

- **Recommendation #22**

BPD

Preparatory orders warning officers of the impending use of chemical agents should be announced over the radio.

PRC (9.9.2015)

The use of CS gas on December 6 is a cause of major concern. Not only is it unclear whether the actions of the crowd warranted such use, it is unclear how decisions were made to continue to deploy CS gas, and whether the continued use was necessary. Careful review of the policies regarding both the initial use of CS gas and its continued deployment must be undertaken by the BPD in conjunction with the PRC. New policies need to be drafted more carefully delineating when and how CS gas should be used in crowd management and control situations.

If and when CS gas is deployed, a public announcement regarding the impending use should be made, as well as radio broadcast to all law enforcement personnel.

- **Recommendation #23**

BPD

Prior to the planned deployment of CS Gas, medical aid should be on scene and available to respond to treat people who might be affected by CS Gas.

PRC (9.9.15)

(The PRC endorses the BPD's recommendation, and adds:) The PRC recommends that an operational policy regarding the use of CS gas be established delineating a removal and transport process as well as establishing a secure triage area for the treatment of affected personnel and members of the public.

- **Recommendation #25**

BPD

Improve accountability for the deployment and use of less lethal munitions and CS gas. Use of less lethal munitions should be recorded in the after action report and the policy should be updated to include this requirement.

PRC

(These are ideas tentatively agreed on pending conversation with the BPD.)

Improve accountability for the deployment and use of less-lethal munitions and CS gas.

PRC recommends that BPD and mutual aid responders perform an inventory of less-lethal munitions and CS gas both before and after an incident.

Whenever an officer uses less-lethal force in a crowd control situation, that officer is responsible for preparing an individual report of such use.

1 **Compilation of Commissioner Findings**

2 **Draft 9-11-2015**

3
4 The following findings by the Police Review Commission have been compiled
5 from personal participation by members of this commission; public comments at City
6 Council meetings and Police Review Commission meetings; analysis and review of the
7 Berkeley Police Department's Response to Civil Unrest December 6th and 7th, 2014
8 including the applicable BPD General Orders; review of Berkeley Police Department
9 videos; social media posts, photos, and videos; and review of reports from two of the
10 mutual aid responders, the Hayward and Alameda Police Departments.

11
12 1. On December 1, 2014, BPD learned of a planned, unpermitted march scheduled
13 to take place on Saturday, December 6, 2014.¹

14
15 2. The December 6 demonstration originated as part of the national Black Lives
16 Matter movement.² The focus of the December 6 demonstration was to express
17 frustration and anger over the failure of the authorities to charge the police officers
18 responsible for the deaths of Michael Brown in Ferguson, Missouri and Eric Garner in
19 Staten Island, NY, and others. A majority of the protesters believed the march was
20 intended to be peaceful and nonviolent.³

21
22 3. BPD's official position toward the protest was one of "protecting and defending
23 peaceful First Amendment activity."⁴ However, BPD believed the protest was organized
24 as a "F___ the Police" march, citing a leaflet with a picture of a protester sitting atop an
25 overturned/vandalized police vehicle.⁵ BPD did not try to contact the organizers until the
26 day of the event and they failed to reach any of the organizers.⁶ Thus, BPD's planning
27 unreasonably focused on potential agitators and vandals rather than facilitating a peaceful
28 protest.

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31 ¹ Response to Civil Unrest December 6th and 7th 2014; A Review of the Berkeley Police
Department's Actions and Events of December 6 and 7, 2014 (hereinafter "BPD Report"), pages 1,
12.

32 ² <http://blacklivesmatter.com/a-herstory-of-the-blacklivesmatter-movement/>.

33 ³ Moni Law, PRC Meeting, June 10, 2015.

34 ⁴ BPD Report, page 15 (Mission Statement).

⁵ BPD Report, page 13.

⁶ BPD Report, page 13.

1 4. In anticipation of a possibly large and violent crowd (as seen in other
2 demonstrations across the U.S.) BPD requested assistance from the Alameda County
3 Office of Emergency Services under the Mutual Aid response policy.⁷ The following law
4 enforcement agencies participated in the December 6 response: Alameda County
5 Sheriff's Office, Alameda Police Department, Hayward Police Department, Pleasanton
6 Police Department, Livermore Police Department, Oakland Police Department, California
7 Highway Patrol, and UC Berkeley Police Department.⁸

8
9 5. The Mutual Aid responders brought non-lethal munitions, including bean bag
10 shotguns, CS gas, and one tactical response vehicle.⁹ BPD did not inventory the non-
11 lethal munitions brought by other jurisdictions before or after the demonstration.¹⁰ BPD
12 did not provide any specific orders limiting the use of non-lethal force. Mutual Aid
13 responders follow their own department's internal rules and protocol when using less-
14 lethal force.¹¹

15
16 6. The December 6 demonstration began at approximately 5:00 p.m. with a crowd
17 gathering on the UC Berkeley Campus.¹² As the crowd marched down Telegraph and
18 into central Berkeley it grew in size.¹³ The crowd was peaceful, walking through the
19 streets and chanting.¹⁴ When the crowd reached the Public Safety Building, around 6
20 p.m., it had grown to several hundred.¹⁵

21
22 7. Shortly after the crowd arrived at the Public Safety Building, BPD set up a skirmish
23 line¹⁶ across MLK at Addison to keep the crowd away from the Public Safety Building
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25 ⁷ BPD Report, page 16, paragraph 3.

26 ⁸ Chief Meehan confirmed with the PRC Officer that this list is accurate and complete.

27 ⁹ Hayward Police Department Special Response Unit, After Action Report – SRU Operation #
28 14-14, page 7; numerous eyewitnesses testified to the PRC about seeing an armored vehicle
marked "Hayward Police Department" in or near the Civic Center area, Alejandro S., City Council
Meeting, December 16, 2014.

29 ¹⁰ BPD Report, pages 52-53.

30 ¹¹ California Office of Emergency Services Law Enforcement Guide for Emergency Operations.

31 ¹² BPD Report, page 17; Berkeley Police Department Detail Call for Service Report for 12/6/14
(hereinafter "CAD Report"), page 2.

32 ¹³ CAD Report, pages 3-4.

33 ¹⁴ James Arcellano, PRC Meeting, December 10, 2014; John, PRC Meeting, December 10,
2014; Anonymous Woman, PRC Meeting, December 10, 2014; Paul Kealoha Blake, City Council
Meeting, December 16, 2014; CAD Report, pages 3-4.

34 ¹⁵ M. Gordon, PRC Meeting, February 11, 2015; CAD Report, page 4 (900 people)

¹⁶ When a skirmish line is set up, officers are directed to maintain a safety zone, approximately
one arm's length plus the length of a baton, around themselves.

1 entrance and the staging area.¹⁷ As the crowd continued to grow several members of the
2 demonstration were seen testing the skirmish line and yelling insults at the police officers.
3 In an effort to keep the demonstration non-violent, some demonstrators admonished the
4 group to remember that "we are peaceful and non violent."¹⁸

5
6 8. When establishing the skirmish line, BPD officers gave verbal commands to the
7 front of the crowd to stay back and began to push protesters away.¹⁹ The protesters
8 believe that BPD failed to give adequate or sufficiently audible warnings to the
9 demonstrators to avoid the skirmish line officers' safety zone.²⁰ Numerous demonstrators
10 reported being struck in the head and/or back with batons at MLK and Addison. This was
11 the first use of force on December 6²¹ and the crowd became more verbally
12 confrontational with BPD thereafter.²²

13
14 9. Around 6:30 p.m., a BPD Commander determined that the roadblock at MLK and
15 Addison was causing a conflict with the crowd and was unnecessary. BPD then released
16 most of the lanes on MLK to allow the crowd to flow northbound.²³ BPD officers remained
17 in front of the Public Safety Building, in a line protecting the safety of the building.²⁴

18
19 10. As the crowd moved north towards University Avenue,²⁵ a protester approached a
20 BPD skirmish line officer with his arms raised. The protester was an older gentleman with
21 white hair and a beard. The protester came very close to the officer, well within an arm's
22 length. The officer used his baton to push the protester away. The protester fell
23 backward, tripping over his dog, and fell to the ground.²⁶ Many protesters saw this
24 exchange and shortly thereafter the atmosphere became more confrontational wherein

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28 ¹⁷ BPD Report, pages 16 – 17; CAD Report, page 6.

29 ¹⁸ BPD videos.

30 ¹⁹ BPD Report, page 19 (This was part of BPD's "safety zone" policy wherein skirmish line
officers create and maintain a safety space between themselves and protesters).

31 ²⁰ Moni Law, PRC Meeting, June 10, 2015.

32 ²¹ BPD Report, page 20.

33 ²² Moni Law, PRC Meeting, December 10, 2014.

34 ²³ CAD Report, page 6.

²⁴ BPD Report, page 22, paragraph 3.

²⁵ BPD Report, page 20; CAD report, page 6.

²⁶ James Arcellano, PRC Meeting, December 10, 2014; Tonya Carpenter, City Council
Meeting, December 16, 2014; BPD Report, page 21.

1 demonstrators became verbally confrontational with the police and several projectiles
2 were thrown toward the police from the north moving crowd.²⁷

3
4 11. The projectiles thrown at the police (throughout the evening) included a screw
5 driver, bricks, rocks, metal pipes and a bag of gravel.²⁸ At least five officers were injured,
6 one with a dislocated shoulder.²⁹ After the projectiles were thrown at officers near MLK Jr.
7 Way and Addison Street, BPD responded by firing one foam baton round³⁰ and rolling four
8 smoke canisters into the crowd.³¹ A protester picked up one of the smoke canisters and
9 threw it back toward the officers.³²

10
11 12. Some protesters attempted to dissuade acts of violence and encouraged the
12 crowd to stay focused on the purpose and to continue to march north. Some of these
13 protesters placed themselves between the police skirmish line and the protesters. At least
14 one protester who attempted to keep the crowd peaceful reported being struck in the back
15 with a baton. BPD did not communicate or attempt to manage the demonstration with the
16 protesters who assumed leadership roles or in any way take advantage of the de facto
17 peaceful leadership which emerged from the crowd.³³

18
19 13. The crowd eventually dispersed from the front of the Public Safety Building and
20 continued to move north toward University. At MLK and University, the majority of the
21 protesters began to move west on University.³⁴

22
23 14. Some individuals wearing black with mask covered faces vandalized the Trader
24 Joe's at MLK and University.³⁵ BPD videotaped the vandalism and destruction of Trader

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27 ²⁷ M. Gordon, PRC Special Meeting, February 25, 2015; BPD report, page 21, paragraph 3;
28 CAD report, pages 6-7.

²⁸ BPD Report, page 21, paragraph 3; CAD Report, pages 6-7.

²⁹ BPD Report, page 21, paragraph 3.

³⁰ The foam baton round used by BPD looks like a rubber bullet.

³¹ Steven O, City Council Meeting, December 16, 2014; BPD Report, page 21, paragraph 4;
31 CAD Report, page 7.

³² Male Speaker, City Council Meeting, December 16, 2014; BPD Report, page 30 (photo);
32 CAD Report, page 7.

³³ Moni Law, PRC Meeting, December 10, 2014; Anonymous Woman, PRC Meeting,
33 December 10, 2014; Moni Law, PRC Meeting, June 10, 2015.

³⁴ BPD Report, page 23, paragraph 2; CAD Report, pages 6-8.

³⁵ BPD Report, page .22, paragraph 3; CAD Report, page 7.

1 Joe's, but did not respond³⁶ or apprehend the criminals.³⁷ One male citizen confronted
2 the masked men at Trader Joe's and he was attacked.

3
4 15. Because BPD did not intervene to stop the various acts of vandalism, Berkeley
5 residents and some protesters felt compelled to take action to stop the vandalism and
6 looting. These acts of citizen policing left the citizens open to violent retaliation from the
7 vandals.³⁸ As the crowd moved west on University, a small sub-group engaged in
8 vandalism, including tagging buildings with spray paint, breaking windows, and
9 overturning trash cans.³⁹ Residents who live in this area repeatedly tried to stop this
10 conduct and were met with violence and intimidation.⁴⁰ The police were not present.⁴¹

11
12 16. The law enforcement presence at the University onramp kept the protesters off of
13 the freeway.⁴²

14
15 17. At 8:20 p.m. and thereafter, Lt. Schofield gave numerous Dispersal Orders at
16 Berkeley Way and West Street.⁴³ Lt. Schofield also announced that the demonstration
17 was an unlawful assembly.⁴⁴ BPD repeatedly attempted to kettle the protesters and their
18 attempts repeatedly failed.⁴⁵

19
20 18. The protest then moved eastbound, back toward the UC campus. As the crowd
21 moved east through Berkeley, there were reports of sponge rounds and beanbags fired at
22 the crowd with reported injuries from beanbags or sponge rounds throughout the
23 demonstration. Marchers reported being forced or trapped by BPD into a parking lot near
24 Acton and University, then being shot with rubber bullets and CS gas as they tried to
25 escape.⁴⁶ As the demonstrators regrouped near the UC campus there were more reports
26 of vandalism and a reported fire.⁴⁷

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28 ³⁶ M. Gordon, PRC Special Meeting, February 24, 2015.

29 ³⁷ BPD Report, page 22, paragraph 3; CAD Report, page 7.

30 ³⁸ BPD Report, page 22, paragraphs 1, 3.

31 ³⁹ CAD Report, pages 7-8.

32 ⁴⁰ Carol Denney, PRC Meeting, June 10, 2015.

33 ⁴¹ BPD Report, page 23, paragraph 2.

34 ⁴² BPD Report, pages 23-24.

⁴³ CAD Report 8:20 p.m. dispersal order; BPD Report, page 24, paragraph 4

⁴⁴ BPD videos.

⁴⁵ CAD Report 8:20 p.m. dispersal order & order to kettle; BPD report, pages 50-51.

⁴⁶ Ted Ambrose, December 10, 2014 PRC Meeting (stated that as the protest began to die down he and other protestors were on a side street where the police blocked them on the street

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2 19. At 9:00 p.m., BPD issued Dispersal Orders to the crowd located on Bancroft
3 between Dana Street and Telegraph Avenue. BPD "Command had an increasing concern
4 that there would be more looting, vandalism and violent riotous behavior in the Telegraph
5 Ave. business district if the crowd was allowed access."⁴⁸ BPD issued more Dispersal
6 Orders and attempted (unsuccessfully) to kettle the crowd again.

7
8 20. At 9:30 p.m., more than 100 officers blocked the intersection of Bancroft Way and
9 Telegraph Avenue. The crowd of approximately 200 included many UC Berkeley
10 students. Police then pushed protesters back toward Telegraph and Durant Avenue, to
11 which protesters chanted, "Hey hey, ho ho, police state has got to go." But there was a
12 line of officers at Durant blocking their path.⁴⁹

13
14 21. Police used batons to push protesters down Telegraph. The Alameda officers
15 reported that they were directed to move the crowd southbound on Telegraph and they
16 did so with their batons while yelling "Get back!"⁵⁰ Numerous protesters reported being hit
17 with batons, many in the face and head. Many of the baton strikes were delivered using
18 over the head or over the shoulder swings. Some claimed they were hit even though they
19 were peaceful.⁵¹

20
21 22. There were also reports of officers striking at cameras or cell phones that were
22 being used to record the events. One Alameda Police officer reported that he mistakenly
23 pushed a male member of the press: "I used my baton to push several of the protestors
24 back in order for them to move. At one point I pushed a White Male in the back with my
25 baton in order for him to move. At no point did I see any readily identifiable credentials

26
27 and didn't tell them anything and they had no idea what was going to happen. People were forced
28 to break down a fence to escape and then the police shot rubber bullets and tear gas into the
29 crowd who were trying to get out because they were afraid for their lives).

30
31 ⁴⁷ CAD Report 9:26 p.m. and 9:46 p.m. describes rocks and bottles thrown from the back of the
32 crowd toward officers.

33 ⁴⁸ BPD Report, page 25 paragraph 3.

34 ⁴⁹ BPD Report, p. 26.

⁵⁰ Alameda Police Department Report No. 14-6614 (hereafter "Alameda Police Report"),
several references. Note: The Alameda Police Department was the only mutual aid responder on
December 6 who provided a detailed report in response to PRC staff's request for records of a law
enforcement agency's involvement that night. Thus, no references can be made with the same
specificity regarding other agencies' actions.

⁵¹ BPD Report, page 26, paragraph 2 (batons used); Benjamin Schaub, PRC Meeting,
December 10, 2014 (witnessed officers attacking non-violent protestors).

1 that indicated he was with the press. He turned around, stepped back and yelled at me
2 claiming to be with the press. He then pulled a small badge from around his neck saying
3 he was from the press again. I did not get a good or close enough look at the badge to
4 verify whether or not that individual had a legitimate press pass. After he yelled at me he
5 stepped away from the large crowd and I lost visual of him.”⁵²

6
7 23. Simultaneously, a much larger crowd, estimated between 1000 and 1500
8 demonstrators, had gathered at Telegraph Avenue and Durant Avenue.⁵³ Dispersal
9 Orders were given to the crowd which referred to the possible use of less-lethal munitions,
10 but the orders did not include specific references to CS gas. The crowd did not disperse.⁵⁴

11
12 24. Around 10:00 p.m., Chief Meehan approved the deployment of CS gas and BPD
13 began deploying CS gas in the area of Telegraph and Durant.⁵⁵ After the CS gas was
14 used, reports of rock and bottle throwing and vandalism of police cars increased.⁵⁶ At
15 approximately 11:18 p.m., a man was injured by a projectile at Fred's Market.⁵⁷ The
16 subject was transported to Alta Bates.

17
18 25. At approximately 11:30 p.m., BPD again attempted to disperse the crowd. An
19 unlawful assembly was declared and BPD and the Mutual Aid units began to form around
20 the protesters.⁵⁸ At 11:37 p.m., the Dispersal Orders began again.⁵⁹ The officers were
21 directed to push the crowd south toward Oakland. The officers created multiple skirmish
22 lines pushing parts of the crowd in different directions.⁶⁰ The officers moved the crowd

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24 ⁵² Alameda Police Report, Supp. No. 7.

⁵³ BPD Report, page 26, paragraph 1.

⁵⁴ Alameda Police Report, page 3. (“A Lieutenant from the BPD gave the crowd several
25 commands to disperse . . . The order to disperse was loud and clear, however, the crowd refused
26 to disperse and continued throwing rocks and glass bottles at officers.”)

⁵⁵ BPD Report, page 29, paragraph 2; Alameda Police Report (eight officers reported deploying
27 CS gas).

⁵⁶ CAD Report, page 14 (10:15 p.m. taking rocks, taking rocks; 10:18 p.m. taking missiles;
28 10:39 p.m. taking on missiles).

⁵⁷ CAD Report, page 16; Fred's Market is located at 2521 Telegraph Avenue at Blake.

⁵⁸ Andrea Prichett, City Council Meeting, December 16, 2014; BPD Report, page 25,
29 paragraph 3; Zachary Running Wolf, City Council Meeting, December 16, 2014; Approximately
30 11:40 p.m., BerkeleySide reported that “Some of the protesters are sitting on the ground. The
31 demonstration appears to be peaceful.”; CAD Report, page 16.

⁵⁹ CAD Report, page 17.

⁶⁰ Nicky M., City Council Meeting, December 16, 2014 (told the council that she witnessed a
32 total disconnect between citizenry and the police. She said she was on Telegraph Avenue and
33 heard the cops scream skirmish line and then cops dressed in battle gear ran over them); BPD
34 videos.

1 southbound with their batons and thrusting motions. At various points the protesters were
2 pushed by one skirmish line into another skirmish line. This haphazard effort exacerbated
3 the problem and aggravated the crowd.⁶¹ Numerous protesters reported being hit with
4 batons and sprayed with CS gas as they attempted to comply with the dispersal orders
5 and marched toward Oakland.⁶²

6
7 26. At around 12:20 a.m., the process to "drive the crowd south" was renewed. BPD
8 orders were to "force the issue, keep moving them south."⁶³ The crowd was forced to
9 walk to Oakland, as the police presence prevented them from leaving the crowd.

10
11 27. At approximately 12:32 a.m., the police reported that they were being hit with
12 projectiles⁶⁴ and police vehicles were vandalized with inflammatory language and graffiti.⁶⁵

13
14 28. At about 1:00 a.m. near Telegraph Avenue and Parker Street, the police began
15 using CS gas⁶⁶ to continue to push the protest southbound.⁶⁷ Marchers stated that they
16 were told to go to Oakland,⁶⁸ and the crowd complied with officer demands to move south,

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18 ⁶¹ Ted Ambrose, City Council Meeting, December 16, 2014 (stated that as the protest began to
19 die down he other protestors were on a side street where the police blocked them in and they were
20 forced to break down a fence to escape. As they were escaping the police shot rubber bullets and
21 tear gas at them); BPD videos; Police used batons to push protesters down Telegraph; BPD
22 Report, page 26, paragraph 3..

23 ⁶² Nicky M., City Council Meeting, December 16, 2014; Male Speaker, City Council Meeting,
24 December 16, 2014; Berkeleyside reported, "Cindy Pincus, who identified herself as an intern
25 minister at the First Unitarian Society of San Francisco, said she was hit from behind with a police
26 baton just after midnight 'while retreating peacefully . . .' A police officer had begun jabbing a
27 protestor with the end of his baton. I turned around to retreat and passed a woman who had fallen
28 and was being trampled. I bent down to pick her up under one armpit while another woman
29 grabbed her other arm. I saw an officer raise his baton over my shoulder and was struck on the
30 back of the head as I was bent forward." She distributed a picture of her head bleeding from the
31 wound. http://www.huffingtonpost.com/2014/12/08/berkeley-protest-cindy-pincus_n_6290652.html;
32 Steven O., City Council Meeting, December 16, 2014 (stated he was one of the hundreds of
33 peaceful protesters that was tear gassed. He said that he witnessed bystanders, media, and
34 students that received tear gas as they were retreating); CAD Report, page 17; Walker Quinn, City
Council Meeting, December 16, 2014; BPD videos.

⁶³ CAD Report, page 18.

⁶⁴ CAD Report, page 19.

⁶⁵ BPD Report, page 27, paragraph 3; CAD Report, pages 18-19. Also, the Alameda Police
said that all four of their patrol vehicle were vandalized (Alameda Police Report, p. 4.)

⁶⁶ CAD Report, page 20.

⁶⁷ Jackson R, PRC Special Meeting, February 25, 2015 (stated that he was beaten with
overhead baton strikes; he saw the police line up and then charge toward the protestors; police
ordered them to march to Oakland); BPD Report, page 29, paragraph 2; BPD Report, page 31,
paragraph 1.

⁶⁸ John, PRC Meeting, December 10, 2014 (stated that protesters were marched to Oakland).

1 but the police continued to pursue them, deploying CS gas at six intersections on
2 Telegraph⁶⁹ and using raised batons and baton jabs.⁷⁰ No evidence of dangerous crowd
3 activity has been provided to the Commission to justify these repeated uses of force. The
4 combination of repeated CS gas exposure along with the lengthy walk was extremely
5 impactful, and there were reports of protesters suffering physical and emotional injuries as
6 a result. The marchers were driven over the city line into Oakland around 1:30 a.m.⁷¹

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32 ⁶⁹ BPD Report, page 31, paragraph 1; two videos of 1-1:30 AM Sunday December 7 2014
33 Telegraph Avenue: <https://www.youtube.com/watch?v=xUHvro4idPY> ;
<https://www.youtube.com/watch?v=Rn7Bu8TCXU8>

34 ⁷⁰ Alameda Police Report; several references to moving the crowd south using CS gas and batons.

⁷¹ CAD Report, page 22.



1 **Discussion section**

2 **A. Very preliminary and free-form thinking about what this might look like**

3

4 What conclusions are to be drawn from the Findings in the prior section? How do these
5 conclusions inform the Recommendations of the next section?

6

7 1) In general, here's what was problematic

8 i) Focusing, in beginning, on crowd control, when should've been on crowd
9 management

10

11 2) Specific areas of concern

12 i) Crowd management/control

13 (a) Kettling and dispersal tactics

14 (b) Communications

15 ii) CS gas use

16 iii) Other less-lethal munitions used

17 iv) Baton strikes

18 v) Mutual Aid

19 vi) Media

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21 3) Accountability

22 i) No AAR done

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1 **B. Ideas about what some parts of the Discussion section might look like.**

2
3 Crowd Control: Overall Approach

- 4
- 5 1. The BPD's approach on December 6, 2014, focused too heavily from the start on
6 crowd control, when the emphasis should have been on crowd management. The
7 crowd control posture resulted from an assumption that the protesters were largely
8 motivated by those promoting an "FTP" event and associated with violent action. To
9 the contrary, while focus of the protests was on the actions of police across the
10 country, the vast majority of protesters intended to march peacefully. The PRC agrees
11 with the BPD's post-incident assessment about how to approach such events in the
12 future. "We recommend greater resources be deployed in crowd *management* and
13 preventative roles. If necessary, resources should be redeployed or reconfigured for
14 crowd *control* needs as they arise. Greater emphasis should be placed on crowd
15 *management* techniques starting at the beginning of the event."¹ (staff)
- 16
- 17 2. The City considers non-violent demonstrations of concern about community issues to
18 be positive and healthy activities. Therefore, the City should interact with such
19 demonstrations primarily as events to be facilitated, rather than as threats to public
20 safety. (From Recommendation #8) Police officers will seek to navigate complex and
21 confusing crowd situations which may have mixed elements of legal and illegal,
22 peaceful and violent behavior. Facilitation of free expression, de-escalation of tension,
23 and peaceful resolution of conflict are primary goals of police interaction with crowds.
24 (New Rec. – preamble to Communication section)
- 25
- 26 3. To advance and make meaningful its goal of protecting First Amendment rights of
27 freedom of speech and assembly,² police must win the trust of the assembly that they
28 can demonstrate in safety. Heavily armed, massed police using crowd control tactics
29 may inflame an assembly and incite rather than prevent violent clashes. They can
30 intimidate peaceful demonstrators and promote alienation and confrontation. [cite to
31 study if available now.] Retired San Francisco police chief Tony Ribera "said law
32 enforcement agencies are usually most successful at handling demonstrations when

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34 ¹ BPD Report, p. 49, para. 3.

² BPD General Order C-64, para. 22.

1 they approach with a non-confrontational stance and ramp up when necessary. 'It's
2 hard to have a confrontational situation, then pull back from that.'³ The need for
3 sufficient police resources must also be balanced against the chilling effect of a large
4 and visible police presence.⁴ (From Rec. #8, edited.)
5

6 Crowd control: communications [omitted from Findings – didn't seem to fit there]
7

8 4. BPD did not adequately test the East Bay Regional Communication System (EBRCS)
9 for use in large-scale multijurisdictional actions. EBRCS is designed to have specific
10 radio channels to be used for multi-agency actions.⁵ However, some of agencies lines
11 were encrypted and others were not. The failure of EBRCS meant that BPD was not
12 able to communicate with the mutual aid responders. (AB, GP)
13

14 5. BPD also failed to either record or maintain any of the radio communication from
15 December 6 between BPD itself. The loss of this contemporaneous recording of the
16 department's observations and actions has had a significant impact on the ability to
17 both reconstruct and test the recollections of those involved. (AB, GP)
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32 ³ See: <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>. (Aug. 22, 2014.)
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34 ⁴ OPD Crowd Control policy, Sec. III.C.2, p. 4.

⁵ BPD Report, page 46, paragraph 4.

1 Less-lethal munitions - accounting

2
3 6. BPD staff told the PRC that they were unable to report how much CS gas or other
4 less-lethal munitions they or mutual aid responders used. However, it can be
5 discerned from other BPD materials that a significant amount of less-lethal ordnance
6 was expended on December 6. A December 7 BPD email states that "Last night's
7 rioting consumed the vast majority" of their on-hand supply of CS gas and 40 mm less
8 lethal ammo, and requests that departments supply "as much as you are willing to
9 loan us"⁶ The Hayward police reported that a count of their specialty impact munitions
10 and chemical agents revealed a need to restock inventory.⁷ (GL) One Alameda
11 police officer reported shooting 10 muzzle blasts of CS gas and throwing one CS
12 canister, while another deployed five CS canisters; six other officers deployed one CS
13 canister each.⁸ The inability of the BPD to account for how much CS gas and other
14 less-lethal munitions were used is troubling. While the PRC agrees with the BPD that
15 accountability for the deployment and use of less-lethal munitions should be improved,
16 the PRC would also like to see an accounting by mutual aid responders. (staff)

17
18 CS Gas

19
20 7. The PRC believes that CS gas was launched indiscriminately and broadly on two
21 occasions the night of December 6, 2014. (GL) This use of CS gas is a cause of major
22 concern. (rec #22) Not only is it unclear whether the actions of the crowd warranted
23 such use, it is unclear how decisions were made to continue to deploy CS gas, and
24 whether the continued use was necessary. (#22) CS gas was deployed with
25 apparent disregard for non-violent protestors, bystanders, children, the elderly and
26 disabled, and the homes of neighboring communities,⁹ and its use lacked basic
27
28
29

30 ⁶ December 7, 2014 email from Lt. Frankel to undisclosed recipients.

31 ⁷ Hayward Police Department Special Response Unit, After Action Report – SRU
Operation # 14-14, page 7.

32 ⁸ Alameda Police Report, various references.

33 ⁹ Anonymous/Transgender person, PRC Meeting, December 10, 2014 (This Berkeley
34 resident resides near Telegraph and Peoples Park and told the PRC that tear gas went
into the apartment via open windows and caused food, dishes, and linens to be thrown
out.).

1 protections such as using the minimum amount necessary and ensuring medical care
2 is available for those exposed to the gas. (GL)

3
4 8. Berkeley is out of step with its neighbors on the use of CS gas. The San Francisco
5 Police Dept. does not use tear gas.¹⁰ According to the Oakland Crowd Control and
6 Crowd Management Policy, "Chemical agents can produce serious injuries or even
7 death," and officers are to "use the minimum amount of chemical agent needed to
8 obtain compliance."¹¹ Further, "The use of hand-thrown chemical agents or
9 pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or
10 serious bodily injury from shrapnel. Said devices shall be deployed to explode at a
11 safe distance from the crowd . . ." ¹² Berkeley's crowd control and use of force policies
12 contain no similar language. (GL)

13
14 9. The PRC considered whether to recommend a ban on the use of CS gas for crowd
15 control purposes, but a majority of Commissioners do not support such a ban. Most
16 felt that the BPD should be able to resort to CS gas if needed. All Commissioners feel
17 strongly, however, that if CS gas is allowed, policies be revised to limit its use to
18 narrowly prescribed circumstances. Moreover, the Commissioners were unanimous in
19 their opinion that if CS gas is to be deployed to disperse a crowd, then its possible use
20 should be made explicitly clear in a dispersal order, and medical aid should be
21 arranged for in advance of deployment. (staff)

22
23 Less-Lethal Munitions

24
25 10. BPD told the PRC indicating that they were unable to report on how much less-lethal
26 munition the department expended. We do know that officers fired one less-lethal
27 foam baton round shortly after 6:30 pm on MLK Jr. Way near Addison Street. Another
28 report around 11:15 pm states "Fred's Market, man shot w/ projectile BFD loaded w/
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31
32 ¹⁰ <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>. Also, Capt. Theresa Gracie told the PRC Officer in a May 13, 2015 phone
33 conversation that SFPD has not used tear gas in the 20 years she has been with the
34 department.

¹¹ Oakland PD Crowd Control Policy, Sec. V.H.4.b. and V.H.4.c.

¹² Oakland PD Crowd Control Policy, Sec. V.H.5.b.

1 rig." The subject was transported to Alta Bates.¹³ (GL) Hayward police reported a
2 need to restock their specialty impact munitions, but did not specify how much was
3 used.¹⁴ (staff) No other information has been made available regarding the use of less-
4 lethal munitions. (GL)

5
6 11. Under Oakland policy, less-lethal munitions "shall not be used for crowd management,
7 crowd control or crowd dispersal during demonstrations or crowd events,"¹⁵ and they
8 "shall be used only when other means of arrest are unsafe and when the individual
9 can be targeted without endangering other crowd members or bystanders."¹⁶ Berkeley
10 has no such restrictions. (GL) Berkeley's Use of Force policy allows use of less-lethal
11 munitions in a crowd situation, but only by authorization of the Police Chief or his/her
12 designee, except in exigent circumstances.¹⁷ In such cases, the Incident Commander
13 must authorize the use.¹⁸ (staff)

14
15 12. BPD staff stated that they could not guarantee that non-violent people will not be shot
16 accidentally. Nor could they guarantee that people would not be shot in protected
17 organs. (GL) Therefore, PRC is recommending a revision of BPD's policy on using
18 less-lethal munitions, to minimize the risk that innocent persons will be hit. (staff)

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¹³ Cites needed. CAD Report? Baton round mentioned in BPD report, p. 21 without a
time given.

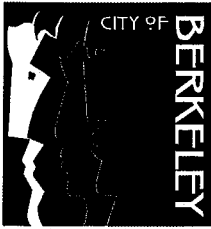
31 ¹⁴ Hayward Police Dept. Special Response Unit After Action Report – SRU Operation
32 #14-14.

33 ¹⁵ OPD Crowd Control Policy, Sec. VI.F.2.

34 ¹⁶ OPD Crowd Control Policy

¹⁷ General Order U-2, paragraph 18.

¹⁸ General Order U-2, paragraph 15.



Office of the City Manager

WORKSESSION
September 15, 2015

To: Honorable Mayor and Members of the City Council
From: *DWR* Dee Williams-Ridley, Interim City Manager
Submitted by: Michael K. Meehan, Chief of Police
Subject: Mid-year 2015 Crime Report

INTRODUCTION

At the request of City Council, the City Manager provides semi-annual reports on crime statistics in Berkeley. This report provides information on reported Part One crime for January through June of 2015 and compares those statistics with mid-year crime data from 2011 through 2014. This report provides Council with accurate crime data with the intent of informing the discussion on current efforts to reduce crime and victimization in the City of Berkeley.

CURRENT SITUATION AND ITS EFFECTS

In the first six months of 2015, reported Part One crime in Berkeley increased by 23% overall. With the exception of a decrease in homicides, Part One crimes increased in all categories with the largest numerical increase found in larceny/theft. Increases in Part One crime are being experienced across numerous regional jurisdictions, and increases have also been reported across California. There are various factors being considered as causes for these increases.

Homicides

There were no homicides in Berkeley during the first six months of the 2015. Felony aggravated assaults and cold case investigation continue to be a focus of our investigators.

Robberies

Overall, robberies have increased 53%, from 108 in 2014 to 165 this year compared to the first half of 2013 when there were 221 robberies. Pedestrian robberies increased 52%. This increase appears to have begun in late 2014 robberies trended upwards.

Rape and Aggravated Assaults

The FBI implemented the revised Uniform Crime Report sexual assault definition in January 2015 which resulted in nationwide increases in reported sexual assault statistics. Reported rapes were up 22%, an increase of 3 cases, as compared to 2014. Of Berkeley's 17 reported rapes, 9 would not have been recorded under the previous UCR definition. Eighty eight percent of reported rapes involved an acquaintance of some type, either recently introduced, or previously known to the victim. Alcohol was also present in most of the cases. There were two reported stranger rapes. No other similar incidents were reported. Aggravated Assaults were up 44%, with 22 additional incidents than in 2014. Aggravated assaults often involve people who know each other. Many of those cases involved victims or suspects who are homeless and/or suffering from mental illness or in some cases both. There were no unusual series to report in either category.

Burglary, Larceny and Auto Theft

Overall, Part One Property crimes increased by 21%. Burglaries increased 38% compared to 2014, with residential burglaries increasing by 86%, while commercial burglaries decreased by 19%. Burglaries of garages and sheds are included as they are categorized as "residential" burglaries. Larcenies were up by 17%, two hundred ninety one cases, and there were forty-six more Auto Thefts, a 15% increase as compared to the first six months of 2014.

Data

Data on serious crime is collected annually by the Federal Bureau of Investigation (FBI) from over 17,000 law enforcement agencies representing over 90% of the U. S. population. The FBI's primary objective in the Uniform Crime Report (UCR) is to generate a reliable set of crime statistics for use in law enforcement administration, operation, and management in the United States. The UCR tracks the following crimes:

Violent Crimes

Murder
Rape
Robbery
Aggravated Assault

Property Crimes

Burglary
Larceny (petty and grand theft, auto burglary)
Auto Theft
Arson*

**Arson is a UCR crime tracked separately from violent and property crime. It is included in the accompanying graphs.*

The UCR data provides the Berkeley Police Department the ability to analyze national and local crime trends, determine the effectiveness of response to crime, and conduct future planning and potential resource allocation. The FBI UCR handbook discourages using UCR statistics to compare crime rates of one jurisdiction to another because of the complex variables affecting crime and crime reporting practices.

BPD Crime Prevention and Response Strategies

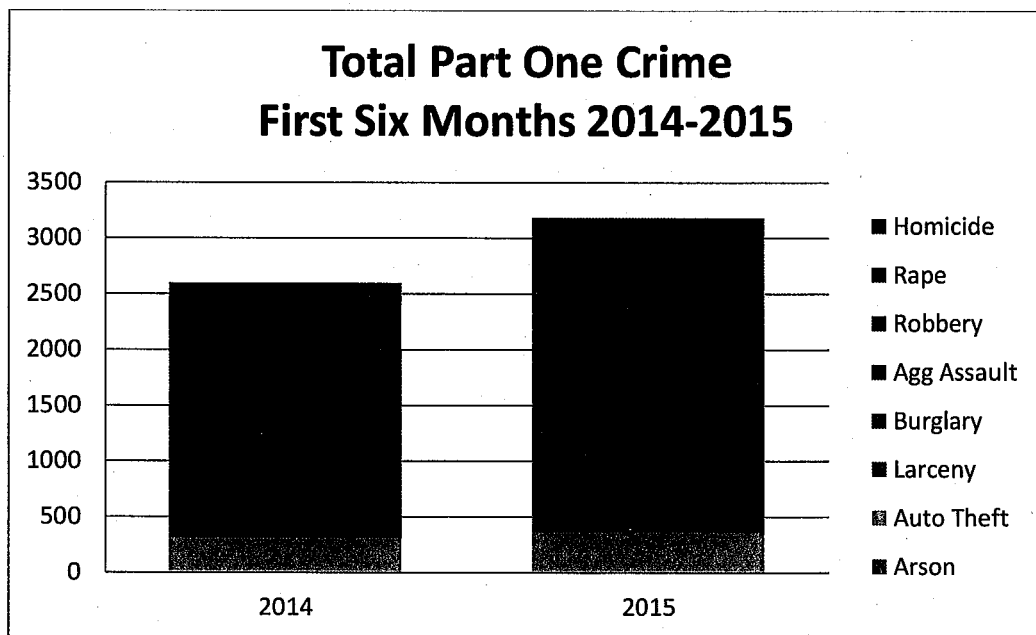
2015 has been a challenging year for law enforcement. The Berkeley Police Department's goal was to reduce the level of Part One Crime experienced in 2014 (the lowest in 50 years). The Department continued to implement crime prevention and response strategies and increase community engagement, including:

- Continued rapid and robust response to crimes in progress.
- Increasing focus on prevention of crime.
- Weekly Crime Analysis and Response Strategy meetings and coordination of focus and resources, including identification and focus on chronic offenders.
- Frequent and regular internal communication regarding crime trends, series, chronic and wanted offenders, and crime prevention strategies.
- Auto burglary suppression teams in areas and at times when data suggested the highest likelihood of auto burglaries will occur.
- Collaboration with UCPD on rape awareness and prevention education.
- Youth Services Detectives collaborating with Juvenile Probation to determine if high risk juvenile offenders are involved in Berkeley's residential burglaries.
- Strategically use of bike patrols in the downtown area, and collaboration with UCPD on bike patrols on and around Telegraph Avenue.
- In collaboration with UCPD, beginning use of "Bait Bike" program to apprehend Berkeley bicycle thieves.
- Education and support regarding BikeIndex.org online bicycle registry program to help identify and recover stolen bicycles.
- Work with BART to write and distribute community alerts and bulletins to increase rider awareness and to teach personal safety measures designed to reduce victimization.
- Pursuit of Department of Justice COPS grant which, if obtained, would fund part of the cost of an additional School Resource Officer that could positively support focus on services, support and intervention for students at risk of involvement in crime.
- In January 2015, the department implemented a new beat structure to improve efficiency and equalize workload among patrol officers. The Department plans to analyze the new structure to verify that the changes have resulted in beats being consistently staffed during most hours of the day and night and officer workload levels are equally distributed across beats.
- Utilizing Nixle social media alert and notification service to inform the community about crime prevention strategies, police incidents (e.g. missing persons at risk) and road closures caused by traffic accidents.
- Continued Crisis Intervention training (CIT) of officers and supervisors.
- Monthly Berkeley Safe Neighborhood Committee Meetings to address public safety concerns and collaborate on safety strategies.

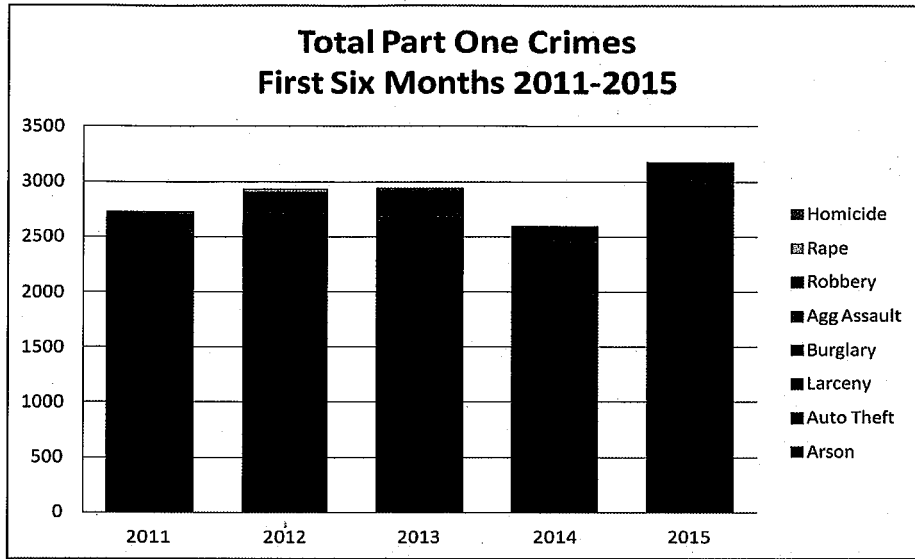
The attached graphs include six-month totals of UCR data for Part One Violent and Property Crimes for 2014 and 2015 in Berkeley, as well as five-year trends in Part One Violent Crimes and Part One Property Crimes.

Graphs below include:

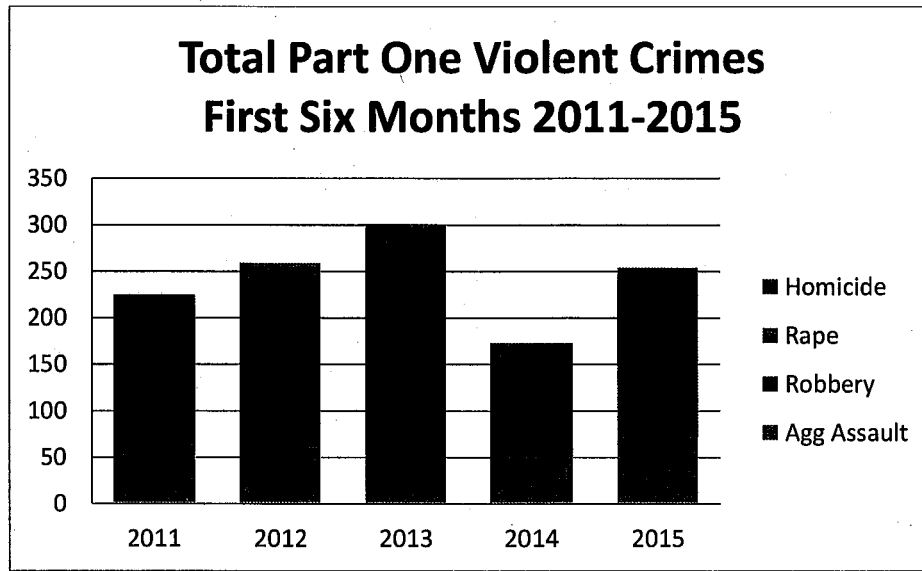
- UCR Part One Violent and Property Crime, two year trend
- UCR Part One Violent and Property Crime, five year trend
- UCR Part One Violent Crime, five year trend
- UCR Part One Property Crime, five year trend



	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2014	1	14	108	50	432	1683	302	5
2015	0	17	165	72	598	1974	348	9

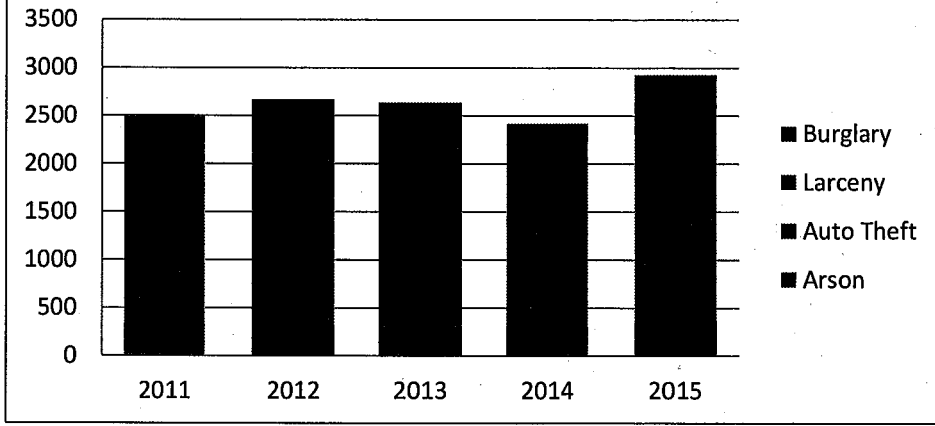


	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2011	1	10	150	64	506	1661	314	15
2012	3	18	177	61	433	1910	319	6
2013	1	18	221	60	479	1860	293	8
2014	1	14	108	50	432	1683	302	5
2015	0	17	165	72	598	1974	348	9



	Homicide	Rape	Robbery	Agg Assault
2011	1	10	150	64
2012	3	18	177	61
2013	1	18	221	60
2014	1	14	108	50
2015	0	17	165	72

Total Part One Property Crimes First Six Months 2011-2014



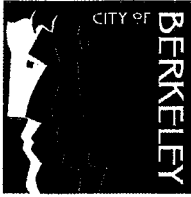
	Burglary	Larceny	Auto Theft	Arson
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2012	433	1910	319	6
2013	479	1860	293	8
2014	432	1683	302	5
2015	598	1974	348	9

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Michael K. Meehan, Chief of Police, (510) 981-5900



Police Review Commission (PRC)

September 15, 2015

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, Police Review Commission Officer 

Re: Revision of "The Right to Watch" Policy

The Police Review Commission has asked me to convey its concerns regarding the recent revision of The Right to Watch policy, as reflected in new General Order W-01, issued on July 21, 2015.

This policy holds particular significance to civilian members of the community, because it governs how and under what circumstances they are allowed to observe and record police officers in the performance of their duties. The ability to watch is an important means by which the community can hold officers accountable. Yet, the policy was revised from former Training & Information Bulletin No. 91 without input from or consultation with the PRC or any other public body, as far as the PRC is aware.

Therefore, the PRC voted unanimously at its September 9, 2015 meeting to request that, until the community and the PRC are given an opportunity to review the changes to The Right to Watch policy, that the BPD revert to following The Right to Watch guidelines as set forth in Training & Information Bulletin No. 91.

cc: Captain Cynthia Harris
Dee Williams-Ridley, Interim City Manager
Gil Dong, Interim Deputy City Manager

