outside a fence. The vendor approached the officer asking if there was a problem. The officer explained she was arresting another person for public intoxication. The vendor noted to the officer that he knew the man and verified that he was harmless. The intoxicated man had in the meantime put a backpack in the vendor's truck. The officer approached the vendor in a loud voice that she needed to search his truck. As she was removing the backpack, other officers approached the vendor from behind and forcibly wrestled him to the ground. At no time did the officers explain their actions. The vendor was arrested, taken to the police station, booked and put into a holding cell. He was never read his rights and was eventually told he was arrested for raising his voice.

4. 9/28/2014 A racially-mixed family was having pizza at Bobby G's on University. Another diner called police saying that the mixed couple were "abusing their child by drinking beer and wine in front of their child." Two police cars arrived with lights flashing. The owner attested that the family were regulars, and were minding their own business watching a football game. Police interrogated the African-American father for one hour in a hallway at the restaurant.

5. 9/19/2015 An African-American man, a security guard in uniform with a licensed gun, was talking with a Caucasian female on the corner of Bonar and Allston Way after a ceremony at the Berkeley Youth Association. A Caucasian man drove by, parked the car, got out and started videotaping the couple. The African American man asked the driver to stop videotaping. The man answered that it was his right to do so

470 and started making statements such as “don’t bring a gun into my neighborhood.”
471 After a heated back- and-forth, the driver called the police. Eight cars arrived. The
472 lead officer reviewed the credentials of the African -American man, was satisfied and
473 departed. One of the remaining officers stayed and continue to ask the same
474 questions for another 15 minutes. The African-American security guard registered
475 that he felt he was “unduly questioned” and was being “badgered.”
476

477 6. 11/2014 A mother came to a NAACP meeting to lodge a complaint. Her son takes
478 BART to SF to attend school at CCSF. Many times on his way between home and
479 Ashby BART, an unmarked police car rolls up and asks her son if he is on parole and
480 other harassing questions such as “where are you going?” and “where do you live?”
481 etc.
482

483 7. 5/15/2014 A group of African-American UC students were walking to UC down
484 Dwight Way. They jaywalked across Dwight. A police car spotted them and
485 approached the group to stop to talk to the students but the group continued on. The
486 police then pursued the group. The testimony from witnesses and the group was that
487 the police were unduly harsh and rough with them. One or two were arrested and
488 some members of the group filed a suit against police for harsh treatment.
489

490 8. 1/2/2015 An African-American minister was stopped for driving without
491 headlights. Without issuing a ticket or warning the officer proceeded to question the
492 minister with “where are you coming from?” and “did you take anything?”
493 (repeatedly). Then the officer proceeded to administer a sobriety check. After all of
494 this, they sent the minister on his way.
495

496 9. 9/20/2015 A vehicle was stopped on Sacramento at Fairview at 8:21pm
497 for driving without headlights. Two officers approached the vehicle. There was one
498 African-American man and two African-American women in the car. The driver was
499 removed from the car and handcuffed. The two women were made to stand against
500 the wall on the sidewalk. The vehicle was searched. Another police vehicle pulled up
501 and talked to the officers. Shortly thereafter the persons were released without arrest
502 or citation. A Public Records Act request was filed by NAACP on this incident and
503 the response from BPD was that there was no information on this stop.
504

505 10. Approximately 11/20/2015 A young Latino PRC member went on a ride-along
506 with a BPD commander on his duty shift. He recounted “racially biased behavior
507 from some officers” and “prejudiced comments about communities of color” during
508 the ride and in the station.
509

510 11. 01/13/2015 ACLU received a statement from a witness who observed a low-
511 speed car accident involving two vehicles at approximately 10 AM. According to the
512 witness, the African-American driver of the vehicle that was hit was casually talking
513 to a Caucasian officer when he was “slammed onto the police car” and placed under
514 arrest. Also, a non-consent search was made of the arrestee’s vehicle. When the
515 witness asked the arresting officer why the need for escalation she was told the

516 African American driver was resisting arrest. When the driver of the other car
517 involved in the accident and several other witnesses expressed concern how the
518 young man was treated they received no clear answers. No statements were taken.
519

520 12. 2016 The owners of "44 Restaurant and Lounge" lodged a complaint with
521 NAACP and police. During happy hour to 8pm the guests that frequent the bar are a
522 racially mixed crowd. After 8pm the guests are predominantly African-American.
523 After a minor complaint to police from a resident, the police parked a car with lights
524 off across the street from the establishment for a period of four months. "44" has no
525 history of rowdiness or spillover from bar patrons onto the sidewalk or the street. The
526 bar down the street, Nick's Lounge, has spillover into the street almost every night.
527 The owners of "44" and the NAACP observed there is no police presence at Nick's.
528

529 13. 9/21/2015 A witness observed an auto parked on Sacramento Street with
530 four under-30 African-American men. A police vehicle drove up and stopped at the
531 parked car. Two officers got out and one officer asked all four in the parked car to
532 step out. Each African-American man was searched and the parked car was searched.
533 No police action was taken. The officer in charge issued this warning before driving
534 off: "We are watching you."
535

536 14. 7/23/2015 An African-American retired city worker made a legal left turn on
537 San Pablo onto Dwight Way eastward. A police car then followed the resident to his
538 home a few blocks up Dwight. The police car pulled into his driveway behind him
539 and asked where he had been and why did he stop here. His wife came out and asked
540 why they were questioning her husband. The answer she received was "mistaken
541 identity." The officers got in their car and drove off.
542

543 15. 11/1/2014, afternoon. In the 3200 block of Sacramento St. a Berkeley Copwatch
544 member witnessed three BPD officers stop a vehicle with 3 African-American men.
545 All men were handcuffed and searched and the vehicle was searched but no arrest
546 was made or citation issued.
547

Section 5. Literature Review and Related Reports

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549

550 This section of the report presents an overview of three recent reports on policing policies
551 and practices along with some of the findings of each report. More detailed information
552 about the reports and their findings is shown in Appendix 3 to this report. The three
553 reports are:

- 554 • The President’s Task Force on 21st Century Policing completed in May 2015
- 555 • A study of Oakland Police Department’s (OPD) policies and practices by
556 Stanford University completed in June 2016
- 557 • The Interim Report by the Center for Policing Equity (CPE) on the Berkeley
558 Police Department (BPD) released in July 2017

559 These studies provide insight and recommendations on policing policies, practices and
560 related stop and use of force data, and analysis by ethnic group. The information and
561 insights from these studies were used, in part, by the PRC in developing its
562 recommendations to the City Council.

563 President’s Task Force on 21st Century Policing Report

564 This was a national study involving law enforcement, the community, and other diverse
565 stakeholders done to advise the president of the United States on key issues that should
566 be addressed to improve policing nationwide.

567 The members of the Task Force on 21st Century Policing set forth many recom-
568 mendations designed to bring long-term improvements to the ways in which law
569 enforcement agencies interact with and bring positive change to their communities.

570 The Stanford Study on OPD

571 This study was a cooperative effort between Stanford researchers and OPD which
572 initiated the study. It was an exhaustive and comprehensive two-year study undertaken
573 commissioned by Oakland to analyze and improve its policing policies and practices. It
574 was completed in June 2016.

575 The Stanford research on thousands of police interactions found significant racial
576 differences in Oakland police conduct toward African Americans and other groups in
577 traffic and pedestrian stops, and offers a data-driven approach to improving police-
578 community relationships there and elsewhere.

579 The report makes 50 specific recommendations for police agencies to consider, such as
580 more expansive data collection and more focused efforts to change the nature of
581 mindsets, policies and systems in law enforcement that contribute to racial disparities.

582 The Interim CPE Report on BPD

583 This interim report was released in July 2017. Further work will be needed over the next
584 few months to provide a more comprehensive, final report. In the meantime, the PRC has
585 reviewed the CPE data and recommendations and included our analysis and
586 recommendations in this report.

587 Some important points excerpted from the interim CPE report follow:

588 The report presents analyses of BPD traffic stops and searches for calendar years
589 2012 through 2015, pedestrian stops for calendar year 2015, and officers' use of
590 force for calendar years 2012 through 2016. For all these analyses, we isolate
591 race and ethnicity, exploring differences in practices and modeling outcomes of
592 interest while controlling for competing factors, such as place specific crime
593 rates. The raw data point to disparate treatment of Berkeley citizens based on
594 race and ethnicity in vehicle stops and in use of force. While neighborhood
595 variations in crime rates explain some of these disparities, some racial disparities
596 remain after controlling for crime and other nonracial factors. After adjusting for
597 community-level demographic differences, Black and Hispanic drivers remain
598 exposed to higher stop rates than White drivers, and Black individuals remain
599 much more likely to experience use of force.

600

601 BPD's data collection with respect to use of force is not comprehensive. When
602 its officers use force, BPD does not necessarily require its officers to complete a
603 Use of Force report. Unlike many other departments, BPD requires that use of
604 force incidents be reported only if a weapon is used, the person is injured, or the
605 person files a complaint. As a result, CPE was unable to report any findings with
606 respect to racial disparities in unreported use of force incidents. CPE encouraged
607 BPD to begin data collection of all use-of-force incidents.

608

609 Many questions about these disparities remain unanswered, but could be
610 addressed through more complete data collection and by further empirical
611 investigation using more detailed geolocation data and more nuanced statistical
612 analysis than can be provided in this interim report. Several such opportunities
613 are identified in this report and its recommendations.

614

615 The interim CPE report makes 11 recommendations which are shown in Appendix 3 to
616 this report.

617 **BPD's Initial Response to the CPE Report**

618 BPD's initial response and comments on the CPE report, dated July 14, 2017, were
619 included as a cover letter to the interim CPE report that was submitted to the City
620 Council. The comments point out accomplishments by the BPD, BPD's history of
621 commitment to policing without racial profiling, the need for more dialog with CPE to
622 insure all the data is clear and correct in the CPE report, and outlines the significant
623 training that has been done in the department around these issues and policies that have
624 been adopted, some of which are noted in the section below.

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Section 6. BPD Initiatives to Address Impartial Policing Issues

BPD has been gathering more comprehensive stop, detention and arrest data since at least 2012, and since 2015 has given the community access to the data via BPD's website. This was a good first step, but it's clear from the interim CPE report that other data including additional use of force data should be added to the database.

In the last several years BPD indicates it has increased its training program related to impartial policing as follows:

- Leveraging Differences for a Competitive Advantage –This City-wide course was designed to understand a business case for diversity, how perception impacts team effectiveness, how differences in communication styles can impact the workplace, and tools for improving effectiveness. 2017
- Fair and Impartial Policing – BPD In-House training, Multiple Workshops spanning 2010-2016
- Tactical De-escalation – BPD In-House Training, 2016
- Crisis Intervention Training – 37- hour class (over 40% have attended thus far; we send officers whenever a class is offered) 2011-present
- Crisis Intervention Training – 8 Hour training 2016
- POST Biased-based Policing – 2014

BPD indicates it has also adopted several general orders and policies related to fair and impartial policing including those below.

- General Order B-4, Fair and Impartial Policing, Reaffirms the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way.
- Police Regulation 282 Non-discrimination/Equal Employment Mandates employees to be fair and equitable in all their relations with citizens. Harassment on the basis of race, color, religion, ancestry, national origin, age, sex, et al. shall not be tolerated.
- Police Regulation 257 Enforcement of Laws – Impartiality Mandates that employees shall enforce laws in a fair and impartial manner.

Section 7: PRC Policy and Practice Recommendations

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As indicated in this report, the PRC has reviewed fair and impartial policing reports and recommendations from: the Center for Policing Equity (CPE) draft report on BPD, the Stanford Study on Oakland policing, and 21st Century Policing (a DOJ report). These four reports contain over 100 recommendations to improve policing. The PRC has also reviewed and analyzed the stop data that has been gathered by BPD over the last two years. Using all of this information, the PRC has developed recommendations to the Berkeley City Council as indicated below.

PRC Recommendations

A. Data Collection and Analysis.

1. BPD add the additional data to that already being collected on traffic, bicycle, and pedestrian stops, within three months:
 - a. Police use of force in the encounter (firearm, weapon, physical, less-lethal, OC, other, None)?
 - b. Were handcuffs used in the encounter?
 - c. Were civilians frisked/pat-searched?
 - d. Was contraband found?
 - e. Beat/neighborhood, and BPD unit

BPD shall collect, maintain, and analyze demographic data on all detentions (stops, frisks, searches, summons, and arrests) and provide public access to the information. (Also recommended in 21st Century Policing)

Each column in the BPD spreadsheet should contain a separate and distinct field of data. Currently the "Dispositions" column contains multiple fields of data (race, gender, disposition, etc.). This makes the analysis and sorting of information very difficult. There should be a separate Race column, Gender column, etc.

2. BPD prepare an initial report to the PRC and City Council within six months analyzing all stop data since January 2016, and quarterly thereafter. BPD shall work with the PRC to aggregate and present all stop data in a way that can easily be understood by all stakeholders on an ongoing basis.
 - Make data accessible using a stop data dashboard; automate data analysis; hire a data manager. (Also recommended by Stanford OPD study.)
The department should provide basic graphs and charts on its website that summarize the data in a clear and meaningful way. Such visual aids will provide much greater access to information on recent stop trends than would a database alone.¹⁵

¹⁵ The following charts are examples to consider from the Richmond Police Department:

<https://opendata.ci.richmond.ca.us/Public-Safety/Reasons-for-Use-of-Force-Pie-Chart-9wzz-ghyd>

<https://opendata.ci.richmond.ca.us/Public-Safety/Use-of-Force-Incidents-Since-2013-by-Call-Type.dkkh-e5yr>

<https://opendata.ci.richmond.ca.us/Public-Safety/Type-of-Force-Used-by-Officers.2mmb-56w6>

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BPD report to PRC shall include stop data by officer, including experience level of officer, stripped of identifying information, in a form that can be aggregated to show a historical pattern.

3. More work needs to be done to correctly identify the ethnicity of individuals during a stop so that stop data is accurately represented.¹⁶
4. Change the use of force data capture protocol to register every use of force by BPD officers, regardless of weapon use, injury or complaint. (Also recommended by CPE)

B. Addressing racial disparities shown in the data.

BPD shall develop a specific action plan to counteract the racial disparities addressed in this report. The action plan shall be in writing, and shall be regularly updated with strategies, results and actions taken to remedy any inequities or problems, and be reported to the PRC and Council in the quarterly report referenced above. The report should indicate what the department found and what it did to address problems, along with any indication of policies or orders that drove the disparate behavior. The core of the action plan shall be as follows:

1. BPD shall monitor search and disposition outcomes across race, and arrest and disposition outcomes associated with use of force. Review data evidence of racial disparities with regard to stops, searches, yield ratio between stops and citations/arrests, yield ratio between searches and contraband confiscated, use of force, use of excessive force. Analyze data about charges filed based on vehicle, bicycle, and pedestrian stops. (Also recommended by CPE)
2. Analyze data to determine whether the disparities are generalized across the force, or are concentrated in a smaller subset of outlier officers or squads/groups of officers. (The Stanford study defines outlier officers as “officers who are at risk of developing problematic behaviors or who have already done so.”) With respect to

See also the Police Strategies website cited above in the Background section.

¹⁶ We suggest this list, drawn from the 2010 US Census and influenced by the projected 2020 Census questions.

1. Latino or Hispanic origin
2. Black, African-American, African, Afro-Caribbean, Afro-Latino
3. White or European origin
4. American Indian/Alaska Native
5. “AMEMSA” (Arab/Middle Eastern/Muslim/South Asian)
6. Other Asian/Pacific Islander origin
7. Other or unknown

<http://www.pewresearch.org/fact-tank/2014/03/14/u-s-census-looking-at-big-changes-in-how-it-asks-about-race-and-ethnicity/>

735 individual officers, set thresholds to identify outliers, such as those with a yield
736 rate below the mean.
737
738 3. Where disparities are concentrated in a subset of officers, initiate investigation to
739 determine the cause for the disparity. Evaluate and assess search incidents for
740 legality. Evaluate whether there are identifiable causes contributing to high
741 search rates and high or low recovery rates exhibited by outlying officers.
742 Determine if there are any trends and patterns among officers with low and high
743 recovery rates.¹⁷
744
745 4. Where disparities are generalized across the force, review policies and practices to
746 determine the institutional cause for the disparity.
747
748 • Review policies on handcuffing people in searches, searching people
749 who are on probation or parole, and asking people whether they are
750 on probation or parole. (Also recommended by Stanford OPD study).
751
752 5. Intervention is initially non-disciplinary, focused on training and counseling.¹⁸ If
753 a yield or other problem is identified for a squad and/or beat, train the supervisor
754 as well as the officer.
755
756 • Identify officers who may have problems; monitor and reduce time
757 pressures, stress and fatigue on officers. (Also recommended by Stanford
758 OPD study).
759 • Also: Improve feedback channels. Give officers individualized feedback
760 on their stop performance. Conduct customer-service audits after routine
761 stops. Regularly administer community surveys.
762
763 6. BPD work with a PRC subcommittee to be established for this purpose, and give
764 PRC a regular report of what the department has found and what it did to address
765 problems, along with any indication of policies or orders that drove the disparate
766 behavior.
767
768 7. Develop an "early warning" systems to head off future problems of bias. (Also
769 recommended by Stanford OPD study).
770

¹⁷ For example, did searches that do not show an investigative nexus, or an additional reason for search other than probation or parole status, result in a different level of recovery?

¹⁸ Per the 21st Century report, review of certain episodes including those that may be "within policy but disastrous in terms of community relations....will have a better chance of success if departments can abandon the process of adversarial/punitive-based discipline, adopting instead 'education-based' disciplinary procedures and policies." Page 23.

- 771 C. Body cameras.
- 772 1. Accelerate procurement and full rollout of body cameras to all BPD officers.
773 Immediately provide a project plan with timeline for rollout.
774
- 775 • Use body camera footage to train officers and evaluate policies; require
776 officers to self-audit racially charged footage. (Also recommended by
777 Stanford OPD study.)
778
- 779 D. Other departmental steps.
- 780 1. BPD should engage/partner with academic institutions for advice in ongoing
781 impartial policing studies and strategies, such as the African American Studies
782 Department at UC Berkeley.
- 783
- 784 2. The wellness and safety of law enforcement officers is critical not only for the
785 officers, their colleagues, and their agencies but also to public safety. Policies
786 should be put in place to support and properly implement officer wellness and
787 safety programs. (Also recommended in 21st Century Policing).
- 788
- 789 3. Law enforcement officers should be required to seek consent before a search and
790 explain that a person has the right to refuse consent when there is no warrant or
791 probable cause. Furthermore, officers should ideally obtain written
792 acknowledgement that they have sought consent to a search in these
793 circumstances. (Also recommended by Stanford OPD study.)
- 794
- 795 4. Law enforcement officers should be required to identify themselves by their full
796 name, rank, and command (as applicable) and provide that information in writing
797 to individuals they have stopped. In addition, policies should require officers to
798 state the reason for the stop and the reason for the search if one is conducted.
799 (Also recommended by Stanford OPD study.)
- 800 E. Community relations.
- 801 1. BPD and PRC prepare within six months a detailed action plan to build
802 community relationships, trust in and accessibility to the department, especially
803 addressing communities of color and immigrant communities and high crime
804 areas.
805
- 806 2. BPD consult and cooperate with the broader Berkeley community, especially
807 those communities most affected by observed racial disparities, to develop and
808 implement policy and practice reforms that reflect these shared values. (Also
809 recommended by CPE)

810 3. Increase positive community contact. Hold monthly relationship-building
811 meetings. Show more care in high-crime areas. Develop and track measures of
812 community engagement. (Also recommended by Stanford OPD study.)

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Section 8: Conclusion

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In the words of the National Institute of Justice,

Racial and ethnic minority perceptions that the police lack lawfulness and legitimacy, based largely on their interactions with the police, can lead to distrust of the police. Distrust of police has serious consequences. It undermines the legitimacy of law enforcement, and without legitimacy police lose their ability and authority to function effectively¹⁹.

On the other hand, law enforcement based on concepts of Procedural Justice,²⁰ Principled Policing,²¹ and Reconciliation²² can build legitimacy and trust in the police, directly enhancing public safety. Four pillars of procedural justice include:

- (1) *voice* (the perception that your side of the story has been heard);
- (2) *respect* (perception that system players treat you with dignity and respect);
- (3) *neutrality* (perception that the decision-making process is unbiased and trustworthy);
- (4) *understanding* (comprehension of the process and how decisions are made).

The recommendations that the Police Review Commission make in this Report are designed to be positive, constructive, and non-judgmental. They are intended as an aid to the police department and the city leadership to understand the concerns arising from both the department's data and the anecdotal community testimony.

The Commission appreciates the willingness of the community members who served as members of the Fair and Impartial Policing Subcommittee, and others who gave testimony to the Subcommittee. We thank the PRC staff and community and academic partners, including the Center for Policing Equity and others, for your support for this initiative.

We also thank the Berkeley Police Department—both its management and officers—for their perspective and expertise in local policing policies and practices. The PRC intends to continue proactively cooperating with BPD to help effect positive change in policing practices in Berkeley and to support BPD to become a national leader in fair and impartial policing strategies and policies.

¹⁹ "Race, Trust and Police Legitimacy," National Institute of Justice, <https://www.nij.gov/topics/law-enforcement/legitimacy/Pages/welcome.aspx>

²⁰ T. R. Tyler, *Why People Obey the Law*. (New Haven, CT: Yale University Press, 1990). See also "The Case for Procedural Justice: Fairness as a Crime Prevention Tool," *Community Policing Dispatch (COPS Newsletter)*, https://cops.usdoj.gov/html/dispatch/09-2013/fairness_as_a_crime_prevention_tool.asp

²¹ <https://uploads.trustandjustice.org/misc/ChiefJonesPrincipledArticle.pdf>

²² <https://trustandjustice.org/resources/intervention/reconciliation>

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Appendix 1: Structure of BPD demographic data.

Descriptions for each data item appear in the Information button at the top of each column on the web page.

Data Item	BPD description	Details
6. Line number	N/A	
7. Incident number	Created by BPD Computer Aided Dispatch system.	
8. Call date/time	Date and time of the incident	
9. Location	General location of the incident/stop	
10. Incident type	This is the occurred incident type created in the CAD program. A code signifies a:	
		Traffic stop (T)
		Suspicious vehicle stop (1196)
		Pedestrian stop (1194)
		Bicycle stop (1194B)
11. Dispositions	Ordered in the following sequence:	
		1st Character = Race, as follows: A (Asian) B (Black) H (Hispanic) O (Other) W (White)
		2nd Character = Gender, as follows: F (Female) M (Male)
		3rd Character = Age Range, as follows: 1 (Less than 18) 2 (18-29) 3 (30-39), 4 (Greater than 40)
		4th Character = Reason, as follows: I (Investigation) T (Traffic) R (Reasonable Suspicion) K (Probation/Parole) W (Wanted)
		5th Character = Enforcement, as follows: A (Arrest) C (Citation) O (Other) W (Warning)
		6th Character = Car Search, as follows: S (Search) N (No Search)

		<p>Additional dispositions may also appear. They are:</p> <ul style="list-style-type: none">P - Primary case reportM - MDT narrative onlyAR - Arrest report only (no case report submitted)IN - Incident reportFC - Field CardCO - Collision investigation reportMH - Emergency Psychiatric EvaluationTOW - Impounded vehicle0 or 00000 – Officer made a stop of more than five persons
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Appendix 2: Concept and methodology of the designation of race

- Social scientists understand the concept of race itself to be a social construct and to be scientifically invalid. We discuss race only to understand human attitudes and patterns of identity and discrimination and oppression. It stands in for other factors such as ethnicity, nationality, religion, color, etc.
- The designation of race in the stop-data refers to the officer’s perception of the civilian’s “race,” not to the civilian’s self-identity, nor even to the civilian’s “true race.” This is because the critical question in the encounter between the two is what is in the mind of the officer; that is, does the officer believe he or she is encountering a Black, White, Latino, Asian, or other person?
 - The officer is expected to give a true report on his or her perception of the civilian’s “race.”
- Subcommittee members raised other methodological questions about the racial designation, including:
 - A policy complaint was submitted in 2015 by an African gentleman whose race was denoted as “Other’ by a BPD officer. The category of “Black” should include people of African and Afro-Caribbean descent. The concern is that the number of Black people stopped and searched may be under-counted.
 - “Asian” is so broad a term as to be useless and is somewhat offensive. The population of Asia itself is some 4.3 billion people, 60% of humanity. It should be possible for officers to determine a somewhat finer breakdown.
 - Add “AMEMSA” (Arab/Middle Eastern/Muslim/South Asian) or some variant.
 - The term “Latino” is arguably more appropriate than “Hispanic,” which some Latinos perceive as offensive.

Appendix 3. Details of Literature Review and Related Reports

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883 Appendix 3 presents a review of three recent reports on policing policies and practices
884 along with some of the overview findings of each report. The three reports are:

- 885 • The President’s Task Force on 21st Century Policing completed in May 2015
- 886 • A study of Oakland Police Department’s (OPD) policies and practices by
887 Stanford University completed in June 2016
- 888 • The Interim Report by the Center for Policing Equity (CPE) on the Berkeley
889 Police Department (BPD) released in July 2017

890 These studies provide insight and recommendations on policing policies, practices and
891 related stop and use of force data, and analysis by ethnic group.

892 President’s Task Force on 21st Century Policing Report

893 This was a national study involving law enforcement, the community, and other diverse
894 stakeholders done to advise the president of the United States on key issues that should
895 be addressed to improve policing nationwide. The report’s findings are summarized as
896 follows:

- 897 • Building trust and nurturing legitimacy on both sides of the police/citizen divide
898 is the foundational principle underlying the nature of relations between law
899 enforcement agencies and the communities they serve.
- 900 • Police must carry out their responsibilities according to established policies and
901 those policies must reflect community values. To achieve this end, law
902 enforcement agencies should have clear and comprehensive policies on the use of
903 force (including training on the importance of de-escalation), mass
904 demonstrations (including the appropriate use of equipment, particularly rifles and
905 armored personnel carriers), consent before searches, gender identification, racial
906 profiling, and performance measures— among others such as external and
907 independent investigations and prosecutions of officer-involved shootings and
908 other use of force situations and in-custody deaths. These policies should also in-
909 clude provisions for the collection of demographic data on all parties involved.
910 All policies and aggregate data should be made publicly available to ensure
911 transparency.
- 912 • The use of technology can improve policing practices and build community trust
913 and legitimacy, but its implementation must be built on a defined policy
914 framework with its purposes and goals clearly delineated and must set
915 expectations for transparency, accountability, and privacy.
- 916 • The report emphasizes the importance of community policing as a guiding
917 philosophy for all stakeholders. Community policing emphasizes working with
918 neighborhood residents to co-produce public safety. Law enforcement agencies
919 should, therefore, work with community residents to identify problems and

920 collaborate on implementing solutions that produce meaningful results for the
921 community.

922 • Today's line officers and leaders must be trained and capable to address a wide
923 variety of challenges including international terrorism, evolving technologies,
924 rising immigration, changing laws, new cultural mores, and a growing mental
925 health crisis. To ensure the high quality and effectiveness of training and educa-
926 tion, law enforcement agencies should engage community members, particularly
927 those with special expertise, in the training process and provide leadership
928 training to all personnel throughout their careers.

929 • The wellness and safety of law enforcement officers is critical not only for the
930 officers, their colleagues, and their agencies but also to public safety. Policies
931 should be put in place to support and properly implement officer wellness and
932 safety programs.

933 The members of the Task Force on 21st Century Policing set forth many recom-
934 mendations designed to bring long-term improvements to the ways in which law
935 enforcement agencies interact with and bring positive change to their communities. These
936 recommendations are used as insights for the PRC recommendations herein.

937 The Stanford Study on OPD

938 This study was a cooperative effort between Stanford researchers and OPD which
939 initiated the study. It was a comprehensive two-year study undertaken by Oakland to
940 analyze and improve its policing policies and practices. It was completed in June 2016.

941 A summary of the report's finding follows:

942 The Stanford research on thousands of police interactions found significant racial
943 differences in Oakland police conduct toward African Americans and other groups in
944 traffic and pedestrian stops, and offers a data-driven approach to improving police-
945 community relationships there and elsewhere.

946 The report makes 50 specific recommendations for police agencies to consider, such as
947 more expansive data collection and more focused efforts to change the nature of
948 mindsets, policies and systems in law enforcement that contribute to racial disparities.

949 Across the United States, the report noted, police agencies are guided by the commitment
950 to serve communities with fairness, respect and honor. Yet tensions between police and
951 communities of color are documented to be at an all-time high.

952 The two-year Stanford study, conducted in close cooperation and collaboration with the
953 Oakland Police Department, examined data from body camera footage, police stops and
954 reports, and community and resident surveys.

955 The study analyzed traffic stop data from police body cameras that occurred between
956 April 1, 2013, and April 30, 2014. During this period, 28,119 traffic and pedestrian stops
957 were recorded by 510 police officers. Police can legally stop people on the basis of traffic
958 violations, probable cause, reasonable suspicion, or for being on probation or parole,
959 among other reasons.

960 They found that 60 percent of police stops in Oakland, or nearly 17,000 stops, were made
961 of African Americans. This rate is more than three times that of the next most common
962 group, Hispanics (whites accounted for 13 percent). The research also showed that:

- 963 • When officers report being able to identify the race of the person before stopping
964 them, the person stopped is much more likely to be African American (62
965 percent) than when officers couldn't tell the race (48 percent).
- 966 • African American men were more likely to be handcuffed during a stop (1 out of
967 4 times) than whites (1 out of 15 times), excluding arrests.
- 968 • African American men were also more likely to be searched (1 in 5 times vs. 1 in
969 20 times for whites), though officers were no more likely to make a recovery from
970 those searches.
- 971 • African American men were more likely to be arrested after a stop by police –1 in
972 every 6 vs. 1 in 14 for white men.

973 Also, 77 percent of Oakland police officers who made stops during the 13-month period
974 never discretionarily searched a white person, but 65 percent did so with an African
975 American person.

976 Likewise, 74 percent of these officers did not handcuff a white person who was not
977 ultimately arrested, yet 72 percent did so with an African American person. Also, the
978 degree of racial disparities in handcuffing and arrests was lower for more experienced
979 officers than less experienced ones.

980 The researchers point out that racial disparities are not defined as overt racism – in fact,
981 they found no such acts by Oakland police officers while conducting the study. It is not
982 so much an individual as an institutional problem or pattern, they note. They found a
983 consistent and persistent pattern of racial disparity, even when data was controlled for
984 variables such as crime rate. They said that drilling deep into the data allowed the
985 researchers to identify problem areas and evidence-based recommendations.

986 The researchers suggest that police departments in Oakland and elsewhere can overcome
987 a subtle bias problem. Using better data, providing education and becoming informed are
988 the first steps.

989 The report had many specific recommendations that are used herein by the PRC for BPD
990 where applicable.

991 The Interim CPE Report on BPD

992 This interim draft was released in July 2017. Further work will be needed over the next
993 few months to provide a more comprehensive report. In the meantime, the PRC has
994 reviewed the data and recommendations and included our analysis and recommendations
995 in this report. A summary of the CPE report findings and recommendations are shown
996 below.

997 According to CPE the aim of this interim report is to begin to provide the Berkeley Police
998 Department a powerful tool toward identifying and reducing biases, and improving
999 community-police relations. It is intended as a preliminary guide toward options for
1000 ensuring equity in public safety. Too often, law enforcement data have been captured
1001 with an eye towards accounting or litigation, without leveraging the data to optimize
1002 performance. This report is designed to help fill that gap, providing straightforward
1003 statistical answers to some of the most pressing questions facing BPD and other law
1004 enforcement agencies.

1005 The Center for Policing Equity aims to address the needs of both law enforcement and
1006 communities, who can avail themselves of the CPE's National Justice Database (NJD).
1007 The NJD collects policing data to measure fairness and improve policing equity, and to
1008 make its findings transparent to law enforcement and to communities. NJD's analysis
1009 applies a rigorous analytic framework to make sense of policing data, seeking to identify
1010 and understand the consequences of policing activities and the sources of racial disparity.
1011 In this research brief, empirical documentation is presented of the degree of racial and
1012 ethnic disparities in BPD's policing practices, as well as possible interpretations of such
1013 differences. While the results are mixed, the NJD analysis reveals encouraging findings
1014 and heartening trends. It also flags questions and disparities that warrant further
1015 investigation and reform.

1016 The BPD's collection of vehicle stop data has been quite comprehensive; researchers
1017 were able to analyze data from vehicle stops between January 2012 and October 2015.
1018 The BPD began documenting pedestrian stops in January 2015. As a result, this report
1019 was prepared with the only year of data that was available. We encourage the BPD to
1020 continue its collection of vehicle and pedestrian stop data so that more powerful analyses
1021 can be conducted on a larger dataset representing multiple years of BPD practice.

1022 However, BPD's data collection with respect to use of force is not comprehensive. When
1023 its officers use force, BPD does not necessarily require its officers to complete a Use of
1024 Force report. Unlike many other departments, BPD requires that use of force incidents be
1025 reported only if a weapon is used, the person is injured, or the person files a complaint.
1026 As a result, CPE was unable to report any findings with respect to racial disparities in
1027 unreported use of force incidents. CPE encouraged BPD to begin data collection of all
1028 use-of-force incidents.

1029 CPE's findings are summarized as follows:

1030 The pages that follow present analyses of BPD traffic stops and searches for calendar
1031 years 2012 through 2015, pedestrian stops for calendar year 2015, and officers' use of
1032 force for calendar years 2012 through 2016. For all these analyses, we isolate race and
1033 ethnicity, exploring differences in practices and modeling outcomes of interest while
1034 controlling for competing factors, such as place specific crime rates. The raw data point
1035 to disparate treatment of Berkeley citizens based on race and ethnicity in vehicle stops
1036 and in use of force. While neighborhood variations in crime rates explain some of these
1037 disparities, some racial disparities remain after controlling for crime and other nonracial
1038 factors. After adjusting for community-level demographic differences, Black and
1039 Hispanic drivers remain exposed to higher stop rates than White drivers, and Black
1040 individuals remain much more likely to experience use of force.

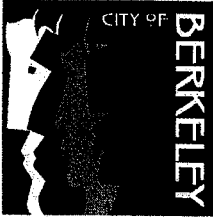
1041 Other results of this interim analysis offer reasons for concern and opportunities for
1042 further investigation and reform. Although disparities declined over the time period
1043 measured, Black and Hispanic drivers, and Black pedestrians, remain much more likely
1044 to be stopped by police than their White counterparts. Moreover, BPD data indicated
1045 wide and unexplained racial disparities in search rates. Black and Hispanic drivers, in
1046 particular, were disproportionately likely to be stopped and searched without being
1047 arrested. Meanwhile, although Asian drivers were less likely than White drivers to be
1048 stopped, they were five times more likely to be searched, and four times more likely to be
1049 arrested, at a stop. Furthermore, data with respect to stops and searches revealed wide
1050 variation in racial disparity among BPD beats. Finally, Black people were subjected to
1051 reported use of force at about six times the rate of Whites. These disparities are largely
1052 unexplained, and warrant further investigation, in particular with respect to the charges
1053 filed against drivers of these racial groups.

1054 This report's analysis and explanation of observed racial disparities in BPD policing data
1055 is limited by the data BPD has shared with researchers, and by the time available for data
1056 analysis and reporting. Many questions about these disparities remain unanswered, but
1057 could be addressed through more complete data collection and by further empirical
1058 investigation using more detailed geolocation data and more nuanced statistical analysis
1059 than can be provided in this interim report. Several such opportunities are identified in
1060 this report and its recommendations.

1061 CPE's report presented 11 specific recommendations as follows:

- 1062 1. We recommend changing the use of force data capture protocol to register every use of
1063 force by BPD officers, regardless of weapon use, injury or complaint.
- 1064 2. We recommend that BPD monitor search and disposition outcomes across race, and
1065 arrest and disposition outcomes associated with use of force. In particular, BPD should
1066 collect and share data with respect to contraband found during vehicle or pedestrian
1067 searches, and that it analyze data about charges filed at vehicle and pedestrian stops.
- 1068 3. We recommend that BPD track and analyze whether law enforcement actions are
1069 officer-initiated, or respond to calls for service.
- 1070 4. We recommend that BPD affirm that the egalitarian values of their officers are visible
1071 in the work they do.
- 1072 5. We recommend that BPD consult and cooperate with the broader Berkeley community,
1073 especially those communities most affected by observed racial disparities, to develop
1074 and implement policy and practice reforms that reflect these shared values.
- 1075 6. We recommend BPD track hit rates and monitor patrol deployments, using efficient
1076 and equitable deployment as a metric of supervisory success.
- 1077 7. We recommend that BPD track crime trends with neighborhood demographics in order
1078 to ensure that response rates are proportional to crime rates.
- 1079 8. We recommend that BPD engage in scenario-based training on the importance of
1080 procedural justice and the psychological roots of disparate treatment in order to
1081 promote the adoption of procedural justice throughout the organization, and to protect
1082 officers from the negative consequences of concerns that they will appear racist.

- 1083 9. We recommend that trainings include clear messaging that group-based hierarchy is
1084 not consistent with the values of BPD.
- 1085 10. We recommend that value-based evaluations of supervisors be developed to curb the
1086 possible influence of social dominance orientation on the mission of the department.
- 1087 11. We recommend leveraging the existing community advisory board to help review
1088 relevant areas of the general orders manual and provide a more integrated set of
1089 policies with clear accountability and institutional resources. While not an exhaustive
1090 list of possible solutions to the issues raised in this report, these 11 recommendations
1091 represent straightforward first steps towards addressing each of them.
- 1092 The PRC's analysis of the CPE report and related recommendations are presented
1093 elsewhere in this report.



Mayor Jesse Arreguín
Councilmember Sophie Hahn

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: October 31, 2017

Item Number: 28

Item Description: Analysis of Disparate Outcomes in Police Stop Data

Submitted by: Mayor Jesse Arreguín & Councilmember Sophie Hahn

Alternative recommendation submitted in response to **Item 28: Refer to the Berkeley Police Department to Address Disparate Racial Treatment and Implement Policy and Practice Reforms**

ITEM 28

Supplemental 2

ACTION CALENDAR

October 31, 2017

To: Members of the City Council
From: Mayor Jesse Arreguin and Councilmember Sophie Hahn
Subject: Analysis of Disparate Outcomes in Police Stop Data

RECOMMENDATION:

Refer to the City Manager and Police Review Commission the following proposals, and any other actions necessary, to analyze disparate outcomes observed in existing and potentially observed in future police data, and improvements to Department practices:

1. Track yield rates by patrol, department and officer, disaggregated by the race of the individual(s) stopped, and track and analyze whether law enforcement actions are officer-initiated, or respond to calls for service.

BPD should also consider and track any other criteria which would contribute to a better understanding of which categories of individuals are stopped, searched and/or cited or arrested, and against whom force is used, and the reasons for such actions.

This data analysis will allow BPD to better understand the reasons for any disparate outcomes and make improvements to policing practices. For the first year, BPD should report its findings biannually to the Council, and should report yearly, thereafter, using anonymized data.

2. Once released, BPD should analyze the final Center for Policing Equity report and propose improvements in BPD policies and practices, as called for.
3. Determine whether current implicit bias training is sufficient to address any unaccounted-for disparate outcomes, or whether new or enhanced training is needed. (e.g., more scenario-based training on procedural justice, expanded de-escalation training, etc.).
4. Consult and cooperate with the broader Berkeley community, especially those communities most affected by any observed racial disparities, as well as the Berkeley Police Association, to develop and implement appropriate policy and practice reforms that reflect our community's shared values.

FINANCIAL IMPLICATIONS:

Staff time to analyze police stop data and develop recommendations, and costs associated with new or enhanced training programs.

ENVIRONMENTAL SUSTAINABILITY:

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

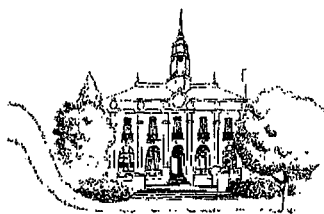
CONTACT PERSON:

Jesse Arreguin, Mayor

510-981-7100

Sophie Hahn, Councilmember, District 5

510-981-7150



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177, EMAIL
kworthington@cityofberkeley.info

ACTION CALENDAR

November 14, 2017

(Continued from October 31, 2017)

To: Honorable Mayor and Members of the City Council
From: Councilmembers Kriss Worthington, Ben Bartlett, and Kate Harrison
Subject: Refer to the Berkeley Police Department to Address Disparate Racial Treatment and Implement Policy and Practice Reforms

RECOMMENDATION:

Refer to the Berkeley Police Department to track yield rates, develop training programs to address disparities found through the yield rates, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department and broader Berkeley community.

BACKGROUND:

The short-term reforms listed in this referral address the issue of racial disparity of police policies and practices in Berkeley.

The Council directs the Berkeley Police Department to take the actions listed below:

1. Track yield rates (i.e., the percentage of citations or arrests per traffic or pedestrian stop and the ratio of contraband found by search conducted) by individual officer, by patrol and by the department as a whole disaggregated by the race of the individual(s) stopped. This data will focus BPD examination of the reasons for disparate racial treatment and to identify outliers. For the first year, BPD will report its findings quarterly to the Council, using anonymized data.
2. Develop training programs to address the organizational causes of disparate treatment uncovered in #1 above and through examination of footage on police body cameras (e.g., more scenario-based training on procedural justice and the roots of disparate treatment, expanded de-escalation training).
3. Consult and cooperate with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values.
4. Subject to applicable law, provide the PRC with the same access to all department files and records, in addition to all files and records of other City departments and agencies, as the department's Internal Affairs Division (IAD). The Department and other city departments and agencies will make every reasonable effort to respond to the PRC's requests for files and records within (10) days.

5. Use the "Preponderance of the Evidence" as the standard of proof for Board of Inquiry Decisions of the PRC.
6. Extend the current 120-day limit on the imposition of discipline to one year, consistent with existing California law.

FINANCIAL IMPLICATIONS:

Staff time.

ENVIRONMENTAL SUSTAINABILITY:

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

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

Council Action Items

26. **Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy**
From: Councilmember Harrison, Mayor Arreguin, and Councilmembers Bartlett and Worthington

Recommendation: 1. Direct the City Manager and the Berkeley Police Department ("BPD" or "the Department") to amend General Order U-2: Use of Force ("General Order U-2") to: a. Enhance BPD's use of force policy statement; and, b. Create a definition of use of force; and c. Require that all uses of force be reported; and d. Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and e. Require Use of Force Reports to be captured in a manner that allows for analysis; and f. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.

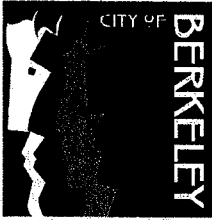
2. Direct that the City Manager report to the Council by December 12, 2017 on the progress to date.

Financial Implications: Staff time

Contact: Kate Harrison, Councilmember, District 4, 981-7140

Action: Moved to Consent Calendar. Approved recommendation as revised in Supplemental Reports Packet #1.

1. *Direct the City Manager to amend Berkeley Police Department ("BPD" or "the Department") General Order U-2: Use of Force ("General Order U-2") to:*
 - a. *Enhance BPD's use of force policy statement; and*
 - b. *Create a definition of use of force; and*
 - c. *Require that all uses of force be reported; and*
 - d. *Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and*
 - e. *Require Use of Force Reports to be captured in a manner that allows for analysis; and*
 - f. *Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission ("PRC") and Council.*
2. *Direct that the City Manager report to the Council by December 12, 2017 on the progress to date and present to the Council by February 27, 2018 a final version of General Order U-2.*
3. *Prior to implementation, the revised General Order U-2 shall be submitted to the PRC in accordance with BMC 3.32.090(B).*



Mayor Jesse Arreguín
Councilmember Sophie Hahn

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: October 31, 2017

Item Number: 29

Item Description: Review PRC Enabling Legislation and Propose Changes to Policies and Authority

Submitted by: Mayor Jesse Arreguín & Councilmember Sophie Hahn

Alternative recommendation submitted in response to **Item 29: Referral to Police Review Commission to Write a Charter Amendment Ballot Measure**

ITEM 29

Supplemental 2

ACTION CALENDAR

October 31, 2017

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguin and Councilmember Sophie Hahn

Subject: Review PRC Enabling Legislation and Propose Changes to Policies and Authority

RECOMMENDATION:

Refer to the City Manager and Police Review Commission (PRC) to review the existing enabling legislation for the PRC, and to consider and propose, if necessary, amendments to strengthen the authority of the PRC to consider and act on citizen complaints, and other possible structural, policy and procedural reforms.

Changes the City Manager and PRC should consider, but not be limited to, include the following:

1. Use the "preponderance of the evidence" as the standard of proof for all PRC decisions;
2. Extend the current 120-day limit on the imposition of discipline to one year, consistent with existing California law.
3. Give the PRC full discretion to review complaints as to alleged officer misconduct.

As part of the review of proposed improvements to the PRC process, the PRC should analyze police review policies and structures in other jurisdictions (e.g. San Francisco, BART, etc.) and engage relevant stakeholders, including the Berkeley Police Association and community organizations, in developing proposals.

BACKGROUND:

The Police Review Commission (PRC) was established by the voters of Berkeley in 1973. The original 1973 ordinance abolished Internal Affairs, giving sole responsibility for police discipline to the PRC. The City administration of that time held the view that the PRC had an important role to play in reducing the City's liability and fostering a better department. As the PRC was established under an ordinance rather than a charter amendment, it was subject to weakening actions by successive administrations.

Over the years since its 1973 adoption, many cities in California and throughout the United States have established Police Review Commissions, and have refined models for fair and effective commission standards and procedures. Thus, we refer to the PRC to review a variety of police review commission models and suggest updates and amendments to strengthen Berkeley's PRC structures, policies and procedures.

FINANCIAL IMPLICATIONS:

Staff time involved in analyzing changes to PRC enabling legislation

ENVIRONMENTAL SUSTAINABILITY:

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

CONTACT PERSON:

Jesse Arreguin, Mayor

510-981-7100

Sophie Hahn, Councilmember, District 5

510-981-7150



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ACTION CALENDAR

November 14, 2017

(Continued from October 31, 2017)

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington and Kate Harrison
Subject: Referral to Police Review Commission to Write a Charter Amendment
Ballot Measure

RECOMMENDATION: Referral to the Police Review Commission to write a charter amendment ballot measure to present to Berkeley voters to reform the Police Review Commission structure.

BACKGROUND:

In 2016, citizens of Oakland voted to create a Police Review Commission that has power to create real changes. San Francisco voters also passed similar reforms. Berkeley now trails behind these two cities in police accountability standards.

The Police Review Commission (PRC) was established by the voters of Berkeley in 1973. The original 1973 ordinance abolished Internal Affairs, giving sole responsibility for police discipline to the Commission. The city administration of that time held the view that the PRC had an important role to play in reducing the City's liability and fostering a better department. As the PRC was established under an ordinance rather than a charter amendment, it was subject to weakening actions by successive administrations. Regulations limiting the Commission's access to evidence were counter-productive, unnecessary, and not legally required, resulting in and substantially ineffective Commission.

Thus, we refer to the Police Review Commission to review the San Francisco, Oakland, and other police commission models as appropriate and develop a charter amendment ballot measure to provide police accountability. With this referral to the Police Review Commission, the process of writing a ballot measure for the November 2018 election will begin. We request the Commission have a draft ballot measure within six months of the referral.

FINANCIAL IMPLICATIONS:

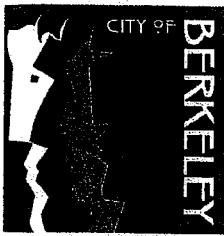
Minimal.

ENVIRONMENTAL SUSTAINABILITY:

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

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170



Police Review Commission

November 2, 2017

To: Andrew Greenwood, Chief of Police
From: Katherine J. Lee, PRC Officer *KJL*
Re: Recommended General Order W-1, Right to Watch Policy

At its October 25, 2017 meeting, the Police Review Commission voted to recommend that the Berkeley Police Department adopt the attached General Order W-1 on the Right to Watch.

This action was the culmination of several meetings the PRC spent deliberating over a revised policy regarding the rights of the public to observe, photograph, and video police officers in the course of their duties. The proposed policy draws in part from several sources, including prior versions of the BPD's Right to Watch policy (including Training & Information Bulletin #91), and the San Francisco Police Department's DGO 5.07 on the Rights of Onlookers.

The PRC respectfully requests your prompt consideration of the attached proposed policy. The recommendation to forward this proposal to you passed unanimously. M/S/C (Allamby/Prichett) -- Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Yampolsky; Noes: None; Abstain: None; Absent: Perezvelez, Roberts.

Attachment

cc: PRC Commissioners
Jovan Grogan, Deputy City Manager

THE RIGHT TO WATCH
REVISED GENERAL ORDER W-01
(As approved by PRC October 25, 2017)

The purpose of this General Order is to provide policy and procedural guidance regarding the right of members of the public to observe, photograph or video record officers during the course of the officers' public duties that reflect these clarifications.

I. POLICY

It shall be the policy of the Berkeley Police Department to place the least possible restriction on public observation, photographing or video recording of police officers' performance of their duties, while ensuring the safety of the public and the officers. The "least possible restriction" means that the officer's mindset should be to only limit observation if necessary for law enforcement purposes. Members of this department will not prohibit or intentionally interfere with such lawful recordings.

Officers shall exercise restraint and shall 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.

Officers shall restrict the practice of requesting that onlookers withdraw only to those instances where a potential threat to safety is involved.

II. PROCEDURES

1. It is the policy of this Department that **persons not involved in an incident be allowed to remain in the immediate vicinity** to witness stops, detentions and arrests of suspects occurring in public areas, except under the following circumstances:

- a. When the safety of the officer or the suspect is jeopardized.
- b. When persons interfere or violate law.
- c. When persons threaten by words or action, or attempt to incite others to violate the law.

2. **Members of the public also have the right to communicate with the detained person, provided:**

- a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148

prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.

- b. that the observer's actions or communications do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's attention. An officer may instruct an observer to maintain a safe distance from the scene. In such an instance, the officer shall provide clear directions on what an individual can do to be compliant; directions shall be specific enough to allow compliance.

3. Members of the public are allowed to approach: If the conditions at the scene are peaceful and sufficiently quiet, and the situation is stable, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:

- a. The suspect objects to persons overhearing the conversation.
- b. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.

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).

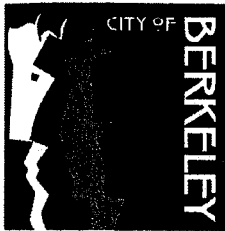
4. Officers shall promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence.

5. An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provide the film or other recording. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime and that the evidence will be important to prosecution of that crime.

III. SUPERVISOR RESPONSIBILITIES

1. 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 and 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 or 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.



Police Review Commission

ACTION CALENDAR
12/5/2017 (to be confirmed)

To: Honorable Mayor and Members of the City Council
From: Police Review Commission
Submitted by: George Lippman, Chairperson, Police Review Commission
Subject: Resolution Repealing the Revised Oleoresin Capsicum (Pepper Spray) Policy
Passed September 12, 2017

RECOMMENDATION

Adopt a Resolution repealing the recent change in the Berkeley Police Department's use of Oleoresin Capsicum (OC, or pepper spray).

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On September 12, 2017, the City Council approved a change in the longstanding policy governing the Berkeley Police Department's use of pepper spray. The rationale for this change was the series of protests and demonstrations centered in Berkeley this year, which brought out extremist groups committing violent acts against people and property. The revised policy allows police to use pepper spray on specific individuals within a crowd who are committing acts of violence upon police or others. Previously, the use of pepper spray was prohibited in crowd control situations.

However, studies showing the uncertain efficacy of pepper spray, detrimental health effects on those exposed to it, and risk of affecting innocent bystanders, call into question whether applying pepper spray in a crowd, regardless of the specific circumstances, is ever justified or acceptable.

BACKGROUND

On September 16, 1997, the City Council adopted a policy for the Berkeley Police Department use of pepper spray that included "No pepper spray will be used as crowd control." This policy was incorporated in successive versions of the BPD's General Order U-2, Use of Force, up to the March 9, 2017 version in effect before Council's September 12, 2017 action. Under Section 20, "Prohibited Uses of Force":

- (b) Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy

recommendation that says, in part, "no pepper spray will be used for crowd control by the Berkeley Police Department."

This year, following outbreaks of violence against people engaged in First Amendment activities, and in anticipation of more of the same during "Free Speech Week" the last week in September, the City Manager and Chief of Police requested a change in the pepper spray policy to make it available to officers as a use of force option against violent offenders. The Council approved this policy change on September 12, 2017.

Consequently, the BPD revised General Order U-2, Section 20(b), on September 13, 2017, to state that pepper spray should not be directed against persons engaged in peaceful, non-violent expression of First Amendment rights, or to disperse a crowd, move a crowd, or against subjects involved in passive resistance.

Responding to questions of whether the revised language accurately reflected the Council's action, the BPD on September 20, 2017 further revised General Order U-2, Section 20(b) to incorporate the Council's September 12, 2017 motion, which "re-affirmed and further amended the Council's policy regarding the use of pepper spray as such use relates to crowd control, expression of First Amendment speech, and addressing acts of violence by specific individuals within a crowd." The order further states that officers shall not use pepper spray as a crowd control technique to disperse or move a crowd, nor direct it against persons engaged in legal speech or other protected First Amendment expression, or those committing unlawful acts by non-violent or passive resistant means.

The Police Review Commission is concerned that even the limited application of pepper spray in a crowd situation is dangerous. Health hazards to the intended target of OC is documented in a survey of studies summarized in a North Carolina Medical Journal article.¹ Also troubling is the potential for adverse effects on those in the vicinity of the target. The International Network of Civil Liberties Organizations/Physicians for Human Rights declared in their study of crowd control weapons that when delivering chemical weapons by firing a grenade or canister, the risk of affecting bystanders is high.²

Finally, while the PRC asks for the immediate reinstatement of the pre-September 12, 2017 language to General Order U-2, it also requests additional language to prohibit pepper spray use against individuals in a crowd. This added wording will prevent the ban on pepper spray use "as a crowd control technique" or "for crowd control" from

¹ Smith, C. G., & Stopford, W. (1999) "Health Hazards of Pepper Spray." *North Carolina Medical Journal*, 60(5), 268-274.

<http://web.archive.org/web/20000817004624/http://www.ncmedicaljournal.com/Smith-OK.htm>

² The International Network of Civil Liberties Organizations (INCLLO) and Physicians for Human Rights (2016) "Lethal in Disguise: The Health Consequences of Crowd-Control Weapons." https://www.aclu.org/sites/default/files/field_document/weaponreport_final_web_1.pdf

being interpreted to impliedly permit use of pepper spray to stop criminal behavior of an individual in the crowd.

At its October 25, 2017 meeting, the PRC voted to recommend to the City Council that it adopt the attached resolution calling for reinstatement of the September 1997 pepper spray policy. M/S/C (Prichett/Matthews) -- Ayes: Allamby, Lippman, Matthews, Prichett, Yampolsky; Noes: None; Abstain: Ford; Absent: Perezvelez, Roberts.

ENVIRONMENTAL SUSTAINABILITY

Eliminating the risk of collateral or ambient exposure to OC, and additional untested chemicals commonly combined with OC, will increase the air quality surrounding a targeted civilian, and reduce the danger of harm to those with a compromised health status such as asthma.

RATIONALE FOR RECOMMENDATION

Oleoresin Capsicum can have severe and long-lasting health effects on its intended target and those in the immediate vicinity. An officer's best efforts to spray only an individual violent offender with OC can be thwarted by wind or a volatile crowd, thus resulting in accidental exposure of bystanders. Therefore, all uses of pepper spray within a crowd should be banned.

ALTERNATIVE ACTIONS CONSIDERED

No practical alternatives to this recommendation exist.

CITY MANAGER

See companion report.

CONTACT PERSON

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

Attachments:

1: Resolution

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

REPEALING THE REVISED OLEORESIN CAPSICUM (PEPPER SPRAY) POLICY
PASSED SEPTEMBER 12, 2017

WHEREAS, the Police Review Commission advises and makes recommendations to the public, the City Council and the City Manager "concerning all written and unwritten policies, practices, and procedures of whatever kind and without limitations, in relation to the Berkeley Police Department, other law enforcement agencies and intelligence and military agencies operating within the City of Berkeley, and law enforcement generally . . ." (Ordinance No. 4644-N.S., Sec. 10); and

WHEREAS, in 1997 community activists proposed a ban on use of Oleoresin Capsicum (OC, or pepper spray), and a compromise was achieved in City Council in which OC was banned for use in crowd situations, and the following language was placed in the BPD General Order U-2 "Use of Force": "Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited"; and

WHEREAS, the September 12, 2017 Council action reaffirmed the 1997 Council policy on OC "as such use relates to crowd control, expression of First Amendment speech," etc., and affirms that "Oleoresin Capsicum (pepper spray) shall not be used as a crowd control technique to disperse a crowd or move a crowd," and "shall not be used on persons engaged in legal speech or other expression that is protected by the First Amendment, nor on those committing lawful acts by non-violent or passive resistance means (e.g. sitting or lying down to block a street or doorway)"; and

WHEREAS, notwithstanding these policy pronouncements, the September 12, 2017 Council action allows police use of "pepper spray upon specific individuals in a crowd who are committing acts of violence upon police or others"; and

WHEREAS, studies summarized in a University of North Carolina/Duke University report show significant and sometimes lasting negative effects from use of OC, including acute asthma and respiratory arrest; 70 in-custody deaths beginning in 1993 involved the use of OC spray during arrests, with pre-existing conditions listed as causes or contributors to the deaths, and a 1993 North Carolina death "precipitated by pepper spray";³ and

WHEREAS, the same UNC study expressed caution about other chemicals that different brands mix with OC, noting, "Inhalation of high doses of some of these

³ Smith, C. G., & Stopford, W. (1999) "Health Hazards of Pepper Spray." *North Carolina Medical Journal*, 60(5), 268-274.

<http://web.archive.org/web/20000817004624/http://www.ncmedicaljournal.com/Smith-OK.htm>

chemicals can produce adverse cardiac, respiratory and neurologic effects, including arrhythmias and sudden death”; and

WHEREAS, the UNC study casts doubt on the efficacy of OC, stating that “It is important to remember that subjects who are highly aggressive, agitated, intoxicated, or suffering from mental illness may have altered perception of and response to pain, and consequently may not be affected by – or may even become enraged after – being sprayed”; and

WHEREAS, a study by an international consortium of civil liberties groups and the Physicians for Human Rights states that “Chemical irritants are an indiscriminate weapon by design; because of their indiscriminate nature – especially when delivered by firing a grenade or a canister – limiting the exposure to individuals or small groups is difficult, and the risk of affecting bystanders and individuals other than the intended targets is high.”⁴

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley hereby reverses its action of September 12, 2017,⁵ and returns the policy on the use of OC (pepper spray) to the 1997 policy,⁶ except that the policy shall not be interpreted to allow the use of OC against individuals within a crowd; and requests the Berkeley Police Department to immediately reinstate the related language on OC in General Order U-2, “Use of Force,” with the addition of an express prohibition on the use of OC against individuals within a crowd.

⁴ The International Network of Civil Liberties Organizations (INCLC) and Physicians for Human Rights (2016) “Lethal in Disguise: The Health Consequences of Crowd-Control Weapons.” https://www.aclu.org/sites/default/files/field_document/weaponreport_final_web_1.pdf

⁵ Annotated Agenda, Special Meeting of the Berkeley City Council for Tuesday, Sept. 12, 2017, Action Calendar Item #1. https://www.cityofberkeley.info/Clerk/City_Council/City_Council__Agenda_Index.aspx

⁶ “Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy recommendation that says, in part, ‘no pepper spray will be used for crowd control by the Berkeley Police Department.’” General Order U-2, Section 20(b), March 9, 2017 (version in effect before Council’s Sept. 12, 2017 action).

Nixle

https://local.nixle.com/alert/6235835/?sub_id=1909685

Tuesday October 31st, 2017 :: 10:41 a.m. PDT

BPD Receives Grant for Traffic Enforcement & Crash Prevention

The Berkeley Police Department has been awarded a \$265,000.00 grant from the California Office of Traffic Safety (OTS) for a year-long program of special enforcement and public awareness efforts to prevent traffic related deaths and injuries. The Berkeley Police Department will use the funding as part of the city's ongoing commitment to keep our roadways safe and improve the quality of life through both education and enforcement.

Chief Andrew Greenwood shared, "Thanks to OTS, this grant will help us educate our community, and support our officers' focused enforcement efforts on unsafe driving behaviors and locations in Berkeley. The grant will give us the ability to field additional officers to increase safety and reduce collisions in Berkeley. We are grateful to the California Office of Traffic Safety for their support of our work to keep our roadways safe and reducing injuries and harms through both enforcement and education."

After falling to a ten year low in 2010, the number of persons killed on roadways has climbed nearly 17 percent across the state, with 3,429 fatalities in 2015. Particularly alarming is the rise in pedestrian and bicycle fatalities that now comprise nearly 25 percent of all traffic deaths, along with the growing dangers of distracting technologies and the emergence of drug-impaired driving. This grant funding will provide opportunities to combat these and other devastating problems such as speeding and crashes at intersections.

"Unsafe behaviors account for 94 percent of traffic crashes," said OTS Director Rhonda Craft. "This grant emphasizes the two most effective ways to change behaviors – education and enforcement. The Berkeley Police Department, with assistance from the Office of Traffic Safety, will use these tools to help keep the members of the Berkeley community safe."

Activities that the grant will fund include:

- Educational presentations
- DUI Checkpoints
- DUI Saturation Patrols
- Bicycle and pedestrian safety enforcement
- Motorcycle safety enforcement
- Distracted driving enforcement
- Seat belt and child safety seat enforcement
- Speed, red light, and stop sign enforcement

While alcohol remains the worst offender for DUI crashes, The Berkeley Police department supports the new effort from OTS that aims to drive awareness that "DUI Doesn't Just Mean Booze." Prescription medications and marijuana can also be impairing by themselves, or in combination with alcohol, and can result in a DUI arrest.

In 2016, Berkeley PD arrested (342) people for driving under the influence of alcohol and/or drugs, and in 2015, Berkeley PD (247) people were arrested for driving under the influence of alcohol and/or drugs. These arrests are in part a result of Office of Traffic Safety funded training programs, DUI Checkpoints, and DUI Saturation operations.

Funding for this program is from the California Office of Traffic Safety through the National Highway Traffic Safety Administration.

Lee, Katherine

From: Lee, Katherine
Sent: Tuesday, October 31, 2017 3:07 PM
To: Lee, Katherine
Subject: FW: [police oversight] OPINION: The case against Tasers

Dear Commissioners,

Thought this might be of interest. The author, Barbara Attard, is a former Berkeley PRC Officer.

-Kathy

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

From: policeoversight@yahoogroups.com On Behalf Of cameron.mcellhiney@yahoo.com [policeoversight]
Sent: Monday, October 30, 2017 6:28:33 AM (UTC-08:00) Pacific Time (US & Canada)
To: policeoversight@yahoogroups.com
Subject: [police oversight] OPINION: The case against Tasers

<https://48hills.org/2017/10/27/opinion-case-tasers/>

OPINION: The case against Tasers

They often don't work, when they do they can be deadly -- and they don't stop cops from shooting people

BY BARBARA ATTARD - OCTOBER 27, 2017

On Friday, November 3, 2017 at 5:00 p.m. at City Hall the San Francisco Police Commission will be holding its last public hearing on purchasing stun guns for San Francisco police officers. Although there has been much discussion on the topic, there remain many misconceptions about the weapon under consideration and its potential impact on policing in the city.

I've heard many people – young and old – say that they'd rather be stunned than shot with a bullet. This is a logical response. Unfortunately it's based on misunderstandings about how conducted electrical weapons (CEWs) work.

Even the San Francisco Police Officers Association (POA) has repeatedly asserted after officer-involved shootings that SF police officers need CEWs to use as an alternative to guns.

To be clear, CEWs cannot be substitutes for guns because there are inherent limitations in how they function that render them unreliable for being used in deadly force situations.

The leading manufacturer of CEWs specifically states in its training materials, "CEWs do NOT replace deadly-force options." Most departments that have CEWs instruct officers NOT to use them in deadly force situations because they cannot be relied upon to stop a threat. Many factors can cause the CEW be ineffective – how thick the person's clothing is, whether both probes hit the person, and whether the CEWs electrical charge captures enough muscle to incapacitate, to name a few.

The law permits officers to use their firearms in deadly-force circumstances, which involve a threat of death or great bodily harm. The manufacturer's training materials advise officers that the optimal range for CEW deployment is seven to 15 feet. To use a CEW in a situation in which an individual is armed or violent or aggressive would require the officer to be just seven to 15 feet from the individual. Alarming, CEWs have been found to fail often, in fact the Los Angeles Police Department (LAPD) reported a 47% failure rate in 2015.

The SFPD adopted a new Use of Force policy in December 2016 stating the commitment to accomplish the "mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics" including time and distance. Bringing in a weapon that requires officers to be within seven to 15 feet of an aggressive individual would undermine the tenets of the policy and the training that has been instituted. And, should the weapon fail, officers would be in jeopardy and would have no choice but to escalate to lethal force.

In considering adopting CEWs it is prudent to ask, "Have CEWs been shown to stop or reduce officer-involved shootings in other law enforcement agencies?" Recent reports from Los Angeles and San Jose, both cities that have deployed CEWs for many years, register significant numbers of officer-involved shootings. LAPD reports 34 officer-involved shootings to date in 2017, and San Jose registered its eighth officer-involved shooting in September. CEWs clearly do not prevent officers from using guns.

SFPD has had ongoing issues with disparate use of force, including deadly force, on persons of color. The findings of the DOJ Collaborative Reform Assessment of the SFPD and the Blue Ribbon Panel Report detail racial inequalities in many areas from stops, searches, and arrests, to officer-involved shootings.

San Francisco is not the only city with disproportionate use of force patterns. Other cities that have similar problems report disparities in officer-involved shootings as well as CEW use. For example, a 2016 Chicago study documented that Chicago officers shot and used CEWs on African Americans at disturbing rates, and a Houston study reported that CEWs were used disproportionately on African Americans.

The question of CEW efficacy is further complicated by the fact that the weapon under consideration for purchase by SFPD at this time, the Taser x2, is a new model that has had very little study or research to verify its reliability. The City of Houston has had several incidents that raise serious questions about the Taser x2. A lawsuit filed this year by Houston Officer Karen Taylor after she was severely injured in a failed Taser x2 incident details how the newer CEWs, while possibly less dangerous to suspects than previous models, are more risky for officers because they are less effective. In one weekend in March, 2016, in three separate incidents Houston officers shot suspects after failed Taser x2 deployments.

Tragically, CEWs, the “less lethal” weapons, kill far too often. In a series published this past summer a Reuters Report examines 1,005 deaths since 2000 involving Tasers and states, “Many who die are among society’s vulnerable – unarmed, in psychological distress and seeking help.” In the city of San Jose alone there have been eight deaths after CEWs have been used – some linked to the CEWs, and some from other contributing factors. In all of the cases, use of the CEW did not result in safely taking a suspect into custody.

Would we support our city purchasing new, untested cars for employee use that reputedly fail nearly 50% of the time, that randomly kill people (particularly vulnerable populations and people of color) even when used as directed, and would certainly result in costly lawsuits? Of course not.

Before obtaining a new problematic weapon that would most likely be used disproportionately on people of color and vulnerable populations, the city and the SFPD must focus on de-escalation of force and ensuring that policing in San Francisco is equitable and fair and functions at the stated SFPD “highest priority (of) safeguarding the life, dignity and liberty of all persons.” SFPD General Order 5.01 Use of Force

Barbara Attard is a police accountability consultant, former president of the National Association for Civilian Oversight of Law Enforcement (NACOLE), and co-author of the Police Misconduct Complaint Investigations Manual.

Posted by: cameron.mcellhiney@yahoo.com

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Lee, Katherine

From: Lee, Katherine
Sent: Friday, November 03, 2017 8:34 AM
To: Lee, Katherine
Subject: FW: a letter from Blair Beekman. Thursday November 2, 2017. _____
Recently established, Bay Area legal precedents, in Emergency Zoning and Health, with Homeless Shelter Issues.

From: bob tom [mailto:cranberrysauce23@gmail.com]
Sent: Thursday, November 02, 2017 8:45 PM
Subject: a letter from Blair Beekman. Thursday November 2, 2017. _____ Recently established, Bay Area legal precedents, in Emergency Zoning and Health, with Homeless Shelter Issues.

Dear city governments, of Berkeley, and San Jose,

I am sorry, for the hour of this letter.

San Jose, has been through a lot of homeless issues, the past few years.

They have not had, the court case and judge, the south Berkeley Bart situation, is currently in.

I feel San Jose, can be a lot of help to Berkeley, at this time, on the legal issues, of emergency zoning and health permits, with the homeless issue.

San Jose, had to create, a very good legal language, very quickly, at this time, last year.

Although there are always disagreements, I feel, the city attorneys of San Jose, really tried to acknowledge, health issues and its legal questions, on a common sense level.

And to create flexible, yet safe, zoning and health laws, to respect the depth and urgency, of the emergency homeless situation, S.J. was in last year.

I am guessing Berkeley, can possibly be very happy with, a lot of quick and needed, legal examples and help.

The judge in the recent Bart homeless encampment issue, has said it is up to the city of Berkeley,

to present options, and what is possible, and what it will actually take, budget wise and logistics wise, to better shelter the homeless community in Berkeley

This is an interesting, an impartial approach. To ask the city of Berkeley, how to look into the issue, of how to shelter, feed, and provide longer term solutions, for, at least 800 homeless people, of their city.

Mayor Arreguin, and the Berkeley city council, approved emergency funding for the city of Berk., this past Tuesday, with wording that I felt, was a bit more serious, expansive, and broad, than a softer, finer, more austere language, S.J. used, to approve with emergency funding a year ago so.

A possible hopeful sign, Berkeley has budget surplus money, to pay for things.

So, the city of Berkeley, is possibly preparing to purchase property, land, and buildings, non profit resources, and whatever it takes, to create homeless programs, if needed.

The city government of Berkeley, should really, really, talk with,
the city government of San Jose city attorneys, and their housing dept.,
in the ideas of how to offer permits, with difficult zoning questions, and its health issues.

San Jose, has been through a lot, in the past few years, with homeless issues, winter housing,
and not enough shelters.

They can be of a lot of help.

I am hoping your two cities, have talked about all of this already.

I hope this letter, can open up, where important city government officials,
are not communicating yet, between each other.

But please learn to keep your conversations, on a, as-needed basis.

And, try not to create new plans,
to get in the way, or run over,
what your own city government departments, humanistically,
are already trying to practice.

Again I hope your city attorneys can talk, with each other at this time.
And further develop, early ideas, that you have possibly worked on together.
I hope this letter can release a bit of superstition, or awkwardness you may have,
and so you can better talk with each other, if needed.

Sincerely,
Blair Beekman

p.s.

Good luck in better connecting and working together, at this urgent and time of
emergency.

It was suggested the city of Berkeley, needs to learn to develop an overall better
homeless plan.

Creating a better relationship between everyday people and their non-profits is important.
It has been important goal that has been accomplished in years,
by the homeless advocacy groups in San Jose.

Building a solid, continual homeless advocacy community, and overall philosophy, takes
time.

Answering emergency relief, health, and zoning questions,
can be answered quickly, and with the good legal precedents, the city of San Jose has
started, is my hope.

2017 Annual Commission Attendance Report

Reporting Period: November 1, 2016 through October 31, 2017

Vacant seats: 0
(as of October 31, 2017)

Commission: Police Review Commission

Commission Secretary: Katherine J. Lee

Scheduled Meeting Date	Cancelled? if Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length	Tele-Conference?*
11-9-16		7 of 8	2	0	2.5	No
12-14-16		6 of 7	8	4	3.2	"
1-11-17		8 of 8	13	7	2.8	"
1-25-17		8 of 8	13	9	3.2	"
2-8-17		6 of 8	4	2	2.1	"
2-22-17		8 of 8	6	1	2.7	"
3-8-17		8 of 8	12	4	3	"
3-22-17		5 of 8	9	2	3	"
4-12-17		8 of 8	7	1	2.8	"
4-26-17		8 of 8	11	3	3	"
5-10-17		6 of 8	5	3	2.7	"
5-24-17		6 of 8	14	4	1.5	"
6-14-17		5 of 8	7	9	3.4	"
6-28-17		6 of 9	10	4	2.8	"
7-12-17		6 of 9	19	9	2.9	"
7-26-17		6 of 9	14	4	3.1	"
9-6-17		8 of 8	12	6	2.9	"
9-27-17		6 of 8	10	4	3.2	"
10-11-17		8 of 8	15	4	3.3	"
10-25-17		6 of 8	4	2	2.8	"

**Please indicate with a "Yes" or "No" whether or not any commissioners participated in the meeting via teleconference. If "Yes," please note how many commissioners participated via teleconference.

Lee, Katherine

From: Greenwood, Andrew
Sent: Wednesday, November 08, 2017 4:52 PM
To: Lee, Katherine
Subject: FW: Special events - ACLU Berkeley/North East Bay Chapter
Attachments: three chiefs flyer05.pdf

Hi Kathy,

Please pass this along to the PRC, for those who might wish to attend.

Thanks,

Andy G.

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

From: barbara dilts [mailto:bdilts@redshift.com]
Sent: Wednesday, November 08, 2017 4:29 PM
To: 'Dilts, Barbara' <bdilts@redshift.com>
Subject: Special events - ACLU Berkeley/North East Bay Chapter

Hi,

I hope you can attend at least one of these events.

Stay Active,
Barbara

Sunday, November 19, 3:00 – 4:30. The Berkeley/North East Bay Chapter of the ACLU invites you to “Three Police Chiefs in Conversation with the Public,” a panel including the Chiefs of Police of Berkeley, El Cerrito and Richmond at the Albany Community Center. Moderator will be Abdi Soltani, Executive Director of the ACLU of Northern California. See the attached flyer. The event is Free, so please join us.

Monday, November 13, 6:00 – 9:00 pm. Berkeley’s Sanctuary City Task Force is hosting an ACILEP “ICE Hotline” rapid response training for community members at 2441 Le Conte Avenue, Berkeley.

ACILEP is a coalition of Alameda County organizations and the Alameda County Public Defender’s office that provide a number of services to support undocumented community members in Alameda County (<http://mujeresunidas.net/the-alameda-county-immigration-legal->

and-education-partnerships-response-to-ice-activity-in-oakland/). One of these critical services is a hotline for verifying ICE activity and providing immediate legal and community support. The training is for community members who want to be part of that network of community supporters that are alerted when ICE activity is verified nearby and are interested in learning to become legal observers. Here is the link for additional info and registration: <http://bit.ly/acilep-training-berkeley>

ICE has already targeted sanctuary communities around the country—this training will ensure we have the knowledge and resources we need to band together to protect and defend our undocumented neighbors, friends, and family members. Please share info about the training far and wide—**capacity is approx. 100 people**—and it would be amazing to have a huge turnout! Also, please ensure people register via Eventbrite if they plan to attend so that ACILEP has their contact information and we have a good head count for the event.

Let me know if you have questions and I hope to see you on the 13th!
Erika Kemp, People Power Berkeley erikajkemp@gmail.com

And More:

Thursday, November 16, 6:00 pm. The Racial Justice Task Force Community Forum. Multi-Purpose Room at 3400 MacDonal Avenue, Richmond – ACLU will have a table of information.

Saturday, November 18, 9:00 am. Promotores del Norte de California, "Nuestra Fuerza en Tiempos de Cambio" Latina Organization, "Conozcan Sus Derechos (All in Spanish) at 1701 San Pablo Avenue in Berkeley.