

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, December 13, 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 November 15, 2017.
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**
 - a. Status of complaints; other items.
 - b. *For discussion & action:*
Approve PRC Regular Meeting schedule for 2018.
- 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) – next meeting Monday, Dec. 18, 1:30 p.m., at 1947 Center St.
- d. Fair & Impartial Policing Subcommittee
-- Dissolve Subcommittee
- e. Mutual Aid Pacts Subcommittee
 - i.) Discuss observations of PRC Commissioners who attended Urban Shield exercise Sept. 8 or 9. (*Appeared as Old Business on Nov. 15, 2017 agenda.*)
 - ii.) Approve subcommittee recommendations
 - iii.) Dissolve subcommittee or consider renaming

9. SPECIAL PRESENTATION BY CHIEF OF POLICE

Demonstration of body-worn cameras.

10. OLD BUSINESS (discussion & action)

- a. Review and consider next steps regarding City Council's October 31, 2017 action revising the reporting requirements in General Order U-2, Use of Force.
- b. 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.
- c. Proposal for BPD Accountability Plan, including professional development/training of BPD officers, department budget, etc.
From: Commissioner Prichett

11. NEW BUSINESS

- a. Suspension of Standing Rules regarding timing of election of chair and vice-chair.
From: Commissioner Lippman
- b. Review specially equipped panel van use policy.
From: Mayor Arreguin
- c. Consider whether to accept Policy Complaint #2433 and, if accepted, what steps to take.
From: PRC Officer

12. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

13. PUBLIC COMMENT

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

Closed Session

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

14. PETITION FOR REHEARING IN COMPLAINT #2422
15. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2431 FOR FAILURE TO STATE A PRIMA FACIE CASE
16. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2435 BECAUSE IT IS FRIVOLOUS

End of Closed Session

17. ANNOUNCEMENT OF CLOSED SESSION ACTIONS
18. ADJOURNMENT

Communications Disclaimer

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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
December 13, 2017

MINUTES

November 15, 2017 Regular Meeting Minutes Page 7

AGENDA-RELATED

Item 6.b. – 2018 Proposed Commission Meeting Dates. Page 13

Item 8. – PRC Subcommittees List updated 12-7-17. Page 17

Item 8.e. – Recommendations from Mutual Aid Pacts Subcommittee. Page 19

Item 8.e. – Commissioner observations of Urban Shield. Page 23

Item 10.a. – From City Council Annotated Agenda for Oct. 31, 2017 –
Item 26, BPD Use of Force Policy. Page 31

Item 10.b.1.) – From City Council Annotated Agenda for Nov. 14, 2017 Page 33
– Item 25, Referral to the Police Review Commission to Write a
Charter Amendment Ballot Measure.

Item 10.c. – Proposal: Good Governance Police Accountability Plan. Page 35

Item 11.b. – Draft Consent Calendar Item, December 19, 2017,
Specially Equipped Panel Van Use Policy. Page 37

Item 11.c. – Policy Complaint #2433. Page 45

COMMUNICATION(S)

Email from Commissioner Perezvelez, dated Nov. 16, 2017, re-
consideration motions. Page 47

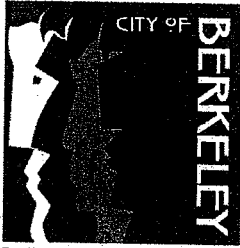
Email dated Nov. 28, 2017, A proposed City Charter amendment. Page 55

Emails dated Nov. 21, Nov. 22, and Dec. 4, 2017, from Blair Beekman. Page 61

City Council Item from PRC on Proposed Surveillance Technology Use
& Community Safety Ordinance; related Communications. Page 71

To Achieve Fairness and Impartiality: Report and Recommendations
from the Berkeley Police Review Commission. Page 113

KJL:mgm



Police Review Commission (PRC)

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

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

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR LIPPMAN AT 7:03 P.M.

Present: Commissioner George Lippman (Chair)
Commissioner Gwen Allamby (Vice-Chair)
Commissioner Clarence Ford
Commissioner Sahana Matthews
Commissioner George Perezvelez (arr. 7:30 p.m., left 9:59 p.m.)
Commissioner Andrea Prichett
Commissioner Terry Roberts
Commissioner Michael Sherman
Commissioner Mary Kay Lacey (temporary)

Absent: Commissioner Ari Yampolsky

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andrew Greenwood, Lt. Angela Hawk, Sgt. Rashawn Cummings

2. APPROVAL OF AGENDA

The agenda, with the moving of Item #10.a. to before Old Business, was approved by general consent.

3. PUBLIC COMMENT

There were 2 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of October 25, 2017

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

Ayes: Allamby, Ford, Lippman, Matthews, Prichett

Noes: None Abstain: Lacey, Roberts, Sherman
Absent: Perezvelez, Yampolsky

5. CHAIR'S REPORT

Significant items involving the PRC were on Council's agenda last night.

6. PRC OFFICER'S REPORT

- No new complaints filed since the last meeting.
- Clarifying announced attendance at the October 25 meeting: Comm. Sherman not absent because not yet sworn in. Comm. Perezvelez did inform staff he would not be attending.
- Next PRC meeting will be Dec. 13, last meeting of the year.
- Continuation of BOI hearing taking place this Friday.
- 2016 Annual Report mailed to Commissioners; copies available here for the public and posted online.
- PRC item to Council on reverting to original Pepper Spray policy is going to Council on Dec. 5.
- Running list of pending agenda items read.
- Original Council items involving PRC are in agenda packet; revised items have been handed out.

Question:

- Status of last regulation change? Staff to draft impacts letter to BPA re whether they think it's subject to meet and confer.
- Move all pending agenda items to next agenda? Could do that or perhaps go through another prioritization process.

7. CHIEF OF POLICE'S REPORT

Chief Greenwood reported:

- Staffing continues to be extremely critical. Currently at 161, from 176 budgeted. Today, 2 more officers gave notice they're going to other agencies and 1 officer will be retiring. Bike patrol suspended; narcotics unit supporting investigations division. All agencies – regionally and nationally -- having problem finding candidates. Scott Castle promoted to Sergeant.
- Attended IACP conference in Philadelphia. Lots of good sessions, including re Body-Worn Cameras.
- Attended California Police Chiefs Assoc. "Women Leaders in Law" conference along with Lt. Hawk and several others from BPD.
- 120 Body-Worn Cameras are plugged in and charging at BPD. Training starts the week after Thanksgiving. Meet-and-Confer with BPA on the policy will occur soon. Policy primarily says "shall" record. Custodial interviews "should" be recorded, but document and explain if you don't. Will provide policy to PRC. Aiming to go live mid-Dec.
- Upcoming training on Principled Policing in Sacramento; includes concepts of explicit and implicit bias.

- Sunday, Nov. 19, Chief will be on a panel discussion with Chiefs of Richmond and El Cerrito at the Albany library on Marin.
- By your next meeting will be delivering several dozen Lexipol policies.

Questions:

- Reaction of IACP attendees to current administration's disregard of 21st C policing principles? No specific pronouncement by IACP leadership, but among police chiefs in his circles, they like it, fully support it, and not stepping away from the tenets. Still a mandatory read for promotional process for sergeants and lieutenants.
- Still coming to December meeting for BWC demo? Yes. Training on draft policy? Yes. How do you handle lessons learned from IACP? Chief and rest of command staff to be one of the first ones trained.
- Any "grace period" for BWC policy violations during first month or three of implementation? Haven't formulated yet; want to be flexible.
- Can the police legitimacy training be shared? Yes, after a cycle of the training is done. Relationship to procedural justice? Same concepts. External and internal legitimacy. Recommended read: "Why People Obey the Law" by Tom Tyler.
- Have 40% of officers been through the 37-hour CIT training? Don't know the exact number but do know BPD sends officers every time Alameda Co. offers slots.
- Why conversion to Lexipol? Answer best provided in a presentation by officers working on it. [To be agendized; and PRC Officer to report on historical background.]

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 – Two members need to respond to Doodle poll
- b. Homeless Encampment Subcommittee – The Chair appointed Comm. Sherman to this subcommittee. PRC Officer to forward Doodle poll to him.
- c. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting) – Might wrap up work with one more meeting; next meeting scheduled for Nov. 30 at 6:00 p.m.
- d. Re-establish Mutual Aid Subcommittee and appoint additional members – Chair Lippman appointed himself to the subcommittee.

9. OLD BUSINESS (discussion & action)

- a. Rescind Standing Rule prohibiting non-Berkeley residents from sitting as community members on PRC subcommittees.
(*Heard following Item #10.a.i.*)

Original motion: to amend the Standing Rules by deleting subpart a) of Section J, requiring public members of PRC subcommittees to be Berkeley residents.

Moved/Seconded (Prichett/Matthews)

Friendly amendment: to allow members of the public to serve on PRC Subcommittees, but if not a Berkeley resident, they do not have a vote.

Moved by Matthews; not accepted by Prichett

Substitute motion: to allow members of the public to serve on PRC Subcommittees, but if not a Berkeley resident, they do not have a vote.

Moved/Seconded (Matthews/Roberts) **Motion Failed**

Ayes: Roberts Noes: Allamby, Lippman, Prichett

Abstain: Ford, Matthews, Perezvelez, Sherman, Lacey Absent: Yampolsky

Vote on original motion: Motion Failed

Ayes: Lippman, Matthews, Prichett.

Noes: Allamby, Perezvelez, Roberts, Sherman Abstain: Ford, Lacey

Absent: Yampolsky

Motion to reconsider substitute motion

Moved by Lippman; motion died for lack of second.

- b. Observations of PRC Commissioners who attended Urban Shield exercise Sept. 8 or 9.
(Item continued to the next meeting.)
- c. Proposal for BPD Accountability Plan, including professional development/training of BPD officers, department budget, etc.
(Item continued to the next meeting.)

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.

Heard following Item #8.d.

Motion to add, in the first sentence after the bullet point in subsection A.2 of Section 7 "In addition, that the City hire or engage a 3rd party to review the data and report to the Council and Commission semiannually."

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

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett, Roberts, Sherman, and Lacey.

Noes: None Abstain: None Absent: Yampolsky

Motion to insert, to the fourth paragraph of subsection A.2. of Section 7, in the sentence "BPD's report to PRC should include stop data by officer," the phrase, "including the number of years of BPD experience of the officer, . . ."

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

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett, Roberts, Sherman, and Lacey.

Noes: None

Abstain: None

Absent: Yampolsky

Motion to revise subsection B.6. of Section 7 to read: "As part of the quarterly report, BPD should detail what steps it has taken to address problems, along with any indication of policies or orders that drove any disparate behavior."

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

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett, Roberts, Sherman, and Lacey.

Noes: None

Abstain: None

Absent: Yampolsky

Motion to adopt entire report as amended and send to the City Council and City Manager

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

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett, Roberts, Sherman, and Lacey.

Noes: None

Abstain: None

Absent: Yampolsky

- ii.) Dissolve Fair & Impartial Policing Subcommittee.
(Item continued to the next meeting.)
- 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.
(Item continued to the next meeting.)
- 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.
(Item continued to the next meeting.)
- c. Police Department's timeline for implementation of body-worn camera program, including finalization of General Order governing use of and access to video.
(Item continued to the next meeting.)
- 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.
 - i.) Review and consider next steps regarding City Council's November 14 action on broader or longer-term changes to PRC structure and authority.
(Items continued to the next meeting.)

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

There were no speakers.

Closed Session

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

13. REPORT ON STATUS OF COMPLAINT #2424

End of Closed Session

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

No reportable action taken.

15. ADJOURNMENT

By general consent, the meeting was adjourned at 10:11 p.m.

2018 Commission Meeting Dates

Please complete this form and email it to the
Commission Inbox by: **Friday, January 5, 2018**

Name of Commission: PRC COMMISSION

DRAFT

Commission Secretary: Katherine J. Lee

Please Note the Commission Meeting Dates for 2018 Below

2018 Meeting Dates

Month	Meeting Day and Date	Time
January 2018	Wed. 1/10/18	7:00 pm
	Wed. 1/24/18	7:00 pm
February 2018	Wed. 2/14/18	
	Wed. 2/28/18	
March 2018	Wed. 3/14/18	
	Wed. 3/28/18	
April 2018	Wed. 4/11/18	
	Wed. 4/25/18	
May 2018	Wed. 5/9/18	
	Wed. 5/23/18	
June 2018	Wed. 6/13/18	
	Wed. 6/27/18	

Month	Meeting Day and Date	Time
July 2018	Wed. 7/11/18	
	Wed. 7/25/18	
August 2018	No Meeting	
September 2018	Wed. 9/12/18	
	Wed. 9/26/18	
October 2018	Wed. 10/10/18	
	Wed. 10/24/18	
November 2018	Wed. 11/14/18	
December 2018	Wed. 12/12/18	

commission@cityofberkeley.info

City Clerk Department

Please contact Leslie Rome at (510) 981-6908 with any questions.

PRC 2018 Meeting Schedule *Proposed*

January

Su	Mo	Tu	We	Th	Fr	Sa
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November

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 PRC Meeting

 City Holiday

 Council Meeting

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 12-7-17**

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 Sherman 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 Formed 11-15-17	Matthews Lippman	Matthews	Capt. Dave Reece

Recommendations from Mutual Aid Facts Subcommittee

1. Immigration and Customs Enforcement (ICE)

Proposed Recommendation: Approve the ICE Understanding with the proviso that it be modified to reflect the following statement.

"BPD shall not provide stand-by security service for USICE investigations or enforcement actions. This shall not prevent BPD from responding to a public safety emergency related to an ICE action; in such event BPD shall explain the facts giving rise to its action in a written report to the Berkeley City Council and the Police Review Commission at the earliest opportunity."

m/s/c Lippman/Matthews Vote: 2-0

Alternative actions considered:

- Reject the entire Understanding.

Proposed Background:

PRC believes that the trust of the community in the law enforcement is damaged when local police are seen as participating in ICE actions.

The recent ICE raid in Oakland resulted in only a civil immigration arrest, demonstrating the risk that involvement with supposed criminal investigations may draw the police into support for civil enforcement.

Oakland Mayor Libby Schaff is now supporting a similar position. For more information see this *East Bay Express* editorial:

"Why Oakland Should Cut Off ICE"

<https://www.eastbayexpress.com/oakland/why-oakland-should-cut-off-ice/Content?oid=11028169>

Mayor Libby Schaaf, who has supported Kirkpatrick's position on the West Oakland case and has said that she read the sealed warrant from the investigation and believes it was a bona fide criminal matter, said in a Nov. 21 statement that she now supports the proposal for OPD to not provide traffic control during HSI/ICE operations. She said that even though current Oakland law "forbids our officers to act in any way other than to protect our residents and officers from wandering into harm's way of an active operation, the perception that OPD now participates, or somehow aligns itself with ICE, has grown too full to ignore. This perception stops residents in our immigrant communities from viewing OPD as partners in our sanctuary city. It stops residents from reaching out when they have been the victim of crimes; when they need assistance for their children; when they want to participate fully in our community. It makes all of us safer to live in a city where everyone can feel protected and live free of fear."

45 2. UASI/ Urban Shield

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47 Proposed Recommendation:

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49 BPD cease participation in the Urban Shield activity beginning with the 2018 activity.
50 Search for, or create in partnership with other communities, alternatives to replace the
51 positive elements of Urban Shield.

52 m/s/c Matthews/Lippman Vote: 2-0

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54 Note—there is no ongoing year-to-year Agreement with UASI.

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57 3. NCRIC

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59 Proposed Recommendation: Set a one-year moratorium on BPD participation with
60 NCRIC while PRC reviews CM/BPD-supplied information about how BPD-NCRIC
61 relationship functions.

62 For example, review the bulletins that BPD receives from NCRIC.

63

64 m/s/c Matthews/Lippman Vote, 2-0

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66 Alternative considered: REJECT renewal of Understanding, rescind General Order N-17,
67 and cease BPD participation with the Northern California Regional Intelligence Center.

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72 4. Law Enforcement Mutual Aid Plan: No action taken.

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74 Consider at Police Review Commission meeting December 13

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78 5. Approve all remaining agreements and understandings

79 m/s/c Matthews, Lippman Vote: 2-0.

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/>

Observations and Thoughts about Urban Shield Exercises in September 2017

Terry Roberts

11/15/17

I attended the Urban Shield exercises for two days in September. The training was based on “real life” emergency situations that have been encountered by emergency response teams around the world, in an attempt to provide relevant vignettes to benefit local emergency responders. I thought the training provided very useful information and practice for police, fire, public works, and every day citizens to prepare for emergencies in their communities.

Available Training

The training included: Hazmat, event security, active shooters and hostage situations, critical infrastructure response, hospital and hotel attacks, bus and Amtrak hostage situations, biological and chemical response, rail collision, structure collapse, large animal rescue, water rescue, earthquake and severe weather response, and community preparedness with community members participating, focusing on community organization and readiness, to name a few. There were also sessions about responding to the Ghost Ship fire and the Orville Dam evacuation which gave important insights to emergency responders.

This provided a wide variety of training for all emergency responders---not just police. There were hundreds of emergency responders from all over California participating at 36 locations in the Bay Area.

I was surprised at the wide variety of training available to Berkeley and other communities, since some people in our community paint a picture of Urban Shield training that only results in militarization of our police department, but in truth it can benefit other city departments too, with the potential of improving overall safety in our community.

While the BPD SWAT team did participate in scenarios such as hostage situations and a truck running down pedestrians on a crowded street, those scenarios are certainly not outside of what might eventually be experienced in Berkeley in the future. You might have noticed lately that --- Berkeley is being targeted by various groups---and we don't know what to expect in the future. With terrorist-type attacks happening in California, the nation and the world, we need to be ready to respond to keep our community as safe as possible. We need to be equipped, trained and ready, so we aren't wringing our hands and Monday morning quarterbacking after an emergency event, blaming BPD and others for not being prepared, similar to after the Back Lives Matter protests recently. It's our responsibility to support BPD and other departments in their efforts to be ready to respond to emergencies.

Vendor Show

For all the talk in the community about Urban Shield militarizing our police force I expected to find a lot of heavy weapons, armored personnel carriers, explosives, and other strictly military weaponry and equipment at the vendor show. But there was nothing I saw that would be inappropriate for city police department use. Much of the equipment and technology was about

officer safety. Of course, there were some weapons displayed, but of a small arms nature compared to military equipment. Some of this equipment may not be needed or appropriate in Berkeley due to local policies.

Some surveillance technology was also displayed at the vendor show, which may or may not be appropriate in Berkeley, but purchase of such equipment will eventually be governed by our pending surveillance ordinance.

Berkeley Participation Going forward

I believe Berkeley's emergency responders need this type of training to help our community become more prepared and safer in emergencies. The wide range of training in Urban Shield helps us achieve that goal and gives our staff emergency response training and some funding for equipment that we would not otherwise receive because we cannot afford it.

But the training and equipment we receive from Urban Shield should be selected based on our community values under a city-adopted plan to ensure it is appropriate for our community. In addition, we know that BPD needs additional training in other areas such as de-escalation training, fair and impartial policing training, etc., to ensure there is a balance in the training program to meet all of the challenges facing policing activities.

Overall, I believe that Urban Shield provides access to a critical piece of our training and safety equipment needs. As a community we need to have a clear plan to guide our emergency training that will address all likely emergency circumstances and will result in a higher level of community and officer safety.

In the final analysis, under Urban Shield, we choose locally what is appropriate for us----nothing in Urban Shield mandates either the training we take or the equipment we purchase for police. It is up to us locally to decide how we participate.

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).*

Action Calendar – New Business

25. Referral to Police Review Commission to Write a Charter Amendment Ballot Measure *(Continued from October 31, 2017. Item contains revised materials.)*

From: Councilmembers Worthington and Harrison

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.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: M/S/C (Arreguin/Maio) to call the previous question on Item 25.

Vote: Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – Worthington; Abstain – Davila.

Action: M/S/C (Hahn/Droste) to adopt the following recommendation.

Refer to the City Manager and Police Review Commission (PRC) to review the existing enabling legislation, rules, and regulations for the PRC, and to consider all options, including charter amendments, ballot measures, and any other amendments to strengthen the authority of the PRC to consider and act on citizen complaints, and other possible structural, policy and procedural reforms.

Direct the City Manager (through the City Attorney) to provide a legal analysis of which proposals can be completed legislatively and which require amendments to the City Charter.

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 up to one year, consistent with existing California law.*
- 3. Give the PRC full discretion and access to evidence to review complaints as to alleged officer misconduct.*

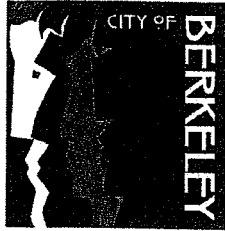
As part of the review of proposed improvements to the PRC process, the PRC should analyze police review policies and structures in other jurisdictions (e.g. San Francisco, BART, etc.), all PRC models and engage relevant stakeholders, including the Berkeley Police Association and community organizations,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

Full analysis by the PRC and City Manager must be reported to the City Council by May 2018.

Vote: Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – Worthington; Abstain – Davila.

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



Office of the Mayor

CONSENT CALENDAR

December 19, 2017

To: Members of the City Council
From: Mayor Jesse Arreguin
Subject: SPECIALLY EQUIPPED PANEL VAN USE POLICY

RECOMMENDATION

Adopt the first reading of a Resolution that defines and provides for the use and deployment of a Specially Equipped Panel Van by the Berkeley Police Department (Attachment 1).

BACKGROUND

On June 20, 2017, the City Council adopted Resolution No. 68,053-N.S. pursuant to City Charter Article XI Section 67.2 for the purchase of a Specially Equipped Panel Van for use by the Berkeley Police Department in situations where there is an objective risk to the safety of civilians and/or officers from a person who may be considered armed and dangerous or in a situation that would risk injury or death to civilians or officers.

Additionally, City Council adopted Resolution No. 68,052-N.S. establishing the terms and conditions of the City of Berkeley's acceptance of the UASI grant funding to purchase the Specially Equipped Panel Van to be (1) The City of Berkeley ("Berkeley") retains authority to determine the UASI sponsored programs and activities Berkeley will participate in; and (2) The vehicle shall be used only in UASI sponsored exercises that Berkeley chooses to participate in, and in such instances shall only be used by Berkeley personnel, according to Berkeley's policies and protocols, under Berkeley's exclusive command and control.

Final action included the adoption of Resolution No. 68,053-N.S. stated that the City Council will adopt a policy for use of the Specially Equipped Panel Van prior to its being deployed in any capacity by the City of Berkeley.

FINANCIAL IMPLICATIONS

Staff time

ENVIRONMENTAL SUSTAINABILITY

No impact

Specially Equipped Panel Van Use Policy
CONSENT CALENDAR – December 19, 2017

CONTACT PERSON

Jesse Arreguín, Mayor 510-981-7100

Attachments:

1. Resolution No. XX,XXX
2. Resolution No. 68,052–N.S
3. Resolution No. 68,053–N.S.

RESOLUTION # XX,XXX.XX

USE, DEPLOYMENT AND OPERATIONS TRAINING BY THE BERKLEY POLICE DEPARTMENT FOR SPECIALLY EQUIPPED VAN UNDER

WHEREAS, On June 20, 2017, the City Council adopted Resolution No. 68,053-N.S. pursuant to City Charter Article XI Section 67.2 for the purchase of a Specially Equipped Panel Van for use by the Berkeley Police Department in situations where there is an objective risk to the safety of civilians and/or officers from a person who may be considered armed and dangerous or in a situation that would risk injury or death to civilians or officers.

WHEREAS, Additionally, on June 20, 2017, the City Council adopted Resolution No. 68,052-N.S establishing the terms and conditions of the City of Berkeley's acceptance of the UASI grant funding to purchase the Specially Equipped Panel Van to be (1) The City of Berkeley ("Berkeley") retains authority to determine the UASI sponsored programs and activities Berkeley will participate in; and (2) The vehicle shall be used only in UASI sponsored exercises that Berkeley chooses to participate in, and in such instances shall only be used by Berkeley personnel, according to Berkeley's policies and protocols, under Berkeley's exclusive command and control.

WHEREAS, Also on June 20, 2017 the adoption of Resolution No. 68,053-N.S. stated that the City Council will adopt a policy for use of the Specially Equipped Panel Van prior to its being deployed in any capacity by the City of Berkeley.

WHEREAS, Requirements for use, deployment and operations training have been reviewed by the Berkeley Police Department and Police Review Commission.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following requirements are integrated into the Use, Deployment and Operations Training by the Berkeley Police Department:

USE OF THE SPECIALLY EQUIPPED PANEL VAN

The use of the Specially Equipped Panel Van will be authorized by the field supervisor and, whenever practical, the on-duty/on-call Watch Commander. The use of the Specially Equipped Panel Van will only be for supervisory approved purposes including, but not limited to, calls for service involving potentially armed subjects, Tactical Team callouts, search warrants served by at least one Tactical Team member, officer or citizen extraction or authorized training. The vehicle's purpose is to provide an armored rescue resource for officers to use when managing critical incidents.

The Specially Equipped Panel Van shall not be deployed during non-violent demonstrations, including for crowd control and crowd management. The vehicle may be called to a declared unlawful assembly, when a lawful dispersal order has been issued or when persons are engaged in criminal behavior that presents an objective risk

of injury or death. The Specially Equipped Panel Van may be staged at pre-designated locations away from protest sites to allow for timely response.

The SWAT commander will maintain a vehicle usage log which will be provided to the City Council every 6 months, or as requested.

SPECIALLY EQUIPPED PANEL VAN OPERATION TRAINING

Periodic briefings and training will be conducted on the operation and deployment of the Specially Equipped Panel Van. Supervisors shall submit training validation forms to document that staff members have received appropriate training regarding the use and deployment of the Specially Equipped Panel Van.

SPECIALLY EQUIPPED PANEL VAN DEPLOYMENT CONSIDERATIONS

Staff has the discretion to deploy the Specially Equipped Panel Van in those circumstances where there is an objective risk of serious injury or death to civilians and officers and use of the vehicle may reduce or resolve said risks by facilitating safe police management of the critical situation and rescue of injured persons. Staff should:

- Assess the situation and based on the objective facts determine that the discretionary use of the vehicle may contribute to the safe resolution of a critical incident where there is a risk of serious injury or death to civilians or officers.
- Given proper authorization for deployment of the vehicle, staff should, except in an emergency, create an operational plan for deployment of the vehicle consistent with this policy, current law and the Berkeley Police Department Use of Force policy.
- The vehicle may be used to locate and contain a threat by providing cover for officers, facilitating a rescue of an injured person or as a tactical resource to allow officers to take into custody a person who presents an objective risk of injury or death to civilians or officers.

In selecting the rescue team, the supervisor should consider experienced personnel, including but not limited to: Tactical Team Operators and/or former Tactical Team members, Hostage Negotiators and officers who have received Crisis Intervention Training (CIT). In addition, the rescue team should include an officer trained in emergency medicine support, rescue carriers, cover officers along with officers equipped with less lethal force equipment. Fire and ambulance personnel should be ready to accept injured persons at the termination point of the rescue.

USE OF THE SPECIALLY EQUIPPED PANEL VAN BY OUTSIDE AGENCIES

The on-duty supervisor shall approve the use of the Specially Equipped Panel Van by outside agencies for emergency purposes. At least one on-duty Tactical Team officer shall deploy with the vehicle, to assist outside agency requests. This may include additional officers who have received training in advanced first aid. At all times any use of the Specially Equipped Panel Van shall be consistent with Berkeley Police Department Use of Force policy. Under no circumstances shall the Specially Equipped Panel Van be used in Urban Shield exercises.

RESOLUTION NO. 68,052-N.S.

ESTABLISHING THE TERMS AND CONDITIONS OF THE CITY OF BERKELEY'S
COOPERATION WITH UASI PROGRAMS AND ACTIVITIES

WHEREAS, the City of Berkeley ("Berkeley") has entered into the Agreement between the City and County of San Francisco and the City of Berkeley for the distribution of FY 2016 UASI Grant Funds, dated November 1, 2016 ("The Agreement"), a copy of which is attached; and

WHEREAS, Section 10.13 of The Agreement, Cooperation with UASI Programs and Activities, sets terms for the City of Berkeley's cooperation with UASI programs and activities; and

WHEREAS, Subsection (a) of Section 10.13 states that Berkeley agrees to participate in UASI programs and activities "subject to reasonable terms and conditions"; and

WHEREAS, the City of Berkeley wishes to clarify the "terms and conditions" under which the City of Berkeley will participate in UASI programs and activities.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the terms and conditions as referenced in Section 10.13(a) of the Agreement between the City and County of San Francisco and the City of Berkeley for the distribution of FY 2016 UASI Grant Funds, dated November 1, 2016 are as follows:

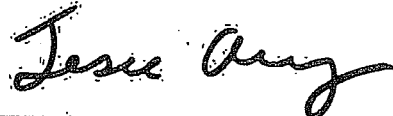
- (1) The City of Berkeley ("Berkeley") retains authority to determine the UASI-sponsored programs and activities Berkeley will participate in; and
- (2) The equipment acquired with funds furnished by the above referenced Agreement (the Specially Equipped Panel Van) shall be used only in UASI-sponsored exercises that Berkeley chooses to participate in, and in such instances shall only be used by Berkeley personnel, according to Berkeley's policies and protocols, under Berkeley's exclusive command and control.

The foregoing Resolution was adopted by the Berkeley City Council on June 20, 2017 by the following vote:

Ayes: Bartlett, Droste, Hahn, Maio, Wengraf, Worthington and Arreguin.

Noes: Davila and Harrison.

Absent: None.



Jesse Arreguin, Mayor

Attest:


Mark Numainville, City Clerk

RESOLUTION NO. 68,053-N.S.

PURCHASE ORDER: THE ARMORED GROUP FOR ONE SPECIALLY EQUIPPED
PANEL VAN

WHEREAS, one Specially Equipped Panel Van is needed by the Berkeley Police Department to protect officers and community members from gunfire; and

WHEREAS, this van is factored into the California Disaster and Civil Defense Statewide Mutual Aid System; and

WHEREAS, Charter section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City is using pricing obtained by another public entity through a competitive process; and

WHEREAS, the Federal General Services Administration Cooperative Purchasing Agreements are available for purchasing by state and local governments; and

WHEREAS, GSA released a bid solicitation in 2006 which was nationally advertised for open competition; and

WHEREAS, the bid responses were reviewed by GSA Contracting Officers who determined The Armored Group's bid pricing to be fair and reasonable and awarded GSA Contract No. GS-07F-9375S; and

WHEREAS, City of Berkeley Equipment Maintenance Division, Police Department and Finance-General Services reviewed the specifications and determined the GSA contract meets the needs of the Equipment Maintenance and Police Department; and

WHEREAS, the cost for one Specially Equipped Panel Van will not exceed \$205,373 and funds will be available in FY 2017 UASI Regional Fund and Asset Forfeiture Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that pursuant to GSA bid procedures and specifications, the City Manager is hereby authorized under Charter section 67.2 to purchase one new Specially Equipped Panel Van from The Armored Group, in an amount not to exceed \$205,373.

BE IT FURTHER RESOLVED because of the unusual nature of this piece of equipment, and the potential that when deployed in certain ways it may be perceived to limit or chill free speech and/or assembly, and because it was purchased for specific scenarios it should only be used in those instances when it is clearly called for.

BE IT FURTHER RESOLVED that the City Council will adopt a policy for use of the Specially Equipped Panel Van prior to its being deployed in any capacity by the City of Berkeley. The policy will be developed by the Mayor, in consultation with the Chief of Police and reviewed by the PRC, and will be approved by the City Council.

The foregoing Resolution was adopted by the Berkeley City Council on June 20, 2017 by the following vote:

Ayes: Bartlett, Droste, Hahn, Maio, Wengraf, Worthington and Arreguin.

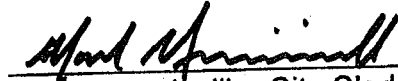
Noes: Davila and Harrison.

Absent: None.



Jesse Arreguin, Mayor

Attest:



Mark Numainville, City Clerk



POLICY COMPLAINT FORM

Police Review Commission (PRC)
 1947 Center Street, 1st Floor, Berkeley, CA 94704
 Website: www.ci.berkeley.ca.us/prc/
 E-mail: prc@ci.berkeley.ca.us
 Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Received by PRC
 Date Received:
 NOV 27 2017
 PRC CASE # 2433

1

Name of Complainant: Guerre Christine
Last First Middle
 Mailing Address: 2337 Harrison Street #2, Oakland, CA 94612
Street City State Zip
 Primary Phone: (510) 839-2004 message Alt Phone: ()
 E-mail address: _____
 Occupation: _____ Gender: Female Age: _____
 Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiracial Other

2

Identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

Berkeley passes strict law for sidewalk homeless, VA agency laws. Conjure
up a distance part when police can punish people without a home or
permanent residence. "Berkeley targeting homeless on sidewalks
Sitting or sleeping near a building for some reason.
The proposed ordinance recalls measure F, a Berkeley ballot
measure in 2012 that proposed a ban on lying or sitting on Berkeley's
side walks.

3

Location of incident (if applicable) Berkeley, California

Date & Time of incident (if applicable) Jan 2017 date is at question?

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

John Wesley Johnson was homeless at the time and
on social security disability. City of Alameda Housing
Authority has information when John Wesley Johnson had
a low income housing in the City of Alameda a few years
ago, after he lost his home in the City of Alameda, CA
John Wesley Johnson became homeless.

4 What changes to BPD policy, practice, or procedure do you propose?

Police officers seeing a homeless person lying or sitting on a Berkeley side walk or near any building. A police officer should speak to the homeless person and ask who they are and ask the person or persons to move out of the area at the time. Police officers should always carry a homeless shelter list to give to a homeless person or person's before arresting a person or person's. Please ask the police officers to be more kinder to the homeless in Berkeley, California

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Commission in evaluating your complaint.)

See attachments next pages. John Wesley Johnson was sleeping near a building and homeless in Berkeley, California, at the time he was working to get his Social Security check at a check cashing place. Mr. Johnson at the time did not know about the Berkeley city ordinance lying and sleeping on a Berkeley side walk near a building. A Berkeley police officer targeted Mr. Johnson and used his past rap record against him. Instead the Berkeley police officer created a false police report and never read him his Miranda Rights, when he was arrested at the time of the arrest.

Mr. Johnson stated he was not told what he was arrested for by a cop in Berkeley at the time of arrest.

6

CERTIFICATION

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

Character witness

Glenn Dun
Signature of Complainant

NOV 23 2017
Date

7

How did you hear about Berkeley's Police Review Commission?

- Internet
- Publication: _____
- Referral: _____
- Other: _____

cc: John Wesley Johnson
cc: Mr. John W. Peace Father of Mr. Johnson Revised 4-22-16

Lee, Katherine

From: George Perezvelez <georgeperezvelez@gmail.com>
Sent: Thursday, November 16, 2017 2:21 PM
To: Lee, Katherine; Droste, Lori
Subject: Re-consideration motions

Mrs. Lee,

Please forward my email to the full commission and as part of official communications.

Dear Fellow Commissioners,

Let me take the time to expand on my objections to the use of a re-consideration motion at last night's meeting.

Although it is correct to assert that any legislative body has the right to re-examine any issue at any time, my concerns do not lie on the viability of the process but on how the process looks and what division it can create within the body.

"Just because something can be done or its legal, does not necessarily make it right"

It is important to distinguish between revisiting an issue and hedging your bets to affect the outcome for a losing side. This could continue on an endless loop until the desired effect or result is achieved.

The purpose of a deliberative body is to freely make, debate and vote up and down motions. This is at the core of the democratic process and the trust build between the participants.

Putting the creation or perpetuation of a perceived injustice, lack of understanding of a motion or the interest of an absent member to vote on an issue aside, part of the deliberative process is the mechanism of discussion, interaction, exchange of ideas and resolution to a question. There has to be a belief that although we might all disagree on process or on the "how to get there", everyone's goal of interactive and progressive community oversight is the same.

It would be detrimental and an erosion of the trust inherent in our process to rely on a "vote counting system", on "wait until I get the votes I need to discuss an issue" or " revisiting issues over and over again" until someone(s) achieves their intended outcome. It invalidates the deliberative nature of the commission, the democratic process of voting and diminishes each commissioner's belief that their voice and votes matter.

Although the differences on whether to allow Berkeley residents to only have a voice in matters of policy affecting their city or to open it to others outside of the public comment or submission of information for member's consideration aspect is not truly the end of the world, the practice of re-consideration of votes needs to be reviewed closely with the concerns listed above. It must be measured against what should be ethical and proper in order not to erode the fundamental tenets of our working relationship

In addition,

Please note the difference between reconsider versus renewed:

<http://www.dummies.com/careers/business-skills/roberts-rules-and-the-motion-to-reconsider/>

Also, please consider the following implications

- *Moot Reversal*. Motions can be reconsidered at subsequent meetings provided no action has been taken on the motion in the interim. As a practical matter, a motion cannot be reversed if the vote has caused something to be done that is impossible to undo. (Robert's Rules, 11th ed., pp. 321-322.)

As well as the viable option to any commissioner to engage in the following process:

https://en.wikipedia.org/wiki/Objection_to_the_consideration_of_a_question

Respectfully submitted for consideration,

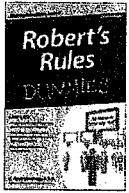
George D. Perezvelez

AD15 Associate Delegate, Alameda County Democratic Party Central Committee
Senior Member Berkeley Police Review Commission
Chair, BART Police Oversight Citizen Review Board
Executive Board Member, East Bay Stonewall Democratic Club



🏠 > CAREERS > BUSINESS SKILLS > ROBERT'S RULES AND THE MOTION TO RECONSIDER

ROBERT'S RULES AND THE MOTION TO RECONSIDER



RELATED BOOK

Robert's Rules For Dummies, 2nd Edition

By **C. Alan Jennings, PRP, PRP**

The motion to *Reconsider* is a distinct parliamentary motion! When you use the word *reconsider* in a parliamentary situation, it refers only to this specific motion. All the motions in the class of motions that bring a question again before the assembly assist your group in revisiting previously considered motions.

You may find that members talk about reconsidering a motion when they really want to rescind or amend something previously adopted. Or they may just want to renew a motion that failed in an earlier meeting (or that didn't get a second in the current meeting). Using the word *reconsider* in a generic sense in a parliamentary situation can cause problems.

ADVERTISING



Replay

The motion to *Reconsider*

- Can't interrupt a speaker who has the floor and has begun to speak, but is in order until that time (it is in order to make a motion to *Reconsider* when other business is pending, but dealing with the motion can't interrupt pending business — that part of the process must wait until nothing else is pending)
- Must be seconded
- Is debatable if the motion to be reconsidered is debatable
- Can't be amended
- Requires a majority vote
- Can't be reconsidered

The motion to *Reconsider* is subject to some unique limitations:

- It must be made on the same day as the meeting in which the motion to be reconsidered was decided (or on the next day business is conducted, if the session is more than one day).
- It must be made by a person who voted on the *prevailing* side of the motion to be reconsidered.

**WARNING**

Anytime a motion to *Reconsider* is (properly) made, all action authorized by the motion being considered is suspended until the decision whether to reconsider is made. Furthermore, if the motion to *Reconsider* is adopted, the suspension continues until the result of the reconsideration is decided, as long as it's decided within some specified time limits.

Generally, the reconsideration has to take place in the current session or the next session, unless the next session isn't going to occur within a quarterly time interval. In that case, it has to be completed by the end of the current session, or the motion to be reconsidered goes into full effect as adopted.

WAIT FOR THE RIGHT TIME TO RECONSIDER

Because of the nature of the motion to *Reconsider*, it's not always appropriate to consider it at the same time it's made. In other words, *Reconsider* isn't a privileged motion. It's important for the members to know that someone has had second thoughts, even though the time may not be right for a discussion.

As a result, you can make the motion anytime, but you can't actually talk about reconsidering except when no immediately pending motion is on the floor.

CALL UP THE MOTION TO RECONSIDER

Your motion to *Reconsider* is *called up* by any member at any appropriate time (and doesn't need to be seconded).

Even though anyone can call up your motion to *Reconsider*, you're entitled to have the reconsideration called up at whatever time you think best, as long as no one else has the floor or another question is pending. Robert's Rules gives you that privilege.

KNOW WHEN NOT TO USE "RECONSIDER"

A motion to reconsider a vote is a motion limited in both the time it can be made and the person who can make it. But even when the motion to *Reconsider* isn't in order, there's no reason you can't revisit a motion, passed or not, at your next (or any future) meeting.

Robert's Rules refers to this procedure as "renewing" a motion. According to the General, any member can offer again a motion that failed in an earlier meeting. In fact, if a motion is made at any meeting and doesn't get a second, it can even be renewed at that very same meeting.

The motion to *Reconsider* is out of order when the motion to which it is applied can be *renewed* or when the desired result can be achieved with some other, less complicated parliamentary motion.

It's also out of order if it's applied to a negative vote on some motion that would at the time be out of order because it conflicts with something already adopted, or would conflict with any other motion that is pending or temporarily disposed of and still under the assembly's control.

Of course, if a motion has been adopted and any part of the motion's provisions has been executed, it's too late to reconsider the vote.



REMEMBER

The point of all these rules about reconsidering (and renewing and rescinding and amending something previously adopted) is that the group has an orderly way available to take a second look at almost anything, as long as you use the right procedure.

Most of the time, your group can save a lot of time if members use the right motion instead of thinking of every second look at something as being a "reconsideration."



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WIKIPEDIA

Objection to the consideration of a question

In parliamentary procedure, an **objection to the consideration of a question** is a motion that is adopted to prevent an original main motion from coming before the assembly. This motion is different from an objection to a unanimous consent request.

Explanation and use

If a member feels that an original main motion should not be considered, an objection to the consideration of a question could be made.^[1] It is often used to prevent an embarrassing question from being introduced and debated in the assembly.

According to Robert's Rules of Order Newly Revised (RONR), this motion is not debatable and requires a two-thirds vote against consideration.^[2] This objection may be applied only to an original main motion, that is, a motion that brings a new substantive issue before the assembly.^[2] The objection may be raised only before debate has begun on the motion, as the purpose is to completely suppress debate on the motion.^[2]

According to Mason's Manual of Legislative Procedure, the purpose of the objection to consideration is to bar from discussion or consideration "any matter that is considered irrelevant, contentious or unprofitable, or that, for any reason, is thought not advisable to discuss."^[3]

This motion is different from an objection to a unanimous consent request.^[2]

The Standard Code of Parliamentary Procedure does not have this motion and provides alternative motions for accomplishing the same purpose.^[4]

Improper use of tabling a motion

Using the rules in RONR, a main motion is improperly killed by tabling it. In this case, before debate has begun, it would have been proper to make an objection to the consideration of the question.^[5]

Objection to the consideration of a question (RONR)

Class	Incidental motion
In order when another has the floor?	When another <i>has been assigned</i> the floor, until debate has begun or a subsidiary motion has been stated by the chair
Requires second?	No
Debatable?	No
May be reconsidered?	Negative vote (sustaining objection) only
Amendable?	No
Vote required	Two-thirds against consideration sustains objection

See also

- Debate (parliamentary procedure)
- Postpone indefinitely
- Previous question
- Table (parliamentary procedure)

References

1. Robert, Henry M.; et al. (2011). *Robert's Rules of Order Newly Revised* (11th ed.). Philadelphia, PA: Da Capo Press. p. 267. ISBN 978-0-306-82020-5.
2. Robert 2011, p. 268
3. National Conference of State Legislatures (2000). *Mason's Manual of Legislative Procedure*, 2000 ed., p. 218
4. Sturgis, Alice (2001). *The Standard Code of Parliamentary Procedure*, 4th ed., p. 233–234
5. Robert III, Henry M. (2011). "Frequently Asked Questions about RONR (Question 13)" (<http://www.robertsrules.com/faq.html#13>). *The Official Robert's Rules of Order Web Site*. The Robert's Rules Association. Retrieved 2016-02-19.

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Tuesday, November 28, 2017 8:07 AM
To: Lee, Katherine
Subject: FW: A proposed City Charter amendment

-----Original Message-----

From: Russ Tilleman [mailto:russ.tilleman@gmail.com]
Sent: Monday, November 27, 2017 11:34 PM
To: PRC (Police Review Commission) <prcmailbox@cityofberkeley.info>
Subject: A proposed City Charter amendment

Hi,

I'm one of the organizers of the Campaign for Police Accountability, California Committee ID# 1400286. We are working to create an elected Police Accountability Board that will have full authority over the Berkeley Police Department. We expect to have an initiative measure on the ballot next November.

I'm including a rough draft of the amendment below. We need to clean it up but the major points are there. Simply put, it would transform the PRC into an elected board with full authority over the Berkeley police.

We are doing this for a number of reasons. Across the United States, police are out of control. They are beating and killing innocent people and getting away with it. Here in Berkeley, the police attacked and beat down peaceful Black Lives Matter protesters and journalists.

And Berkeley Police are using hollow point bullets, which have been banned in international warfare since The Hague Convention of 1899. These bullets explode on impact and cause massive damage to any victim struck with them.

Hollow points are so bad that even the Nazis in World War Two obeyed the international treaties and refused to use them. But many police forces in the US are using them now against our own people.

Dr. Eliot Specht, an award winning physicist at Oak Ridge National Laboratory and a 2012 Fellow of the American Physical Society, had this to say about police departments' stated reason for using hollow points:

The argument that hollow-point bullets protect bystanders doesn't make sense.

So it appears that the police may have intentionally lied to us about their reasons for using hollow point bullets. An unstated reason to use them is to inflict as much damage

as possible on suspects, while inflicting that same damage on any innocent people hit by them.

Glenda Hatchett, the judge representing Philando Castile's family, had this to say about police hollow points:

Philando Castile was killed by that type of bullet.
Five bullets, two fatal bullets that ruptured his heart.
All so senseless and despicable.

Even the FBI, which in 1990 created the overly-powerful .40 Smith & Wesson ammunition that thousands of American police forces are now using, recently admitted that they were wrong in upgunning to such a destructive weapon.

The .40 has around twice the muzzle energy of the .38 special that police had successfully used for many decades previously. Bullet energy is a major cause of intentional damage to a human target.

The combination of the .40 muzzle energy and the jacketed hollow point bullet types that police are now using results in a massively and unnecessarily destructive weapon.

I am honestly horrified by this.

- The FBI intentionally upgunned to a bullet that was much more lethal to both suspects and bystanders than necessary.
- Then police forces across the country misrepresented their reasons for changing over to it.
- And then, 26 years later, the FBI admitted they were wrong after who knows how many thousands of innocent people were needlessly killed by it.
- Now many police forces, like Berkeley (based on BPD's online documentation) and Oakland, still haven't followed the FBI's lead in switching back to less lethal and more effective ammunition.

If we can get control of the Berkeley Police Department, we can change the bullets they use and their use-of-force policy to benefit the community. And in the future it will be easier for other cities to do the same thing.

We feel that this issue potentially affects everyone in this country.

Judge Hatchett was nice enough to give us a written endorsement for setting up the Police Accountability Board in Berkeley:

I believe that an elected Police Accountability Board is a critically important element to necessary reform in your community and in our nation.

We have talked with a lot of people here, and we believe we have the votes to get the Police Accountability Board passed into law next November. But we need to make our

case to the voters, so we are asking for help getting our message out to anyone who can either vote in Berkeley or donate to our campaign.

We have set up a GoFundMe page to accept donations:

<http://www.gofundme.com/campaign-for-police-accountability>

We set our goal at \$225,000 for two reasons. The first is that that amount of money will pay for a very strong campaign. The second is that it is the amount of money raised on GoFundMe by Darren Wilson, the police officer who killed Michael Brown in Ferguson, Missouri.

If we can raise the same amount, it will make a statement that we as Americans intend to take back control of our police forces.

I am dedicating the next year of my life to this campaign, partially because I have seen the effects of police violence up close. A police officer in Cincinnati shot a friend of mine's boyfriend to death for no good reason a few years ago.

That officer had previously been suspended for shooting an innocent high school student in the head with a taser, also for no good reason. If there had been a Police Accountability Board in place there, the officer would have been thrown off the force and my friend's boyfriend would be alive today. Instead, he is dead and the officer was recently promoted to Lieutenant.

We can't expect the courts to hold police officers accountable. The US Supreme Court has essentially ruled that police officers have the right to kill anyone or anything they want, at any time and under any circumstances, as long as they later say that they felt threatened.

Anyone who feels threatened by a woman in a bathrobe who called the police to report a sexual assault, an unarmed woman holding her baby, or a dog that is wagging its tail shouldn't be a police officer.

An empowered Police Accountability Board can put an end to this kind of police behavior.

We are working with Congresswoman Barbara Lee's office to make the Police Accountability Board a reality. And in addition to dealing with bad cops, it can be a step toward greater freedom for the people of this country. If the police work for us, then the government will have to work for us too.

We are looking for endorsements and assistance with fundraising. If there is anything you can do to help, we would appreciate it!

These news headlines tell the story better than I can:

Settlement in Lawsuit Over Berkeley Police Brutality
at 2014 Black Lives Matter Protest

NewsGuild Photographer Roughed Up by Berkeley

Police in June

Videos show Berkeley cops doing nothing as violence erupts between protesters in street

Berkeley Police Brutality Excessive Force on Occupy Berkeley

Yoga instructor who called 911 killed in Minneapolis Police shooting

Officer Acquitted in Fatal Shooting of Unarmed Woman and Baby

Mayor's Dogs Gunned Down by Cops in Improper Drug Raid

All nine bystanders wounded in Empire State shooting hit by police

Regards,

Russ Tilleman
2670 Parker St
Berkeley, CA 94704
510-485-6044
russ.tilleman@gmail.com

PROPOSED AMENDMENT

ELECTIONS

The Police Accountability Board shall have nine members, one elected from each City Council district and one elected at-large. Each member is expected to represent all Berkeley residents, not just those from their own district.

Board members shall be elected in the same regularly-scheduled elections as the City Council member from their district, or in the case of the at-large member, the Mayor.

Any Board member who serves any part of one term shall not be eligible to serve any part of the following term.

Any vacancies on the Board shall be filled by appointment by the seated City Council member of that district, or in the case of the at-large member, the seated Mayor.

The Board shall begin existing, and the Police Review Commission shall cease to exist, on January 1, 2019.

To avoid the cost of a special election, prior to the first regularly-scheduled election of the Board member from each district or the at-large member, that Board member shall

be appointed by the seated City Council member of that district, or in the case of the at-large member, the seated Mayor.

COMPENSATION

Each Board member shall receive \$1000 per month plus health benefits.

MEETINGS

The Police Accountability Board shall meet at the South Berkeley Senior Center, 2939 Ellis Street, on the 2nd and 4th Wednesdays of each month at 7:00 pm, or at any times and places as determined by the Board.

POWERS

The Police Accountability Board shall have full authority over the Berkeley Police Department and any other security personnel employed directly or indirectly by the City of Berkeley, including but not limited to all such powers previously assigned to the Berkeley City Council, Berkeley City Manager, Berkeley Police Chief, and Berkeley Police Department Internal Affairs division.

The City of Berkeley shall provide the funding and other resources required for the Police Accountability Board to carry out its responsibilities.

Lee, Katherine

From: bob tom <cranberrysauce23@gmail.com>
Sent: Tuesday, November 21, 2017 5:12 PM
Subject: Re: a letter from Blair Beekman -2 . Saturday November 18, 2017.

Dear city government of Berkeley,

A letter, at the end of November, three day week, and four day weekend.

There is so much good, that is possible at this time, I say we are at a time, to never again, return of the Bush era, ICE practices of 2006-7.

We are trying to close the door, on shock doctrine experimenting, militarized thinking, and the overall bad reasoning, where 9/11/01, was its centerpiece.

There is a hopeful, peaceful and better reasoned future, that has started, at this time.

There are more thoughtful, and peaceful ideas, in the questions, of immigration, refugees, housing rights, worker rights, civil rights, civil protections, and local neighborhood accountability and local democracy, we are all working toward, and would like to better develop.

We also have, incredibly good standards and practices, created with many programs, and on many levels, by the Obama administration, and its DOJ, from 2008-2016

Good accountability ideas, for local neighborhoods, good immigration practices, and a better future of immigration, are among them.

I think the Trump administration, needs to learn how to work more, within this framework. And to have patience, and respect, in the waiting period, we are all in, to develop these more peaceful, and better reasoned concepts.

The Trump administration, and local law enforcement, overall, may be somewhat embarrassed, at this time.

I hope the city government, and everyday people of Berkeley, are ready to offer, their years of experience, and polite, good meaning, and helpful ideas, to ICE/HSI/DHS/DOJ

authorities, and the Trump Administration, at this time. And, about how to be more cooperative, thoughtful, and peaceful, in the ways, that are possible to work, at this time.

In what mostly seems, an unnecessary practice, on many levels, I hope we can end, the experiment and ideas, around combat fatigues and armored vehicles, for ICE detainment issues, in Berkeley, and throughout the Bay Area

There is a peaceful, and promising future, that is waiting and developing. Many good voices, around Berkeley city hall, around the community, and around the Bay Area, on this issue, can be of much help, at this time.

Sincerely,

Blair Beekman
San Jose, Ca.

a letter below, to city government of Oakland, Monday Novemeber 13, 2017. The day before their Public Safety meeting.

The issue of how to respect, its new immigration policies, will go to a Public Safety meeting again, December 5, 2017.

Dear city government of Oakland,

We may be starting to understand, how the Trump administration, and its DOJ, will want to work, the next four years.

The new ways, of ICE, HSI, and the Trump admin. is starting to become regular.

I feel these are ways, that border on paranoia.

We are at time, to be aware of this, and ask this new ICE way of working, to stop.

And ask to continue, the peaceful, professional, well reasoned country, we are intending to build.

To put it simply, these new ICE policies, shouldn't be a part of , new important ideas in human rights, and healthy immigration ideas, we are all trying to work towards.

Sincerely,

Blair
San Jose, Ca.

<https://www.vera.org/newsroom/press-releases/safe-cities-network-launches-11-communities-united-to-provide-public-defense-to-immigrants-facing-deportation>

Lee, Katherine

From: bob tom <cranberrysauce23@gmail.com>
Sent: Wednesday, November 22, 2017 3:29 PM
Subject: Re: a letter from Blair Beekman. Wednesday, November 22, 2017.

Categories: For Agenda

Dear county government of Alameda, and others,

What I spoke of yesterday, during the public forum, at the Alameda County Board of Supervisors meeting,

Is that I feel Sherriff Ahern, and the Trump Administration, is creating a dim, short-sighted, and only short term view, of how to answer questions of immigration, at this time.

We are developing many helpful, good ideas and practices, around human rights, civil rights, and worker rights, making a recent use of ICE in Berkeley, with combat fatigues, and an armored vehicle, very frustrating and questionable.

ICE agent safety may be important, but I am assuming, respectable standards have already been created, for all sides, and are usually understood, in a immigration detention raid.

The Obama Administration, and its DOJ, after eight years, has created a very sensible body of work, of studies and reports, on a number of domestic issues.

The city of Oakland, the OPD, and its Privacy Advisory Commission, led by chair Brian Hofer,

are working hard, towards a local immigration policy, that is reflective, of a more thoughtful future of immigration, we are all working towards.

With this, and the work of countless other good people, I am hoping, we can begin to continue, the more humanistic and fairly well developed ideas, in the questions of immigration, human rights, and civil rights, as well.

Ideas of Trump/Ahern, seem short sighted, militarized, conspiratorial, and war-like, and short term, at best. And not the future ideas, of a more peaceful, accountable, sustainable community and local democracy, that is now more possible to understand, and to build towards.

I am hoping Trump, and Sherriff Ahern, can learn to work their own ideas, within previous Obama Administration, and its DOJ. standards, practices, concepts, reports and

studies. Ideas that are thoughtful and well reasoned. Instead of trying to resist them, avoid them, or trying to work around them.

It is with good intentions, and the future we are sure, that is more possible, at this time, we can all learn, to simply leave behind, many Trump/Sherriff Ahern, ideas and concepts. And I feel, a more steady, long term, efficient, and a more decent minded budget, can be established, for Alameda County, and its Sheriffs Department.

All of this, as we are all trying to learn, how to more fully leave, the time of 9/11/01.

Good luck in this work, and to the city of Oakland, in trying to create a good example, for all of us, in the future of immigration policy, at this time.

Sincerely,

Blair Beekman
San Jose, Ca.

Mon 12/4/2017 8:15 PM

bob tom cranberrysauce23@gmail.com

a letter from Blair Beekman. _____ Regular Meeting Agenda. December 5, 2017. ____ Item 31. The future of ASCO.

Dear county government of Alameda,

Sorry for the hour of my letter.

It is my hope, item 31, on your December 5, 2017 budget, can be put off, until more thought, can be placed, on the matter.

The current ASCO system, may already be a model system, for how local, state, and federal government, can work together, on the questions of how prisoners, can be interrogated, in a county jail system.

The current system, seems a good example, of a more centralized process. Instead of a mish-mash, of different government agencies and organizations, that can come in and out, to question, interrogate, and gather information, of a local, county jail system.

The grant system, in the most recent proposal, by Sheriff Ahern, and a 2012 ASCO MOU, seem mostly the same. Is this correct. ?

There does not seem to be, any significant, or more efficient, monetary use or improvement, in the proposed, new ASCO system, on my first readings.

Leaving myself to guess, the new ASCO purpose, is simply to allow the FBI more freedom, in their county jail, interrogation practices.

It seems the intention, of this new system being set up, is so there can be more questioning, of everyday immigration detainees.

And, they can be labeled, more of a possible, 'terrorist threat', if needed, like in the mid-2000's.

And so the FBI, can also have, more freedom to question, Central American Drug Cartels members, detained by the county, law enforcement system.

I would guess, Alameda County, is not in any, super-desperate, red-alert, emergency situation, currently, with Central American drug cartel/sex trafficking issues. And, as what the new Oakland Police Chief, had originally offered, with her part, in the August 16, ICE raid, in Oakland.

With the problems, in the August 16, 2017, ICE raid situation, in Oakland, and the OPD, and with the incredibly good work, the people and city government of Oakland, is working on, to better address, the future of good and meaningful immigration policy, for the future of a city, in this country,

I would guess, county officials, would simply like to continue, already well- established practices, in the questions of the Central American Drug/Sex Trafficking Cartels, within Alameda County.

And to not, rock the boat.

I would guess, ' Central American cartels', are probably not, over-stressing, or overburdening, Alameda County communities, with new, or overly outrageous patterns, in how they can work, at this time, as well.

Among the many ideas, I am trying to list, why this vote, can be put off, until another time, is to also mention, there has been, an important, recent, audit concept, of the Alameda County Sheriff's dept.

After almost a full year, of a new Trump administration, I hope this can be a time, to review, and to question, a number of new, Trump/Sheriff Ahern/republican ideas, and their experimental, and mostly, short term plans and solutions, for Alameda County.

I hope a review process, of the Sheriff's dept., can be respected, at this time, for the more thought out, long term goals, of a county, and its budget process. A less militarized, and better reasoned, more practical, efficient, peaceful set of ideas, for the long term future, of Alameda County.

To add, to all of this, is the idea, of the incredible work, that has been started, by everyone in the Bay Area, how to leave the era of 9/11/01, and to how to end some of its worst concepts, including militarization and incarceration, and the complete erosion, of good ideas, in civil rights, and civil protections.

And how we are using, peaceful, good ideas, to try to rebuild, accountable, good neighborhoods, communities, and their local democracies.

So with all of this in mind, I hope Alameda County, can put off item 31, of its Dec. 5, 2017 agenda, until a later time.

This can also be, a formal, new beginning.

And use this item, as part of an example, of an important, new audit process, for the Alameda Co. Sheriff's dept.

However this matter, can then be voted on, in the future,

I hope it can be understood, what can be, its important, good reasoning, at this time, -
The current ASCO system, established by Alameda County, and the previous Obama Administration, from 2010-12, and now in use,

seems a model program, with checks and balances, accountability and transparency,
and all levels of govt., local, state, and federal, trying to work well together, with a fair, common goal, and cause.

It seems, a very good idea, now, and for the future, for a county jail, and its interrogation practices.

And, a good idea, for the S.F. Bay Area, and perhaps, this country.

Why end, the current ASCO program ?

Government and everyday people, together, are starting to learn, how their communities, can leave the past fifteen years of war.

And to understand, better reasoned, accountability and transparency issues, along with good civil rights, and civil protection issues,

that can more peacefully create, and also better defend, the future of local cities, towns, and communities.

Sincerely,

Blair Beekman
San Jose, Ca.,

peace and accountability,
with surveillance and tech.
as a long p.s., or as a Letter #2,

As a part of, putting this ASCO item, on hold at this time, I hope the Alameda County audit process, of the Sheriff, can be taken seriously, at this time.

It can answer a lot of questions, how to shape the future, of a more simple, yet better reasoned, and more practical, long term budget.

With important questions, of many policy ideas and concepts, including what can be a good immigration future, and the idea of communities, for all of us.

What can be ideas, based on peace, help, and people working together, on good terms.

And, how do we learn together, how to continue to leave, the time of 9/11/01,

and begin to focus, for the good, collective, shared future, we are all trying to work towards, and a part of, together.

I am not trying to discuss revenge politics.

I am discussing, a more, peaceful, good future, most of us, would like to build. And what is more practical, in how to budget and shape local communities, towards more harmonious and peaceful ways.

I hope it can be a time to review, and honestly begin to reject, many short term, short sighted ideas, of a new Trump/republican administration, and Sheriff Ahern ideas.

I feel, these ideas, are simply based, on how to re-introduce, militarization and incarceration, to a community, and its immigration process.

This in comparison, to the honest reasoning, there is a good, that most can think about, and that is being worked on, and that is possible, around the ideas of immigration.

This is a process, in years of good thought, hope, and plans. It is a process, of people sharing borders, with peaceful, good intentions, and understandings.

The practice in leaving, the bad reasoning and thinking, from the time of 9/11/01, is becoming easier to understand, and may actually be starting to become, more enjoyable to work with, for all of us.

We are at good beginnings, we are all trying to learn to practice better, in the last few years.

The current ASCO system, seems to have a very good system of checks and balances.

And has been employed, for over five years now. It seems wise, not to hurt this system.

If this system, will be changed, in the future, I think its original intention, must be respected.

It seems the idea, that all govt. agencies, at each level of govt., speak with Alameda County first, as a sort of 'check-in', in a county jail system interrogation process, is an important system of oversight, and checks and balances.

And to be better understood, at this time, before the FBI, being allowed, a 'separate', or somehow, 'more exclusive', status.

I would guess, a FBI need for exclusivity, can be practiced almost as well, within the current system.

Even though, I may be, a bit too anecdotal, or outside of things, I hope I have labeled this issue, straight into the heart, of what is simple and good, and to still create the ideas, of realistic and practical thinking.

With the possibility of a Sheriffs audit, we are at a time, we can start to label things very well, and review what is truly, more decent, practical, and long term, for the future of Alameda County, the entire community, and their budget.

I feel, Trump/republican/Ahern ideas, around immigration, and other plans, are too experimental, cumbersome, and are mostly impractical, short sighted, short term, in the use of more militarization and incarceration, for immigration issues.

Meanwhile, there is an immigration future, that is hopeful and positive, for everyone, and waiting to be worked on, in what is the good of people, and to continue the good work, at a local community level, based on good reasoning, human and civil rights, civil protections, and peace.

We also have decades of good practices, how immigration detention processes, and its raids within a community, can be as low key, and stress free, as possible.

To also mention, what must be a very impressive, set of studies and reports, the Obama Administration and its DOJ, of the past eight years.

To also mention, a new practice is emerging, of everyday people and local government, that can work together, to better learn how to leave, the past fifteen years of war, and begin to work towards, more practical, accountable, and a more peaceful set of ideas, for the future of a community.

With all of this in mind, as I have stated above, I would like to ask, the Alameda County Board of Supervisors, if they can put off approval, of a new ASCO plan, and payment system, on their Dec. 5 agenda.

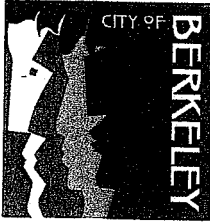
And please respect, the ASCO system, that was created in 2010-12, has the sort of ideas, we are all learning to work towards, at this time.

Sincerely,

Blair Beekman
San Jose, Ca.

A thank you to everyone in the Bay Area, that has been starting, to leave the era and practices, of militarization, incarceration, and many of the concepts, associated around 9/11/01.

We are starting a time, of human rights, civil rights, civil protections, and peace. It is using, thoughtful, good reasoning. Things should be safe. This work makes it own, safe reasoning. I hope, we can continue this work, we have all started.



Police Review Commission

ACTION CALENDAR
December 5, 2017

To: Honorable Mayor and Members of the City Council
From: Police Review Commission
Submitted by: George Lippman, Chairperson, Police Review Commission
Subject: Proposed Ordinance: Surveillance Technology Use and Community Safety

RECOMMENDATION

Adopt first reading of an ordinance governing the approval, acquisition, and use of surveillance technology by the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

Staff and commission time to carry out review and reporting requirements.

CURRENT SITUATION AND ITS EFFECTS

Presently, when surveillance technology is acquired and used by City departments, it is often done so without public discussion of the potential intrusions into civil liberties and privacy rights associated with the use of such technologies. While City departments use surveillance technology to advance their work, consideration is not always given to possible drawbacks, and whether those are outweighed by the benefits in using the particular technology. The proposed ordinance establishes a public process by which benefits are balanced against costs before any new surveillance technology is purchased or used, and applies that process to surveillance equipment currently in use.

BACKGROUND

Process

At its July 12, 2016 meeting, the City Council referred to the City Manager, the Police Review Commission, and the Peace and Justice Commission an item to consider adopting a community control of surveillance measure similar to that enacted by the County of Santa Clara. (Attachment 1.) On September 14, 2016, the Police Review Commission formed a Surveillance and Community Safety Ordinance Subcommittee. Four members of the Commission were appointed to the Subcommittee, along with three members of the public with interest and expertise in the subject.

After several meetings, the Subcommittee learned that the Fire Department used many more technologies subject to the draft ordinance than the Police Department and, on January 11, 2017, the PRC voted to refer the draft to the Disaster and Fire Safety Commission, and to suspend its own work in the interim. The Disaster and Fire Safety

Commission completed its review on March 22, 2017, and the PRC's Surveillance and Community Safety Subcommittee resumed its work on April 12, 2017, proceeding diligently on a proposal, culminating in its presentation of a recommended draft ordinance to the full Commission on July 26, 2017.

At its July 26, 2017 meeting, the PRC voted unanimously to recommend that the City Council adopt the attached Surveillance Technology Use and Community Safety Ordinance. (Attachment 2.) (M/S/C Yampolsky/Halpern. Ayes: Allamby, Halpern (temp.), Lippman, Price, Prichett, Roberts, Yampolsky; Noes: None; Abstain: None; Absent: DaSilva, Ford, Perezvelez.)

Ordinance provisions

Under the ordinance, City Council approval is required before: seeking funding for surveillance technology; accepting funds for or donations of such technology; using surveillance technology in a way not previously approved; or agreeing with anyone outside the City to acquire, share or use surveillance technology or the information it provides. (Section 4.)

Before seeking Council approval, the City department must first seek review from the appropriate commission, e.g., the PRC for the Police Department, or the Disaster and Fire Safety Commission for the Fire Department. The department must submit a Surveillance Impact Report and a Surveillance Use Policy for the proposed technology, to be considered by the reviewing commission at its next regular meeting. (Section 4.)

The Surveillance Impact Report describes the how the technology works; how and where it will be used; potential impacts on civil liberties and possible mitigation of such effects; types of data to be collected and how it will be secured; costs of the technology and funding sources; a summary of alternatives to the technology; and a summary of other entities' experience with it. (Section 4.) The Surveillance Use Policy specifies the purpose of the technology; authorized and prohibited uses; information that may be collected, as well as who may access and collect the data; safeguards to protect the data; retention requirements; public accessibility; whether data will be shared with third parties; training to use the technology or use data; and how compliance with the Use Policy will be ensured. (Section 5.)

The reviewing commission may approve or object to proceeding, or take no action. Regardless of the commission's decision or failure to act, the requesting department must still seek City Council approval and submit the Surveillance Impact Report and Surveillance Use Policy to the Council. (Sections 4 and 6.)

The City Council may approve a surveillance technology request only after considering the reviewing commission's recommendation, and then making a determination that the benefits to the community outweigh the costs; that the proposal will safeguard civil liberties and civil rights; and that, in the Council's judgment, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective. (Section 7.)

Any City department possessing or using surveillance technology before the ordinance takes effect must seek approval for continued use, undergoing the review process for new technologies described above, and submit a Surveillance Impact Report and proposed Surveillance Use Policy to the City Council for approval within 180 days of the effective date of the ordinance. (Section 8.)

Following approval of a surveillance technology, the City Council must annually re-evaluate whether the technology continues to meet the thresholds required for initial approval. This occurs following the City department's written Surveillance Report to the appropriate reviewing commission, which makes a recommendation to Council. The Council may direct that use of the technology cease or be modified if the balancing of interests and other concerns are not satisfied. The Council must annually publish a summary of all requests for approve of surveillance technology, as well as all Surveillance Reports submitted, and agendize them for discussion. (Section 9.)

In exigent circumstances, a City department may temporarily acquire or use surveillance technology without first going through the steps set forth above. Notice to the Council and the reviewing commission must, however, be provided within 30 days. If the use is anticipated to be ongoing, the department must submit a proposed Surveillance Use Policy to the reviewing commission, and then the Council, within 90 days. (Section 5.)

The proposed ordinance provides for a private right of action against the City if the ordinance or a Surveillance Use Policy is violated, but only after a 30-day notice of violation and opportunity to cure is given. A private right of action is also allowed against any third party who uses surveillance technology or data in violation of the ordinance. A person subjected to a surveillance technology in violation of the Ordinance, or about whom information has been gathered, may bring a suit for damages. (Section 10.)

As an additional enforcement mechanism, the Subcommittee's recommendation to the Commission included a clause making a willful or intentional violation of the ordinance or Surveillance Use Policy a misdemeanor, punishable by a fine of up to \$1000 per violation. This is the only provision that generated substantial disagreement in both the Subcommittee and the Commission. Proponents believe the criminal violations for flagrant violations shows that the City is serious about adhering to the ordinance, while opponents feel that criminalization is overkill and duplicative of existing law. In a 4-3 vote, the Commission voted to delete this provision from the draft ordinance presented to you. M/S/C (Yampolsky/Price) Ayes: Allamby, Halpern (temp.), Roberts, Yampolsky; Noes: Lippman, Price, Prichett; Abstain: None; Absent: Ford, DaSilva, Perezvelez.

Finally, the draft ordinance contains prohibitions on surveillance-related agreements that conflict with the ordinance and on non-disclosure agreements (Section 11); and protects whistleblowers – employees who bring to light a violation of the ordinance – from adverse action by the City. (Section 12.)

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The proposed ordinance responds to a Council referral. See Attachment 1.

CITY MANAGER

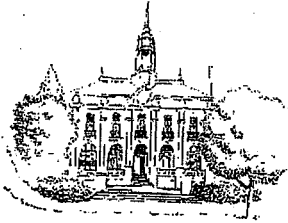
See companion report.

CONTACT PERSON

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

Attachments:

- 1: July 12, 2016 Consent Calendar Item
- 2: Proposed Surveillance Technology Use and Community Safety Ordinance



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@ci.berkeley.ca.us

CONSENT CALENDAR

July 12, 2016

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

Subject: Referral to the City Manager, the Police Review Commission, and the Peace and Justice Commission to consider adopting a Surveillance Use Policy measure similar to that of Ordinance No. NS-300.897 of Santa Clara County

RECOMMENDATION:

Referral to the City Manager, the Police Review Commission, and the Peace and Justice Commission to review and consider adopting a community control of surveillance ordinance similar to that of Ordinance No. NS-300.897 of Santa Clara County.

BACKGROUND:

Santa Clara County Board of Supervisors unanimously approved a law which governs surveillance equipment used by police and other law enforcement officials - such as drones, license plate readers, cellphone trackers - including a broad public debate prior to equipment implementation. The law also requires board approval of a Surveillance Use Policy that safeguards civil liberties and civil rights, and ongoing accountability including an annual audit. This law is vital in assuring civil liberties are not hindered and that there is the utmost transparency between law enforcement officials and the citizens which they serve. Santa Clara County Supervisor Joe Simitian spearheaded this effort because there would be a great deal of transparency and accountability.

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

For more information:

Santa Clara Ordinance NS-300.897

ACLU Report "Making Smart Decisions About Surveillance" - <http://tinyurl.com/zla8mu6>

Model Ordinance - Model Ordinance

FINANCIAL IMPLICATIONS:
Minimal.

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

CONTACT PERSON:
Councilmember Kriss Worthington 510-981-7170

ORDINANCE NO. -N.S.

SURVEILLANCE TECHNOLOGY USE AND COMMUNITY SAFETY ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Title

This ordinance shall be known as the Surveillance Technology Use and Community Safety Ordinance.

Section 2. Findings

The City Council finds as follows:

- 1) Through the enactment of this ordinance, the City seeks to establish a thoughtful process regarding the procurement and use of surveillance technology that carefully balances the City's duty to protect public safety with its duty to protect the privacy and civil rights of its community members.
- 2) Transparency is essential when the City is considering procurement and use of surveillance technology.
- 3) Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk. In U.S. history, government surveillance has had a disproportionately repressive effect on marginalized racial, ethnic, religious, and LGBT communities and social change movements.
- 4) No decisions relating to surveillance technology should occur without strong consideration of the impact such technologies may have on civil rights and civil liberties, including those rights guaranteed by the California and United States Constitutions.
- 5) Surveillance technology involves immediate, as well as ongoing, financial costs. Before the City acquires any surveillance technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.
- 6) Decisions regarding whether and how surveillance technologies should be funded, acquired, or used should give significant weight to public input.
- 7) Legally enforceable safeguards, including robust transparency, oversight, and accountability measures, must be in place to protect civil rights and civil liberties before any surveillance technology is acquired or deployed.

- 8) If a surveillance technology is approved, data reporting measures must be adopted that empower the City Council and public to verify that mandated civil rights and civil liberties safeguards have been strictly observed.

Section 3. Definitions

The following definitions apply to this Ordinance:

- 1) "Surveillance Report" means an annual written report concerning a specific surveillance technology that includes all of the following:
 - a) A description of how the surveillance technology was used, including the quantity of data gathered or analyzed by the technology;
 - b) Whether and how often data acquired through the use of the surveillance technology was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, and the justification for the disclosure(s);
 - c) Where applicable, a breakdown of what physical objects the surveillance technology software was installed upon; for surveillance technology software, a breakdown of what data sources the surveillance technology was applied to;
 - d) Where applicable, a breakdown of where the surveillance technology was deployed geographically, by whatever geographical unit is used by the City entity;
 - e) A summary of each community complaint received by the City entity or applicable reviewing commission about the surveillance technology;
 - f) The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;
 - g) Information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;
 - h) Information that helps the community assess whether the surveillance technology has been effective at achieving its identified purposes;
 - i) Statistics and information about public records act requests;
 - j) Total annual costs for the surveillance technology, including personnel and other ongoing costs, and what source of funding will fund the technology in the coming year; and
 - k) Any request by the City entity for modifications to the Surveillance Use Policy and a detailed basis for the request.

- 2) "City entity" means any department, bureau, division, or unit of the City of Berkeley.
- 3) "Surveillance technology" means any electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered surveillance technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems; body-worn cameras; social media analytics software; gait analysis software; video cameras that record audio or video, and transmit or can be remotely accessed; and personal communication devices.
 - a) "Surveillance technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 8(3):
 - (a) routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or law enforcement functions;
 - (b) Parking Ticket Devices (PTDs);
 - (c) manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
 - (d) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;
 - (e) manually-operated technological devices used primarily for internal municipal entity communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems;
 - (f) municipal agency databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology; or
 - (g) electrocardiogram machines.
- 4) "Surveillance Impact Report" means a publicly-released written report that, if the surveillance technology were to be used or deployed, includes the following:
 - a) **Description:** Information describing the surveillance technology and how it works, including product descriptions from manufacturers;
 - b) **Purpose:** Information on the proposed purposes(s) for the surveillance technology;
 - c) **Location:** The location(s) it may be deployed and reasons for deployment in the location(s);

- d) **Impact:** An assessment identifying any potential impact on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;
 - e) **Mitigation:** Information regarding specific, affirmative technical and procedural measures that will be implemented to appropriately safeguard the public from any impact identified in subsection (d);
 - f) **Data Types and Sources:** A list of all sources of data to be collected, analyzed, or processed by the surveillance technology, including "open source" data;
 - g) **Data Security:** Information about the steps that will be taken to ensure that adequate security measures are used to safeguard the data collected or generated by the technology from unauthorized access or disclosure;
 - h) **Fiscal Cost:** The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding;
 - i) **Third Party Dependence:** Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis;
 - j) **Alternatives:** A summary of all alternative methods (whether involving the use of a new technology or not) considered before deciding to use the proposed surveillance technology, including the costs and benefits associated with each alternative and an explanation of why the proposed technology is preferable; and,
 - k) **Track Record:** A summary of the experience (if any) other entities, especially government entities, have had with the proposed technology, including, if available, quantitative information about the effectiveness of the proposed technology in achieving its stated purpose in other jurisdictions, and any known adverse information about the technology (such as unanticipated costs, failures, or civil rights and civil liberties abuses).
- 5) "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of the surveillance technology that at a minimum specifies the following:
- a) **Purpose:** The specific purpose(s) that the surveillance technology is intended to advance;
 - b) **Authorized Use:** The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;

- c) **Data Collection:** The information that may be collected by the surveillance technology. Where applicable, list any data sources the technology will rely upon, including “open source” data;
 - d) **Data Access:** The individuals who may access or use the collected information, and the rules and processes required prior to access or use of the information;
 - e) **Data Protection:** The safeguards that protect information from unauthorized access, including encryption and access control mechanisms;
 - f) **Data Retention:** The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond that period;
 - g) **Public Access:** How collected information may be accessed or used by members of the public;
 - h) **Third Party Data Sharing:** If and how other City or non-City entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;
 - i) **Training:** The training required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology, including any training materials;
 - j) **Auditing and Oversight:** The mechanisms to ensure that the Surveillance Use Policy is followed, including the job title category and number of personnel assigned to ensure compliance with the policy, internal recordkeeping of the use of the technology or access to information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the legally enforceable sanctions for violations of the policy; and
 - k) **Maintenance:** The mechanisms and procedures to ensure that the security and integrity of the surveillance technology and collected information will be maintained.
- 6) “Exigent circumstances” means a City entity’s good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the surveillance technology or the information it provides.

- 7) "Appropriate reviewing commission" means the existing citizens commission with reviewing responsibilities over the City entity. If no such commission exists, the City Manager may designate a citizens commission to act as the reviewing commission or ask the City entity to submit reports directly to the City Manager.
- 8) "Personal communication devices" means mobile telephones, personal digital assistants, wireless capable tablets and similar wireless two-way communications and/or portable Internet accessing devices, whether procured or subsidized by a City entity or personally owned, that are used in the regular course of business.

Section 4. City Council Approval Requirement

- 1) A City entity shall notify the Chair of the appropriate reviewing commission prior to the entity:
 - a) Seeking or soliciting funds for surveillance technology, including but not limited to applying for a grant; or
 - b) Soliciting proposals with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides.

Upon notification by the City entity, the Chair shall place the item on the agenda at the next meeting for which it may be properly noticed, for discussion and possible action. At this meeting, the City entity shall inform the reviewing commission of the cost of the proposal, the need for the funds or equipment, or shall otherwise justify the action the entity intends to take. The reviewing commission may vote its approval to proceed, object to the proposal, recommend that the entity modify its proposal, or take no action. Neither opposition to the act or failure by the reviewing commission to act shall prohibit the City entity from proceeding. The City entity is still bound by subsection (2) regardless of the action taken by the reviewing commission under this subsection.

- 2) A City entity must obtain City Council approval, subsequent to a regularly scheduled, non-consent City Council meeting prior to any of the following:
 - a) Accepting state or federal funds for, or in-kind or other donations of, surveillance technology;
 - b) Acquiring new surveillance technology, including but not limited to procuring such technology without the exchange of monies or consideration;
 - c) Using new surveillance technology, or using existing surveillance technology for a purpose, in a manner or in a location not previously approved by the City Council; or

- d) Entering into an agreement with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides.
- 3) A City entity must obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (2)(a)-(d).

Section 5. Temporary Acquisition and Use of Surveillance Equipment

Notwithstanding the provisions of this ordinance, a City entity may temporarily acquire or temporarily use surveillance technology in exigent circumstances without following the provisions of this ordinance before that acquisition or use. However, a City entity that acquires or uses surveillance technology in exigent circumstances must: (1) provide notice of that acquisition and use to the City Council and appropriate reviewing commission in writing within 30 days following the commencement of those circumstances; (2) if it is anticipated that the use will continue beyond the exigent need, submit a proposed Surveillance Use Policy to the City Council regarding that surveillance technology within 90 days following the commencement of those circumstances pursuant to Section 4; and (3) include that surveillance technology in the City entity's next annual Surveillance Report to the City Council following the commencement of those circumstances.

Section 6. Information Required

- 1) Prior to seeking City Council approval under Section 4, the City entity shall submit the Surveillance Impact Report and proposed Surveillance Use Policy to the appropriate reviewing commission for its review at a regularly noticed meeting.
- 2) The reviewing commission shall recommend that the City Council adopt, modify, or reject the proposed Surveillance Use Policy.
- 3) After receiving the recommendation of the reviewing commission, the City entity seeking approval under Section 4 shall submit to the City Council a Surveillance Impact Report and a proposed Surveillance Use Policy at least forty-five (45) days prior to the City Council meeting. The City Council shall publicly release in print and online the Surveillance Impact Report, proposed Surveillance Use Policy, and reviewing commission recommendation at least thirty (30) days prior to the City Council meeting.
- 4) The City Council, or its appointed designee, shall continue to make the Surveillance Impact Report and Surveillance Use Policy, and updated versions thereof, available to the public as long as the City entity continues to utilize the surveillance technology in accordance with its request pursuant to Section 4.

Section 7. Determination by City Council that Benefits Outweigh Costs and Concerns

The City Council shall only approve any action described in Section 4 (2) or Section 5 of this ordinance after first considering the recommendation of the appropriate reviewing commission, and subsequently making a determination that the benefits to the community of the surveillance technology outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights; and that, in the City Council's judgment, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective.

Section 8. Compliance for Existing Surveillance Technology

Each City entity possessing or using surveillance technology prior to the effective date of this ordinance shall submit a Surveillance Impact Report and a proposed Surveillance Use Policy in compliance with Section 6 and no later than one hundred eighty (180) days following the effective date of this ordinance for review and approval by the City Council pursuant to Section 4. If such review and approval has not occurred within ninety (90) days of the City Council submission date, the City entity shall cease its use of the surveillance technology until such review and approval occurs.

Section 9. Oversight Following City Council Approval

- 1) A City entity that obtained approval for the use of surveillance technology must submit a written Surveillance Report for each such surveillance technology to the City Council within twelve (12) months of City Council approval and annually thereafter on or before November 1.
 - a) Prior to submission of the Surveillance Report to the City Council, the City entity shall submit the Surveillance Report to the appropriate reviewing commission for its review.
 - b) The reviewing commission shall recommend to the City Council that the benefits to the community of the surveillance technology outweigh the costs and that civil liberties and civil rights are appropriately safeguarded; that use of the surveillance technology cease; or propose modifications to the Surveillance Use Policy that will resolve the concerns.
- 2) Based upon information provided in the Surveillance Report and after considering the recommendation of the reviewing commission, the City Council shall determine whether the requirements of Section 7 are satisfied. If the requirements of Section 7 are not satisfied, the City Council shall direct that use of the surveillance technology cease and/or require modifications to the Surveillance Use Policy that will resolve any deficiencies.

- 3) No later than January 15 of each year, the City Council shall hold a public meeting and publicly release in print and online a report that includes, for the prior calendar year:
 - a) A summary of all requests for City Council approval pursuant to Section 4 or Section 8 and the pertinent reviewing commission recommendation, including whether the City Council approved or rejected the proposal and/or required changes to a proposed Surveillance Use Policy before approval; and
 - b) All Surveillance Reports submitted.

Section 10. Enforcement

- 1) Any violation of this Ordinance, or of a Surveillance Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance. An action instituted under this paragraph shall be brought against the city entity, the City of Berkeley, and, if necessary to effectuate compliance with this Ordinance or a Surveillance Use Policy (including to expunge information unlawfully collected, retained, or shared thereunder), any third party, except a city employee, with possession, custody, or control of data subject to this Ordinance.
 - a) Prior to the initiation of any legal proceeding under subsection 1), the City of Berkeley or City entity must be given notice of the violation(s) and an opportunity to correct such violation(s) within 30 days of receipt of the notice.
- 2) Any person who has been subjected to a surveillance technology in violation of this Ordinance, or about whom information has been obtained, retained, accessed, shared, or used in violation of this Ordinance or of a Surveillance Use Policy, may institute proceedings in any court of competent jurisdiction against any person who committed such violation and shall be entitled to recover actual damages.
- 3) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought under paragraphs (1) or (2).

Section 11. Secrecy of Surveillance Technology

It shall be unlawful for the City to enter into any surveillance-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

To the extent permitted by law, the City shall publicly disclose all of its surveillance-related contracts, including any and all related non-disclosure agreements, if any regardless of any contract terms to the contrary.

Section 12. Whistleblower Protections

1) It shall be a violation of Section 12 for the City or anyone acting on behalf of the City to take or fail to take, or threaten to take or fail to take, an adverse employment action with respect to any employee or applicant for employment, because:

a) The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of a surveillance technology or surveillance data based upon a good faith belief that the disclosure evidenced a violation of this Ordinance.

Section 13. Severability

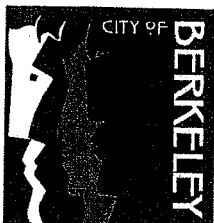
The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 14. Construction

The provisions of this Ordinance, including the terms defined in Section 3, are to be construed broadly so as to effectuate the purposes of this Ordinance.

Section 15. Effective Date

This Ordinance shall take effect on [DATE].



Office of the City Manager

ACTION CALENDAR
December 5, 2017

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Andrew Greenwood, Chief of Police
David Brannigan, Interim Fire Chief
Subject: Companion Report: Proposed Ordinance: Surveillance Technology and
Community Safety

RECOMMENDATION

Refer this item to the City Council Agenda Committee for scheduling to return to the City Council no later than January 30, 2018 to allow additional time for City staff to resolve differences with the Police Review Commission's recommendations or develop alternative recommendations for the City Council to consider.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impact to refer the item to the Agenda Committee. Staff and commission time required for further analysis.

CURRENT SITUATION AND ITS EFFECTS

This proposed Surveillance Technology Use and Community Safety Ordinance by the Police Review Commission (PRC) establishes new acquisition, use, reporting, data tracking and enforcement requirements that necessitate a thorough review and analysis by City staff. Since the PRC voted on July 26, 2017 to forward its recommended Ordinance to the City Council, staff from various departments (Police, Fire, City Attorney and the City Manager's Office) have been reviewing the implications of the Ordinance and developing alternatives for the City Council to consider. Unfortunately, this work is not yet complete. Staff is requesting that the City Council refer this item to the Agenda Committee for scheduling to return to the City Council no later than January 30, 2018.

The additional time will allow staff to resolve differences with the PRC recommendations and develop alternatives for the City Council to consider. A few of the concerns with the PRC Ordinance that staff is analyzing center on the:

- Impact on firefighting efforts related to the use of thermal imaging cameras and mutual aid resources that provide situational awareness for significant fire rescue and suppression operations.

- Impact on law enforcement investigations and the apprehension of individuals that commit crimes in Berkeley.
- Workload and staffing implications related to the administration of the proposed acquisition, use, reporting, and data tracking requirements.
- Legal and financial liability effects for employees and the City related to the enforcement provisions that provide for “any person who has been subjected to a surveillance technology in violation of this Ordinance... [to] institute proceedings in any court of competent jurisdiction against any person who committed such violation and shall be entitled to recover actual damages.”

BACKGROUND

At its July 12, 2016 meeting, the City Council referred to the City Manager, the Police Review Commission, and the Peace and Justice Commission an item to consider adopting a community control of surveillance measure similar to that enacted by the County of Santa Clara. The Disaster and Fire Safety Commission also reviewed the referral and recommended to the City Council on May 2, 2017 that further legal review was warranted and that an analysis of the cost and administrative burden on city departments was needed.

On July 26, 2017 meeting, the PRC voted unanimously to recommend that the City Council adopt the attached Surveillance Technology Use and Community Safety Ordinance.

ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental effects related to the recommendation.

RATIONALE FOR RECOMMENDATION

See Current Situation and Its Effects section.

CONTACT PERSON

Andrew Greenwood, Chief of Police, 981-5900
David Brannigan, Interim Fire Chief, 981-3473

Communications – 12/05/17

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.

Item 23a: Proposed Ordinance: Surveillance Technology Use and Community Safety

1. Tracy Rosenberg
2. Gene Bernardi
3. Police Review Commission

Winter Shelter Plans

4. Homeless Commission

Marathon Traffic

5. Keith Pageau

Housing Article

6. Donald Goldmacher

Ford GoBikes

7. Steven Saylor

Short-Term Rental Tax Revenues

8. Thomas Lord

MEDIA ALLIANCE

November 20, 2017

Via electronic mail only

Honorable Mayor Jesse Arreguin and Members of the Berkeley City Council
Council-member Linda Maio, Council-member Cheryl Davila, Council-member Ben Bartlett
Council-member Kate Harrison, Council-member Sophie Hahn, Council-member Susan Wengraf
Council-member Kriss Worthington, Council-member Lori Droste
Berkeley City Council
2180 Milvia Street
Berkeley, CA 94704

cc: Berkeley City Clerk, Police Review Commission Chair George Lippman, Police Review Commission Officer Katharine Lee,

Re: Community Support for the Surveillance Equipment Use and Community Safety Ordinance

Honorable Mayor Arreguin and Council Members,

Accompanying this note is a coalition letter of support for the proposed ordinance from 27 prominent civil rights and liberties organizations with significant constituencies in the City of Berkeley.

To provide some brief background, the proposed ordinance was developed in 2013 after a citywide surveillance dragnet planned for the City of Oakland was stopped after a large community uproar. Community groups wanted to develop a proactive framework for future local conversations about surveillance that would prioritize transparency, cost to benefit analysis and oversight, and prevent waste, abuse and misuse.

In partnership with the ACLU, model legislation was developed, and in June of 2016, Santa Clara County, under the initiative of former State Senator Joe Simitian, became the first adopter of the legislation. In the ensuing 15 months, legislation has been initiated or discussed in another dozen Bay Area cities, counties and municipal agencies, including here in Berkeley.

The ordinance is a framework to create a process that is not technology-specific, but encompasses existing technology and equipment already in use, those newly proposed for acquisition and adoption, and new innovations. It is intended to replace reactive whack-a-mole type of legislation that responds only to one piece or part of the use of surveillance technologies and equipment,

The City of Berkeley initiated this legislation with a unanimous referral to the Police Review Commission and the Peace and Justice Commission in July of 2016 to develop Berkeley-specific legislation based on the ACLU model.

Over the past 16 months, the language before you has been reviewed and discussed in 3 meetings of the Peace and Justice Commission (where it received unanimous support), 10 meetings of a dedicated subcommittee at the Police Review Commission, 3 meetings of the full Police Review Commission (where it received unanimous support on July 26 of this year) and 3 meetings of the Disaster and Fire Safety Commission (where a specific exemption for electrocardiograms was inserted (*Section 3.3.3(g)*) along with the more general exemption for manually operated equipment for non-surreptitious communications (*Section 3.3.3(e)*).

A statewide version was introduced into the California State Legislature in January of 2017 by Senator Jerry Hill (D-San Mateo) where it passed successfully through 5 policy committees and the California State Senate. The Berkeley City Council endorsed unanimously the text of the ordinance now before you for implementation in every California city and county on May 16, 2017 (Item 36 Consent Agenda from Council Members Wengraf, Maio, Droste and Harrison).

Support SB 21 (Hill) Law Enforcement Agencies: Surveillance Policies

From: Council-members Wengraf, Droste, and Maio

Recommendation: Send a letter in support of SB 21 (Hill) urging our representatives to support this bill. Letter should be sent to State Senator Jerry Hill, State Senator Nancy Skinner, Assembly-member Tony Thurmond and Governor Jerry Brown.

Financial Implications: Minimal

Contact: Susan Wengraf, Council-member, District 6, 981-7160

Action: Council-member Harrison added as a co-sponsor. Approved recommendation.

Thank you for Berkeley's generally enlightened and progressive approach to municipal policy-making.

Sincerely,

Tracy Rosenberg

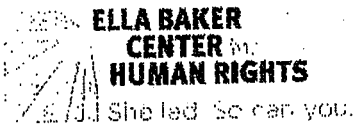
Tracy Rosenberg



CAIR
CALIFORNIA

ACLU
Northern
California

MEDIA ALLIANCE



ELLA BAKER CENTER
for
HUMAN RIGHTS

She led. So can you.



ELECTRONIC FRONTIER FOUNDATION



THE CENTER FOR MEDIA JUSTICE



ASIAN AMERICANS
ADVANCING JUSTICE
ASIAN LAW CAUCUS



COURAGE TO RESIST



RESTORE the FOURTH



COALITION FOR POLICE ACCOUNTABILITY



X Tenth Amendment CENTER



DEFENDING RIGHTS & DISSENT



OFFNOW.org



TURN
Lower bills. Livable planet.



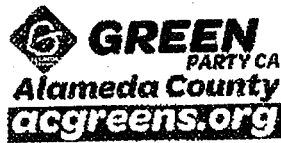
WELLSTONE DEMOCRATIC RENEWAL CLUB



BBBON
Block By Block Organizing Network
Volunteers Working Together for One Oakland



VETERANS FOR PEACE



GREEN PARTY CA
Alameda County
acgreens.org



PPJC
PENINSULA PEACE AND JUSTICE CENTER

CODE PINK
WOMEN FOR PEACE



AMERICAN FRIENDS SERVICE COMMITTEE



WAR RESISTERS LEAGUE



THE GREENLINING INSTITUTE

COURAGE CAMPAIGN



Nov. 20, 2017

Via electronic mail only

Honorable Mayor Jesse Arreguin and Members of the Berkeley City Council
Councilmember Linda Maio, Councilmember Cheryl Davila, Councilmember Ben Bartlett
Councilmember Kate Harrison, Councilmember Sophie Hahn, Councilmember Susan Wengraf
Councilmember Kriss Worthington, Councilmember Lori Droste
Berkeley City Council
2180 Milvia Street
Berkeley, CA 94704

cc: Berkeley City Clerk, Police Review Commission Chair George Lippman, Police Review
Commission Officer Katharine Lee,

**Re: Community Support for the Surveillance Equipment Use and Community Safety
Ordinance**

Honorable Mayor Arreguin and Council Members,

The undersigned coalition urges the Berkeley City Council to approve the Surveillance and Community Safety Ordinance. This coalition represents diverse Berkeley residents who are concerned with law enforcement's secretive and unaccountable use of technologies that can facilitate discriminatory policing and undermine public safety goals. This ordinance provides the Berkeley public with the information and opportunity to participate in important decisions about surveillance technology. We urge you to approve it without delay.

This Ordinance is the result of a robust and open debate among the City's residents, civil society organizations, and government stakeholders. This debate began with robust conversation in the Police Review Commission, and it has continued through the Peace and Justice Commission and Disaster and Fire Safety Commission, which has held hearings on the language and solicited the input of both community members and law enforcement. As a result, this Ordinance represents the civil rights and civil liberties values of Berkeley. The City Council now has the opportunity to enshrine these values into local law.

The Ordinance is straightforward: it requires essential transparency, accountability, and oversight for all surveillance technology proposals, and it ensures the public has the opportunity to learn about the civil rights and civil liberties impact of surveillance technologies before local officials acquire them. If acquired, technologies must be reexamined to ensure any benefits outweigh the civil liberties and civil rights costs. Recent amendments to the Ordinance ensure that the City will be able to address new surveillance technologies and that emergency use of such technologies will be strictly limited and subject to oversight.

As the Trump Administration signals that it will focus its surveillance and enforcement powers on immigrants and Muslim Americans, local leaders have a special responsibility to enact strong measures that protect vulnerable residents from suspicionless monitoring and the creation of databases exploitable for discriminatory ends.

This Ordinance helps protect the civil liberties and civil rights of all Berkeley residents and is the culmination of a year-long debate. We urge the City Council to adopt it without delay.

Sincerely,

ACLU of Northern California
American Friends Service Committee
Asian Americans Advancing Justice – Asian Law Caucus
Block By Block Organizing Network
CAIR California
Center for Media Justice
Coalition for Police Accountability
Code Pink Bay Area
Color of Change
Courage Campaign
Courage to Resist
Defending Rights and Dissent (formerly Bill of Rights Defense Committee)
Electronic Frontier Foundation
Ella Baker Center for Human Rights
Green Party of Alameda County
Greenlining Institute
Media Alliance
National Lawyers Guild - Committee on Democratic Communications
Oakland Privacy
Off Now
Peninsula Peace and Justice
Restore the 4th
Tenth Amendment Center
TURN – The Utilities Reform Network
Veterans for Peace East Bay
War Resisters League West
Wellstone Democratic Renewal Club

November 20, 2017

Surveillance Technology and Community Safety Ordinance

Dear Mayor Arreguin and City Councilmembers

We are strongly in favor of a Surveillance Ordinance which truly protects the privacy, free speech and assembly rights of the residents, workers, and visitors to Berkeley, as guaranteed by the U.S. and California Constitutions.

The proposed Surveillance Technology and Community Safety Ordinance, if modeled after the Santa Clara County Ordinance, focuses on surveillance technology and particularly new technology. In order to truly protect the privacy and First Amendment rights of the Berkeley Community, this ordinance must involve a review of all existing programs, systems and General Orders, which involve surveillance, but which may or may not involve technology. For example, we request that a review of the following existing programs be included in the ordinance:

1. **The Northern California Regional Intelligence Center (NCRIC)**
2. **General Order N-18, Situational Awareness Group (SAG)**
SAG is comprised of the Terrorism Liaison Group (part of NCRIC) and the Gang Information Group (GIG).
3. **Geographical Information System (GIS-Contract 10414 Amended 6/27/17)**
originally referred to in City Council Agendas as a Homeland Security Computer Server Project. (see Agenda Information Calendar 4/18/2006 and also attached \$10,000 invoice to Contra Costa County Sheriff's office for Berkeley's Information Technology Department's work in establishing a Homeland Security Data Server Site in that County).
4. **License Plate Recognition Contract 9977 with Portable Computer Systems**
5. **Berkeley Police Department G.O. R-23 and other orders dealing with Criminal Intelligence policies.**
6. **Criminal Intelligence Operational Activities Section Two, II Use of Undercover Criminal Intelligence Officers A2. Standard for Infiltrating a Non-target Group.** (In City Clerk's office's Police Binder 2015 and possibly later ones).
7. **Body-Worn Cameras**
8. **Security Camera Data Base**

Regarding No. 3 above, Situational Awareness Group (SAG), the Division Lieutenant in command of SAG is also a NCRIC Terrorism Liaison Coordinator (Item 7. in Order N-18). And

see: "State's gang database fails to ensure privacy", S.F. Chronicle 8/11/16. California CalGang database tracks around 150,000 alleged gang members, 85% of whom are Latino or African American.

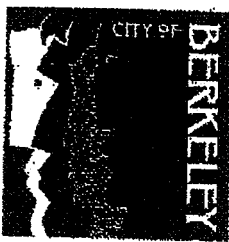
In view of all of the above existing programs and policies and others not listed which involve surveillance, we ask that you include them in the ordinance for review for their compliance with the intent of the ordinance to protect our privacy and our freedom of speech and assembly Constitutional rights.

Sincerely,

Gene Bernardi

Veterans For Peace East Bay Chapter 162,

SuperBOLD (Berkeleyans Organizing for Liberty Defense)



Department of Information Technology
Office of the Director

INVOICE

City of Berkeley, Department of Information Technology 2180 Milvia St. 4 th Floor Berkeley, CA 94704 Phone: 510-981-6540, Fax 510-981-6560 Contact Name: Patrick DeTemple	Date: 04/15/05 Re: OJP 03 Supplemental Funding
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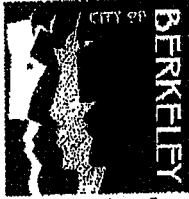
Bill To: Tracy Hein, Emergency Services Manager Contra Costa Office of the Sheriff, Office of Emergency Services 50 Glacier Drive Martinez, CA 94553 Phone: 925-335-1529
--

Description	Amount
<p>The City of Berkeley (Department of Information Technology) has successfully completed the East Bay Homeland Security Data Server Site (one of four being implemented in the region) as specified in the above referenced grant. The servers are for data management and implementation of the appropriate data model in support of Contra Costa County and other bay area first responders in cooperation with the Homeland Security Data Server Pilot Project.</p> <p>These servers (data and application) will help organizations publish, discover, access, exchange, and maintain the vital geospatial information required to support critical infrastructure protection, response, and recovery operations. It will provide support for these functions and base information layers to State and regional E Team Emergency Response and Incident Management implementations.</p> <p>Expenditure allocable to this item (which includes secure -- https -- access, County data upload and download functions) is ten thousand dollars (\$10,000) which covers the costs of this project from December 1, 2004 through April 14, 2005.</p>	\$10,000.00

If you have any questions about the invoice, please contact the issuing department above.

Make all checks and payments payable to: The City of Berkeley
Mail all payments to:

The Department of Information Technology
City of Berkeley
2180 Milvia, 4th floor
Berkeley, CA 94704



Police Review Commission (PRC)

To: Honorable Mayor and Members of the City Council
 From: Police Review Commission
 Submitted by: Byron Norris, Police Review Commission
 Subject: Surveillance Equipment Use and Community Safety Ordinance
 Date: November 20, 2017

At the request of PRC Commission Chair George Lippman, please include the three (3) attached items as a communication to the December 5, 2017 Berkeley City Council Agenda. These items are in reference to Agenda Item #25a: **Proposed Ordinance: Surveillance Technology Use and Community Safety.**

For questions, contact the PRC Office at (510) 981-4950.

Attachments:

1. Fact Sheet
2. Coalition Letter of Support
3. ACLU Guide Introduction

To: Honorable Members of the Berkeley City Council

From: Brian Hofer, Member – Berkeley PRC Subcommittee on Surveillance; Chair - City of Oakland Privacy Advisory Commission; Member - Oakland Privacy

Re: *City of Berkeley – Surveillance and Community Safety Ordinance*

Date: Nov 20, 2017

Based on the ACLU's Community Control Over Police Ordinance ("CCOPS"), the Berkeley ordinance requires:

- **Informed Public Debate at Earliest Stage of Process:** Public notice, distribution of information about the proposal, and public debate prior to seeking funding or otherwise moving forward with surveillance technology proposals.
- **Determination that Benefits Outweigh Costs and Concerns:** Local leaders, after facilitating an informed public debate, expressly consider costs (fiscal and civil liberties) and determine that surveillance technology is appropriate or not before moving forward.
- **Thorough Surveillance Use Policy:** Legally enforceable Surveillance Use Policy with robust civil liberties, civil rights, and security safeguards approved by policymakers.
- **Ongoing Oversight & Accountability:** Proper oversight of surveillance technology use and accountability through annual reporting, review by policymakers, and enforcement mechanisms.

City Council Approval Required (Sections 4 & 8)

Prior to accepting funds or donations for surveillance technology, acquiring new technology, using existing technology in an un-approved manner, or entering into an agreement with a non-City entity to share or use technology, a City department must first obtain City Council approval.

Proposals will first be considered by the appropriate reviewing commission. When making the determination as to whether the benefits outweigh the concerns, the City Council must consider the commission's recommendation.

For pre-existing equipment, each City Entity has 180 days to complete the approval process required by Section 4. Based on my conversations with Chief Greenwood and Chief Dong, I conclude that BPD has two pieces of equipment that meet the definition of surveillance technology (including the body-worn camera purchase), and BFD has two. BFD was asked to identify its existing list of equipment that might meet the definition of surveillance technology. After discussion, the PRC voted to expressly exclude EKG machines. My understanding of license plate reader use by the City of Berkeley is that Public Works operates the equipment, not BPD, and thus Public Works has at least one piece of equipment that is subject to this ordinance.

Informed Decision Making And Ongoing Oversight (Sections 6 & 9)

With each proposal, two documents are required. During the approval seeking stage described in Section 4, an Impact Report and a draft Use Policy will inform the public, appropriate reviewing commission, and the City Council as to the potential impact to civil liberties from use of surveillance equipment, and the draft use policy will demonstrate how the proponent intends to use the technology.

The Impact Report requires that an analysis be performed by the proponent. Among other requirements, the report must discuss implementation of safeguards designed to mitigate the impact to our civil liberties, analysis of the track record of the surveillance technology in other jurisdictions, discuss alternatives that were considered, the data that will be collected and how it will be secured, and generally how the equipment works and how it is intended to be used.

The draft Use Policy will describe the intended authorized uses, the data to be collected, who may access it and under what conditions, the length of data retention, whether third party data sharing is expected, and provisions for training and auditing.

For approved proposals, a third required document is the Annual Report, necessary for ongoing oversight and possible policy modifications. This document will summarize how the technology was used in the preceding year, whether data was shared with outside entities and for what purpose, where the technology was deployed, and the results of any internal audits. The report will also provide for information including crime statistics to help demonstrate success (or the lack thereof), and summarize total costs, providing for oversight and to help the Council make the determination described in Section 7.

Determination That Benefits Outweigh Costs And Concerns (Section 7)

The ordinance requires that the City Council determine that the benefits of a new use or acquisition, or continued use of an existing technology, outweigh the costs and concerns at two different stages: during the up-front approval process, and then again after review of the Annual Report. If the City Council does not make a favorable determination, a new proposal is denied.

For existing technology with an adverse analysis, use must cease or modifications to the policy must occur, sufficient to result in a favorable determination as to continued use. At each determination stage, the recommendation of the appropriate reviewing commission will be considered.

Whistleblower Protections, Prohibition On Non-Disclosure Agreements (Sections 11 & 12)

The ordinance provides for whistleblower protections, and a prohibition on non-disclosure agreements. The public policy benefits of each should be self-evident.

Enforcement (Section 10)

The ordinance provides for a menu of enforcement mechanisms: a private right of action for injunctive relief against the City as a corporate entity; a private right of action against an individual that uses surveillance technology or data in violation of the ordinance or pertinent policy; an award of attorney's fees and costs to a prevailing party.

Prior to initiation of legal action against the city, the City of Berkeley is allowed a thirty-day "right to cure" any alleged violation.

Other Jurisdictions

Santa Clara County: the first entity to adopt this model. The Santa Clara County ordinance is substantively the same in scope as Berkeley, and includes the "right to cure", an exigent circumstances provision, private right of action, award of attorney's fees, and a misdemeanor penalty for a willful violation.

Oakland: after unanimous approval by the Privacy Commission, the Public Safety Committee also unanimously approved the ordinance. The City is now going through a "meet and confer" process with its public unions, due to the penalty provisions of the ordinance. Oakland's template is the basis for the Berkeley draft. The ordinance does include a private right of action and award of attorney's fees.

BART: the first transit district to consider the model. The BART ordinance was approved by a Board committee, and is pending review by the full Board. The Santa Clara County version is the basis for the BART draft. The BART version includes a right to cure, exigent circumstances provision, a private right of action for injunctive relief against BART as a corporate entity, and an award of attorney's fees and costs.

Richmond: proposing to use the Oakland template as the basis for their ordinance, and to create a Privacy Commission in conjunction with the ordinance. The ACLU and Oakland Privacy are in early discussions with the council sponsor, and the Richmond Police Department.

Palo Alto: the ordinance outline was approved by the Policy and Services Committee unanimously in June, and staff will present a fully drafted ordinance to the City Council soon.

Alameda County: in July, the Board voted to form an official working group that will use the Santa Clara County ordinance as the basis for an Alameda ordinance. It is now meeting regularly.

Davis: An ordinance based on Oakland's version was reviewed and approved by a citizen's commission, and is now proceeding through City Council and City staff analysis, and will be brought before the Council in 2018.



CAIR

ACLU **MEDIA ALLIANCE**
Northern California

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ASIAN AMERICANS ADVANCING JUSTICE
ASIAN LAW CAUCUS



X TENTH Amendment CENTER



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WAR RESISTERS LEAGUE

THE GREENLINING CAMPAIGN

COURAGE 

Nov. 20, 2017

Via electronic mail only

Honorable Mayor Jesse Arreguin and Members of the Berkeley City Council
Councilmember Linda Maio, Councilmember Cheryl Davila, Councilmember Ben Bartlett
Councilmember Kate Harrison, Councilmember Sophie Hahn, Councilmember Susan Wengraf
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cc: Berkeley City Clerk, Police Review Commission Chair George Lippman, Police Review
Commission Officer Katharine Lee,

**Re: Community Support for the Surveillance Equipment Use and Community Safety
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This Ordinance helps protect the civil liberties and civil rights of all Berkeley residents and is the culmination of a year-long debate. We urge the City Council to adopt it without delay.

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American Friends Service Committee
Asian Americans Advancing Justice – Asian Law Caucus
Block By Block Organizing Network
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Coalition for Police Accountability
Code Pink Bay Area
Color of Change
Courage Campaign
Courage to Resist
Defending Rights and Dissent (formerly Bill of Rights Defense Committee)
Electronic Frontier Foundation
Ella Baker Center for Human Rights
Green Party of Alameda County
Greenlining Institute
Media Alliance
National Lawyers Guild - Committee on Democratic Communications
Oakland Privacy
Off Now
Peninsula Peace and Justice
Restore the 4th
Tenth Amendment Center
TURN – The Utilities Reform Network
Veterans for Peace East Bay
War Resisters League West
Wellstone Democratic Renewal Club

Making Smart Decisions About Surveillance A Guide from the ACLU.

ACLU Summary Source Text reproduced below from: tinyurl.com/zaujek4

Surveillance is on the rise in our communities, but basic transparency, oversight, and accountability remain the exception, not the rule. Police are spending billions of dollars on very sophisticated and invasive surveillance technology from license plate readers and cell phone trackers to facial recognition and drones. Too many of these programs are moving forward without public conversation, careful consideration of the costs and benefits, or adequate policies in place to prevent misuse and protect rights.

As a result, surveillance may enable high-tech profiling, perpetuate systems of abusive policing, and undermine trust in law enforcement, particularly in communities of color where police misconduct has been rampant and community relationships have been strained. It's time for change.

Communities must be equal partners in any decision about the use of surveillance technology. They need to know when and why surveillance is being considered, what it is intended to do, and what it will really cost — both in dollars and in individual rights. They need to be certain that any proposal includes strong mechanisms for transparency, accountability, and oversight.

The ACLU guide (download here: tinyurl.com/zaujek4) provides a step-by-step framework to approach surveillance proposals, properly evaluate their true costs, and develop policies that provide transparency, oversight, and accountability. It also includes dozens of case studies highlighting smart approaches and missteps to avoid. The guide concludes with model language for policymakers to adopt to make sure the right process is used every time a surveillance proposal is considered.

Ordinance Sponsors' Note: The Berkeley Surveillance Technology Use and Community Safety Ordinance is based on this model ACLU legislation.

ACLU guide (35 pages): tinyurl.com/zaujek4

SUPPLEMENTAL COMMUNICATIONS AND REPORTS 1

BERKELEY CITY COUNCIL REGULAR MEETING

DATE OF MEETING: TUESDAY, DECEMBER 5, 2017

TIME: 6:00 P.M.

The agenda packet for this meeting was distributed/posted on November 22, 2017. Communications in this supplement were received after 5pm, November 20, 2017. This communication packet was distributed/posted on November 30, 2017.

Action Calendar – New Business

Each item in this supplement follows the corresponding item on the City Council Agenda for this date.

Item 23a: Proposed Ordinance: Surveillance Technology Use and Community Safety

9. JP Massar

Council Action Items

Item 25: Strengthening Provisions of Significant Community Benefits in the Downtown

10. Revised materials, submitted by Councilmember Harrison
11. Pamela Webster
12. Raj & Rita Sahai
13. Janis Ching
14. Nancy Van Zwalenburg
15. Elsa Johnson
16. Bruce Bagnell
17. Cindy Shamban
18. Patrick Oh
19. Donald Goldmacher
20. Cherilyn Parsons
21. Zipporah Collins
22. Paola Laverde
23. Tree Fitzpatrick
24. Sheila Jordan

25. David Ushijima
26. Kelly Hammargren
27. Chris Schildt
28. Linda Franklin
29. Margot Smith
30. Fred Dodsworth
31. Sally Nelson
32. Mary Elieisar
33. Jane Kitchel
34. Gary & Jane Facente
35. Ryan Steinberg
36. Hewot Shankute, on behalf of East Bay Community Law Center

From: JP Massar <massar@alum.mit.edu>
Sent: Tuesday, November 28, 2017 9:06 AM
To: All Council
Subject: A FAQ ABOUT THE PROPOSED SURVEILLANCE TECHNOLOGY USE AND COMMUNITY SAFETY ORDINANCE.

A FAQ ABOUT THE PROPOSED SURVEILLANCE TECHNOLOGY USE AND COMMUNITY SAFETY ORDINANCE.

Q. Why is this legislation necessary? Why isn't the Fourth Amendment enough?

A. The short answer is that the law has not kept up with technology.

The longer answer is that our constitution, written in the 1780's, could not have conceived of the technological capacities we now have for observation and communication. While some legal opinions have extended fourth amendment protections to include newer technologies, others have gone in the opposite direction (e.g., a recent decision, *USA v Matish*, said that you have no reasonable expectation of privacy with respect to your home computer if it is connected to the Internet!).

We have the very real possibility of soon living in a society far beyond what even George Orwell imagined - where we will be tracked whenever we leave our house through facial recognition integrated with surveillance cameras; where everything we do online will be cataloged, stored and run through algorithms for "thought crime" analysis, and where our conversations may be overheard and analyzed - even in our own homes if we choose to use voice-enabled gadgets. These things are all well within our technological capability today, and who knows what will be possible in five or ten years?

Not only is our constitution unable to deal effectively with it all, but laws cannot keep pace either. Technology is developed and deployed long before legislators can regulate it - if they even know about it, which they often don't.

This legislation reverses that course - it stipulates that such technology will not be deployed without analysis, public awareness, and, hopefully, a democratic decision about what level of surveillance is acceptable in an open society.

Q. What sort of stuff are we talking about?

A. Surveillance cameras. Drones. Infrared Imaging Cameras (FLIRs). Cell tower simulators (STINGRAYS) that can tap your cell phone. Social media analysis software. Website URL analysis software. Automatic License Plate Readers (ALPRs). Facial recognition and other appearance-analyzing software used in conjunction with surveillance cameras. Voice and other sound detection systems (SHOTSPOTTER). Satellite imagery analysis. Spyware on your computer. GPS location monitoring. Data integration from multiple databases and subsequent profiling.

The list goes on. The possibilities into the future are essentially endless.

Q. Berkeley doesn't have any surveillance equipment. Why do we need this?

A. In fact, Berkeley already does have such equipment. Such things as red light cameras, police body cameras, surveillance cameras, and license plate readers. (Other equipment and software, such as social media analysis programs and FLIRs are in the hands of many police departments and municipalities, if not Berkeley's, often without the populace even being aware of it.)

Even if Berkeley does not possess a particular item currently, the cost of much of this technology is going down rapidly, and its sophistication is increasing rapidly. It's only a matter of time before Berkeley, like every other police department and municipality, will have the opportunity to obtain "crime fighting tools" at little or no cost, and it is very difficult to resist the siren call of inexpensive or free technology designed "to keep us safe."

Q. Why is the legislation long and complicated?

A. This ordinance is about ten pages (for comparison, The Affordable Care Act is 2000+ pages), covering four different aspects of surveillance, while specifying the methodology acquiring proposed equipment or software, and using it, in detail:

- What has to happen BEFORE such technology is acquired, such as a public hearing, and a cost/benefit and civil liberties infringement analysis.
- HOW and with what RESTRICTIONS the tech may be used - a privacy and use policy.
- How often and to what extent reporting on use and effectiveness must be done.
- An enforcement mechanism to make sure the law is followed.

Putting it all into legal form commonly expands size and decreases explicability, but none of these sections individually is particularly complicated.

Q. What's a "privacy and use policy"?

For a piece of equipment or software, it specifies

- What you CAN use the system for...
- and what you CANNOT use the system for
- Under what conditions the system is allowed to be deployed (e.g., "get a warrant")
- How long the data that is collected can be stored for later retrieval...
- And what protections are in place to prevent unauthorized access.

It's the analog of a safety policy for a piece of construction equipment, or rules for road repair (e.g., "put up safety cones 10 yards from your work zone").

Q. What's the point of demanding public hearings? No one goes to those things anyway!

A. In Berkeley, there are many who would disagree with the notion that no one goes to public hearings! Regardless, "Eternal vigilance is the price of liberty" and while it is true that we should be able to trust our representatives to care enough to protect our civil liberties, hearing from the public about their concerns is of extreme importance in these matters.

As an example, Oakland's Domain Awareness Center, a massive system to collect and integrate surveillance data all over Oakland, was ready to be approved unanimously without debate by the Oakland City Council until someone caught it and organized fellow citizens to speak at Council. It took eight months, but it was eventual and ultimately voted down.

In lieu of stronger constitutional protections (which we should have!), we think allowing public debate and insisting on public scrutiny is the best way we have of making sure such proposals are vetted. As another example, BART was about to install license plate readers in one of its parking lots without any discussion by the Board or the public until a privacy advocate noticed. That program was put on hold and now they are about to pass their own version of this ordinance.

Perhaps the public and the BART Board will ultimately decide it is okay to put such readers in BART parking lots - but it will have been done openly, considering the tradeoffs between privacy, civil liberties and safety.

To the point, we think that insisting that these issues be debated in public is an important component in the fight against a super-Orwellian future.

Q. It seems like the ordinance requires a lot of paperwork?

A. It doesn't. The day to day operations log is usually automated (in the sense that the equipment itself, or its attendant software, keeps a record of its use). The yearly reporting consists of filling in a simple spreadsheet of use and doing a brief write-up.

Yes it does take a fair amount of investigation, analysis, and evaluation to obtain approval for equipment in the first place - that's as it should be, especially when people's civil liberties are in question, but also as a general rule.

The legislation specifies periodic reviews to determine if the benefits of the equipment or software continue to justify its cost. But that's the essence of good government. We know very well that projects, departments and equipment stick around long after they have any net benefit if we aren't diligent. Every significant purchase and procedure should have such reviews, not just surveillance equipment!

Q. How does this get enforced? Isn't this just going to become another toothless law that no one follows?

A. If there's no mechanism in the ordinance for enforcement, then, indeed, it will be a toothless law. Or if no one is interested in enforcing it, then, indeed, it will be a toothless law.

Violating people's right to privacy is no less a problem than violating people's right to free speech, press and assembly. There is a federal law that allows individuals to bring suit against people operating under "color of authority" who violate people's rights, and to bring suit against government entities themselves to force them to stop such behaviors. The same sort of protection, at the very least, is reasonable here, and that's what the legislation proposes.

That, along with the periodic reporting established in the ordinance - which will give civil liberties advocates and concerned citizens the ability to draw attention to problems as they arise - should be a good balance.

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

Approved at the PRC's November 15, 2017 meeting

Section 1. Introduction

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

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

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

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

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

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

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

Although disparities declined over the time period measured, Black and Hispanic drivers, and Black pedestrians, remain much more likely to be stopped by police than their White counterparts. Moreover, BPD data indicated wide and unexplained racial disparities in search rates. Black and Hispanic drivers, in particular, were disproportionately likely to be stopped and searched without being arrested.

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

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

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

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

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

- A. Data Collection and Analysis Enhancements
 1. Add specific data elements to those already tracked. Maintain and analyze demographic data. Enhance the current web display for readability.
 2. Report trends regularly to PRC and City Council. Report stop data by officer (stripped of identifying information).
 3. Hire a data manager/analyst.
 4. Enhance ability to correctly identify ethnicity of individuals.
 5. Report every use of force.
- B. Address racial disparities shown in the data
 1. Monitor stop, search, and enforcement/disposition outcomes across race.

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)

2. Determine if disparities are generalized or reside in a subset of the department and develop effective mitigations including policy reviews, staff support, counseling and training, or other as appropriate.
 3. Work closely with PRC to develop mitigations and track progress.
 4. Develop early warning systems to minimize future problems of biased policing.
- C. Body Worn Cameras
1. Accelerate full deployment of body cameras.
 2. Use camera footage to train officers and evaluate policies.
- D. Other departmental steps
1. Partner with academic institutions.
 2. Increase support for officer wellness and safety.
 3. Strengthen informed consent procedures for search.
 4. Strengthen requirements for officers to identify themselves.
- E. Community relations
1. Prepare detailed action plan to build trust in and accessibility to the department, focused on communities of color.
 2. Consult and cooperate with the broader community to develop and implement policy and practice reforms.
 3. Increase positive community contact.

These recommendations are shown in more detail in Section 7, "PRC Policy and Practice Recommendations."

Section 2. Background

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

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.”)

the data show a pattern of disparity, what would cause that disparity, how to remediate the root cause.

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

The Commission established by this Ordinance shall have the following powers and duties: to review and make recommendations 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.

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

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

Section 3. BPD Demographic Data on Police Stops, 2015

A. Overview

The Berkeley Police Department posts stop data that it collects pursuant to General Order B-4 (Fair and Impartial Policing) on the City's Open Data Portal.

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

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

On January 26, 2015 the Berkeley Police Department began collecting information for all vehicle (including bicycles) and pedestrian detentions (up to five persons). This stop data is now available for public viewing on the City of Berkeley's Open Data Portal, which can be accessed at

<https://data.cityofberkeley.info/Public-Safety/Stop-Data/6e9j-pj9p>.

The police detention categories on the Open Data Portal are traffic, suspicious vehicles, pedestrian and bicycle stops. You will also find information on the incident number, date, time, location, and the demographic disposition listed in this data.

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

B. Structure of the data

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

Line number

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

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

C. Race-related analysis of the data

1. Methodology: Technical information.

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

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

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

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

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

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

2. Methodology: the designation of "Race."

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

3. Racial disaggregation of BPD stop data.

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

The 2015 Agreement between the BPD and the CPE calls for data analysis on "12-months' worth of pedestrian and vehicle stops using BPD's current data collection practices." This scope of study is reflected in this report from the PRC. The CPE report, however, adds several other areas of study including vehicle stops from 2012 through 2014, use of force data from 2012 through 2016, and crime data from 2012 through 2015.⁶ This additional data cannot be analyzed by the PRC because the department has not shared it with the commission. The data given to the CPE should be given immediately to the PRC, as the civic commission responsible for advising the City on law enforcement and criminal

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.

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.

justice.

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

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

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

- a) Vehicle and pedestrian stops.

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

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

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

Similarly, for pedestrian stops:

Most pedestrian stops involved either White or Black pedestrians. In 2015, stops of White or Black pedestrians accounted for approximately 82% of all pedestrian stops: 50% were of White pedestrians and 32% were of Black pedestrians. This, however, is out of step with the demographic makeup of Berkeley: although only one in every 10 Berkeley residents is Black, nearly one third of pedestrian stops involved a Black subject.

Relative to population, Black pedestrians were about 3.5 times more likely than Whites to be stopped by police. Hispanics were slightly less likely than Whites and much less likely than Blacks to be stopped by police while on foot.⁸

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

⁸ CPE report, figures 7b, 8, pp. 22-23.

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, pp. 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, pp. 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, while Contra Costa's Black population was 9.6% in 2016, and in the Bay Area was 6% in 2013 (Sources: <https://www.census.gov/quickfacts/fact/table/alamedacountycalifornia/PST045216>, <https://www.census.gov/quickfacts/fact/table/contracostacountycalifornia/PST045216>, <http://reports.abag.ca.gov/sotr/2015/section3-changing-population.php>).

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.

b) Yield rate.

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

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

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

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

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

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

⁹ CPE report, pp. 31-32.

c) Search rate.

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

While the overall percentage of stops resulting in a search remained steady at 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 pulled over, Black drivers are about five times more likely to be searched than White drivers, while Hispanic drivers are about 2.5 times more likely.¹⁰

For pedestrians, the CPE reports that:

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

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

D. Conclusions

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

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

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

Compared to Whites and Asians in Berkeley, Black and Hispanic people are much more likely to be stopped and searched by BPD

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

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

¹² CPE report, p. 44.

officers without being charged with any criminal offense. Because they are stopped and searched at higher rates (but arrested at the same rate per stop), Black and Hispanic individuals are much more likely to be arrested than Whites. BPD use of force reports indicate that Black individuals are six times more likely than Whites to experience police use of force.¹³

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

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

E. Additional notes

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

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

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

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

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

¹³ CPE report, p. 45.

¹⁴ CPE report, figure 14b, p. 30.

CPE states further that since BPD does not require officers report use of physical force “unless the officer uses a weapon, the subject was injured, or the subject complains. As a result, incidents of physical force not involving a weapon are not comprehensively reported or tracked by BPD, and are not reflected” in the CPE tables showing quarterly use of force counts. The Chief’s statement that “in 2016, our officers handled over 78,000 incidents, conducted over 3,200 arrests, and issued over 5,600 citations... and reported only 32 uses of force (use of a weapon, leaving a visible injury, or where the arrestee complained of pain)” is therefore disingenuous. We agree with the CPE’s call to begin data collection of all use-of-force incidents, as other departments do both nationally and regionally.

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. 2/2/2014 - 6:30 p.m. 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.
2. 5/2/2014 - 10:15 p.m. 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. 5/15/2014. A group of African American UC students were walking to UC down Dwight Way. They jaywalked across Dwight. A police car spotted them and approached the group to stop to talk to the students but the group continued on. The police then pursued the group. The testimony from witnesses and the group was that the police were unduly harsh and rough with them. One or two were arrested and some members of the group filed a suit against police for harsh treatment.
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. 11/2014. A mother came to an NAACP meeting to lodge a complaint. Her son takes BART to SF to attend school at CCSF. Many times on his way

between home and Ashby BART, an unmarked police car rolls up and asks her son if he is on parole and other harassing questions such as "where are you going?" and "where do you live?" etc.

6. 11/1/2014, afternoon. In the 3200 block of Sacramento St. a Berkeley Copwatch member witnessed three BPD officers stop a vehicle with 3 African American men. All men were handcuffed and searched and the vehicle was searched but no arrest was made or citation issued.
7. 1/2/2015. An African American minister was stopped for driving without headlights. Without issuing a ticket or warning the officer proceeded to question the minister with "where are you coming from?" and "did you take anything?" (repeatedly). Then the officer proceeded to administer a sobriety check. After all of this, they sent the minister on his way.
8. 1/13/2015. ACLU received a statement from a witness who observed a low-speed car accident involving two vehicles at approximately 10 a.m. According to the witness, the African American driver of the vehicle that was hit was casually talking to a Caucasian officer when he was "slammed onto the police car" and placed under arrest. Also, a non-consent search was made of the arrestee's vehicle. When the witness asked the arresting officer why the need for escalation she was told the African American driver was resisting arrest. When the driver of the other car involved in the accident and several other witnesses expressed concern how the young man was treated they received no clear answers. No statements were taken.
9. 2/23/2015. An African American resident getting off his bicycle in front of his 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.
10. 7/23/2015. An African American retired city worker made a legal left turn on San Pablo onto Dwight Way eastward. A police car then followed the resident to his home a few blocks up Dwight. The police car pulled into his driveway behind him and asked where he had been and why did he stop here. His wife came out and asked why they were questioning her husband. The answer she received was "mistaken identity." The officers got in their car and drove off.
11. 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 and started making statements such as "don't bring a gun into my neighborhood." After a heated back-and-forth, the driver called the police. Eight cars arrived. The lead officer reviewed the credentials of the African-American man, was satisfied and departed. One of the remaining officers stayed and

continue to ask the same questions for another 15 minutes. The African American security guard registered that he felt he was "unduly questioned" and was being "badgered."

12. 9/20/2015. A vehicle was stopped on Sacramento at Fairview at 8:21p.m. for driving without headlights. Two officers approached the vehicle. There was one African American man and two African American women in the car. The driver was removed from the car and handcuffed. The two women were made to stand against the wall on the sidewalk. The vehicle was searched. Another police vehicle pulled up and talked to the officers. Shortly thereafter the persons were released without arrest or citation. A Public Records Act request was filed by NAACP on this incident and the response from BPD was that there was no information on this stop.
13. 9/21/2015. A witness observed an auto parked on Sacramento Street with four under-30 African American men. A police vehicle drove up and stopped at the parked car. Two officers got out and one officer asked all four in the parked car to step out. Each African American man was searched and the parked car was searched. No police action was taken. The officer in charge issued this warning before driving off: "We are watching you."
14. Approximately 11/20/2015. A young Latino PRC member went on a ride-along with a BPD commander on his duty shift. He recounted "racially biased behavior from some officers" and "prejudiced comments about communities of color" during the ride and in the station.
15. 2016. The owners of "44 Restaurant and Lounge" lodged a complaint with NAACP and police. During happy hour to 8 p.m. the guests that frequent the bar are a racially mixed crowd. After 8 p.m. the guests are predominantly African American. After a minor complaint to police from a resident, the police parked a car with lights off across the street from the establishment for a period of four months. "44" has no history of rowdiness or spillover from bar patrons onto the sidewalk or the street. The bar down the street, Nick's Lounge, has spillover into the street almost every night. The owners of "44" and the NAACP observed there is no police presence at Nick's.

Section 5. Literature Review and Related Reports

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

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

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

President's Task Force on 21st Century Policing Report

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

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

The Stanford Study on OPD

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

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

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

The Interim CPE Report on BPD

This interim report was released in July 2017. Further work will be needed over the next few months to provide a more comprehensive, final report. In the

meantime, the PRC has reviewed the CPE data and recommendations and included our analysis and recommendations in this report.

Some important points excerpted from the interim CPE report follow:

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

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

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

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

BPD's Initial Response to the CPE Report

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

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

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 Federal Dept. of Justice 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 agreed upon the following recommendations to the Berkeley City Council:

A. Data Collection and Analysis.

1. BPD should 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 should 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 should prepare an initial report to the PRC and City Council within six months analyzing all stop data since January 2016, and quarterly thereafter. BPD should 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/analyst. (Also recommended by Stanford OPD study.) In addition, the City should hire or engage a third party to review the data and report to the Council and PRC semiannually.

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

BPD's report to PRC should include stop data by officer, including the number of years of BPD experience of the 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 should develop a specific action plan to counteract the racial disparities addressed in this report. The action plan should be in writing, and 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 any disparate behavior. The core of the action plan should 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.)

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-c5yr>
<https://opendata.ci.richmond.ca.us/Public-Safety/Type-of-Force-Used-by-Officers/2mmb-56w6>

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/>

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 individual officers, set thresholds to identify outliers, such as those with a yield rate below the mean.
3. Where disparities are concentrated in a subset of officers, initiate investigation to determine the cause for the disparity. Evaluate and assess search incidents for legality. Evaluate whether there are identifiable causes contributing to high search rates and high or low recovery rates exhibited by outlying officers. Determine if there are any trends and patterns among officers with low and high recovery rates.¹⁷
4. Where disparities are generalized across the force, review policies and practices to determine the institutional cause for the disparity.
 - Review policies on handcuffing people in searches, searching people who are on probation or parole, and asking people whether they are on probation or parole. (Also recommended by Stanford OPD study.)
5. Intervention is initially non-disciplinary, focused on training and counseling.¹⁸ If a yield or other problem is identified for a squad and/or beat, train the supervisor as well as the officer.
 - Identify officers who may have problems; monitor and reduce time pressures, stress and fatigue on officers. (Also recommended by Stanford OPD study.)
 - Also: Improve feedback channels. Give officers individualized feedback on their stop performance. Conduct customer-service audits after routine stops. Regularly administer community surveys.
6. As part of the quarterly report, BPD should detail what steps it has taken to address problems, along with any indication of policies or orders that drove any disparate behavior.
7. Develop an "early warning" systems to head off future problems of bias. (Also recommended by Stanford OPD study.)

C. Body cameras.

1. Accelerate procurement and full rollout of body cameras to all BPD officers. Immediately provide a project plan with timeline for rollout.

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.

- Use body camera footage to train officers and evaluate policies; require officers to self-audit racially charged footage. (Also recommended by Stanford OPD study.)

D. Other departmental steps.

1. BPD should engage/partner with academic institutions for advice in ongoing impartial policing studies and strategies, such as the African American Studies Department at UC Berkeley.
2. The wellness and safety of law enforcement officers is critical not only for the officers, their colleagues, and their agencies but also to public safety. Policies should be put in place to support and properly implement officer wellness and safety programs. (Also recommended in 21st Century Policing.)
3. Law enforcement officers should be required to seek consent before a search and explain that a person has the right to refuse consent when there is no warrant or probable cause. Furthermore, officers should ideally obtain written acknowledgement that they have sought consent to a search in these circumstances. (Also recommended by Stanford OPD study.)
4. Law enforcement officers should be required to identify themselves by their full name, rank, and command (as applicable) and provide that information in writing to individuals they have stopped. In addition, policies should require officers to state the reason for the stop and the reason for the search if one is conducted. (Also recommended by Stanford OPD study.)

E. Community relations.

1. BPD and PRC prepare within six months a detailed action plan to build community relationships, trust in and accessibility to the department, especially addressing communities of color and immigrant communities and high crime areas.
2. BPD 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. (Also recommended by CPE.)
3. Increase positive community contact. Hold monthly relationship-building meetings. Show more care in high-crime areas. Develop and track measures of community engagement. (Also recommended by Stanford OPD study.)

Section 8. Conclusion

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 effectively.¹⁹

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 makes 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>

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

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

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

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

President's Task Force on 21st Century Policing Report

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

- Building trust and nurturing legitimacy on both sides of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they serve.
- Police must carry out their responsibilities according to established policies and those policies must reflect community values. To achieve this end, law enforcement agencies should have clear and comprehensive policies on the use of force (including training on the importance of de-escalation), mass demonstrations (including the appropriate use of equipment, particularly rifles and armored personnel carriers), consent before searches, gender identification, racial profiling, and performance measures – among others such as external and independent investigations and prosecutions of officer-involved shootings and other use of force situations and in-custody deaths. These policies should also include provisions for the collection of demographic data on all parties involved. All policies and aggregate data should be made publicly available to ensure transparency.
- The use of technology can improve policing practices and build community trust and legitimacy, but its implementation must be built on a defined policy framework with its purposes and goals clearly delineated and must set expectations for transparency, accountability, and privacy.
- The report emphasizes the importance of community policing as a guiding philosophy for all stakeholders. Community policing emphasizes working

with neighborhood residents to co-produce public safety. Law enforcement agencies should, therefore, work with community residents to identify problems and collaborate on implementing solutions that produce meaningful results for the community.

- Today's line officers and leaders must be trained and capable to address a wide variety of challenges including international terrorism, evolving technologies, rising immigration, changing laws, new cultural mores, and a growing mental health crisis. To ensure the high quality and effectiveness of training and education, law enforcement agencies should engage community members, particularly those with special expertise, in the training process and provide leadership training to all personnel throughout their careers.
- The wellness and safety of law enforcement officers is critical not only for the officers, their colleagues, and their agencies but also to public safety. Policies should be put in place to support and properly implement officer wellness and safety programs.

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

The Stanford Study on OPD

This study was a cooperative effort between Stanford researchers and Oakland's Police Department, which initiated the study. It was a comprehensive two-year study undertaken by Oakland to analyze and improve its policing policies and practices. It was completed in June 2016.

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

The Stanford research examined data from body camera footage, police stops and reports, and community and resident surveys of thousands of Oakland police interactions. It found significant racial differences in Oakland police conduct toward African Americans and other groups in traffic and pedestrian stops, and offers a data-driven approach to improving police-community relationships there and elsewhere.

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

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

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

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

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

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

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

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

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

The Interim CPE Report on BPD

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

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

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

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

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

CPE's findings are summarized as follows:

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

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

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

CPE's report presented 11 specific recommendations as follows:

1. We recommend changing the use of force data capture protocol to register every use of force by BPD officers, regardless of weapon use, injury or complaint.
2. We recommend that BPD monitor search and disposition outcomes across race, and arrest and disposition outcomes associated with use of force. In particular, BPD should collect and share data with respect to contraband found during vehicle or pedestrian searches, and that it analyze data about charges filed at vehicle and pedestrian stops.

3. We recommend that BPD track and analyze whether law enforcement actions are officer-initiated, or respond to calls for service.
4. We recommend that BPD affirm that the egalitarian values of their officers are visible in the work they do.
5. We recommend that BPD 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.
6. We recommend BPD track hit rates and monitor patrol deployments, using efficient and equitable deployment as a metric of supervisory success.
7. We recommend that BPD track crime trends with neighborhood demographics in order to ensure that response rates are proportional to crime rates.
8. We recommend that BPD engage in scenario-based training on the importance of procedural justice and the psychological roots of disparate treatment in order to promote the adoption of procedural justice throughout the organization, and to protect officers from the negative consequences of concerns that they will appear racist.
9. We recommend that trainings include clear messaging that group-based hierarchy is not consistent with the values of BPD.
10. We recommend that value-based evaluations of supervisors be developed to curb the possible influence of social dominance orientation on the mission of the department.
11. We recommend leveraging the existing community advisory board to help review relevant areas of the general orders manual and provide a more integrated set of policies with clear accountability and institutional resources. While not an exhaustive list of possible solutions to the issues raised in this report, these 11 recommendations represent straightforward first steps towards addressing each of them.

The PRC's analysis of the CPE report and related recommendations are presented elsewhere in this report.

