

Handouts for Dec. 13, 2017 PRC meeting

Complaint deadlines report

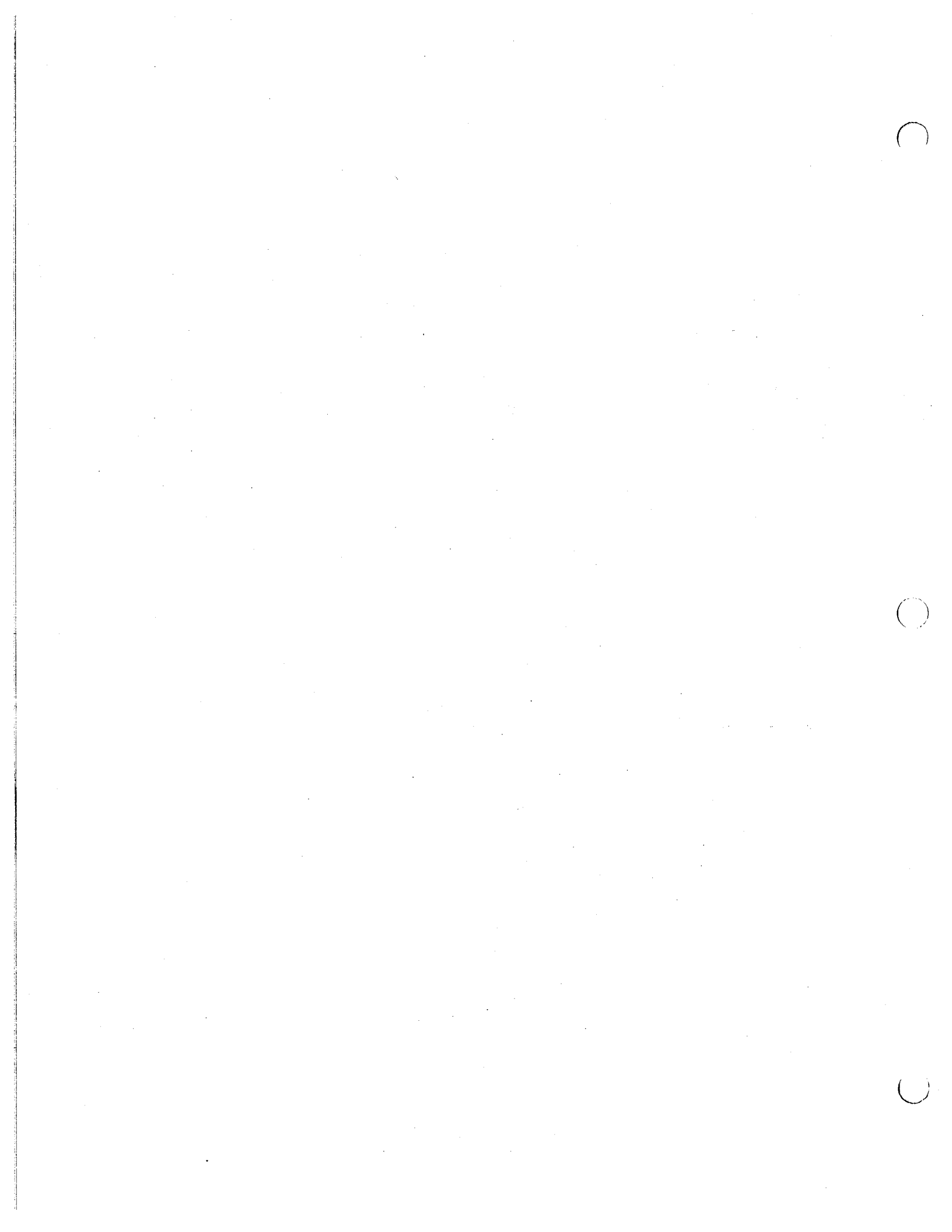
Item #8.e., MOU/Mutual Aid Pacts recommendations – additional information

1. MOU with Dept. of Homeland Security, Immigration and Customs Enforcement (ICE)
2. Agreement with City & County of San Francisco for distribution of UASI grant funds
3. Policy governing relationship with Northern California Regional Intelligence Center (NCRIC) and General Order N-17, dated Nov. 9, 2016.
4. Additional recommendation on Law Enforcement Mutual Aid Plan from Comm. Lippman
 - 4.a. City Council policy on Crowd Management adopted April 28, 1992 (referenced in footnote 1 of above recommendation.)
 - 4.b. General Order M-2, Mutual Aid and Agreements with Law Enforcement Agencies, dated Sept. 18, 2012.

For information:

PRC's Action Calendar for City Council Dec. 19 agenda to Repeal Revised OC Spray policy (Item #40a)

Companion Report (Item #40b)



COMPLAINT DEADLINES REPORT

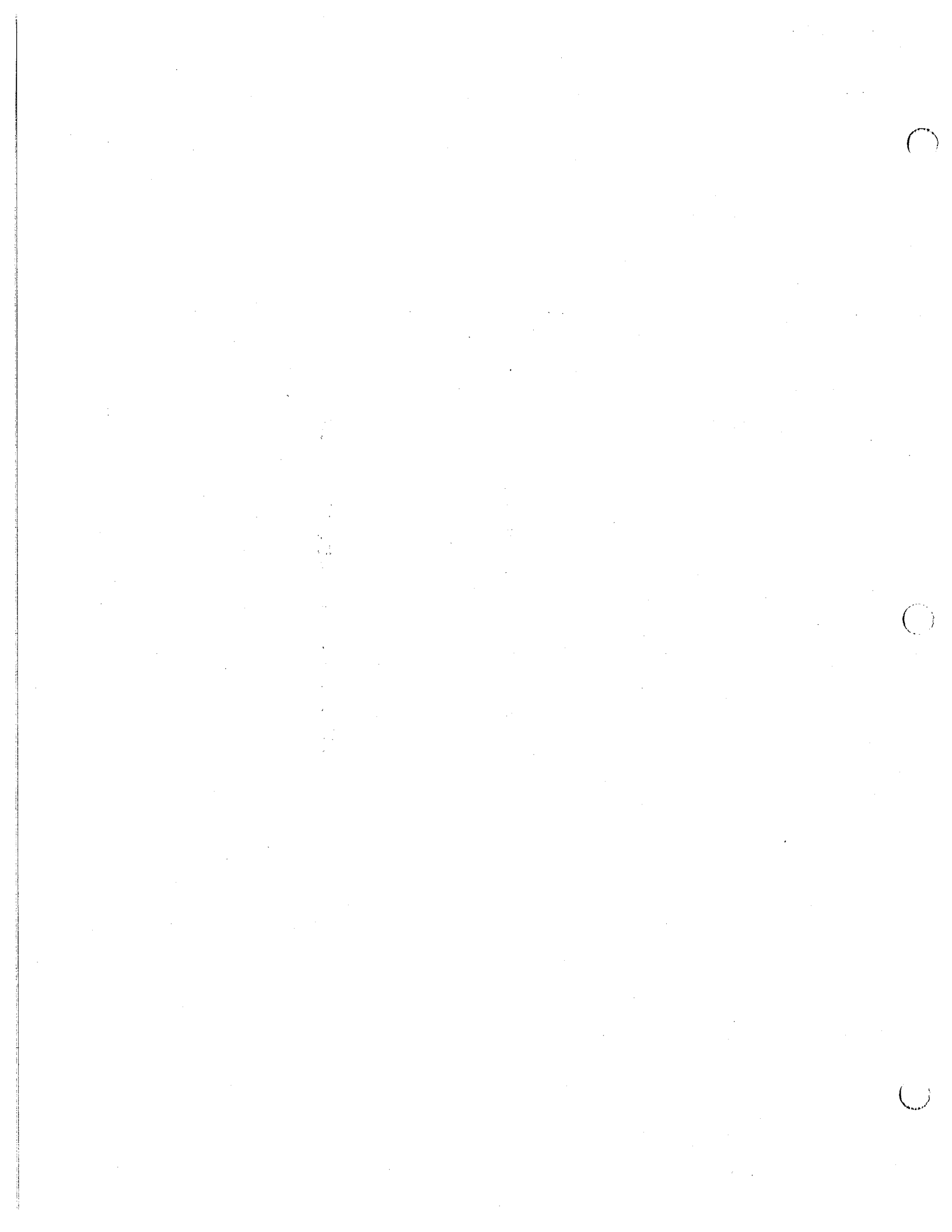
INVESTIGATIONS										
NO.	Complainant	Filed Date	Incident Date	Notice of Allegations Due (20 Bus. Day)	Notice of Allegations Issued	BOI Packet (80 days)	BOI Packet Issued	BOI Findings Report Goal (105 days)	120 Days	STATUS
2419		06/14/17	Jun-17	07/12/17	06/19/17	09/02/17		09/27/17	10/12/17	subject ofc. out to 12/28
2424		08/07/17	Jul-17	09/04/17	08/09/17	10/26/17		11/20/17	12/05/17	BOI 12/20; Summ. Dismissal?
2428		10/11/17	Mar-17	11/08/17	11/03/17	12/30/17		01/24/18	02/08/18	Investigation
2429		10/20/17	Aug-17	11/17/17	10/27/17	tbd		tbd	tbd	Investigation suspended
2430		10/20/17	Aug-17	11/17/17	11/01/17	01/08/18		02/02/18	02/17/18	Investigation
2431		11/03/17	Oct-17	12/01/17		01/22/18		02/16/18	03/03/18	Admin. Closure Recom
2432		11/17/17	Nov-17	12/15/17		02/05/18		03/02/18	03/17/18	Allegations/Interview due
2434		11/21/17	Nov-17	12/19/17	11/28/17	02/09/18		03/06/18	03/21/18	Investigation
2435		11/27/17	Oct-17	12/22/17		02/15/18		03/12/18	03/27/18	Admin. Closure Recom

POLICY COMPLAINT

NO.	Complainant	Filed Date	Notice of Complaint to BPD	Due to Comm (30 days or next mtg.)	Initial Commission Meeting Date	Commission Approval Date	Commission Resolved? y/n	Policy Issue	STATUS
2433		11/27/17	12/7/17	12/27/17	12/13/17				

PETITION FOR REHEARING

NO.	Petitioner	Findings Issue Date to Petitioner	Petition Due Date (15 days)	Petition Receipt Date	Commission Vote Date	Petition Granted Yes / No	Rehearing Due (60 days)	Rehearing Date
2422		10/25/17	11/09/17	11/09/17	12/13/17			



CITY COUNCIL REVIEW / APPROVAL BINDER

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

Item #	3.4
Title:	FEDERAL: DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT (USICE)
Type:	General understanding, local ordinance prohibitions
Approvals:	Initial: April 10, 2010 / Current: December 15, 2015
Summary:	<p>The USICE enforces federal immigration and customs-related laws. They assist State and local law enforcement in the location of non-citizen violent offenders who have fled the United States to evade arrest and prosecution.</p> <p>Council Resolution No 44,784-NS (1971) designated Berkeley as a City of Refuge. Resolution No 63,711 reaffirmed this designation in 2007. The 2007 Resolution prohibits the use of City resources in support of USICE immigration investigations, and precludes the inquiry or sharing of a person's immigration status.</p> <p>With regard to the prohibitions of Resolution No 63,711, the Police Department may request investigative assistance from USICE to support state and local criminal investigations. The Police Department may, - upon USICE request, provide "professional courtesy" stand-by security service at the location of a USICE investigation for the sole purpose of ensuring public and officer safety. Police Department will provide emergency life-safety assistance, and may investigate State/local crimes (e.g., officer involved shooting) occurring in association with a USICE operation. No other administrative, logistical or enforcement service is provided in support of a USICE immigration investigation/enforcement action.</p> <p>Chief Hambleton codified these directives in Department policy via written communication to management staff on January 30, 2008.</p>
Rationale:	Within the structure of local Resolution, maintaining a relationship with USICE is appropriate when investigating non-immigration local criminal cases in which the suspect is a non-citizen.
Cost:	<p>If Approved: Cost will be neutral. Approval will continue to support current law enforcement activity, funded in existing budget.</p> <p>If Not Approved: Effect on cost cannot be calculated. Reduced cooperation would increase the burden of enforcement and related activity; costs would be borne by the Police Department</p>
Recommendation:	Continued approval

From: Hambleton, Douglas
Sent: Wednesday, January 30, 2008 1:10 PM
To: Yuen, Al; Agnew, Bruce; Ahearn, Dennis; Delaney, Diane; Greenwood, Andrew; Gustafson, Eric; Harris, Cynthia; Hart, Alyson L.; Miller, Bobby; Morizono, Matt; Ohlson, Lynne; Reece, David K.; Upson, Erik M.; Williams, Dwayne; Wilson, Jennifer S.; Counts, James A.; Craig, Guy; Curtin, Tom; Delaluna, Patricia; Dougherty, Michael L.; Files, Randolph; Fomby II, Spencer; Frankel, David A.; Friedman, Jack; Hawk, Angela F.; Hong, Peter J.; Juster, Craig; Kusmiss, Mary C.; Lindenau, David; Louis, Jennifer A.; Montgomery, Daniel R.; Murray, Andrew; Nonoguchi, Howard; Okies, Joseph; Rateaver, Andrew; Rittenhouse, Robert B.; Roller, Rico; Ross, Sean B.; Sabins, Todd; Schofield, Kevin M.; Smith, Katherine; Spiller, Edward; Stines, Christian O.; Tate, Jennifer; White, David; Wilson, Brian D.
Cc: Kamlarz, Philip; Caronna, Lisa; Daniel, Christine; Cowan, Zach
Subject: Council Action on Marijuana
Importance: High

Commanders and sergeants:

Last night the City Council passed a resolution regarding marijuana that says in part that they:

"Direct the Berkeley Police Department and the City Attorney's office not to cooperate with DEA investigations of, raids upon, or threats against physicians, individual patients or their primary caregivers, and medical cannabis dispensaries and operators who are operating in accordance with California state law and local ordinances."

This resolution is similar to one that was passed about 5-6 years ago on the same subject. It is BPD policy that officers will not cooperate or assist the Federal Drug Enforcement Administration or other Federal agents in search warrants or other enforcement actions directed at marijuana dispensaries. Any such action by the DEA involves federal violations and they should have the resources to meet their enforcement needs. My interpretation of the City Council directive is that it related to pre-planned "raids", search warrants or other routine enforcement actions.

It is also BPD policy that officers should always respond and help other law enforcement agencies if they are requesting emergency assistance or when there is a developing officer safety or public safety issue that requires additional law enforcement resources. In such a situation the goal of a BPD response should be to protect life and property, preserve the peace and stabilize the situation until the other agency is able to continue the action on their own.

This applies to DEA marijuana enforcement, Immigration and Customs Enforcement (ICE) actions against undocumented immigrants as well as the current tree sitter situation at the UC campus.

Please notify me and the City Manager if the BPD becomes involved in one of these types of situations.

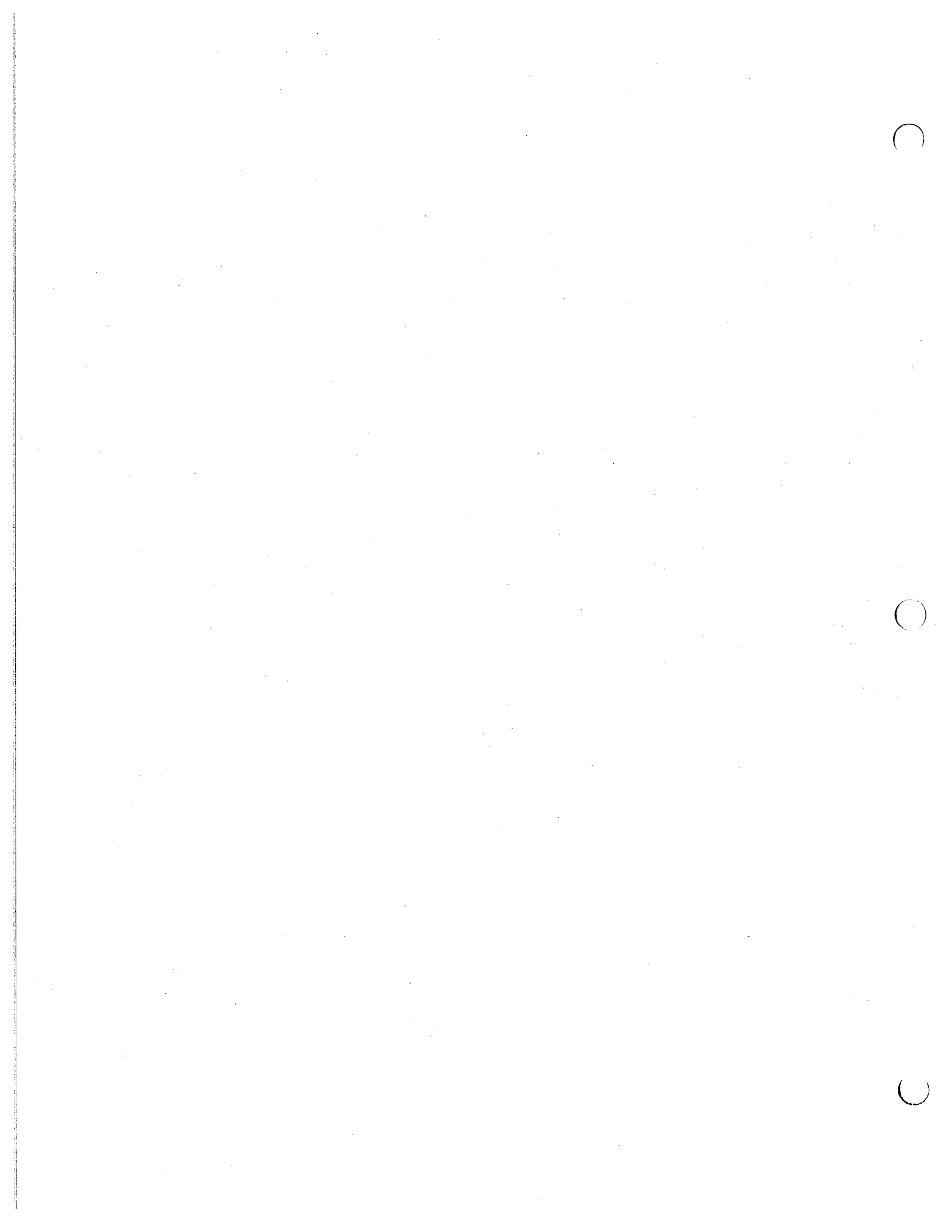
Please discuss this issue with your officers and with dispatchers. It is a politically sensitive matter and they should be aware that on the one hand we should follow the direction from our elected officials, but we also have an obligation as peace officers to protect life and property and preserve the peace.

Douglas N. Hambleton
Chief of Police
Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704
(510) 931-5700
[*dhambleton@ci.berkeley.ca.us*](mailto:dhambleton@ci.berkeley.ca.us)

CITY COUNCIL REVIEW/APPROVAL BINDER

**BERKELEY POLICE DEPARTMENT
AGREEMENTS, LETTERS AND UNDERSTANDINGS RE
MUTUAL AID, INFORMATION SHARING AND COOPERATION
WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES, AND
PRIVATE SECURITY ORGANIZATIONS
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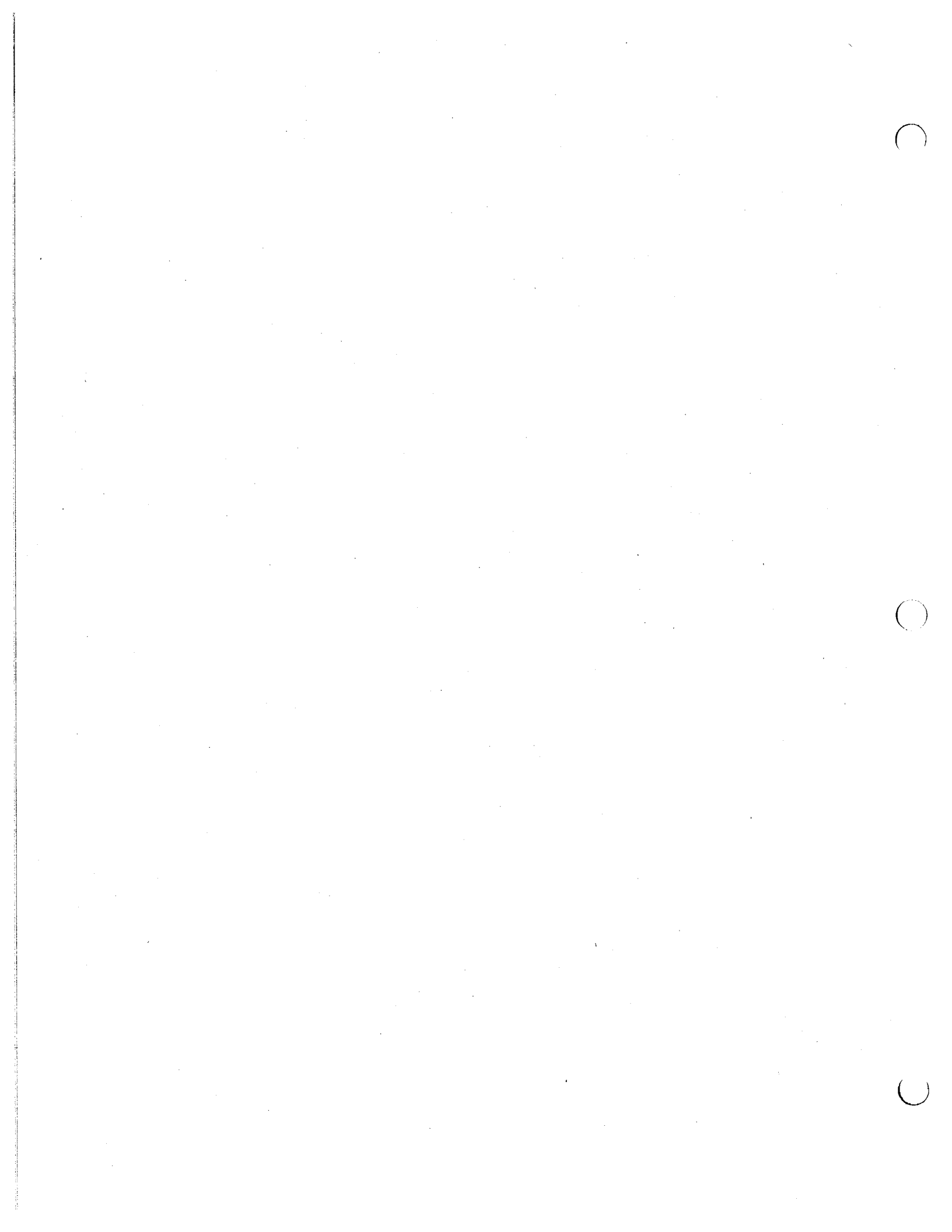
Item #	3.6 (2017 Revision)
Title:	AGREEMENT WITH THE CITY & COUNTY OF SAN FRANCISCO FOR THE DISTRIBUTION OF UASI GRANT FUNDS
Type:	Agreement with Fiscal Agent to receive reimbursement
Compendium Approvals:	Initial: April 10, 2010 / Current: April 25, 2017
Summary:	The Urban Area Security Initiative provides for a grant funding program which is managed by the Department of Homeland Security, supported by FEMA, and with the City and County acting as the fiscal agent through which grant funding is distributed. The funds are provided to support emergency and disaster preparedness and response. This agreement is entered into after Council has authorized the City Manager to apply for, and receive, grants. Upon Council approval for the City Manager to receive the funds, the City Manager executes the agreement with the Fiscal Agent.
Rationale:	The Police Department's application for grant in UASI's grant funding program allows the department to purchase expensive and necessary equipment that promotes public safety and serves the law enforcement mission. Participation in UASI's grant funding program facilitates supports the goals of local and regional preparedness and emergency response to disasters and acts of violence.
Cost:	Item 3.6 is intended to provide information regarding a fiscal agent agreement. With the December 13, 2016 action, Council approved the receipt of grant funds and directed the City Manager to enter into the current Fiscal Agent agreement.
Current Fiscal Agent Agreement	Fiscal Agent Agreement ending February 28, 2018, provides for reimbursement of a maximum of \$125,373 to support the purchase of a reinforced panel van.
Previous Fiscal Agent Agreements (No longer attached)	<ol style="list-style-type: none"> 1. Fiscal Agent Agreement and amendment, ending December 31, 2009, provided for the reimbursement of a total amount not to exceed \$258,267 to support the purchase of a robot for the Emergency Ordinance Disposal team, EOD related training ,and reimbursement for expenses associated with operating a scenario training site during an Urban Shield exercise. 2. Fiscal Agent Agreement ending November 30, 2010, provided for the reimbursement of a total amount not to exceed \$39,066 to support the purchase of a portable X-Ray device for the Emergency Ordinance Disposal team, and refurbishment of a vehicle for EOD team purposes.
Recommendation:	Continued Approval
Implementation:	The Police Department will continue to operate in accordance with all City Council and Department general orders and policies as applicable.



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Item #	3.12 (2017 Revision)
Title:	BERKELEY POLICE DEPARTMENT RELATIONSHIP WITH NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER (NCRIC) AS GOVERNED BY GENERAL ORDER N-17
Type:	Written Policy: BPD General Order N-17
Compendium Approvals:	Initial: April 10, 2010 / Current: April 25, 2017
Summary:	<p>Berkeley Police Department General Order N-17 governs the relationship between the Berkeley Police Department and NCRIC.</p> <p>NCRIC facilitates the legal sharing of terrorism and criminal-oriented information. In this effort, NCRIC produces/disseminates intelligence, conducts training, and provides investigative and analytical case support to federal, state and local law enforcement agencies. NCRIC strives to ensure the protection of privacy and civil liberties of citizens in its assistance to local, state and federal agencies with their mission of protecting the communities they serve from the threats and dangers of terrorist, gang, narcotics and organized criminal activities. Local Terrorism Liaison Officers (TLOs) facilitate information sharing and investigative collaboration.</p> <p>The Police Department has a comprehensive policy regarding the provision of a Suspicious Activity Report to NCRIC, including several steps of review, and the reporting to City Council, in redacted form, of all SARs submitted to NCRIC.</p> <p>The Police Department may receive and share confidential or "law enforcement sensitive" public safety-oriented information with NCRIC to facilitate criminal investigation or to promote the safety of the community and/or law enforcement. The Police Department has designated sworn employees to act as TLO's in addition to their normal assigned duties, as described within General Order N-17)</p>
Rationale:	<p>Police Department interaction with NCRIC, governed by General Order N-17, promotes public safety and serves the law enforcement mission.</p> <p>Transparency of Suspicious Activity Reporting to NCRIC is accomplished through reporting redacted SARs with City Council.</p>
Cost:	<p><i>If Approved:</i> Cost will be neutral. Approval will continue to support current law enforcement activity, funded in existing budget.</p> <p><i>If Not Approved:</i> Effect on cost cannot be calculated. Absence of or reduced interaction would inhibit investigations and impact successful prosecution. Public and employee safety would be adversely affected. Increased local enforcement responsibility would increase local costs.</p>
Recommendation:	Continued Approval
Implementation:	The Police Department will continue to operate in accordance with all City Council and Department general orders and policies as applicable.



BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

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

PURPOSE

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

LIMITATIONS

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

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GENERAL ORDER N-17

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

POLICY

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

DEFINITIONS

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

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to a misdemeanor or felony.

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

PROCEDURES

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

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

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

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

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

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

- (a) Notify their direct supervisor.

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

BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

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

BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

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

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

4. **Law Enforcement Mutual Aid Plan** (proposal from Comm. Lippman)

Proposed Recommendation: ADOPT with recommendation for BPD follow-up to modify General Order M-02 "MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES"

Add a new paragraph in the Procedures section after Paragraph 6, to reflect the City Council's direction that:

"The BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum amount allowable by law...advise such units that they will be expected to comply with [BPD] regulations and policies," and that if there are conflicts with other agencies over policies which cannot be resolved, "BPD reserves the right to elect not to deploy those units affected....where the City of Berkeley has adopted more stringent standards, those will take precedence over county-wide standards within Berkeley.""¹

Berkeley's direction is supported by the Law Enforcement Mutual Aid (LEMA) Plan currently under consideration. The LEMA Plan states:

"Unless otherwise expressly provided, or later agreed upon, the responsible local law enforcement official of the jurisdiction requesting mutual aid shall remain in charge....The agency requesting mutual aid is responsible for the following:

3. Advising responders what equipment they should bring."

In addition, California Govt. Code § 8618 provides that the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident including the direction of personnel and equipment provided him through mutual aid.²

Therefore, host agencies have not only the right, but also the responsibility to supervise the performance of invited agencies.

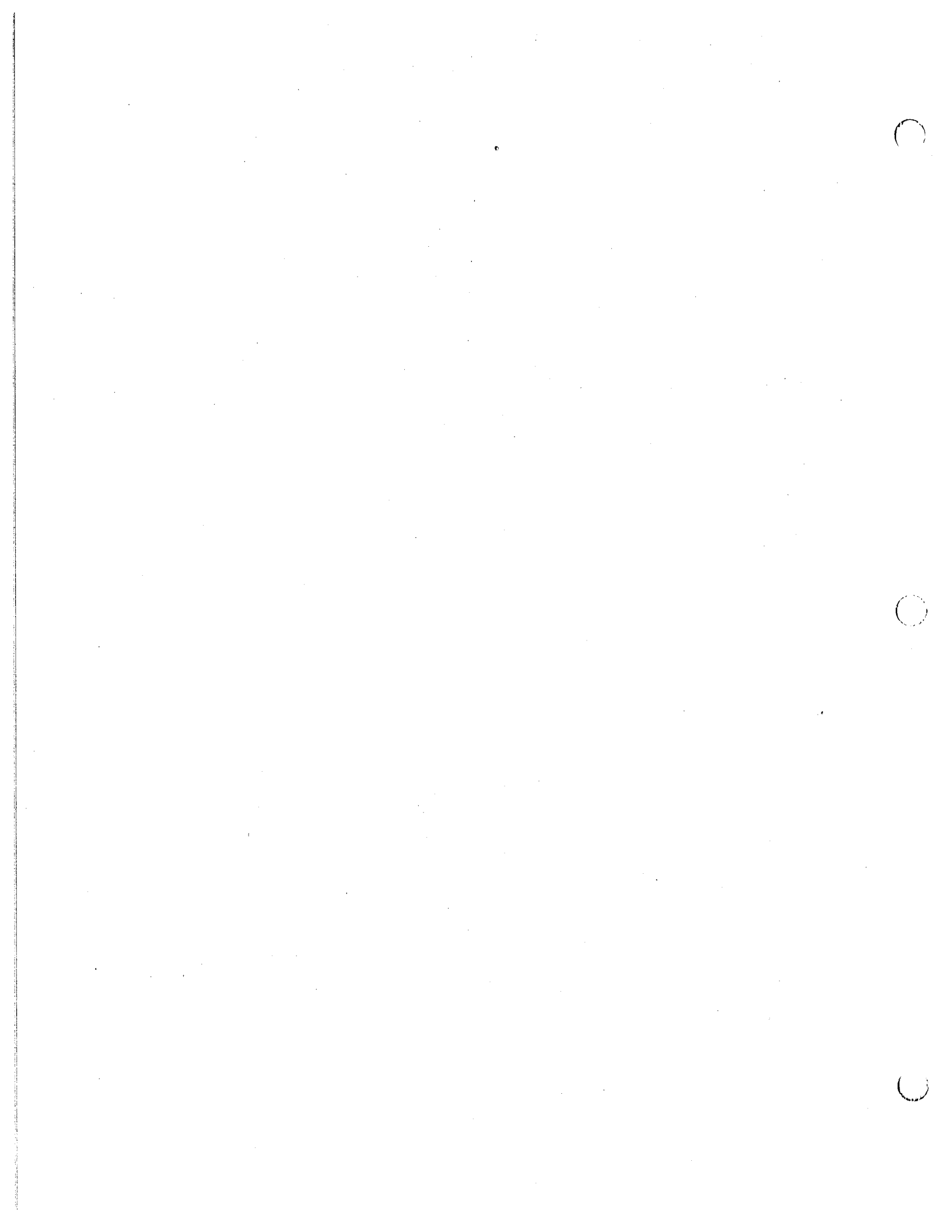
The mandate that the host agency supervises the performance of invited agencies explicitly extends to the direction of personnel and equipment. This state law provides the basis for the instruction in the California Law Enforcement Mutual Aid Plan that the jurisdiction requesting mutual aid is responsible for among other things "advising responders what equipment they should bring."³

¹ <http://www.berkeleyside.com/wp-content/uploads/2015/02/2003-09-09-Item-54-57.pdf> — excerpt attached

² <http://www.lawlink.com/research/Level2/50475>

³ "The agency requesting mutual aid is responsible for the following: 1. Identifying numbers and types of mutual aid resources requested. 2. Identifying specific missions for mutual aid responder tasking. 3. Advising responders what equipment they should bring. 4. Establishing an assembly area for responding resources. 5. Identifying communications channels compatible with command and control of field resources. 6. Designating a liaison officer to facilitate a coordinated assimilation of responding mutual aid resources. 7. Preparing a situation briefing including local maps for responders. 8. Providing logistical support such as food, lodging, rest intervals and equipment maintenance as appropriate, for mutual aid personnel."

<http://www.caloes.ca.gov/LawEnforcementSite/Documents/1Blue%20Book.pdf>



2. **BERKELEY POLICE DEPARTMENT CROWD MANAGEMENT POLICIES
(CONTINUED FROM 4/7/92, ITEM G.(c)2)**

From: Police Review Commission

Recommendation: Adopt 12 specific recommendations regarding Berkeley Police Department crowd management policies as outlined in the report which includes a separate minority report regarding use of munitions for crowd control.

a. **City Manager Report**

Recommendation: Adopt proposed recommendations with necessary changes.

b. **Commission on Disability**

Recommendation: Reconsider support of the use of rubber, wooden, and putty bullets in crowd control situation because of the inordinate risks they pose to persons in wheelchairs and others.

c. **Communications**

Action: Adopted 12 recommendations as submitted by the Police Review Commission. See attachment A.

Motion:

Moved, seconded (Skinner/Shirek) to approve the Police Review Commission's recommendations Nos. 1 through 6 and No. 8, 9, 10, 11 and 12, and for Recommendation 7, approve the minority report's recommendation not to use any form of munition for crowd control.

Moved, seconded (Dean/Goldfarb) a substitute motion, to adopt all of the Police Review Commission's recommendations, including No. 7.

Councilmembers Skinner and Shirek requested severance of the vote on No. 7.

The vote on Recommendation 7 carried. (Ayes - Chandler, Collignon, Dean, Goldfarb, Wainwright, Woodworth, Hancock; Noes - Shirek, Skinner; Absent - None)

The balance of the recommendations were adopted by unanimous vote. (Absent - None)

ATTACHMENT A

BERKELEY POLICE DEPARTMENT CROWD MANAGEMENT POLICIES

(Adopted April 28, 1992)

RECOMMENDATION #1:

That the Berkeley Police Department develop a policy statement regarding First Amendment rights for inclusion in the BPD Events and Crowd Control Manuals and related training materials. That BPD submit such policy statement for PRC review before final implementation.

RECOMMENDATION #2:

That BPD improve procedures for declaring and ordering dispersal of unlawful assemblies by:

- a) Obtaining and utilizing better amplified sound devices to address crowds, monitoring the audibility of dispersal orders, and recording dispersal orders wherever possible for documentation;
- b) Providing the crowd clearer instruction as to what specific location or area is the unlawful assembly site and the route by which persons will be allowed to leave, and providing a reasonable opportunity to comply with the dispersal order;
- c) Using all (reasonable) means to forewarn citizens in the demonstration area of these dispersal order "rules of engagement."

RECOMMENDATION #3:

That BPD designate and train specific officers to serve as crowd liaisons at demonstrations, such officers to:

- a) Be knowledgeable of First Amendment issues, with a sole mandate to consciously look for means to balance security and public safety needs with legitimate and lawful expression of First Amendment Rights;
- b) Be readily identifiable to the crowd and have direct access to the Field Commander as needed;
- c) Serve as a conduit for information between the police and the crowd to improve communication during events wherever possible;
- d) Assist in resolving problems and help identify opportunities to de-escalate confrontational situations;

- c) Be selected based on outstanding inter personal communication abilities and trained in mediation and negotiation;
- f) Be available as a resource to help identify appropriate "liaisons" among demonstrators and to initiate contact wherever possible for pre-event planning and post-event briefing.

RECOMMENDATION #4:

That officers should not be authorized to advance in skirmish lines at "double" or "triple" time except to move rapidly to secure a designated position when no direct, intervening contact with a crowd is involved. This is not to exclude arrest teams of officers from moving quickly to arrest those whose criminal conduct poses an immediate threat to the public safety.

That at all times, the police should avoid bearing down on a crowd faster than the crowd is capable of moving.

RECOMMENDATION #5:

That BPD initiate plans to study and evaluate the use of shields, high intensity lights, and barriers for crowd management and report to the Commission for its review as soon as possible.

RECOMMENDATION #6:

That BPD adopt a crowd management policy to address nonviolent civil disobedience that a) explicitly distinguishes between several categories of nonviolent demonstrators, especially those who manifest an intent to engage in nonviolent civil disobedience including the willingness to accept arrest as a consequence; b) relates authorized use of force to those categories; and c) acknowledges that alternative police responses include arrest, physical removal, and containment of resisters:

A) Categories of nonviolent demonstrators:

Category #1: "Cooperative" - those who, after having accepted arrest rather than obey a lawful order to move, cooperate with the arresting officers (e.g. stand and walk to a transport vehicle when asked to do so by an officer).

Category #2: "Nonviolent/noncooperative" - Those who are passive and neither obstruct nor assist officers in the process of arresting or removing them (e.g. those who go limp, refuse to move when asked to do so, and require that they be carried).

Category #3: "Nonviolent/resistive" - Those who, after a verbal command, are either sitting or otherwise immobilized, and actively exert themselves (e.g. by refusing to unlink arms) to resist lawful police efforts to move them.

Category #4: "Nonviolent active" - Those who are not stationary, but who are nonviolent and not engaged in aggressive behavior directed at police or others (e.g. people standing in a crowd that has been told to disperse).

B) Use of force authorization per above categories:

Category #1: No use of force should be necessary.

Category #2: No use of pain compliance holds or impact weapons (i.e. batons).

Category #3: Minimum force necessary to overcome impediments to arrest or removal of individuals. This category does not allow any use of force for the purpose of inducing movement by subject from the site. No use of impact weapons.

Category #4: Minimum force necessary to move or arrest individuals. No use of the jab baton technique or other more forceful self defense measures.

RECOMMENDATION #7:

That the City of Berkeley adopt a policy that would restrict the use of non-lethal munitions for crowd control to situations where violent criminal acts are being committed by members of a crowd which pose a clear and present danger to officers or others, and for which no reasonable non-lethal force alternative is available; and that in such instances authorized munitions would be restricted to foam rubber multiple-baton rounds discharged from gas guns, and in any event, no non-lethal munitions discharged by shotguns would be permitted.

RECOMMENDATION #8:

That BPD adopt a policy that bars the use of lines of motorcycles in Berkeley to perform security sweeps in crowd control situations; specifically, use of motorcycles as a means of force is not permitted; permissible use of motorcycles in crowd control situations is limited to transportation, establishment of stationary positions as crowd barriers, or other routine traffic or patrol responsibilities.

RECOMMENDATION #9:

That the City of Berkeley adopt the following policies with respect to deployment of all officers provided by outside (non-Berkeley) agencies in response to a Berkeley mutual aid request:

a) That the BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum extent allowable by law:

b) That BPD not allow any mutual aid officer to be deployed in the field without proper identification as required under California Penal Code Section 830.10; and any BPD officer witnessing violations of this section of the Penal Code shall have an affirmative obligation to report such violations to their immediate supervisor immediately or as soon as practicable;

c) That prior to deployment in the field, BPD notify mutual aid units of significant BPD crowd management regulations and policies - especially those regarding use of force and reporting duties - and advise such units that they will be expected to comply with those

regulations and policies; and that BPD take appropriate steps to identify potential conflicts between the local regulations and policies of the outside agencies and those of the City of Berkeley, and that where possible, BPD make reasonable efforts to resolve those differences prior to deployment of those units in the field, and that where significant differences remain, BPD reserves the right to elect to not deploy those units affected.

RECOMMENDATION #10:

That the City of Berkeley urge:

a) Ongoing joint training in crowd management among all Alameda County jurisdictions;

b) Development of uniform county-wide standards regarding use of force in crowd control situations, especially regarding acceptable baton techniques. This action to be taken with the understanding that where the City of Berkeley has adopted more stringent standards, those will take precedence over county-wide standards within Berkeley.

RECOMMENDATION # 11:

That BPD adopt a policy that specifically proscribes the use of flashlights to harass or intimidate individuals in crowd control situations; such restrictions to not inhibit prudent use of flashlights for legitimate public or officer safety reasons.

RECOMMENDATION #12:

That BPD officers be issued helmets with larger numbers than currently used, so as to be more clearly visible in a crowd situation.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

SUBJECT: MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES

PURPOSE

- 1 - The purpose of this General Order is to describe Mutual Aid procedures and written agreements that the Berkeley Police Department has with other law enforcement agencies. **It is also to provide guidance to the Command Staff members regarding the philosophy of Mutual Aid application.**

POLICY

- 2 - Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. **The Berkeley Police Department is also expected to take an event management approach to crowd control situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid.**

MUTUAL AID

- 3 - California's Law Enforcement Mutual Aid Plan was formulated in the early 1950's and enacted into law as part of the Government Code in 1970. The authority of the State of California Law Enforcement Mutual Aid Plan is granted under California Government Code Sections 8550, 8569, 8616, and 8668. The Berkeley City Council grants authority to the Police Department for mutual aid participation in accordance with Berkeley Municipal Code Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS, 1973).
 - (a) The California Law Enforcement Mutual Aid Plan is contained in a **compendium** titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
 - (1) **Copies are publically available on line through the City of Berkeley website.**

PROCEDURES

- 4 - All requests for mutual aid will be made via the Alameda County Sheriff, and all responses to mutual aid will result from mutual aid notification from the Alameda County Sheriff.
 - (a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of Departmental resources, it is the Chief of Police's responsibility to request mutual aid from the Alameda County

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

Sheriff. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.

I. The Chief or his/her designee will also attempt to determine if the only crimes being committed are civil disobedience offenses, and whether these offenses pose a threat to public safety.

II. If individuals are committing crimes that do not present a threat to public safety the Chief or his/her designee should seriously evaluate whether or not the Berkeley Police Department should request or participate in Mutual Aid. Crimes which do present a threat to public safety include property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.

- (b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).
- (1) It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

5 - To request Mutual Aid from the Alameda County Sheriff, the Berkeley Police Department must:

- (a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.
- (b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, and verbally request mutual aid.
- (c) Send a*written message to the Alameda County Sheriff's Department. (FAX is acceptable.)*
- (d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:
 - (1) The dates and times that mutual aid personnel are required.
 - (2) The number of personnel needed to assist.
 - (3) The staging area for responding personnel to meet.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

- (4) Mass processing procedures for persons arrested.
 - (5) Transportation plans for persons arrested.
 - (6) Operation of temporary detention facilities, if needed.
 - (e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of officers requested at the time of each incident.
- 6 - Costs for mutual aid are the responsibility of each agency participating. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

REQUESTING STATE MUTUAL AID ASSISTANCE

- 7 - The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341.
- (a) Five State agencies have specific responsibilities to support local law enforcement during emergency situations:
 - (1) The California Highway Patrol: Provide traffic control and maintenance of law and order.
 - (2) The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.
 - (3) The Department of Justice: Provide legal advice and intelligence.
 - (4) The Department of Corrections: Provide support for local law enforcement (with resources).
 - (5) Office of the California State Police: Provide personnel who remain

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

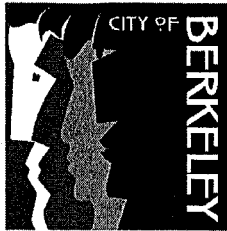
under the command of the State Police.

REQUESTING FEDERAL MUTUAL AID ASSISTANCE

- 8 - Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.

- 9 - The Berkeley City Council reviews and approves agreements with other law enforcement agencies pursuant to California Government Code Section 8617, and in accordance with Berkeley Municipal Code (BMC) Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS 1973).
 - (a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.
 - (1) The agreements are maintained in a **compendium** entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
 - (a) **The compendium is publically available from the City of Berkeley website.**
 - (b) A list of the agreements with other agencies is listed in the table of contents.

 - (b) **The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity -- submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210**



Police Review Commission

ACTION CALENDAR

December 19, 2017

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

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

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

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

BACKGROUND

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

- (b) Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy recommendation that says, in part, "no pepper spray will be used for crowd control by the Berkeley Police Department."

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

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

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

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

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

At its October 25, 2017 meeting, the PRC voted to recommend to the City Council that it adopt the attached resolution calling for reinstatement of the September 1997 pepper

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

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

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

spray policy. M/S/C (Prichett/Matthews) -- Ayes: Allamby, Lippman, Matthews, Prichett, Yampolsky; Noes: None; Abstain: Ford; Absent: Perezvelez, Roberts.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

No practical alternatives to this recommendation exist.

CITY MANAGER

See companion report.

CONTACT PERSON

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

Attachments:

1: Resolution

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

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

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

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

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

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

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

WHEREAS, the same UNC study expressed caution about other chemicals that different brands mix with OC, noting, "Inhalation of high doses of some of these chemicals can produce adverse cardiac, respiratory and neurologic effects, including arrhythmias and sudden death"; and

WHEREAS, the UNC study casts doubt on the efficacy of OC, stating that "It is important to remember that subjects who are highly aggressive, agitated, intoxicated, or suffering

³ Smith, C. G., & Stopford, W. (1999) "Health Hazards of Pepper Spray." *North Carolina Medical Journal*, 60(5), 268-274.
<http://web.archive.org/web/20000817004624/http://www.ncmedicaljournal.com/Smith-OK.htm>

from mental illness may have altered perception of and response to pain, and consequently may not be affected by – or may even become enraged after – being sprayed”; and

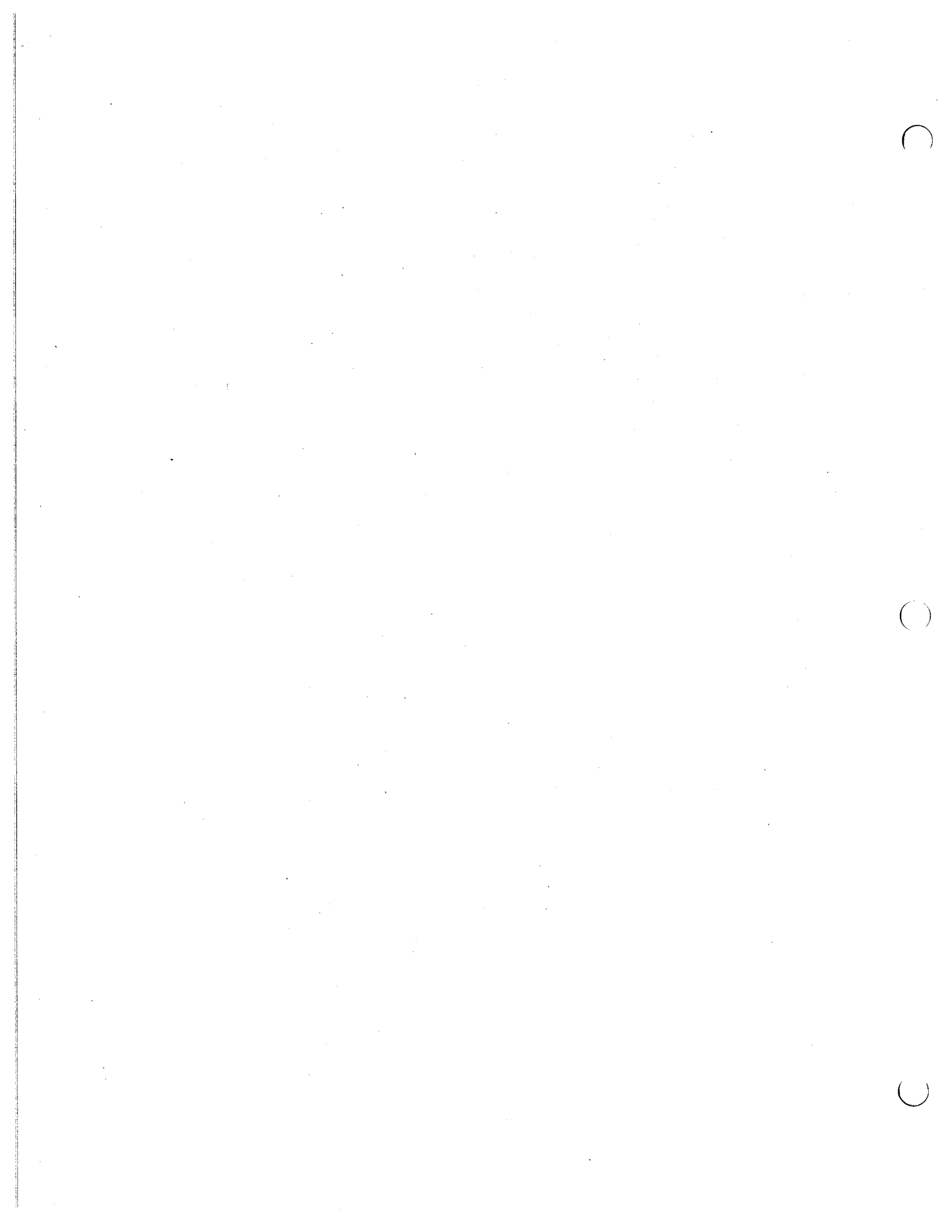
WHEREAS, a study by an international consortium of civil liberties groups and the Physicians for Human Rights states that “Chemical irritants are an indiscriminate weapon by design; because of their indiscriminate nature – especially when delivered by firing a grenade or a canister – limiting the exposure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

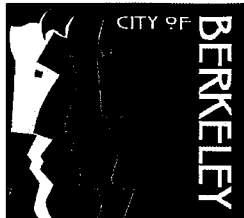
NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby reverses its action of September 12, 2017,⁵ and returns the policy on the use of OC (pepper spray) to the 1997 policy,⁶ except that the policy shall not be interpreted to allow the use of OC against individuals within a crowd;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

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

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

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





Office of the City Manager

ACTION CALENDAR

December 19, 2017

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police

Subject: Companion Report: Repealing the Revised Oleoresin Capsicum
(Pepper Spray) Policy Passed September 12, 2017

RECOMMENDATION

Keep in place current Council policy allowing the use of Oleoresin Capsicum (pepper spray) in specific circumstances upon specific individuals engaged in violent activity in a crowd situation.

BACKGROUND

On September 12, 2017, the City Council voted to re-affirm and further amend the Berkeley City Council's policy regarding the use of pepper spray by the Berkeley Police Department as such use relates to crowd control, expression of First Amendment speech, and addressing acts of violence by specific individuals within a crowd. Council specified that pepper spray:

- Shall not be used as a crowd control technique to disperse a crowd or move a crowd.
- Shall not be used on persons engaged in legal speech or other expression that is protected by the First Amendment of the US Constitution, nor upon those committing unlawful acts by non-violent or passive resistance means, (e.g. sitting or lying down to block a street or doorway).
- May be used by police upon specific individuals within a crowd who are committing acts of violence upon police or others.

Council's policy was subsequently incorporated in the September 20, 2017 revision of General Order U-2, Use of Force. All Berkeley Police officers had already been trained on the proper application, target areas, medical response and reporting requirements. In addition, they have been personally exposed to pepper spray in training scenarios. After the council re-affirmed and amended their policy, officers received additional training.

Over this year, Berkeley has been the focus of an unprecedented effort to be made a battleground for extremist groups. In addition, there has been a recent increase in violence and criminal behavior by extremist groups across the nation who have targeted

First Amendment activities—events that the Berkeley Police Department is committed to protecting.

In Berkeley, on February 1, March 4, April 15, and August 27, large coordinated groups of masked extremists took coordinated action and violently attacked people engaging in free speech activities, as well as police officers. These attacks resulted in significant injuries to both civilians and police officers.

The availability of pepper spray as a force option to use against specific violent offenders in a crowd situation would allow for more safety for officers and the public, and increase the likelihood of apprehension and criminal prosecution of suspects, while reducing the potential for injuries to suspects and officers. Pepper spray is a lesser force option than the only other tools the Berkeley Police Department is currently authorized to use: batons, less-lethal projectiles, and smoke and tear gas canisters.

A pepper spray aerosol dispenser allows police to employ a direct, limited application of force to repel specific attackers. In contrast, tear gas canisters release a cloud of chemical irritant into a larger area, and the cloud can affect peaceful demonstrators, observers, or uninvolved parties. The use of batons to repel direct attacks on officers carries an inherent risk of injury to both suspects and officers.

There have been no uses of pepper spray in a crowd control situation since the council re-affirmed its pepper spray policy on September 12, 2017.

Berkeley police have managed all of the events of the past year according to the values of our community and with the assistance of many outside agencies.

On October 25, 2017, the Police Review Commission (PRC) voted to recommend Council adopt a resolution which would rescind Council's September 12, 2017 action, and expressly and without exception prohibit the use of pepper spray against individuals within a crowd, regardless of the individual's conduct.

The PRC raises concerns that "even the limited application of pepper spray in a crowd situation is dangerous," citing the 1999 study, "Health Hazards of Pepper Spray." We note that this same report *specifically supports the proper usage of pepper spray* by law enforcement officials, in its penultimate paragraph:

The proper role of OC. Despite training-related hazards, field-use data by police departments in Baltimore, Portland ME, and Winston Salem indicate that **properly used OC can be effective and provide additional safety to enforcing officers. In many instances it may reduce injuries to officers as well as to arrestees** (such as fracture, traumatic brain injury, or gunshot wounds, which sometimes result when physical force or impact weapons are required). The use of OC may thus lessen complaints about use of excessive force, and civil liability and injury-related costs to governmental agencies. **We believe that OC spray should remain in the armamentarium of law enforcement and corrections officers who ultimately must decide, based on standard operating protocols, when and which deterrents ought to be used in a given situation.** It is important to remember that subjects who are highly aggressive, agitated, intoxicated, or suffering from mental illness may have altered perception of and response to pain, and consequently may not be affected by-or may even become enraged after-being sprayed.

When OC spray is used, officers must decontaminate those sprayed as soon as possible, continuously monitor them for evidence of serious adverse effects, and seek medical attention immediately if potentially life-threatening symptoms develop.
(Emphasis added)

Berkeley Police policy closely aligns with the final recommendations above, mandating treatment, monitoring and care as needed following the use of pepper spray.

The PRC additionally expresses concerns over “adverse effects to those in the vicinity of the target,” citing a 2016 report by the International Network of Civil Liberties Organizations and Physicians for Human Rights. This report provides an international series of case studies, involving a large variety of “crowd control weapons,” as used by law enforcement agencies and security forces in a variety of countries. Notably, from across the world, the report states, “No cases of death associated with OC were found” (pg. 44). The report suggests “Regulations and operational guidelines or protocols are also an important aspect of good police practice... An effective accountability mechanism is a key element in promoting appropriate crowd management techniques and the proportionate use of force by law enforcement.” (Pg. 19).

Berkeley Police policy closely aligns with this report’s safety concerns on the use of chemical irritants. Current Council policy allows officers the ability to focus on specific violent individuals, rather than risk cross contamination of chemical irritant to uninvolved persons through the release of tear gas. Berkeley Police policy further provides for the regulation and operation guidelines, and accountability measures which are called for by the report.

FINANCIAL IMPLICATIONS

Current policy potentially reduces City liability related to injuries to the public, city employees, property, and the environment. The ability to use pepper spray reduces the likelihood of using tear gas canisters, which indiscriminately release tear gas into an environment, potentially contaminating uninvolved parties and creating potential liability.

CURRENT SITUATION AND ITS EFFECTS

Pepper spray is a common tool carried by police officers throughout the Bay Area and across the country. Berkeley officers have a history of minimal use of pepper spray, having used it a total of fifteen times over the past five years, a period during which Berkeley officers handled hundreds of thousands of calls, and made tens of thousands of arrests and citations. Training, supervision, policy, force reporting, documentation requirements, and body-worn cameras all serve to ensure the Department is accountable to community standards and values.

Across the region and the country, the use of pepper spray in large handheld aerosol spray dispensers is an industry standard tool for the effective intervention in violent crowd control situations involving direct coordinated attacks on police lines. For example, pepper spray dispensers are used in the cities of Seattle, Portland, San Francisco, Oakland, and San Jose.

RATIONALE FOR RECOMMENDATION

There have been no significant changes in conditions since Council's actions on September 12, 2017; the "Current Situation" and "Rationale for Recommendation" in that report remain largely the same. Evidence supporting a change in Council policy is minimal, and safety concerns are well addressed with current policy.

Further, contemporary challenges inherent in preserving space for peaceful expression of First Amendment speech remain. The emergence of tactics involving weapons, shields, and the large-scale, coordinated maneuver of large groups of masked individuals, require the Berkeley Police Department to be prepared and properly equipped with the tools necessary to protect free speech and keep our community safe.

The ability to use pepper spray provides the Berkeley Police Department an important intermediary form of force as an alternative to tear gas grenades and batons.

The use of shields by large coordinated groups of extremists presents a significant challenge in maintaining community safety and space for First Amendment expression. Shields are used as weapons to strike, chop, or ram an opponent, as well as defend against impacts. Shields render police less-lethal projectile weapons ineffective as well. Pepper spray is markedly more effective against those using shields, as shields do not give full protection against the effects of directed, focused applications of chemical irritants.

When used appropriately, this type of force has proven to have immediate effects, including cessation of attack and creation of space between police and violent individuals and their targets, and opportunities to carry out focused arrest efforts on violent offenders. When intermediate uses of force are unavailable, unchecked violence can escalate, creating a need for more significant use of force.

Pepper spray is a law enforcement industry standard tool that is used by virtually every major police agency in the United States. The Berkeley Police Department is now better able to address coordinated groups of violent offenders. The ability to use pepper spray as a force option allows the Police Department to respond effectively to acts of violent attacks and to protect those engaged in lawful First Amendment activities.

ENVIRONMENTAL SUSTAINABILITY

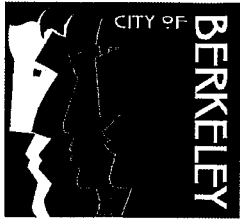
Availability of focused and directed use of handheld pepper spray canisters reduces the likelihood of the deployment of tear gas canisters, which can cross-contaminate a large area, and affect not only people in a crowd who are not involved in violence, but the general area as well.

CONTACT PERSONS:

Andrew Greenwood, Chief of Police, 510-981-5900

Attachments

1. Council Report, September 12, 2017
2. Health Hazards of Pepper Spray, Smith and Stopford, 1999



Office of the City Manager

ACTION CALENDAR

September 12, 2017

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police

Subject: Request for Modification of Current Council Policy Regarding Use of Pepper Spray in Specific Situations Responding to Violent Activity

RECOMMENDATION

To approve modification of current Council policy to allow the use of Oleoresin Capsicum (pepper spray) in specific circumstances when dealing with violent activity in a crowd situation.

BACKGROUND

Twenty years ago, in September of 1997, the Berkeley City Council established an interim policy for the Berkeley Police Department's use of pepper spray, which stated, in part, "No pepper spray will be used as crowd control." The Berkeley Police Department codified that policy in General Order U-2, Use of Force, section 20(b), which states: "Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited."

Berkeley Police Officers have carried individual-sized pepper spray canisters on their equipment belt for twenty years; it is a common tool carried by police officers throughout the Bay Area and across the country. If an officer uses pepper spray, a use of force report is submitted. Additionally, a "Use of Pepper Spray" report is sent to Council. This holds the Department accountable to community standards and values. Berkeley officers used pepper spray an average of 3 times a year since 2012, a period during which Berkeley officers handled hundreds of thousands of calls, and made tens of thousands of arrests and citations.

Across the region and the country, the use of pepper spray in large handheld aerosol spray cans is an industry standard tool for the effective intervention in violent crowd control situations involving direct coordinated attacks on police lines. For example, pepper spray dispensers are used in the cities of Seattle, Portland, San Francisco, Oakland, and San Jose.

FINANCIAL IMPLICATIONS

Potential reduced City liability related to injuries to the public, city employees, property, and the environment. If approved, modest equipment costs would be incurred, and the impact on the existing budget would be minimal.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Police Department is committed to protecting the Berkeley community and upholding First Amendment Rights. Over this year, Berkeley has been the focus of an unprecedented effort to be made a battleground for extremist groups. In addition, there has been a recent increase in violence and criminal behavior by extremist groups across the nation who have targeted First Amendment activities—events that the Berkeley Police Department is committed to protecting.

The availability of pepper spray as a force option to use against specific violent offenders in a crowd situation would allow for more safety for officers and the public, and increase the likelihood of apprehension and criminal prosecution of suspects, while reducing the potential for injuries to suspects and officers. Pepper spray is a lesser force option than the only other tools the Berkeley Police Department is currently authorized to use: batons, less-lethal projectiles, and smoke and tear gas canisters.

A pepper spray aerosol dispenser allows police to employ a direct, limited application of force to repel specific attackers. In contrast, tear gas canisters release a cloud of chemical irritant into a larger area, and the cloud can affect peaceful demonstrators, observers, or uninvolved parties. The use of batons to repel direct attacks on officers carries an inherent risk of injury to both suspects and officers.

All Berkeley Police officers have been trained on the proper application, target areas, medical response and reporting requirements. In addition, they have been personally exposed to pepper spray in training scenarios.

In Berkeley, on February 1, March 4, April 15, and August 27, large coordinated groups of masked extremists took coordinated action and violently attacked people engaging in free speech activities, as well as police officers. These attacks resulted in significant injuries to both civilians and police officers.

On February 1, in reaction to a scheduled event featuring a controversial speaker, a large group of over a hundred masked extremists approached the campus, attacked police with

fireworks and explosives, physically assaulted people in the area, vandalized, destroyed property, set multiple fires and threw a lit flare into a downtown bank.

On April 15, dozens of masked extremists entered Civic Center Park during an otherwise peaceful event, and ultimately attacked others in the park, as well as police officers, using a variety of weapons including chemical irritant sprays, explosive quarter sticks of dynamite known as "M-80s", sticks, bats, bike locks, and wooden shields. An improvised explosive device was also recovered in the park.

On August 27, hundreds of masked extremists arrived on the scene of an otherwise peaceful event in Civic Center Park, accompanied by a flatbed truck loaded with weapons and shields. Shields were off-loaded from the truck and distributed to masked extremists. Directions from an amplified sound system were given. The speaker prepared the crowd for violent confrontation, warning that anyone who was concerned about violence should move away. The masked group formed a line with their shields, ignited smoke bombs, and ultimately entered the park. Members of the group attacked individuals in the park. The group later left the park in a coordinated fashion, leaving under the cover of peaceful demonstrators. Confronting a large well-coordinated armed group is challenging for law enforcement in any context, especially when such activity is carried out in the presence of peaceful observers who are physically close to or mixed in amongst violent extremists.

In each of the above events, extremists came armed with shields. Shields are used as weapons to strike, chop, or ram an opponent, as well as defend against impacts. Shields render less-lethal projectile weapons ineffective as well. However, pepper spray is markedly more effective against those using shields, as shields do not give full protection against the effects of directed, focused applications of chemical irritants.

The Berkeley Police Department is currently limited to using batons, less lethal projectiles, smoke and tear gas to confront coordinated groups of extremists who have launched brutal and determined attacks against officers and people whom they have determined should not be allowed to speak or publicly assemble.

The Berkeley Police Department's use of pepper spray would continue to be governed by General Order U-2, including reporting requirements, submission of "Use of Pepper Spray" reports to Council, and the requirement to obtain medical attention for those upon whom pepper spray is used.

Upon adoption of the new Council policy, General Order U-2 section 20 (b) would be amended as follows:

20 (b): Oleoresin Capsicum (pepper spray) should not be directed against a person or persons who actions are engaged in peaceful, non-violent expression of First Amendment rights e.g. persons sitting or simply standing during a demonstration. Officers shall not use pepper spray to disperse a crowd, move a crowd, or against subjects involved in passive resistance.

Section 18 (d) would be added:

18 (d): Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

RATIONALE FOR RECOMMENDATION

Since February 1, 2017, a series of coordinated attacks by extremists in Berkeley have resulted in violent riots, injuries, and the destruction of property. The emergence of tactics involving weapons, shields, and the large-scale, coordinated maneuver of large groups of masked individuals, require the Berkeley Police Department to be prepared and properly equipped with the tools necessary to protect free speech and keep our community safe.

Pepper spray is a law enforcement industry standard tool that is used by virtually every major police agency in the United States. Currently the Berkeley Police Department is hampered during crowd events in addressing coordinated groups of violent offenders because the only tools available are batons, less lethal projectiles, smoke, and tear gas canisters. The prohibition of pepper spray as a force option limits the Police Department's ability to respond effectively to acts of violent attacks and to protect those engaged in lawful First Amendment Activities.

If amended, General Order U-2 provides for specific policies governing the use of pepper spray in crowd situations, while ensuring that pepper spray **never be directed against passively-resisting, non-violent individuals.**

In this time of escalating coordinated attacks by extremist groups on our community, the prohibition against using pepper spray deprives the Berkeley Police Department of an important intermediary form of force as an alternative to tear gas and batons. When used appropriately, this type of force has proven to have immediate effects, including cessation of attack and creation of space between police and violent individuals and their targets, and opportunities to carry out focused arrest efforts on violent offenders. When intermediate uses of force are unavailable, unchecked violence can escalate, creating a need for more significant use of force.

ENVIRONMENTAL SUSTAINABILITY

Focused and directed use of pepper spray would reduce the likelihood of the deployment of tear gas canisters. Use of tear gas canisters in an urban environment can cross-contaminate a large area, affecting not only people in a crowd who are not involved in violence, but the general area as well.

CONTACT PERSONS:

Andrew Greenwood, Chief of Police, 510-981-5900

Attachments

1. Photographs from Berkeley events
2. General Order U-2, "redlined" to show proposed changes.

Supplemental Information for Sept. 12 Action Item
Photographs from Berkeley Events

Attachment 1
(5 more pages of photos omitted)



Explosive detonates amidst Berkeley Police officers, April 15, 2017, Civic Center Park

Photo credit: Unknown



Explosive detonates, April 15, 2017, Civic Center Park. Photo credit: Unknown

Health Hazards of Pepper Spray

C. Gregory Smith, MD, MPH, and Woodhall Stopford, MD, MSPH

Dr. Smith is Adjunct Associate Professor, Department of Epidemiology, UNC School of Public Health and Chair, NCMS Occupational and Environmental Health Committee. At the time of this investigation, he was senior medical epidemiologist in the Occupational and Environmental Epidemiology Section, NC Department of Health and Human Services. Dr. Stopford is Assistant Clinical Professor, Division of Occupational and Environmental Medicine, Duke University Medical Center and has served as an expert witness on the adverse effects of OC sprays.

Oleoresin capsicum (OC) is an oily extract of pepper plants of the genus *Capsicum*. Each year, millions of pounds of capsicum are imported into the United States, primarily from India, Japan, Africa and Mexico. It is used as a spice in salsa, chili, curries, and hot sauces; as a pharmacologic agent in topical anesthetic and analgesic creams; and as the principal active ingredient in OC spray, or "pepper spray," used by police and others as an antipersonnel agent. OC extract consists of a complex mixture of fat soluble phenols known as capsaicinoids; capsaicin (trans-8-methyl-N-vanillyl-6-nonenamide) and dihydrocapsaicin, the most potent homologues, make up 80-90% of the total. Capsaicinoid content determines the "hotness" of the extract. The relative hotness is measured in Scoville units (the greatest dilution of pepper extract that can be detected by the human tongue).(1-3)

The capsaicinoid content of extracts used in pepper sprays varies widely among manufacturers, from 1.2% to 12.6%. Since the concentration of extract in pepper sprays also varies (5-15%), the potential risks associated with capsaicinoid exposure may vary by as much as 30-fold among brands of OC spray.

Depending on brand, an OC spray may contain water, alcohols, or organic solvents as liquid carriers; and nitrogen, carbon dioxide, or halogenated hydrocarbons (such as Freon, tetrachloroethylene, and methylene chloride) as propellants to discharge the canister contents.(3) Inhalation of high doses of some of these chemicals can produce adverse cardiac, respiratory, and neurologic effects, including arrhythmias and sudden death. The health effects of solvents and propellants are beyond the scope of this article, but they too need to be considered in evaluating potential hazards and effects of exposure to specific brands of OC spray.

During the past decade, OC sprays have become popular with law enforcement and corrections personnel as non-lethal deterrent agents. But there is no real scientific basis for the claim that OC sprays are relatively safe. In fact, a number of reports have associated serious adverse sequelae, including death, with legitimate use, as well as misuse and abuse, of these sprays.

In this article, we review the acute and chronic effects of exposure to capsaicin and OC spray, summarize the occupational health risks of exposure to OC spray during training, review actions taken in the state to address these concerns, and present recommendations to prevent unwanted effects as these sprays become more widely used for personal protection, law enforcement, and

corrections-related activities.

Health Effects of Capsaicin

The characterization of capsaicin was begun in the 1940s by the Hungarian pharmacologist Nicholas Jancso. From his work and others', we have learned that capsaicin acts directly on peripheral sensory nerves and not on motor nerves. It has been used to probe the biologic function of C-fibers and the role of pain receptors (nociceptors) in human physiology. It provides a unique pharmacologic tool for studying the human cough reflex and other airway reflexes. It alters the neurophysiology of sensory neurons in the airway mucosa by inducing the release of tachykinins or neuropeptides like substance P and neurokinin A. These induce neurogenic inflammation in airway blood vessels, epithelium, glands, and smooth muscle, leading to vasodilation, increased vascular permeability, neutrophil chemotaxis, mucus secretion, and bronchoconstriction.(4-7)

The chemical tear gas agents chloroacetophenone (CN) and o-chlorobenzylidene malononitrile (CS) produce primarily irritant effects, but exposure to OC causes both irritation and neurogenic inflammation. Exposure to OC spray may occur through skin or eye contact, or inhalation. Once inhaled, it can be expectorated or ingested. With acute exposure, there is rapid onset of constitutional symptoms including nausea, fear and disorientation.

The ill effects of OC. Dermal exposure to OC spray causes tingling, intense burning pain, swelling, redness, and, occasionally, blistering (capsaicin alone causes redness and pain, but not vesiculation). A severe dermatitis, called "Hunan hand," is found in people who process chili peppers in Mexico. Capsaicin amplifies inflammation by releasing substance P from the skin and nasal mucosa. Multiple exposures of skin or mucous membranes over a period of seconds or minutes exaggerate the response. Capsaicin augments allergic sensitization and worsens allergic dermatitis. Exposure may diminish sensitivity to heat- or chemical-induced pain, thus increasing the risk and severity of skin burns. Capsaicin powerfully stimulates heat receptors, causing reflex sweating and vasodilation, and activates hypothalamus-mediated cooling; this dual effect increases the risk of hypothermia if victims are decontaminated with cold water on cold days.(3,7,8)

Respiratory responses to OC spray include burning of the throat, wheezing, dry cough, shortness of breath, gagging, gasping, inability to breathe or speak (due to laryngospasm or laryngeal paralysis), and, rarely, cyanosis, apnea, and respiratory arrest.(3)

Nasal application of capsaicin causes sneezing, irritation, and reflex mucus secretion.(9) Its inhalation can cause acute hypertension (similar to ammonia inhalation), which in turn can cause headache and increase the risk of stroke or heart attack. Animal studies show various and sometimes profound reflex effects on respiratory and cardiovascular function. These include apnea, airway edema and constriction, systemic vasodilation, hypotension, bradycardia, and sometimes atrioventricular blockade and even asystole.(8-10)

Respiratory effects. Capsaicin-sensitive nerves play an important role in cough, airway reactivity and inflammation. Like other airway irritants, aerosolized capsaicin stimulates the human cough

reflex via sensory nerve endings supplied by afferent, unmyelinated C-fibers.(10,11) In one study, 13 of 22 chili workers exposed to capsaicinoids complained of rhinorrhea and cough, even at concentrations lower than 1mg/m³. (4) Another study of hot pepper workers and controls found that inhalation of dilute, nebulized capsaicin caused reproducible, dose-dependent cough in both groups without inducing tachyphylaxis or significant decrease in baseline pulmonary function in either group.(4) Other studies have demonstrated that capsaicin causes contraction of human bronchial smooth muscle in vitro(12) and transient (<1 min) dose-dependent bronchoconstriction in vivo (a 20-50% increase in airway resistance at doses that do not induce cough).(9,13) There was no difference in duration or magnitude of bronchoconstriction in normal subjects, smokers, and asthmatics; the mechanism has not been clearly elucidated, but it is felt to be mediated either through substance P (acting directly or indirectly) or through vagal reflex bronchoconstriction caused by stimulation of C-fibers.(13) No cases of occupational asthma due to capsaicin have been reported, and it is important to point out that not all asthmatics are sensitive to its bronchoconstrictive effects.(3,14)

In addition to precipitating broncho-constriction, which could manifest as acute asthma, OC spray exposure may increase the risk of laryngospasm and respiratory arrest. Two persons with asthma and one with chronic bronchitis developed respiratory arrest following OC spray exposure during arrest. Respiratory arrest also occurred in another person with a respiratory infection who was sprayed repeatedly.(3,10,15) Direct contact of capsaicinoids with the vocal cords has caused laryngospasm lasting 45 seconds. In addition, laryngospasm, laryngeal and pulmonary edema, chemical pneumonitis and respiratory arrest have occurred after intentional and accidental OC spray inhalation by children.(16,17)

In rodents, capsaicin-induced release of substance P stimulates mucus secretion, increases vascular permeability in the lungs, and exacerbates pulmonary inflammation associated with respiratory infection. Capsaicin exposure in the face of respiratory infection may increase vascular permeability 60-fold. Exposure during Parainfluenza infection causes a 3- to 5-fold increase in neurogenic inflammation of the airways, and, during *Mycoplasma pulmonis* infection, a 30-fold increase in neurogenic plasma extravasation that may last for several weeks. Unfortunately, there are no similar studies in humans.(5)

Chronic low-dose exposure to capsaicinoids is associated with chronic respiratory symptoms and illness. Chili grinders chronically exposed to *Capsicum* develop rhinorrhea, sneezing, cough, weight loss, burning skin (especially when they sweat), and bronchoconstriction. Symptoms are more severe early in employment and tend to decrease with time or when exposed to pepper plants containing less capsaicin. Paprika workers exposed to capsaicinoids may develop hemoptysis, severe chronic bronchitis, pulmonary fibrosis, and bronchiectasis. The chronic pulmonary effects occur in workers who break open the capsicum fruits and not the grinders, and so the etiologic factor may be a fungus (*Mucor stolonifer*) which infests the fruits.(18,19) The chronic effects of low-dose inhalation exposure to OC spray are not known with certainty.

Eye symptoms. Common ocular symptoms associated with OC spray exposure include redness, swelling, severe burning pain, stinging, conjunctival inflammation, lacrimation, blepharospasm and involuntary or reflex closing of the eyelids. In the rat, application of 1% capsaicin to the eye causes neurogenic inflammation and loss of reaction to chemical and mechanical stimuli for up

to a week. In humans, superficial anesthesia and loss of the blink reflex may lead to corneal abrasions from contact lenses or foreign bodies. Capsaicin disrupts the epithelial layer of the cornea, so persons with impaired corneal integrity (from exposure keratitis, keratomalacia, or recurrent corneal erosion) are more susceptible to severe ocular effects than those with normal corneas. Ocular exposure to OC should be treated by flushing for at least 15 minutes with water.(3,7,20)

Gastrointestinal effects. Capsaicin is principally used throughout the world as a spice. It provides a burning sensation while eating that does not necessarily end in the mouth. Chemical irritation can produce a sensation of warmth along the entire gastrointestinal tract; high doses may cause painful burning in the esophagus, stomach, abdomen, even anus.(7)

Animal and human epidemiologic studies suggest that chronic chili pepper consumption may be involved in a number of chronic diseases and may be a significant risk factor for gastrointestinal malignancy. Chronic oral administration of capsaicinoids to hamsters is associated with liver fibrosis, necrosis, and cirrhosis, and damage to the kidney glomeruli. Humans who eat lots of chili peppers reportedly have an increased risk of liver cirrhosis. Capsaicin irritates the stomach, which increases acid secretion and gastric motility and may cause hematemesis. Chronic ingestion of capsaicinoids and peppers is associated with an increased incidence of stomach ulcers in both humans and animals.(7,8,21)

Capsaicin is weakly mutagenic in the Ames test, and a co-carcinogen in rats, enhancing gastric carcinogenesis. Ten percent of mice exposed to capsaicin developed duodenal cancer, versus 0% of those not exposed. A study in Mexico found that consumers of chili pepper had a more than 5-fold increase in risk of gastric cancer (age- and sex-adjusted odds ratio of 5.49; 95% CI 2.7-11.1) compared to nonconsumers; high-level consumers had an odds ratio of 17.11 (95% CI 7.8-37.6). In India and other Southeast Asian countries, eating of chili peppers is associated with oral submucosal fibrosis, a precancerous condition of undetermined etiology.(7,22-24)

A health benefit? Capsaicin may have some beneficial effects. In mice, it produces dose-dependent prolongation of bleeding time and is a more potent inhibitor of platelet aggregation than either aspirin or indomethacin. In Thailand, ingestion of capsicum is associated with increased fibrinolytic activity and hypocoagulability, resulting in higher antithrombin III and lower plasma fibrinogen levels. These may explain the lower incidence of thromboembolic disease in Thai people.(7)

Occupational Risks of OC Exposure

Based on a favorable 1989 FBI report (25) and anecdotal reports of safety and efficacy, many law enforcement and corrections agencies chose OC sprays as a "less than lethal" deterrent, alternative to impact weapons and tear gas. OC was alleged to be effective in apprehending persons who, because they were extremely agitated, mentally ill, or under the influence of alcohol or drugs, might not feel the irritant effects of tear gas, but would be incapacitated by the inflammatory effects of OC. In 1993, however, the US Department of Labor warned that OC spray posed significant health risks to exposed employees, that it could cause unpredictable, severe adverse health outcomes, and that it should not be intentionally sprayed on the skin, eyes,

or mucous membranes of employees during training.(26)

In 1995, additional questions were raised about the safety and effectiveness of OC sprays. A conflict of interest investigation by the FBI Academy Firearms Training Unit in Quantico, VA (which had produced the earlier, favorable report on OC sprays) revealed that one of their researchers had received \$57,500 from the manufacturer and distributor of Cap-Stun, a widely used brand of OC spray. The agent pled guilty to a felony violation of federal conflict of interest law.(27)

Challenge to training exposure. Some law enforcement and corrections officers began to challenge training policies requiring that they be sprayed in the face with OC to learn its effects. Concern about pain and potential adverse effects led those involved to ask, "We don't need to get shot to know what a bullet does, so why do we have to be sprayed to know what OC does?"(28) A challenge to mandatory exposure in North Carolina took the form of a lawsuit seeking an injunction against the NC Department of Corrections, arguing that pepper mace training is "dangerous," extremely painful, and a violation of the right to due process. Lacy H. Thornburg, U.S. District Court Judge for Western North Carolina (who was North Carolina Attorney General when the policy mandating full exposure to OC spray during training was written), dismissed the case, stating that pepper mace training did not deprive the plaintiff of due process under the 14th Amendment. The decision was appealed, and in 1996 the US Court of Appeals reversed Judge Thornburg's decision.(29)

In 1996, the Division of Epidemiology of the NC Department of Health and Human Services and the Occupational Safety and Health Section of the NC Department of Labor began an investigation of training practices involving intentional exposure to OC spray. Based on a compliance inspection, observation of a training session, detailed review of various training programs, the medical literature, and Occupational Safety and Health Administration (OSHA) activities outside of NC, they concluded that exposure to OC spray during training constituted an unacceptable health risk. A review of reported injuries found that 61 of approximately 6000 officers directly exposed to OC spray during training experienced adverse effects (eye irritation, eye burns and abrasions, dyspnea, asthma attacks, nasal irritation, acute hypertension, severe headaches, chest pain and loss of consciousness) sufficiently severe to require medical attention. In 9 cases, effects (headaches, corneal abrasions and asthma) lasted for more than a week. (*W Stopford, unpublished data*).

NC Medical Society Resolution. In 1997, delegates to the North Carolina Medical Society's Annual Meeting adopted a resolution calling for the NC Commissioner of Labor to send guidelines for the safe use of capsaicin spray to law enforcement organizations, the Secretary of the NC Department of Crime Control and Public Safety, and the NC Attorney General. In April 1998, Dr. Ronald H. Levine, then State Health Director, and Harry Payne, the Commissioner of Labor, sent an advisory letter outlining the health and legal concerns associated with the use of OC spray, and recommending that exposure during training be discontinued. The advisory further outlined several measures to reduce the chance of serious injury, should organizations choose to continue exposure training. These included 1: substituting indirect exposure (spraying a wall faced by the trainee or spraying above the trainee's head) or wearing face shields or chemical goggles if direct exposure is used; 2: providing emergency showers and eyewash

stations; 3: screening employees to identify and exempt from exposure those with health conditions that might be exacerbated by exposure to OC spray; 4: having medical personnel present during training to render first aid and other medical treatment if necessary; and 5: compliance with OSHA's Hazard Communication (29 CFR 1910.1200) and Personal Protective Equipment (29 CFR 1910.132) standards during each OC spray training course.(30)

Discussion

Serious adverse health effects, even death, have followed the use of OC sprays. These sprays should be regarded as poisons or weapons and kept away from children and teenagers.(17) The risks of OC spray use by adults for self defense has not been studied, and its effectiveness as a crime deterrent is unknown.

The dangers. Hot peppers and sauces have been agents of child abuse(7) and OC spray has been used in a juvenile detention center for corporal punishment and psychological control. Use of OC to inflict pain is abusive and may cause emotional sequelae.(31) At least one court has ruled that pepper spray should be used only when absolutely necessary to incapacitate dangerous youth "in situations which are reasonably likely to result in injury to persons or injury to a substantial amount of valuable property."(32)

Historically, Japanese police used the *metsubishi*, a lacquer or brass box, to blow pepper dust into the eyes of persons they sought to apprehend.(3) Today, more than 2000 public safety agencies now use some form of pepper spray to subdue and arrest aggressive and violent persons.(31) Law enforcement publications suggest that most who are sprayed suffer relatively minor, transient effects, and that serious adverse effects are uncommon.

Because there have been few controlled clinical studies of the human health effects of pepper spray marketed for police use, some physicians have surmised that pepper spray is not inherently lethal or dangerous.(33) A retrospective review of 81 cases of OC exposure seen in the emergency department of Truman Medical Center, Kansas City, MO, and representing about 10% of total instances of spraying by the Kansas City Police Department over three years, found no significant ocular or pulmonary effects. Burning and redness of the eyes and exposed skin were the most common symptoms; there were corneal abrasions in 7 and respiratory symptoms in 6 patients, but none required hospitalization. Interestingly, 12 of the 81 had a history of asthma, but their respiratory symptoms were similar to the other 69. Five patients presented with shortness of breath or wheezing; 2 had a history of asthma (their wheezing resolved without treatment), and 3 had no apparent predisposing factors (and also did not require treatment).(34)

Despite the encouraging findings from Missouri, since 1993 over 70 in-custody deaths have involved the use of OC spray during arrest efforts.(2) A review of 30 such deaths occurring in 13 states(35) and another of 26 deaths occurring in California(15) found that positional asphyxia (usually associated with hog-tying the arrestee), drug intoxication (with ethanol, cocaine, methamphetamine, or phencyclidine), pre-existing cardiovascular or respiratory disease, obesity, neuroleptic malignant syndrome, and other conditions caused or contributed to almost all deaths. Exposure to OC spray was not judged to be a precipitating cause in any case, but its use before death was not mentioned in 10 of the California cases, and there is concern that its potential role

was not adequately considered in some of the others.

A 1993 death in North Carolina (a 24-year-old man with pre-existing florid bronchiolitis/bronchitis and cardiomegaly found at autopsy) was attributed to "asphyxia due to bronchospasm precipitated by pepper spray" by the attending pathologist and the NC Chief Medical Examiner. This highly publicized and controversial case and another involving, but not attributed to, OC spray have been presented in an article that details the pathologic, toxicologic, and other evidence needed to establish whether OC spray is unrelated, contributory, or causative of death in such cases.(3)

Avoiding unnecessary exposure. Many law enforcement and corrections agencies now prohibit the practice of spraying trainees directly in the face with OC. Based on reports of ocular damage, bronchospasm, pulmonary edema, laryngospasm, respiratory arrest, and death following OC exposure, it is reasonable to conclude that exposure during training, particularly repetitive, direct facial spraying of individuals at increased risk, may cause serious adverse effects and possibly even death. Occupational exposure during training is not advised, and those organizations that continue to use OC spray should avoid direct exposure and screen out and exempt entirely all employees at increased risk for adverse effects (those with pre-existing allergies to peppers, with corneal disease, hypertension, heart disease, respiratory infections, bronchitis, asthma or a history of airway reactivity following irritant exposures, and cigarette smokers). Some people, such as instructors in law enforcement, may have repetitive, low dose exposure to OC spray, but the effects of such chronic exposure are unknown.

The proper role of OC. Despite training-related hazards, field-use data by police departments in Baltimore, Portland ME, and Winston Salem indicate that properly used OC can be effective and provide additional safety to enforcing officers. In many instances it may reduce injuries to officers as well as to arrestees (such as fractures, traumatic brain injury, or gunshot wounds, which sometimes result when physical force or impact weapons are required). The use of OC may thus lessen complaints about use of excessive force, and civil liability and injury-related costs to governmental agencies. We believe that OC spray should remain in the armamentarium of law enforcement and corrections officers who ultimately must decide, based on standard operating protocols, when and which deterrents ought to be used in a given situation. It is important to remember that subjects who are highly aggressive, agitated, intoxicated, or suffering from mental illness may have altered perception of and response to pain, and consequently may not be affected by-or may even become enraged after-being sprayed. When OC spray is used, officers must decontaminate those sprayed as soon as possible, continuously monitor them for evidence of serious adverse effects, and seek medical attention immediately if potentially life-threatening symptoms develop.(28)

The Consumer Product Safety Commission regulates the labeling of OC spray as a hazardous substance under the Federal Hazardous Substance Act. A prominent and conspicuous warning stating the principal hazard, precautionary measures to take when using the product, and first aid measures to be used should appear on the spray. These sprays can be readily purchased via the Internet, and most states place little or no restriction on their purchase. Many buyers do not know enough about the potential hazards of accidental or deliberate misuse and most never receive any training other than the most primitive instructions ("Point and spray!"). Anecdotal, research, and

clinical data on the adverse effects of OC sprays are now sufficient to say that the hazards of these products ought to be more objectively and thoroughly evaluated and more clearly communicated.

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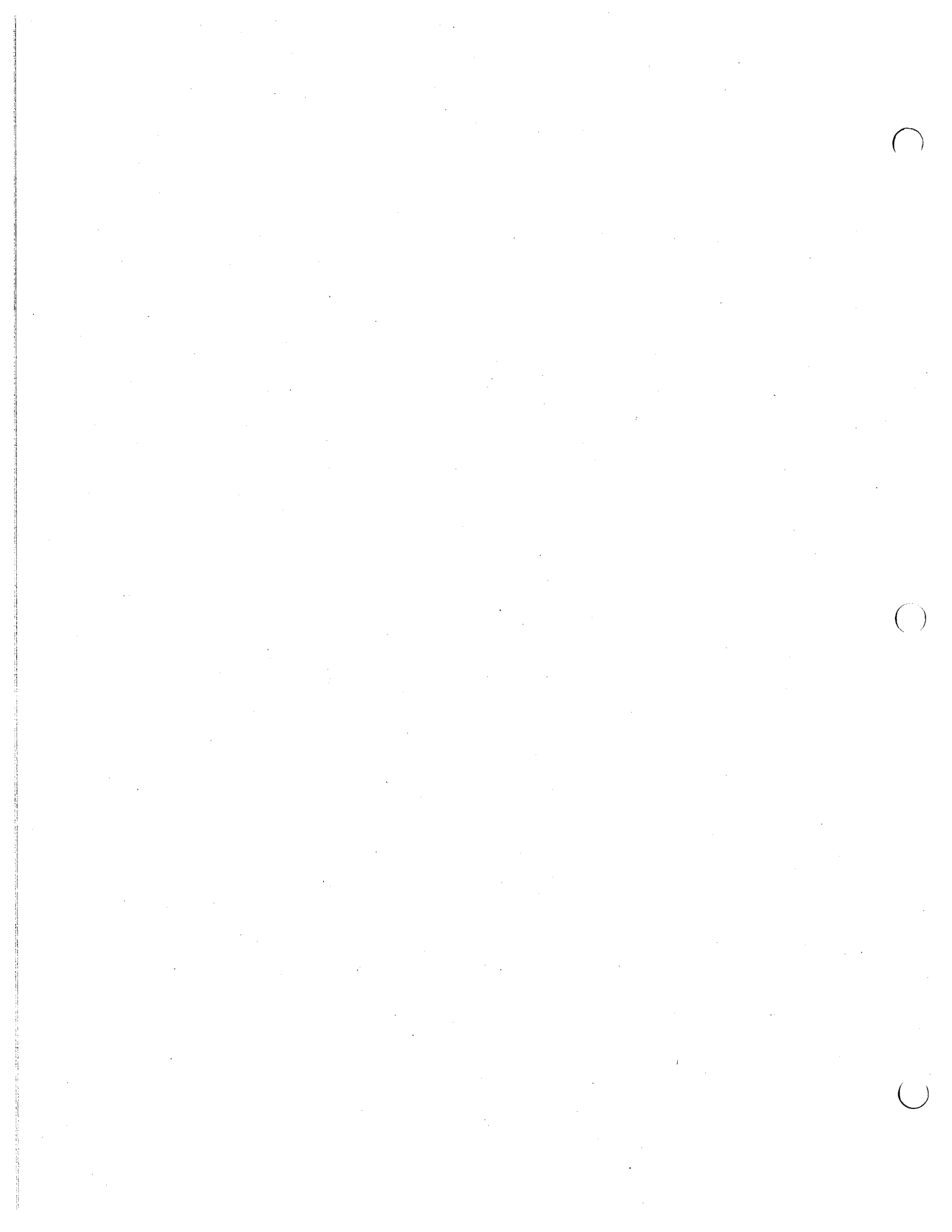
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AXON

BERKELEY PD AXON BODY 2

Training

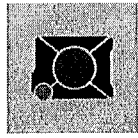
**PROTECT LIFE.
PROTECT TRUTH.**

JANUARY 5,
2018

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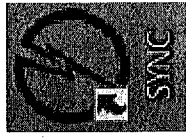
Version 1.2

AXON APPS DEFINITIONS



Axon View (Mobile application) – Video playback and live streaming at 30 fps and ability to add metadata

- Manage device settings



Evidence Sync (Desktop application/software) - Full motion playback and ability to add metadata

- Manage device settings

- Upload files



Evidence.com – Cloud based Digital Evidence Management System (DEMS)

AXON APPS DEFINITIONS

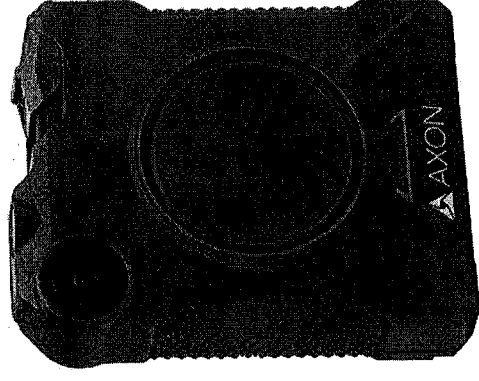


 Axon Capture (Mobile application) – Video, audio, and photo capture

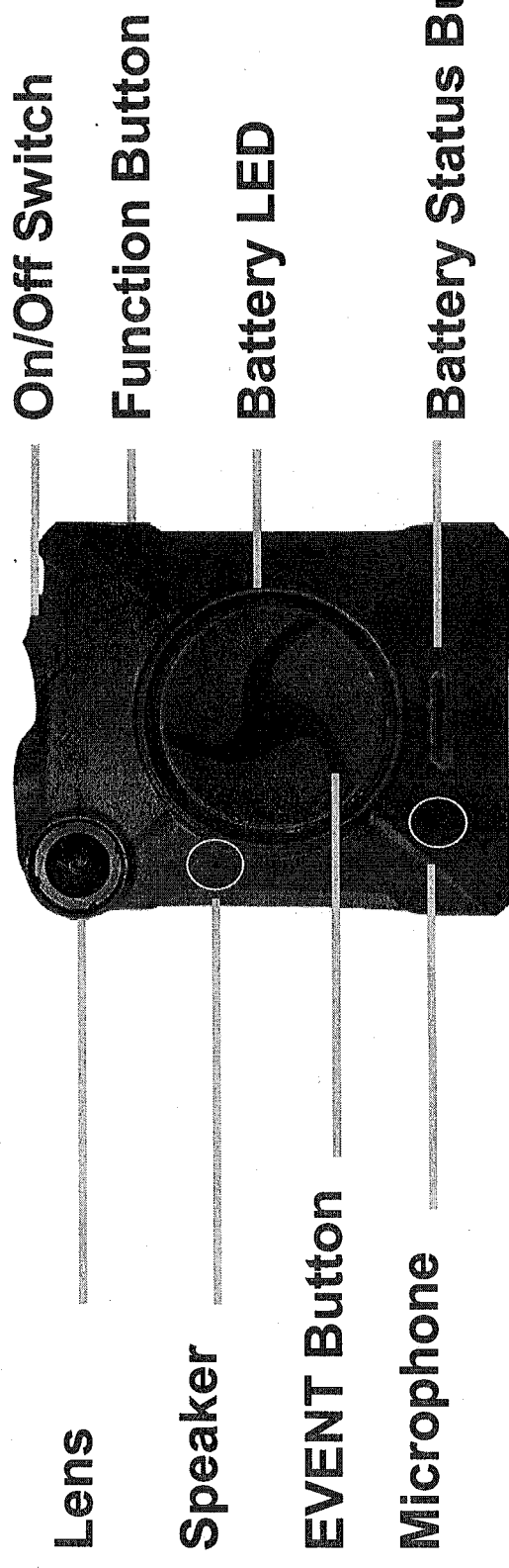
- Upload files to Evidence.com
- Ability to add metadata

■ **AXON BODY 2 OVERVIEW**

- 12+ hours of battery life under normal operation
- Up to 30 frames per second
- 143° diagonal field of view camera lens
- IP67 rated
- 640 x 480 VGA, 1280 x 720 HD, 1920 x 1080 HD
- Up to 23 hours of record time



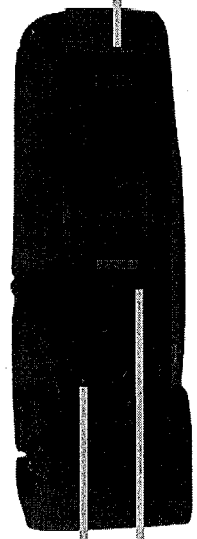
■ AXON BODY 2 OPERATING FUNCTIONS



■ AXON BODY 2 OPERATING FUNCTIONS



Connection Socket

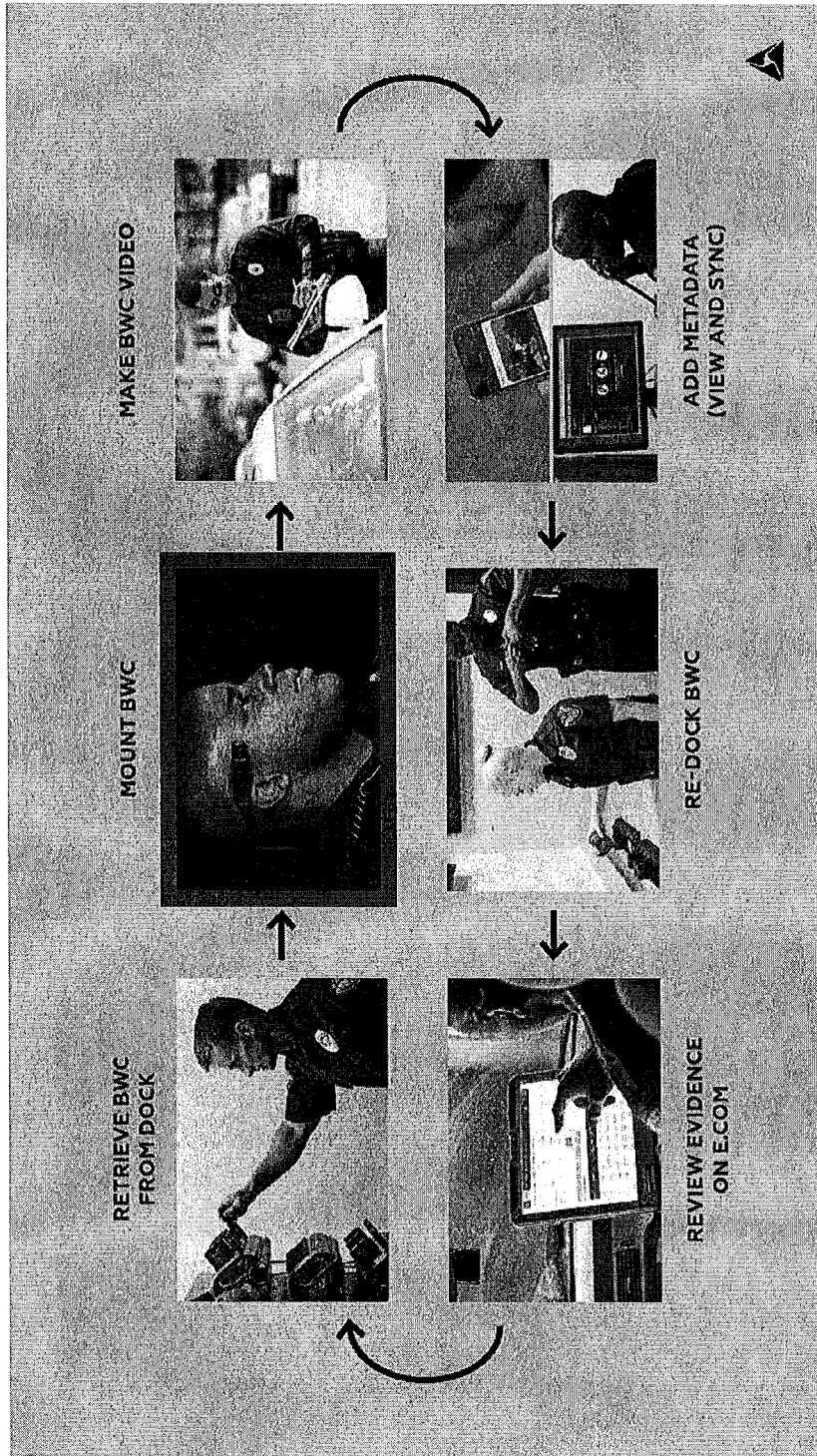


Function LED

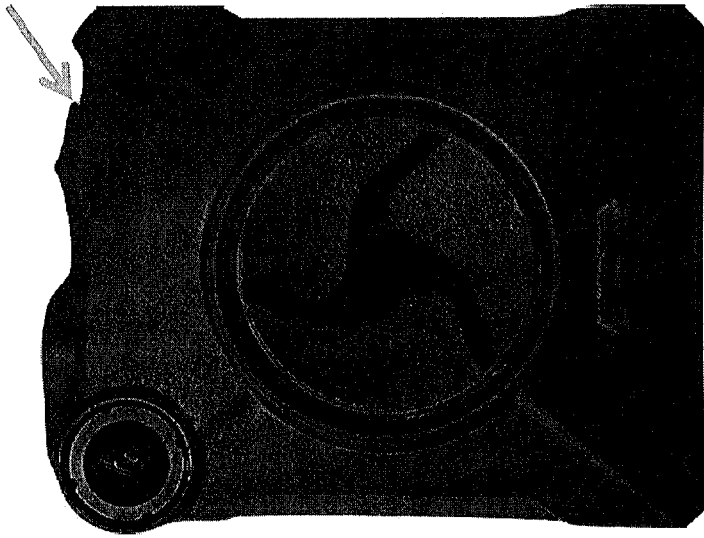
Operation LED



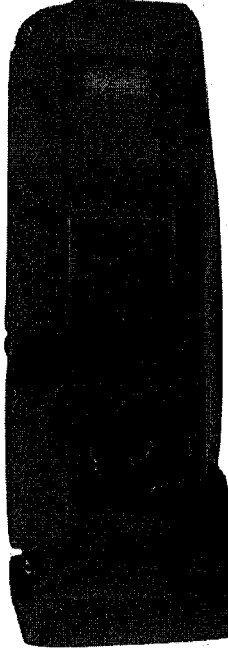
WORKFLOW



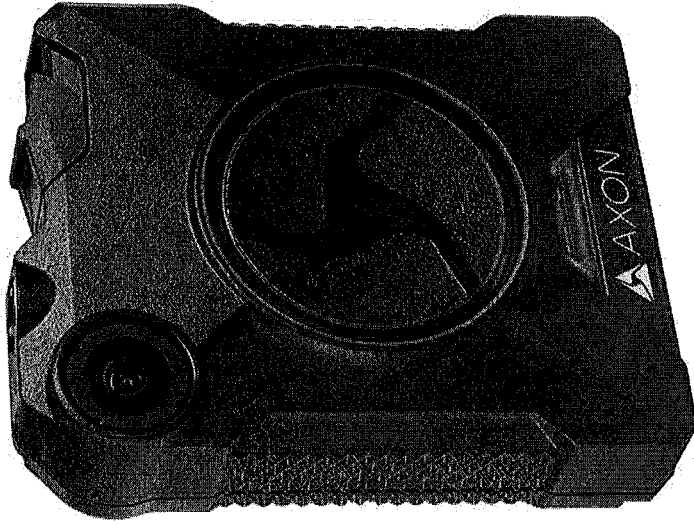
■ BUFFERING MODE



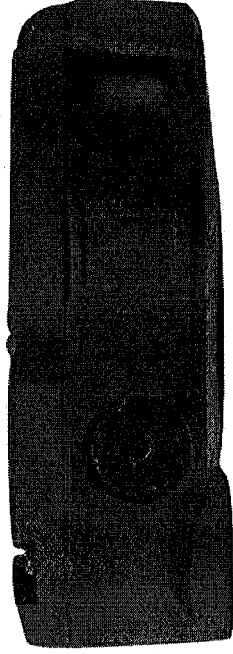
The **BUFFERING** mode is 30 seconds
no audio.



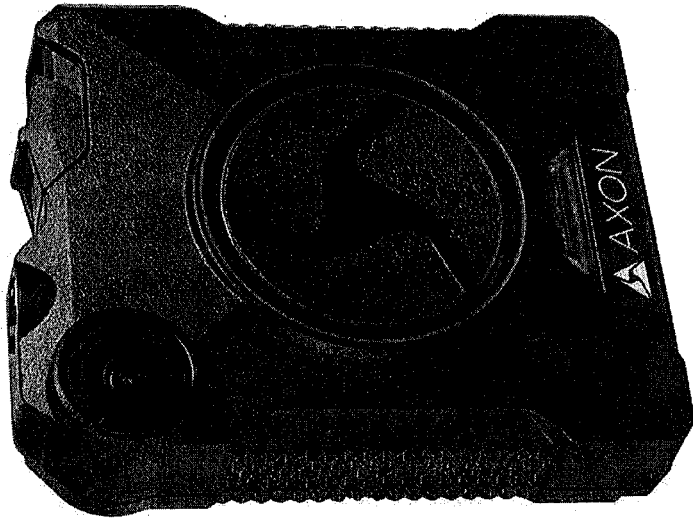
RECORDING VIDEOS



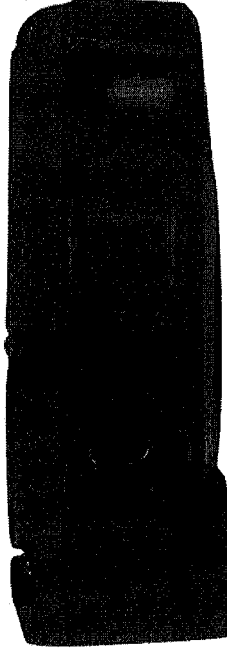
To start recording video,
double tap the EVENT Button.



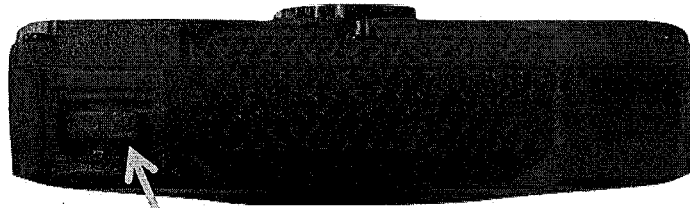
■ RECORDING VIDEOS



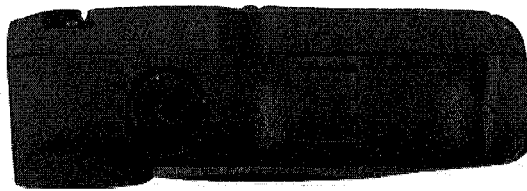
To stop recording,
press and hold the EVENT Button.



MUTING AUDIO



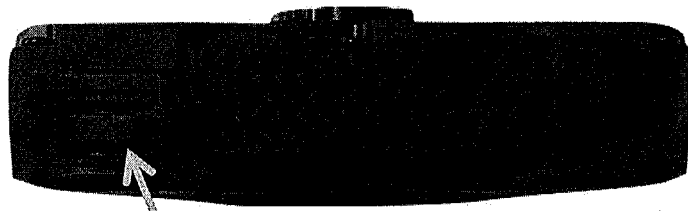
Function
Button



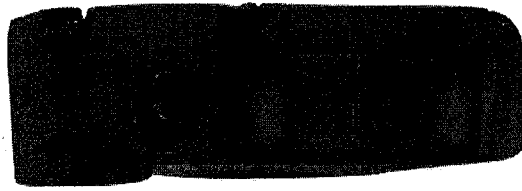
Press and hold the Function Button for three seconds to mute the audio capture.



MUTING AUDIO



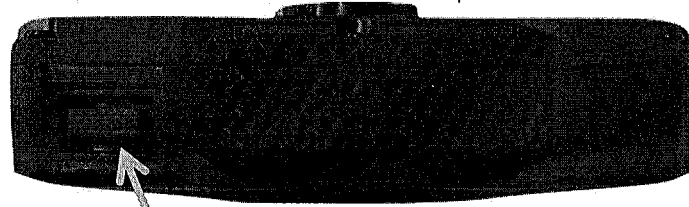
Function
Button



Press and hold the Function Button another 3 seconds to re-enable the audio recording.



■ **ADDING MARKERS**



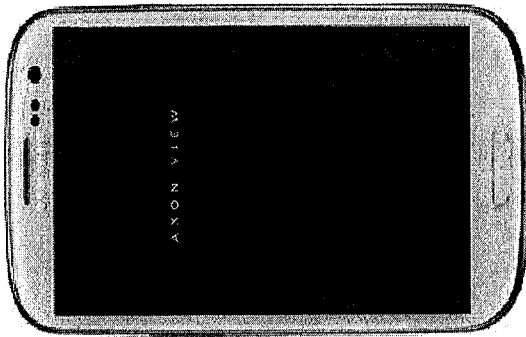
Function
Button

Press and release the function button.

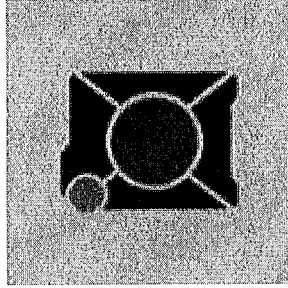


AXON VIEW

Pairing with a Smart Device



Android



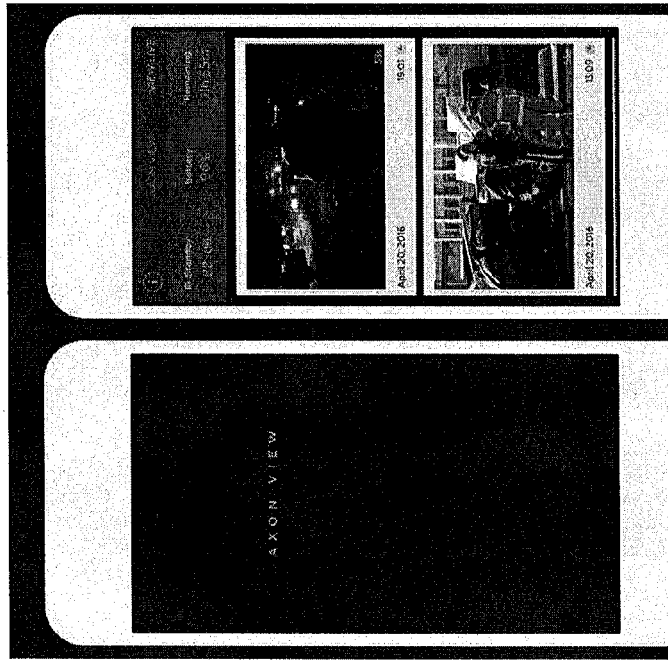
iOS

AXON VIEW



Provides the following capabilities:

- Pairs Axon cameras with Android or iOS devices
- Instant replay
- Live video streaming assists with optimal camera placement
- GPS tagging maps video evidence automatically
- Real-time metadata input enables searching and accurate retention



EVIDENCE LIST - AXON VIEW



- Recording status
- Battery status
- Remaining record time
- Preview a video
- Add Metadata

From the Evidence List screen,
tap on the thumbnail of the video



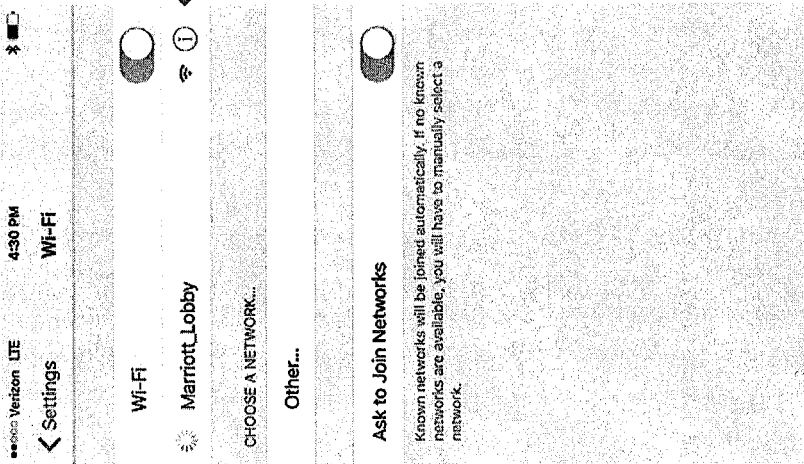
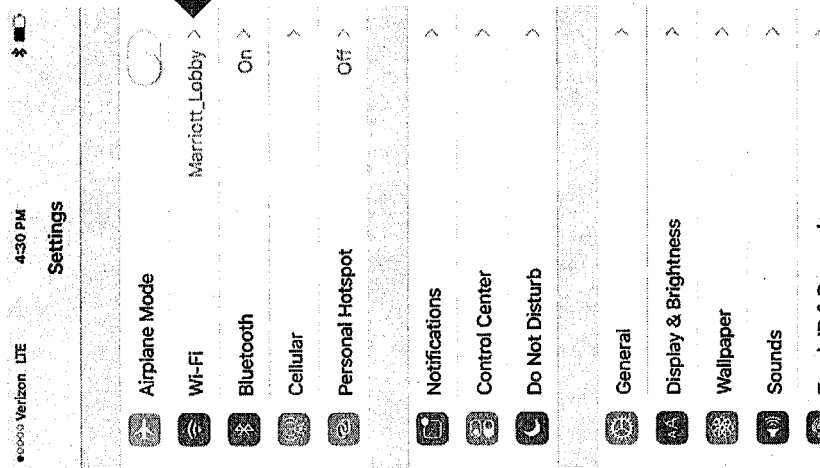
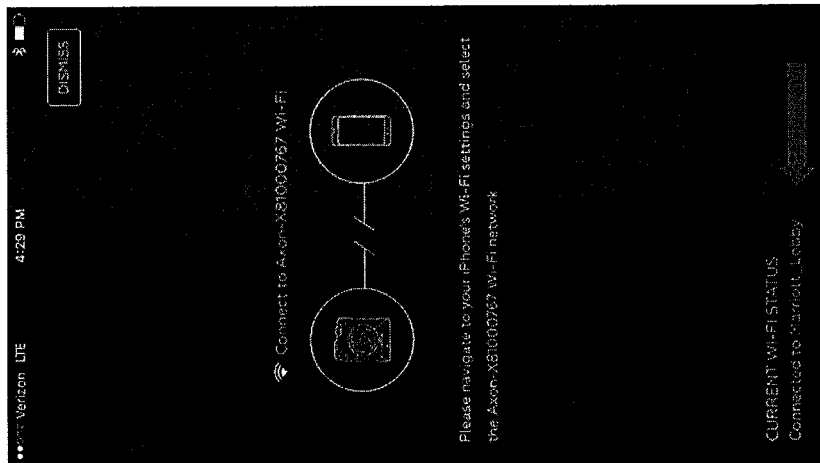
LIVE PREVIEW - AXON VIEW



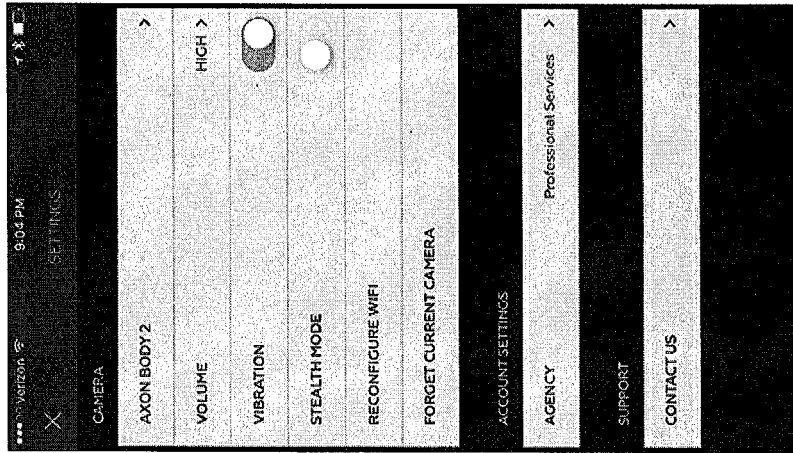
• To view live streaming tap on View Live



LIVE PREVIEW - AXON VIEW

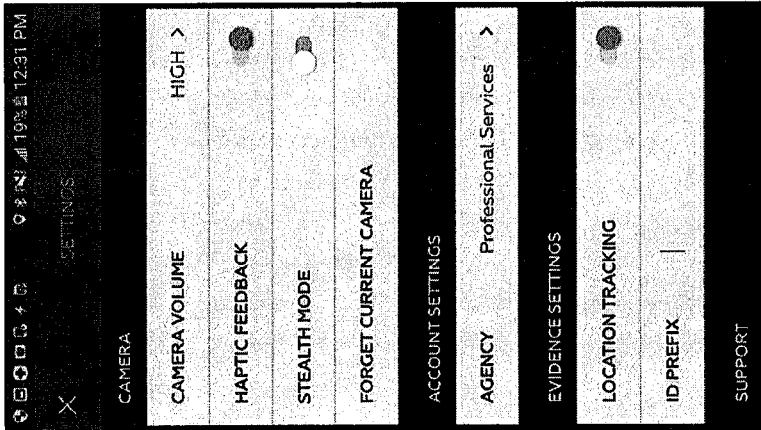


IOS SETTINGS – AXON BODY 2



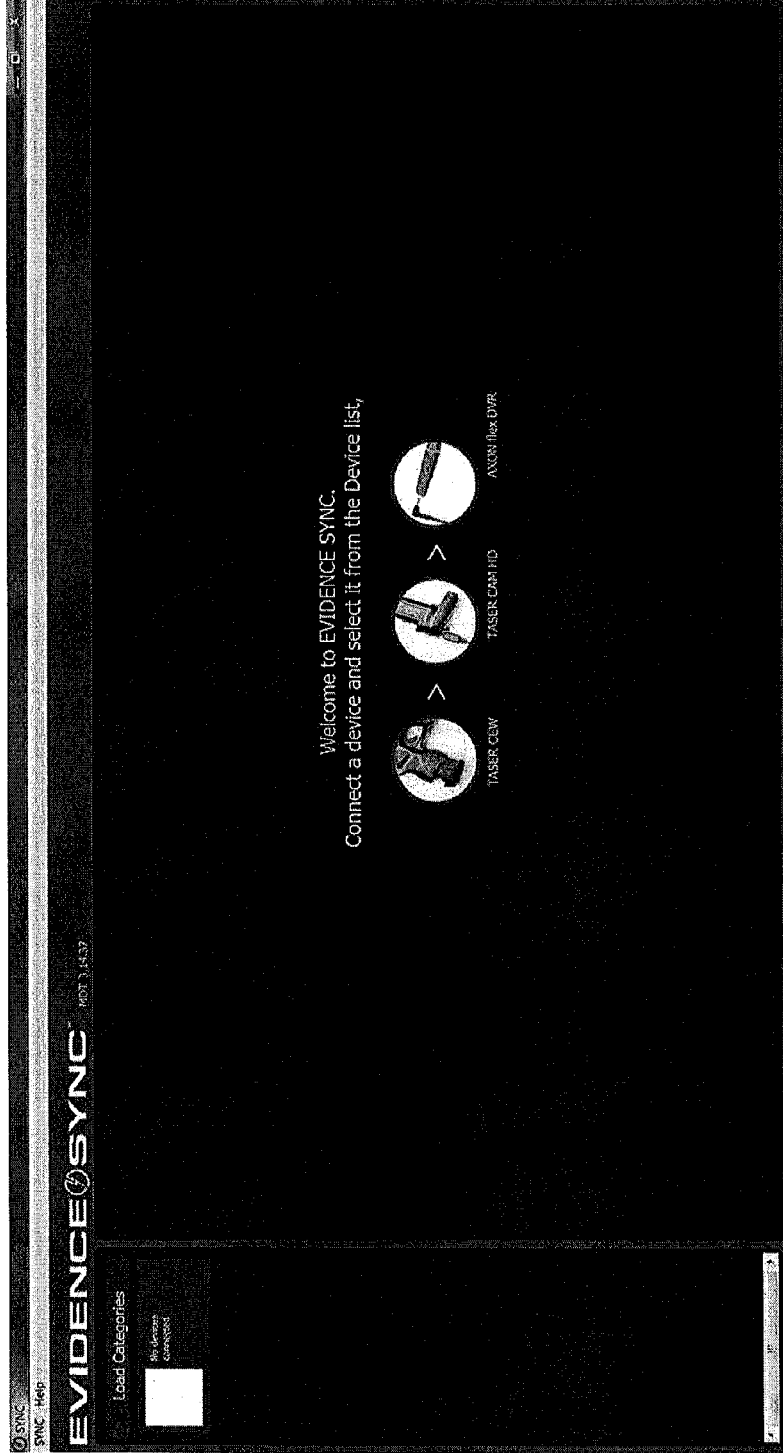
- **Volume**
- High
- Medium
- Low
- Off
- **Vibration**
- **Stealth Mode**

■ ANDROID SETTINGS – AXON BODY 2

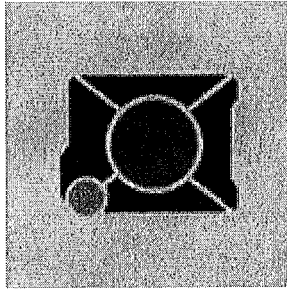


- **Camera Volume**
 - High
 - Medium
 - Low
 - Off
- **Haptic Feedback**
- **Stealth Mode**
- **ID Prefix**

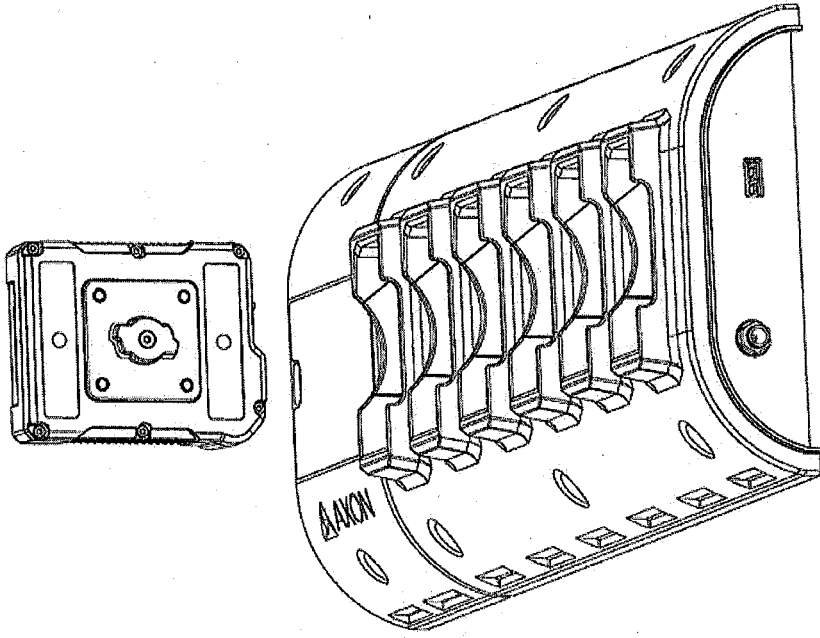
EVIDENCE SYNC



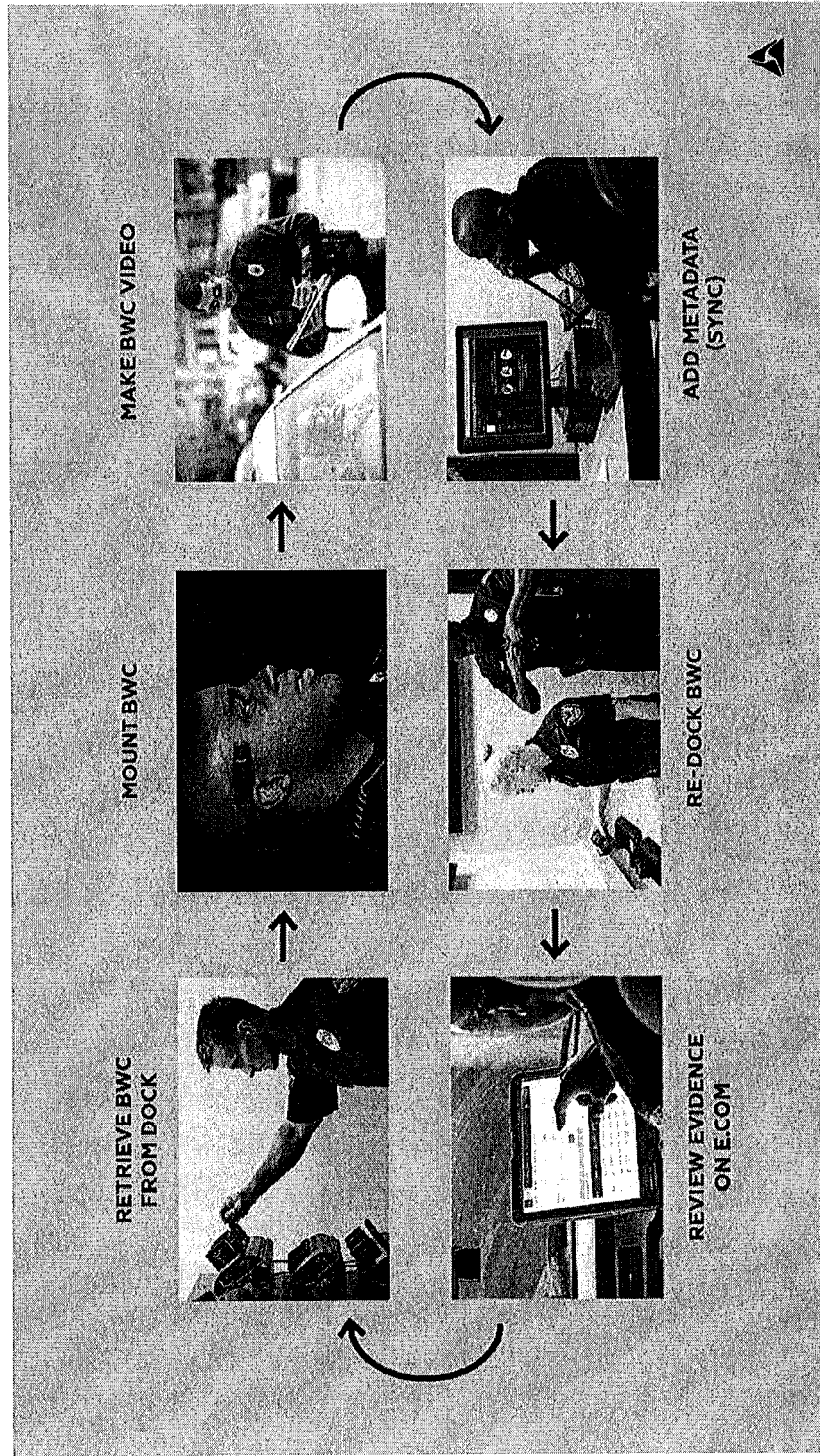
■ CAD INTEGRATION



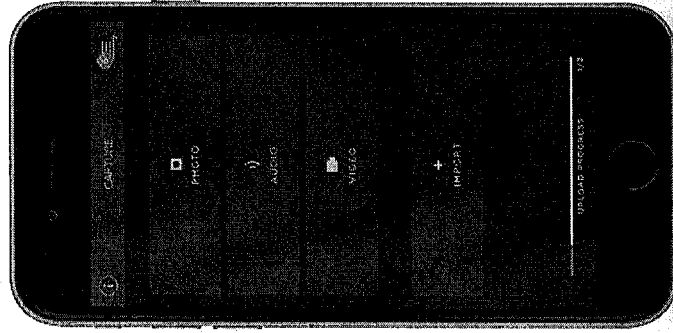
■ DOCKING & CHARGING THE CAMERA



WORKFLOW



■ AXON CAPTURE



- Captures digital evidence right from the field
- Eliminates the needs to use alternative devices for photo, video, and audio recording



AGENCY.EVIDENCE.COM



AXON Evidence.com AXON POLICE DEPARTMENT

[SIGN IN](#) [REGISTER](#)


You have signed out.

USERNAME
Msmith

PASSWORD
.....

[SIGN IN](#)

Forgot your username or password?





DASHBOARD

EVIDENCE CASES DEVICES REPORTS ADMIN HELP

LOG OUT
LOG IN

SYSTEM ALERTS

Warning: IP Restrictions not enabled

CRITICAL DEVICE ALERTS

No Results Found

[Update](#)

UPCOMING EVIDENCE DELETIONS

No Results Found

TITLE **OWNER** **DELETION DATE** **OPTIONS**

No Results Found

TITLE **OWNER** **DELETION DATE** **OPTIONS**

No Results Found

SYSTEM USAGE

Total Storage: 567.67 MB

Video	356.99 MB	0.00 MB	0.00 MB	0.00 MB	0.00 MB	Active	2
Audio	6.35 MB	0.00 MB	0.00 MB	0.00 MB	0.00 MB	Deactivated	2
Other	174.32 MB	0.00 MB	0.00 MB	0.00 MB	0.00 MB	Inert	2

Total Active Drives: 6

UPCOMING EVIDENCE DELETIONS

No Results Found

SYSTEM USAGE

System Assigned (last 30 days): 0.00 MB

Video	0.00 MB	0.00 MB	0.00 MB	0.00 MB	0.00 MB	Active	0
Audio	0.00 MB	0.00 MB	0.00 MB	0.00 MB	0.00 MB	Deactivated	0
Other	0.00 MB	0.00 MB	0.00 MB	0.00 MB	0.00 MB	Inert	1

Total Users: 7

FILE CHANGES Video Audio Other

400

300

200

Last: 30 Days Storage Activity



TASER



AXON

QUESTIONS?

PROTECT LIFE.
PROTECT TRUTH.
JANUARY 5,
2018

Martinez, Maritza

From: Lee, Katherine
Sent: Friday, January 05, 2018 3:05 PM
To: Martinez, Maritza
Subject: FW: Body-worn cameras
Attachments: Axon Body 2 PRC- BWC Orientation.pdf

Maritza,

This is what I was waiting for, to be added to the Handouts for the Dec. 13 PRC meeting.

I've already saved a copy in the G: drive.

Thanks.

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

From: Okies, Joe
Sent: Friday, January 05, 2018 2:47 PM
To: Lee, Katherine <KLee@cityofberkeley.info>; Greenwood, Andrew <AGreenwood@cityofberkeley.info>
Subject: RE: Body-worn cameras

Happy New Year Kathy,

Here is the PowerPoint Dec from the presentation.

Thanks,

Joe

From: Lee, Katherine
Sent: Wednesday, January 03, 2018 11:51 AM
To: Greenwood, Andrew <AGreenwood@cityofberkeley.info>; Okies, Joe <JOkies@cityofberkeley.info>
Subject: FW: Body-worn cameras

Hi Andy and Joe,

Happy 2018! Just a friendly nudge about my outstanding requests, below.

Thanks,
Kathy

Katherine J. Lee
Police Review Commission Officer
City of Berkeley

510.981.4960

From: Lee, Katherine

Sent: Thursday, December 14, 2017 10:56 AM

To: Greenwood, Andrew <AGreenwood@cityofberkeley.info>; Okies, Joe <JOgies@cityofberkeley.info>

Subject: Body-worn cameras

Hi Andy and Joe,

Thank you both for the very informative presentation last night on the body-worn cameras.

Andy, this is the reminder you requested to please send last night's Power Point to me.

Also, we discussed whether I have the version of the policy that went to M&C. I'm attaching the latest version I've gotten from BPD. If there is a later version being discussed in M&C, please send.

Thanks again,
Kathy

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