

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**February 25, 2015
7:00 P.M.**

Booth Auditorium, Boalt Hall
(Bancroft Way at Piedmont Ave.)
University of California, Berkeley

1. CALL TO ORDER & ROLL CALL

2. APPROVAL OF AGENDA

3. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)

4. APPROVAL OF MINUTES

Special Meeting of February 4, 2015.

5. CHAIR'S REPORT

6. CHIEF OF POLICE'S REPORT

Budget, staffing, training updates, and other items.

7. PRC OFFICER'S REPORT

Status of Complaints; announcements

8. OLD BUSINESS (discussion and action)

- a. Continue development of General Order regarding the treatment of transgendered persons. Presentation by Russell Bloom, Investigator, BART Independent Police Auditor's Office, regarding BART's process in creating its general order.
- b. Establish rules of procedure for handling policy complaints and policy reviews.
From: PRC Officer
- c. Policy review regarding the events of December 6, 7, and 8, 2014, specifically focusing on the use-of-force General Order, the crowd control General Order,

the use of tear gas, the limitation on movement of emergency vehicles, the allegations of non-engagement by BPD during the disturbances on December 7; the use of batons in crowd control; and the firing of projectiles into a crowd: review BPD documents obtained to date; further discussion and action, taking into account Council's referral to the PRC as noted in item 8.c. of this agenda.

- d. Mutual aid practices and policies: update from PRC Officer regarding applicable mutual aid orders, policies and other writings, including those from the Alameda County Sheriff's Office; further discussion and action.

9. NEW BUSINESS (discussion and action)

- a. Use of police in-vehicle cameras and body-worn cameras by BPD: determine how to proceed on referrals from City Council on February 10 and possibly February 24.
- b. Changes to General Orders C-64 (Crowd Control), M-2 (Mutual Aid), and U-2 (Use of Force): determine on how to proceed on City Council's February 10 referral to review Oakland and San Francisco PD orders on crowd control and use of force, and any other policies deemed appropriate, to make appropriate recommendations to revise the BPD's general orders.
- c. Investigation into police response to protests on December 6, 2014: determine how to proceed on City Council's February 10 referral to investigate: the appropriateness of using tear gas, other non-lethal munitions, and baton strikes to disperse the crowd; and make recommendations based on what was learned from the incident and what could be improved upon for revised policies and procedures on crowd control; the use of force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as well as policies on mutual aid in First Amendment activity and crowd control incidents; have recommendations to the City Manager, Chief of Police and City Council no later than six months.
- d. Fair & Impartial Policing policy (General Order B-4): ask BPD about the status of implementation and plans for public reporting of demographic data.
From: Commissioner Lippman
- e. How to make the BOI process more responsive to complainants, and civilians generally, in light of City Attorney opinion re Possible Disclosure of BOI Findings Report to Complainants.
- f. Discuss City Attorney opinion re Disclosure of BPD Internal Affairs' Records to the PRC.
- g. Urge Council Members and the Mayor to hold annual commissioners' meetings with their appointees.
From: Commission on Aging

10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

- a. Regulations Subcommittee
Update/schedule meeting date.

- b. Suspicious Activity Reports Subcommittee
Update/schedule meeting date.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached

12. PUBLIC COMMENT

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

Closed Session

13. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

Complaint #2367.

End of Closed Session

14. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

15. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.



Communication Access Information (A.R.1.12)

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 3rd floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

COMMUNICATIONS FOR PRC MEETING

February 25, 2015

MINUTES

February 4, 2015 Special Meeting Page 7

COMMUNICATIONS

Communication #2312 – BPA comments on BART draft General Order on Transgendered persons. Page 13

Communication #4160 – February 9, 2015 memo from PRC Officer re: Draft Rules for Handling Policy Reviews and Policy Complaints. Page 15

Communication #4424 – City Council Annotated Agenda from February 10, 2015 meeting highlighting items involving the PRC. Page 17

Communication #4388 – Councilmember Maio Agenda Item (Action Calendar February 10, 2015 held over to February 24, 2015): Supplemental Report, Item 14; Police Community Relations Action Items. Page 21

Communication #1202 – Memo from City Attorney dated February 18, 2015: Request for Opinion Regarding Possible Disclosure of Board of Inquiry Findings Report to Complainants. Page 27

Communication #4377 – Memo from City Attorney dated February 18, 2015: Request for Opinion Regarding Disclosure of Berkeley Police Department Internal Affairs' records to the PRC. Page 29

Communication #4311 – Commission on Aging request to urge Councilmembers and the Mayor to hold annual commissioners' meetings with their appointees. Page 33

Communication #4370 – Police Review Commission Subcommittee List. Page 39

Communication #4400 – Memo from PRC Officer to Chief of Police: Documents relevant to protests on December 6 – 8, 2014. Page 41

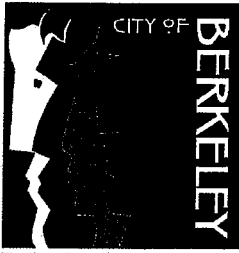
Communication #1106 – Memo from PRC Officer to Chief of Police: Commendations of BPD Officers by Police Review Commission. Page 43

Communication #1741 – Semi-Annual Report of Marijuana Enforcement Activity dated January 14, 2015. Page 45

COMMUNICATIONS

- Communication #4393** – City Manager Response to Referral from Council-Members and the Mayor (Information Calendar February 10, 2015): Police Department LeadsOnline Program. Page 49
- Communication #4193** – Announcement of the NACOLE Northern California Regional Forum on March 4, 2015. Page 51
- Communication #1106** – Letter Re: NACOLE President Brian Buchner's Oral Testimony for the President's Task Force on 21st Century Policing, Policy and Oversight Listening Session, in Cincinnati, Ohio. Page 53
- Communication #4400** – Article from berkeleyside.com, Exclusive: 23-minute delay for paramedics during Berkeley protests, patient later died. Page 57
- Communication #2301** – FBI Director James Comey's February 12, 2015 Speech – and two reactions. Page 61

KJL:mgm



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
SPECIAL MEETING
MINUTES
(Unapproved)**

**February 4, 2015
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 7:05 P.M.

Present: Vice Chair George Perezvelez
Commissioner George Lippman
Commissioner Ann Rogers
Commissioner Bulmaro Vicente
Commissioner Lowell Finley (*temporary assignment*)
Commissioner Harvey Kletz (*temporary assignment*)

Absent: Commissioners Barbara Allen, Karen Kiyo Lowhurst, Benjamin Bartlett, Michael Sherman

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Cynthia Harris, Sgt. Joseph Okies, Sgt. Katherine Smith

2. APPROVAL OF AGENDA

With a slight reordering, the agenda was approved by consensus.

3. PUBLIC COMMENT

There were no speakers.

4. APPROVAL OF MINUTES

Regular Meeting of January 14, 2015.

Motion to approve minutes of the Regular Meeting of January 14, 2015, as corrected.

Moved/Seconded (Finley/Vicente) **Motion Carried**

Ayes: Bernstein, Lippman, Perezvelez, Rogers, and Vicente

Noes: None Abstain: Finley, Kletz Absent: Allen, Bartlett, Lowhurst, Sherman

5. CHAIR'S REPORT

The Chair reported on City Council agenda items relating to issues the PRC is or will be working on.

6. CHIEF OF POLICE'S REPORT

Currently 169 sworn officers and 6 recruits in the academy; 2 dispatcher openings. Data collection under the Fair & Impartial Policing General Order has begun.

7. OLD BUSINESS (discussion and action)

a. Begin developing a General Order regarding the treatment of transgendered persons, using as a starting point BART's draft general order on this subject.

By consensus, the Commission agreed place this matter on the agenda for the February 25th meeting for further discussion and action; and to make the first draft BART order available to new Commissioners.

b. Decide how the BPD officers selected at the January 14, 2015 meeting for special recognition should be commended.

Motion to have PRC Officer write a letter to the Police Chief naming all the BPD officers chose for special recognition.

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

Ayes: Bernstein, Finley, Kletz, Lippman, Perezvelez, Rogers, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Lowhurst, Sherman

c. Review, further revise if needed, and approve revised Confidentiality Agreement.

Motion to accept revised Confidentiality Agreement as drafted, and require all sitting and new Commissioners to sign it.

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

Ayes: Bernstein, Finley, Kletz, Lippman, Perezvelez, Rogers, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Lowhurst, Sherman

By consensus, the Commission asked the PRC Officer to clarify with the City Attorney its advice that including formerly confidential documents that had been made public in a Board of Inquiry packet had the effect of making such documents confidential again.

(The following item was taken out of order.)

e. Policy Complaint #2362 & #2363 regarding McKinley Avenue staging in December 2014: Discuss PRC Officer's report on research into questions Commission raised at its last meeting; take further action or provide further direction.

By consensus, the Commission agreed to have the PRC Officer look into other jurisdictions' best practices for staging operations and report back at the next meeting.

- d. Determine how to proceed on policy review initiated at the January 14, 2015 meeting: Review the events of December 6, 7, and 8, 2014, specifically focusing on the use-of-force General Order, the crowd control General Order, the use of tear gas, the limitation on movement of emergency vehicles, the allegations of non-engagement by BPD during the disturbances on December 7; the use of batons in crowd control; and the firing of projectiles into a crowd.

Motion to establish a subcommittee to address the above issues.

Moved/Seconded (Vicente/Finley) **Motion Failed**

Ayes: Lippman. Noes: Bernstein, Finley, Kletz, Perezvelez, and Rogers.

Abstain: Vicente Absent: Allen, Bartlett, Lowhurst, Sherman.

By consensus, the Commission directed the PRC Officer to request from the BPD the following information: recordings of BPD communications on all channels; operational briefing documents; mutual aid requests; mutual aid plans; videotapes of the event; crowd control plan; requests to the CSIU, and to ask if the materials could be available by the February 25 meeting.

- f. Whether to establish a subcommittee to review BPD general orders and training bulletins regarding crowd control policies in conjunction with recognized established best practices, with particular focus on San Francisco and Oakland crowd control policies.

By consensus, the Commissioners agreed to delay this item until the information in the immediately preceding item has been obtained and the Commission makes further decisions about how to proceed on the policy review.

- g. Whether to conduct information gathering and investigation into mutual aid practices and policies, specifically as they relate to control of law enforcement conduct, accountability for the conduct of assisting agencies within Berkeley, and the scope of BPD responsibility as the lead agency for the conduct of responding agencies.

Motion to have the PRC Officer gather all BPD orders and other writings relating to the use of, and requests for, mutual aid, and how assisting agencies conduct themselves in the City of Berkeley; and obtain rules of the Alameda County Sheriff's Office governing agencies that respond to mutual aid requests; this to be done in advance of having BPD available for questions about the use of mutual aid.

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

Ayes: Bernstein, Finley, Kletz, Lippman, Perezvelez, Rogers, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Lowhurst, Sherman

8. NEW BUSINESS (discussion and action)

- a. Consider establishing rules for review and disposition of policy complaints and reviews.

By consensus, this item was tabled until the next meeting.

b. Consider holding a future meeting on the U.C. campus.

Motion to have regular meetings in other locations in the City, beginning with the U.C. campus on a date to be determined.

Friendly amendment (Bernstein; accepted by Rogers): to hold the February 25 regular meeting on the U.C. campus preceded by a 6:00 p.m. special meeting devoted mostly to hearing from the public.

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

Ayes: Bernstein, Finley, Kletz, Lippman, Perezvelez, Rogers, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Lowhurst, Sherman

By consensus, the Commission directed the PRC Officer to locate a room for the February 25 meeting, and to investigate other possible meeting venues.

c. Discuss ways to undertake community outreach

This item was discussed in conjunction with the item above; no separate action taken.

9. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

a. Wearable Video Cameras Subcommittee

Consider dissolution of subcommittee.

Motion to dissolve the Wearable Video Cameras Subcommittee

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

Ayes: Bernstein, Finley, Kletz, Lippman, Perezvelez, Rogers, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Lowhurst, Sherman

b. Regulations Subcommittee

Chair Bernstein appointed Commissioner Finley to the Regulations Subcommittee.

c. Fair and Impartial Policing Subcommittee

Motion to dissolve the Fair and Impartial Policing Subcommittee

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

Ayes: Bernstein, Finley, Kletz, Perezvelez, Rogers, and Vicente

Noes: Lippman Abstain: None Absent: Allen, Bartlett, Lowhurst, Sherman

d. Budget Review Subcommittee

By consensus the Commission dissolved the Budget Review Subcommittee

e. N-17 Subcommittee

Schedule meeting date; consider name change.

Motion to change the subcommittee name to the Suspicious Activity Reporting Subcommittee.

Moved/Seconded (Rogers/Finley) **Motion Carried**

Ayes: Bernstein, Finley, Kletz, Lippman, Perezvelez, Rogers, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Lowhurst, Sherman

Chair Bernstein appointed Commissioners Lippman and Vicente to the SAR Subcommittee.

10. PRC OFFICER'S REPORT

Three new individual complaints have been filed since the last meeting, for a total of 6 active complaints. A memo regarding the status of outstanding requests was distributed. The BPD extended an invitation to have a Commissioner sit in on SRT member interviews but no one was available.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

12. PUBLIC COMMENT

There were no speakers.

Closed Session

13. VOTE ON WHETHER TO ACCEPT LATE-FILED COMPLAINT

Complaint #2359.

Motion to approve Late File as timely.

Moved/Seconded (Lippman/Rogers) **Motion Failed**

Ayes: Lippman, Vicente Noes: Bernstein, Perezvelez, Rogers

Abstain: Finley, Kletz Absent: Allen, Bartlett, Lowhurst.

14. REVIEW OF CALOCA DECISION

Complaint #2327.

This item was tabled until the next meeting.

End of Closed Session

15. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

The vote to reject the request for late-filed complaint #2359 was announced.

16. ADJOURNMENT

The meeting was adjourned at 10:30 p.m.

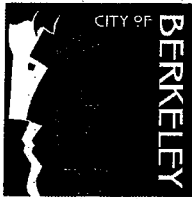
COMMUNICATION No. 2312

Lee, Katherine

From: Stines, Christian O.
Sent: Wednesday, February 04, 2015 12:48 PM
To: Lee, Katherine
Subject: Re: Got your voice mail

Kathy,

In regards to the policy we are firmly in support of the effort to address the specific concerns of the LGBTQ community, and the BART policy looks like a good starting point. The current direction from the department is quite dated and it would benefit our members to have a concise and current policy that addresses best practices in this area.



COMMUNICATION No. 4160

Police Review Commission (PRC)

Date: February 9, 2015

To: Police Review Commissioners

From: Katherine J. Lee, PRC Officer

Re: Draft Rules for Handling Policy Reviews and Policy Complaints
(This memo updates and replaces the memo dated February 3, 2015)

Background. At its January 14, 2015 meeting, questions arose regarding how policy complaints and Commission-initiated policy reviews are to be handled:

- A question was raised as to whether policy complainants are limited to speaking during public comment or whether they could answer questions from the Commissioners.
- In considering a policy review of the police department's response to the December protests, there was uncertainty over the distinction between a policy review and a policy complaint, and whether only one or the other authorizes an investigation to proceed.

The lack of clarity stems, in part, from the lack of written rules for how the PRC proceeds on policy reviews. The PRC Ordinance (Ord. 4644-N.S.; B.M.C. Ch. 3.32) grants the Commission broad powers to "review and make recommendations concerning all written and unwritten policies, practices, and procedures . . . in relation to the Berkeley Police Department" but does not provide details on how to carry out this work.

The PRC Regulations for Handling Complaints Against Members of the Police Department define a "Policy Complaint" as: "A declaration alleging that a BPD policy, practice or procedure is improper or should be reviewed or revised." (Section I.B.12.) The entirety of the procedures for handling policy complaints are found in Section II.A.4.b:

Policy complaints will be brought to the Commission, within 30 calendar days of filing,¹ at a regularly scheduled meeting for discussion or action. If a majority of the Commissioners feel that a policy review is warranted, they may take appropriate action, including, but not limited to, initiating a formal investigation or establishing a subcommittee; a subcommittee, if established, will seek BPD involvement in its review of a BPD policy. Upon completion of its review, the subcommittee will present its conclusions and recommendations to the full Board.

¹ A proposed amendment will change this to read that it may be brought within 30 days of the next regularly scheduled meeting if the 30 days has expired.

Thus, based on the Regulations, a civilian's request to review a particular policy is termed a policy *complaint*, but if the complaint is accepted, a policy *review* will follow.

When PRC Commissioners initiate a look into a policy, the practice has been to call it a "policy review," but there are no written guidelines about what to call it.² Also, according to staff, past practice has been that an investigation may proceed, if the Commission desires, regardless of whether the PRC opens a policy review or policy complaint.

Conclusion. Regardless of how or by whom a policy inquiry is initiated, it results in a policy review undertaken by the Commission. The Commission has broad latitude in determining how to proceed.

Proposed rules. Staff proposes the following rules for your consideration

- An inquiry into a policy, when initiated by a civilian filing a policy complaint form, is a "policy complaint."
 - The procedures for handling a policy complaint are set forth in Section II.A.4.b. of the Regulations.
 - Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Commissioners ██████████ ██████████ may ask policy complainants brief questions. The BPD will be given an opportunity to respond ██████████.
- A Commission-initiated policy review may commence upon a majority vote of the Commissioners.
 - Commissioners shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as whole Commission, assigning a Commissioner to research the issue, asking staff to investigate or research, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Commission.
 - The full Commission may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action.

² Remember also that policy reviews can also be initiated by City Council referrals and requests from the BPD. Also, the PRC may look into "practice and procedures" of the BPD, not just policies; for the purposes of the memo, policy reviews shall mean reviews of practices and procedures as well.

Council Consent Items

6. **Support the Creation of Financial Services by the United States Post Office**
From: Councilmembers Arreguin, Maio, and Wengraf
Recommendation: Adopt a Resolution supporting the creation of financial services by the United States Postal Service. Copies of the Resolution shall be sent to USPS Board of Governors Acting Chairman James H. Bilbray, Members of the Board of Governors Louis J. Guiliano and Ellen C. Williams, Postmaster General Megan J. Brennan, Deputy Postmaster General Ronald A. Stroman, Congresswoman Barbara Lee, Speaker of the U.S. House of Representatives John Boehner, U.S. House of Representatives Minority Leader Nancy Pelosi, U.S. Senators Dianne Feinstein and Barbara Boxer, U.S. Senate Majority Leader Mitch McConnell, U.S. Senate Minority Leader Harry Reid, and President Barack Obama.
Financial Implications: None
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: Adopted Resolution No. 66,927–N.S.
7. **City Manager Referral: Gender Neutral Restrooms**
From: Councilmember Worthington
Recommendation: Refer to the City Manager to create an ordinance making single stall restrooms gender neutral in all public accommodations.
Financial Implications: Minimal
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Councilmembers Moore and Droste added as co-sponsors. Approved recommendation.

Action Calendar – Old Business

- 8. **Berkeley Police Department Use of Police Vehicle In-Vehicle and Body-Worn Cameras** *(Continued from January 27, 2015 – Item includes revised recommendation.)*
From: Councilmembers Moore, Arreguin, and Maio
Recommendation: Refer to the City Manager to develop a plan to implement the use of dash cameras and body-worn cameras for the Berkeley Police Department. The report should be presented to the City Council within 3 months.
Financial Implications: Unknown
Contact: Darryl Moore, Councilmember, District 2, 981-7120
Action: Moved to Consent Calendar. Referred the item to the Police Review Commission with a request that the commission report back to Council within six months.

COMMUNICATION No. 4424

Action Calendar – Old Business

9. **Support the National Demands by Ferguson Action** (Continued from January 27, 2015)

NOTE:
FYI

From: Councilmember Arreguin

Recommendation: 1. Adopt a motion endorsing the National Demands from Ferguson. 2. Advocate for changes to the Alameda County District Attorney policy to include investigations to all in-custody deaths. 3. Issue a statement of concern and support for people of color and their families who have been affected by injury or death by law enforcement agencies.

Financial Implications: None

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

Action: Councilmember Anderson added as a co-sponsor. Moved to Consent Calendar. Approved the recommendation with Paragraph 1 of Attachment 1 revised as follows:

*1. The De-militarization of Local Law Enforcement across the country
Strict limits on the transfer and use of military equipment to local law enforcement and the adoption of the Stop Militarizing Law Enforcement Act of 2014. The federal government should discontinue the supply of military weaponry and equipment to local law enforcement and immediately demilitarize local law enforcement, including eliminating the use of military technology and equipment.*

→ 10. **Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid) and U-2 (Use of Force)** (Continued from January 27, 2015 - Item includes revised recommendation.)

From: Councilmember Arreguin

Recommendation:

1. Refer to the Police Review Commission (PRC) and City Manager the attached changes to BPD General Orders C-64, M-2, U-2, and request that they return to the City Council with recommended revisions to the General Orders. The proposed changes are modeled after the Oakland Police Department's recent amendments to their Crowd Control Policy and address issues raised with the police response to the December 6, 2014 Ferguson protests.

2. Adopt a motion declaring as a temporary City of Berkeley policy that the use of chemical agents (tear gas etc.), Specialty Impact Less-Lethal Weapons ("projectiles" or rubber bullets, wooden dowels, stinger grenades, rubber bullets) and over the shoulder baton strikes, are prohibited uses of force in responding to crowd situations, until such time as an investigation is conducted as to the Police response to the December 6, 2014 protests, and a review of General Orders C-64, M-2, and U-2 is completed.

Financial Implications: Unknown

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

Action: Councilmember Anderson added as a co-sponsor. 72 speakers. M/S/C (Arreguin/Anderson) to adopt Recommendation #1 from the revised materials included with the item amended to direct the Police Review Commission to review all police policies and orders and make recommendations as they deem appropriate.

Vote: All Ayes.

Action Calendar – Old Business

Action: M/S/C (Arreguin/Anderson) to adopt Recommendation #2 from the revised materials included with the item amended to read:

2. Adopt a motion declaring as a temporary City of Berkeley policy that the use of chemical agents (tear gas etc.), rubber bullets and other projectiles and over the shoulder baton strikes, are prohibited uses of force in responding to non-violent crowd situations, using the criteria for non-violent demonstrators established by the Council on April 28, 1992, until such time as an investigation by the Police Review Commission is completed regarding the Police response to the December 6, 2014 protests, and a review and revisions to police policy and General Orders are completed.

Vote: All Ayes.

Recess 9:44 p.m. – 9:58 p.m.

→11. **Independent Investigation of Police Response to December 6, 2014 Protests**
(Continued from January 27, 2015 - Item includes revised recommendation.)

From: Councilmember Arreguin

Recommendation: Direct the City Manager to initiate an independent investigation into the police response to protests on December 6, 2014 and to return to Council as soon as possible, but no later than 60 days with a contract to hire a qualified independent investigator. In considering who to select to conduct the investigation, the City Manager should give preference to former police chiefs or law enforcement officials with experience conducting internal investigations. To avoid the appearance of or possibility of conflicts of interests, the City Manager should avoid selecting an individual or firm who previously worked for the Berkeley Police Department or who previously or currently worked for any law enforcement agency in the San Francisco Bay Area. The City Manager shall ensure that the selected individual or firm has no apparent conflicts of interest.

The Council also refers the questions attached to the report for the City Manager and outside investigator to consider in conducting their investigation.

Financial Implications: Unknown

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

Action: Councilmember Anderson added as a co-sponsor. 20 speakers. M/S/C (Arreguin/Maio) to approve the recommendation as written in the revised materials included with the item:

Refer to the Police Review Commission to initiate an investigation into the police response to protests on December 6, 2014; the appropriateness of using tear gas, and other non-lethal munitions, and baton strikes to disperse the crowd; and make recommendations based on what was learned from the incident and what could be improved upon for revised policies and procedures on crowd control, the use of force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as well as policies on mutual aid in First Amendment activity and crowd control incidents.

The Commission should report its recommendations to the City Manager, Chief of Police and City Council no later than six months.

Action Calendar – Old Business

The Council empowers the Commission to produce documents and witnesses for the purposes of the investigation, including using subpoena power in order to compel testimony and documents.

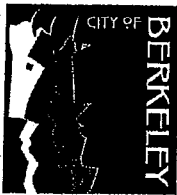
The Council also refers the attached questions to the Police Review Commission to consider in conducting their investigation (Attachment 1).

Vote: All Ayes.

- 12. City Manager Referral: Amend the Berkeley Municipal Code to Require City Contractors to Submit an Equal Pay Report** *(Continued from January 27, 2015)*
From: Councilmember Worthington
Recommendation: Refer to the City Manager to amend the Berkeley Municipal Code to require City contractors and subcontractors with 20 more employees to submit a Equal Pay Report.
Financial Implications: Minimal
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: 0 speakers. M/S/C (Worthington/Maio) to hold the item over to March 24, 2015.
Vote: All Ayes.
- 13. Georgetown University Energy Prize Semi-Finalist Selection** *(Continued from January 20, 2015)*
From: City Manager
Contact: Eric Ångstätt, Planning and Development, 981-7400
Action: Item held over to March 17, 2015.

Action Calendar – New Business

- 14. Police and Community Relations: Action Items**
From: City Manager
Recommendation: Discuss and prioritize action items identified by the City Council at the January 20, 2015 worksession.
Financial Implications: None
Contact: Christine Daniel, City Manager, 981-7000
Action: 0 speakers. M/S/C (Bates/Arreguin) to accept revised material from Council member Maio on Item 14.
Vote: All Ayes.
- Action:** M/S/C (Bates/Worthington) to hold the item over to February 24, 2015 and for the item to be heard at the beginning of the Action Calendar.
Vote: All Ayes.



CITY COUNCIL
Linda Maio

RECEIVED AT
COUNCIL MEETING OF:

FEB 10 2015

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

ACTION CALENDAR
February 10, 2015

23

TO: Honorable Mayor and Members of the City Council
FROM: Councilmember Linda Maio
SUBJECT: Supplemental Report, Item 14; Police Community Relations Action Items

Discuss

RECOMMENDATION: ~~Take the following actions on each category of items:~~

DIRECT STAFF TO:

- Implement body cameras for Berkeley police officers
- Add or strengthen training offered to Berkeley police officers regarding racial sensitivity
- Engage with Connie Rice, a public defender in Los Angeles working on developing trust between police and community

ADDRESS THE FOLLOWING CITY/BUSD PROJECTS AT 2X2 COMMITTEE:

- Work with BUSD to develop a "law and justice" academy at Berkeley High School to encourage Berkeley youth to pursue careers in law enforcement
- Ask BUSD to fund a School Resource Office at the Berkeley Technology Academy and perhaps also seeking state funding
- Establish a Restorative Justice program similar to that in the City of Oakland
- Establish a "Restorative Justice" corridor in the East Bay in collaboration with BUSD

DIRECT STAFF TO PREPARE LETTERS OF SUPPORT OR INTEREST TO RELEVANT STATE OR FEDERAL ELECTED OFFICIALS:

- Consider statewide minimum standards for General Orders when agencies respond to mutual aid requests
- Propose state legislation to amend the Public Records Act to address the records created through use of police body cameras
- Support three pieces of federal legislation:
 - a. HR 2851: End Racial Profiling Act of 2013; to eliminate racial profiling by law enforcement
 - b. HR 5478: Stop the Militarizing of Law Enforcement Act; amends the Department of Defense program transferring excess property to state agencies for law enforcement purposes

COMMUNICATION No. 4358

lmaio@cityofberkeley.info · 510.981.7110 · cityofberkeley.info/lindamaio

- c. HR 5831: Police Accountability Act of 2014; provides a penalty for violent crimes by certain State or local law enforcement officers
- Support state legislation changing how cases against police are prosecuted

REQUEST THE MAYOR AND STAFF WORK WITH ASSEMBLYMEMBER THURMOND ON THE FOLLOWING EAST BAY CORRIDOR PROJECTS:

- Request the Sheriffs in Alameda and Contra Costa Counties to review all police General Orders in each of the cities in their respective counties to identify similarities and differences
- Consider the City of Richmond's Office of Neighborhood Safety and its outreach to young people which has resulted in improved relationships

REFER TO THE CRYC, HEALTH, AND YOUTH COMMISSIONS:

- Identifying employment opportunities for youth such as training youth to become health educators, which provides employment and improves community health outcomes
- Encouraging Berkeley police officers to engage in more community activities, especially with youth, and take into consideration that engagement when officers are considered for promotion

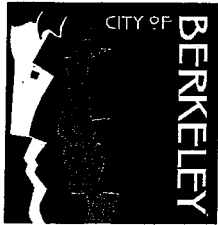
REFER TO AGENDA COMMITTEE TO SCHEDULE WORK SESSIONS:

- Hold a Council Work Session on Housing, Jobs and Education
- Invite the Richmond Police Chief to discuss his initiatives with the Council

BACKGROUND: This item is supplemental to the item prepared by the City Manager in response to the City Council's identification of various topics that the City could act on to improve community and police relations. The list of topics identified by the City Council at the January 20, 2015 Work Session was not categorized for action. This item suggests an approach to moving forward on most of the topics identified by councilmembers.

FINANCIAL IMPLICATIONS: Staff time.

CONTACT: Office of Councilmember Linda Maio, Vice Mayor of the City of Berkeley, District 1
510.981.7110 | lmaio@cityofberkeley.info | cityofberkeley.info/lindamaio




Office of the City Manager

ACTION CALENDAR

February 24, 2015

(Continued from February 10, 2015)

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Subject: Police and Community Relations: Action Items

RECOMMENDATION

Discuss and prioritize action items identified by the City Council at the January 20, 2015 Work Session.

FISCAL IMPLICATIONS

The fiscal impacts of this report are dependent on which topics are ultimately identified for action.

CURRENT SITUATION AND ITS EFFECTS

On Saturday January 17, 2015 the City Council conducted a special meeting at the Ed Roberts Campus to address the issue of Police and Community Relations. At that meeting the Council heard presentations from a number of panelists, including educators and several of the City's elected representatives at the state and federal level, offering information and various ideas about how to improve police and community relations. The Council also heard a number of speakers at public comment who also shared their ideas. Following that meeting, the Council held a special Work Session meeting on January 20, 2015 to continue its discussion of the ideas surfaced at the prior special meeting. The Mayor and Councilmembers each identified a number of items that could be acted upon by the City and the community. Those topics are briefly described below. The City Council requested that these ideas be presented at the February 10, 2015 meeting for discussion and prioritization for action.

BACKGROUND

At the January 20, 2015 Work Session the Mayor and Councilmembers identified the following topics that could be the subject of future action by the City and the community. The Council's discussion at this meeting could group these topics into focus areas and prioritize them for action. The Council could also consider additional, related topics for further discussion.

1. Implement body cameras for Berkeley police officers
2. Work with BUSD to develop a "law and justice" academy at Berkeley High School to encourage Berkeley youth to pursue careers in law enforcement

3. Encourage Berkeley police officers to engage in more community activities, especially with youth, and take into consideration that engagement when officers are considered for promotion
4. Ask BUSD to fund a School Resource Office at the Berkeley Technology Academy and perhaps also seeking state funding
5. Request the Sheriffs in Alameda and Contra Costa Counties to review all police General Orders in each of the cities in their respective counties to identify similarities and differences
6. Consider statewide minimum standards for General Orders when agencies respond to mutual aid requests
7. Propose state legislation to amend the Public Records Act to address the records created through use of police body cameras
8. Support 3 pieces of federal legislation:
 - a. HR 2851: End Racial Profiling Act of 2013; to eliminate racial profiling by law enforcement
 - b. HR 5478: Stop the Militarizing of Law Enforcement Act; amends the Department of Defense program transferring excess property to state agencies for law enforcement purposes
 - c. HR 5831: Police Accountability Act of 2014; provides a penalty for violent crimes by certain State or local law enforcement officers
9. Establish a "Restorative Justice" corridor in the East Bay in collaboration with BUSD
10. Take action on items 1-8 on page 8 of the memorandum from the Peace & Justice Commission
11. Take action on the health recommendations from the NAACP
12. Establish a Restorative Justice program similar to that in the City of Oakland
13. Consider the City of Richmond's Office of Neighborhood Safety and its outreach to young people which has resulted in improved relationships
14. Invite the Richmond Police Chief to discuss his initiatives with the Council
15. Hold a Council Work Session on Housing, Jobs and Education
16. Add or strengthen training offered to Berkeley police officers regarding racial sensitivity
17. Support state legislation changing how cases against police are prosecuted
18. Include the Berkeley Police Department in this dialogue and provide information about what resources are available to support these various efforts
19. Engage with Connie Rice, a public defender in Los Angeles working on developing trust between police and community
20. Identify employment opportunities for youth such as training youth to become health educators, which provides employment and improves community health outcomes
21. Create a separate body to focus on these issues
22. Create two or three City Council subcommittees, each of which would focus on a single topic
23. Give strong focus to the NAACP and their work

24. Provide education about drug usage in Berkeley and arrest rates by demographic
25. Restore mental health services
26. Encourage non-violence training for peacekeepers as part of protests
27. Identify short term actions as well as long term goals
28. Use "best practices" from other jurisdictions as a guide

ENVIRONMENTAL SUSTAINABILITY

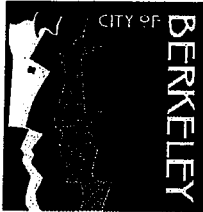
There are no identifiable sustainability effects or opportunities related to the content of this report.

ALTERNATIVE ACTION CONSIDERED

This report is in response to the City Council's discussion at a Work Session. The Council may direct staff based on the content of the report.

CONTACT PERSON

Christine Daniel, City Manager, 981-7000



Office of the City Attorney

Date: February 18, 2015

COMMUNICATION No. 1202

To: Katherine J. Lee, PRC Officer

From: Zach Cowan, City Attorney

By: Sarah Reynoso, Assistant City Attorney 

Re: Request for Opinion Regarding Possible Disclosure of Board of Inquiry Findings Report to Complainants

Background

This responds to your January 13, 2015 memorandum inquiring whether the PRC can release the Board of Inquiry's ("BOI") Findings Report to complainants. The BOI Findings Report is issued after the BOI has completed its review of the complainant's allegations against a subject officer. The Findings Report summarizes the facts of the case, and for each of the allegations sets forth the BOI's reasoning and vote. At the conclusion of the BOI, its Findings Report is sent to the subject officer, BPD Internal Affairs, the Chief of Police and City Manager. The complainant receives only a summary of findings, which sets forth the finding, i.e., sustained, not sustained, etc., and the vote.

Issue

Can the PRC release its BOI Findings Reports to complainants?

Conclusion

No. PRC BOI Findings Reports are confidential personnel records under Penal Code sections 832.7 and 832.8 and cannot be released to the complainant. However, Penal Code Section 832.7 provides that the complainant may be advised of the disposition of the complaint, i.e., whether the allegation was sustained or not sustained, and the vote.

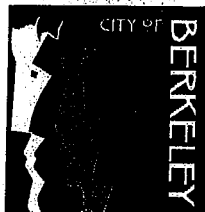
2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.6998 TDD: 510.981.6903 Fax: 510.981.6960
E-mail: ZCowan@cityofberkeley.info

Analysis

Penal Code Section 832.7 provides that peace officer personnel records are confidential and cannot be disclosed except pursuant to a discovery motion under Evidence Code sections 1040 and 1043. Penal Code Section 832.8 subsection (e) specifically provides that complaints and complaint investigation records are "personnel records" protected from disclosure by Penal Code Section 832.7. Additionally, the City previously litigated the issue of whether PRC records and BOI findings were public records in *Berkeley Police Association v. City of Berkeley* (2008) 167 Cal.App.4th 385. The Court of Appeal rejected the City's argument that PRC records were not personnel records under Penal Code section 832.7 and held that "the records and findings of the PRC are protected from disclosure under section 832.7, subdivision (a) both as 'records maintained by any state or local agency pursuant to Section 832.5' and as 'personnel records.'" *Id.* at 404 (emphasis added). Thus, the Court's decision in *Berkeley Police Association v. City of Berkeley*, *supra*, specifically prohibits the PRC from releasing the BOI Findings Report to the Complainant.

However, pursuant to Penal Code section 832.7, subdivision (e) (1), the PRC may continue its practice of notifying the complainant of the disposition of the complaint. That section provides that the "department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition." *Id.* Accordingly, the only information the PRC may release to the complainant is whether his/her allegations against the subject officer were sustained, not sustained, etc., and the vote.

cc: Christine Daniel, City Manager
Dee Williams-Ridley, Deputy City Manager
Mark Numainville, City Clerk
Opn. Index. II.E.1; II.G.8.a.




Office of the City Attorney

COMMUNICATION No. 4377

Date: February 18, 2015

To: Katherine J. Lee, PRC Officer

From: Zach Cowan, City Attorney

By: Sarah Reynoso, Assistant City Attorney 

Re: Request for Opinion Regarding Disclosure of Berkeley Police Department Internal Affairs' records to the PRC

Background

At its January 14, 2015 meeting, the PRC requested an opinion from the City Attorney on whether the PRC could obtain from the BPD Internal Affairs Bureau ("IAB") Division its records regarding prior complaints against the subject officer. The PRC believes that having access to the subject officers IAB complaints and findings may provide relevant information for a PRC Board of Inquiry ("BOI") hearing a complaint against that subject officer. The PRC does not currently have access to the IAB complaint investigation files.

You also asked whether the Police Chief could disclose to the PRC whether he had imposed discipline based on a PRC BOI sustained finding of wrong doing.

Issues

1. Can the PRC obtain access to subject officers IA complaint investigation file records as part of the PRC's complaint investigation process?
2. Can BPD disclose to the PRC whether discipline has been imposed as a result of a PRC BOI sustained finding of wrong doing?

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.6998 TDD: 510.981.6903 Fax: 510.981.6960
E-mail: ZCowan@cityofberkeley.info

Conclusion

1. No. These records are confidential personnel records under Penal Code Section 832.7.
2. No. This information is also confidential personnel records under Penal Code Section 832.7.

Discussion

IAB is responsible for investigating BPD internal personnel complaints and citizen complaints filed directly with IAB. IAB also conducts parallel investigations of all citizen complaints filed directly with the PRC. BPD established IAB to comply with Penal Code Section 832.5, which requires law enforcement agencies to establish a process to investigate complaints against public safety officers.

Pursuant to Penal Code Section 832.7, IAB's complaint investigation records are confidential. Section 832.7 (a), provides, in part, that "Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

Consistent with Section 832.7, BPD General Order P-26 identifies all IAB files as confidential and limits access to these records to "the employee, the Chief of Police, authorized administrative staff, the employee's Division Commander, the City Attorney, Internal Affairs Bureau personnel, the Human Resources Director and the City Manager and others as required by law." BPD G.O. P-26 *Retention of Records* – 56. Thus, the only city employees who have access to IAB records are those that have some role in the disciplinary process of a police officer or the attorneys that represent the City in legal actions

In *Brown v. City of Berkeley* (1976) 37 Cal.App.3d 223, the Court invalidated a provision in the PRC ordinance which purported to give the PRC authority to make disciplinary recommendations of police officers. The Court held that this section of the PRC ordinance conflicted with City of Berkeley Charter Section 28, which vests in the City Manager sole authority over the discipline of all city employees. *Id.* at 233. Thus, while the PRC Ordinance grants the PRC the authority to investigate complaints against police officers, the PRC has no power or authority to discipline or recommend disciplinary action of a police officer. IAB complaint records cannot be disclosed to the PRC because it has no authority to recommend discipline.

Memo to Katherine Lee, PRC Officer

February 18, 2015

Page 3 Re: Disclosure of Berkeley Police Department Internal Affairs' records to the PRC

For the same reasons cited above, the Chief cannot disclose to the PRC whether he has imposed discipline based on sustained findings of wrongdoing by the PRC, as those records are confidential personnel records under Section 832.7.

cc: Christine Daniel, City Manager
Dee Williams-Ridley, Deputy City Manager
Mark Numainville, City Clerk
Opn. Index II.E.1; II.G.8.a.

Lee, Katherine

From: Feldman, Gail
Sent: Tuesday, February 17, 2015 11:31 AM
To: Abel, David; Al-Hadithy, Nabil; Amoroso, Alexander; Angstadt, Eric; Brenman, Eric; Brown, Don L.; Bryant, Ginsi; Burns, Anne M; Corbeil, Donna; Davidson, Amy; DeSnoo, Neal; Erickson, Christina; Feldman, Gail; Geiken, Delfina M.; Greene, Elizabeth; Hollander, Eleanor; Javandel, Farid; Johnson, Carol; Klein, Jordan; Lee, Aaron; Lee, Katherine; Lee, Kristen S.; Merker, Mary Ann; Miller, Roger; Molina, Raquel P.; O'Connor, Katherine P.; Patterson, Carol; PRC (Police Review Commission); Rose, Sean; Schneider, Andrew; Talley, Leah; Thomas, Patricia A.; van Herick, Kristy; Wicker, Andrew; Wong, Wingyin; Zarnowitz, Sally
Subject: Recommendation from the Commission on Aging
Attachments: City Council Appointee Meetings recommendation.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

TO: All Berkeley Commissions and Commissioners
FROM: Commission on Aging (COA)
RE: Joining the CoA in urging Council members and the Mayor to pledge to hold annual meetings with their commission appointees

Fellow Commissions and Commissioners,

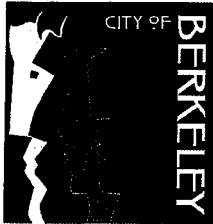
The Commission on Aging is writing to ask you to join us in urging Council members and the Mayor to hold annual commissioners' meetings with their appointees. Our rationale for asking this of council is contained in the recommendation attached. We would like you to put our recommendation before your commission for a vote of support before the end of March 2015. If the recommendation is passed by your Commission, please send a letter to council expressing this. If you'd like to add any comments, contingencies, changes or further suggestions, please feel free to do so.

Please contact Gail Feldman, Commission Secretary, for any information or questions at 981-5232 or gfeldman@ci.berkeley.ca.us

Sincerely,

Commission on Aging

COMMUNICATION No. 4311



Commission on Aging

[CONSENT OR ACTION]

CALENDAR

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: Commission on Aging

Submitted by: George Porter, Commission on Aging, Chairperson

Subject: Annual Meetings of Commission Appointees

RECOMMENDATION

The Commission on Aging recommends that all City Council members and the Mayor hold annual "working" meetings that gather together their appointed Commission members. The purpose of the meetings would be for personal contact, information sharing and networking.

FISCAL IMPACTS OF RECOMMENDATION

The City will incur minimal costs in the implementation of this recommendation.

CURRENT SITUATION AND ITS EFFECTS

Currently there is very little established policy, either formal or informal, regarding face-to-face contact between Council members, the Mayor and their appointees to the various City Commissions and none addressing any such contact between a Councilmember (and the Mayor) and his or her full group of commissioners.

As things stand, since appointment to commissions are in general for four (4) years and often overlap Councilmember's (and the Mayor's) terms, if a given district seat changes hands, on occasion new Council members (and Mayor) and their inherited commissioners have never met in person. In addition to this, since reappointment of commissioners to a second term is often a routine matter, it is possible that eight (8) years can pass with little or no direct contact between a Councilmember (or the Mayor) and his or her appointee.

As far as contact between a Councilmember's (or the Mayor's) group of commissioners goes, there is no consistent policy and to the Commission on Aging's (CoA) observation in many, many cases commissioners have no idea of even the name of their counterparts on other commissions much less any understanding of who these people might be and how best to work with them towards common goals. Indeed, though some commissions are in constant contact with one another, since there is little established

policy encouraging broad based communication between commissions, the simple fact that shared interests exist is far too often missed.

BACKGROUND

Over the past couple of years outreach and communication to other commissions has been part of the CoA work plan. A few individual commissioners have sat in on other commissions meetings, introduced themselves, tried to establish lines of communication and then reported back to the CoA, especially as regards issue relating to the aging population. This has proved moderately fruitful, but time consuming and very hit or miss. During that same time period one commissioner had an appointing council member that held annual commissioner meetings and reported back. This practice seemed much more useful and a couple of other commissioners who had had similar experiences before this period confirmed this which started us down the road that led to this action item.

To the best of the CoA's discovery, in the past various Council members (and Mayors) have come up with individual ways of establishing lines of communications with their commissioners and between them. Though the CoA fully appreciates Council members' (and the Mayor's) need for latitude in determining these relationships, the end results are often uneven and sporadic. In the case of the annual commissioners meeting, over the years some Council members have always held such meetings, others only on occasion and some not at all. Over those same years the individual commissions have had memberships with widely varying exposure to and understanding of the broad set of Municipal concerns the effect their work and much of the time in meetings can be spent bringing everyone up to date regarding these.

The CoA voted at its regular meeting of January 21, 2015 to recommend that City Council members (and the Mayor) hold annual "working" meetings that gather together their appointed Commission members. The purpose of the meetings would be for personal contact, information sharing and networking.

M/S/C (Jacquin/Hallberg) Ayes: Castello-Kramer, Hallberg, Jacquin, Lazaris, Porter, Ratnum, Schechner, Stross; Noes: None; Abstain: None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts

RATIONALE FOR RECOMMENDATION

The CoA feels that Council members (and the Mayor) establishing the habit of an annual commissioners meeting is a very simple and cost effective way of both addressing the concerns expressed above and of opening doors to new opportunities insofar as:

- 1) It ensures a basic level of the needed personal contact between Council members

and their commissioners.

2) For all attendees it puts a "human face" on the work of the various commissions and creates the sense of a broader community effort, the value of which should not be underestimated.

3) A well run meeting where each commissioner has a chance to briefly recap the last year's work of the commission he or she sits on establishes a baseline of information regarding Municipal concerns.

4) It encourages greater communication between the commissions which will result in:

- a) greater appreciation of one another's work
- b) greater awareness of the current scope of one another's work
- c) greater appreciation of the complexity of the Council's work
- d) more efficient use of time in commission meetings
- e) equal opportunity for all commissioners for access to useful information
- f) the recognition of and better cooperation in achieving shared goals
- g) more efficient sharing of resources
- h) increased transparency between commissions

5) In general, it will enliven the working relationship between Berkeley's elected officials and its citizen commissions and help ensure that our investment in this cooperative effort will yield greater returns.

Again, the CoA's suggestion here is that these be casual and friendly working meetings, not just social events. Though we fully appreciate that Council members (and the Mayor) already carry a heavy load, the CoA strongly feels that these yearly meetings will be of so much value to the municipality that we unanimously urge individual Council members (and the Mayor) to take this additional, small burden upon themselves.

ALTERNATIVE ACTIONS CONSIDERED

The CoA had considered that holding the meetings should be done on good faith, that they need not be an official requirement but instead should take the form of a pledge to "do his or her best to hold such yearly events". After further consideration, that language was removed from the recommendation and the accompanying background of the report.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report.

Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, "See companion report."

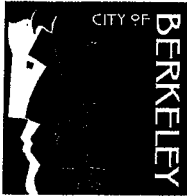
CONTACT PERSON

Gail Feldman, Commission Secretary, HHCS, 981-5232

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 2-6-15**

Subcommittee	Commissioners	Chair	BPD Reps / Others
Accreditation Formed 2-22-12 Renewed 2-27-13 Renewed 6-25-14	(Allen) Perezvelez	Perezvelez	Capt. Harris Sgt. Stines Sgt. Montgomery
Regulations Formed 6-26-13 Renewed 6-25-14	Bernstein Rogers Finley	Bernstein	Ofc. Bartalini PRC Officer PRC Investigator
Suspicious Activity Reporting Formed 11-12-14	Bernstein Rogers Lippman Vicente		Capt. Harris

COMMUNICATION No. 4370




Police Review Commission (PRC)

COMMUNICATION No. 4400

Date: February 11, 2015

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, PRC Officer 

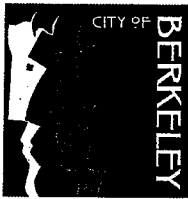
Re: Documents relevant to protests on December 6 – 8, 2014

At its February 4, 2015 meeting, the Police Review Commission discussed how to proceed on its policy review into the events of December 6, 7 and 8, 2014. By consensus, the Commissioners decided to begin by first reviewing documents and other materials that would give them a picture of the police department's actions on those days. Therefore, the PRC is asking the BPD to supply the following documents, audio recordings, and video recordings relating to or made on December 6, 7, and 8, 2014, concerning the demonstrations on those dates:

1. Recordings of communications on all channels, including dispatch and operational channels;
2. Operational orders and operational plans;
3. Operational briefing documents;
4. Requests for mutual aid;
5. Mutual aid plan;
6. Crowd control plan;
7. Requests to the Crime Scene Investigation Unit sergeant or designee to videotape the demonstrations;
8. Video recordings of the demonstrations;
9. Any other relevant documents, audio recordings, or video recordings.

Whatever you are able to provide before the PRC's next meeting, on February 25, would be appreciated. Also, if you will not be able to send certain materials, please let us know. Of course, I am happy to provide any further clarification or direction you may need.

cc: Police Review Commissioners
Christine Daniel, City Manager

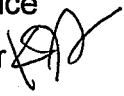


Police Review Commission (PRC)

COMMUNICATION No. 1106

Date: February 12, 2015

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, PRC Officer 

Re: Commendations of BPD Officers by Police Review Commission

At its November 12, 2014 meeting, the Police Review Commission reviewed a group of letters from January through May 2014, from civilians and outside agencies, commending Berkeley police officers and the department for noteworthy actions. At subsequent meetings, PRC Commissioners singled out from that group officers whose actions they believed were particularly exemplary, and asked that I forward their names to you.

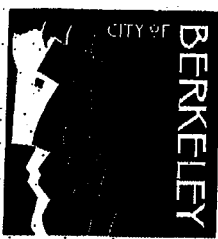
The officers the PRC specially thanks and recognizes for outstanding service between January and May, 2014 are:

- Ofc. Dave Marble & Ofc. Chris Bonaventure, 2-18-2014
- Ofc. Jamie Perkins, 3-12-2014
- Ofc. Darrin Rafferty & partner, 3-12-2014
- Ofc. Matthew Valle, 3-27-2014

Additionally, the PRC thanks and recognizes the entire Berkeley Police Department for its assistance during the February 2014 visit of His Holiness the Dalai Lama in the Bay Area.

The PRC would appreciate your posting this memo where all officers are able to read it. Thank you.

cc: Police Review Commissioners
Christine Daniel, City Manager



Office of the City Manager

COMMUNICATION No. 1741

January 14, 2015

To: Honorable Mayor and City Council members

From: Christine Daniel, City Manager *CD*

Subject: Semi-Annual Report of Marijuana Enforcement Activity

The table below is a compilation of the marijuana enforcement activity which occurred in the City of Berkeley, or was engaged in by Berkeley officers in other cities, during the period of July 1, 2014 through December 31, 2014.

The specific Health and Safety Code sections related to marijuana which were charged are defined in the following table:

11357(a) HS	Possession of concentrated cannabis (hashish)
11357(b) HS	Possession of not more than an ounce of marijuana
11357(c) HS	Possession of over one ounce of marijuana
11357(d) HS	Adult Possession on school grounds during school activity
11357(e) HS	Minor possessing marijuana on school grounds during school activity.
11358 HS	Cultivation of marijuana
11359 HS	Possession of marijuana or hashish for sale
11360 HS	Sales of marijuana or hashish
11361 HS	Inducing a minor to sell or use marijuana

The following information is provided in compliance with BMC 12.224.070.

Ticket/Case Number	Date	Statute
Case# 2014-00026124	8/19/2014	11359
Case# 2014-00039631	7/8/2014	11357 (A)
Case# 2014-00039790	7/8/2014	11359
Case# 2014-00040048	7/10/2014	11357 (A)
Case# 2014-00041448	7/16/2014	11359
Case# 2014-00042075	7/19/2014	11360 (A); 11359
Case# 2014-00044715	8/1/2014	11359

January 14, 2015

Re: Semi-Annual Report of Marijuana Enforcement Activity

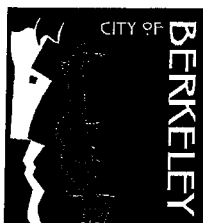
Ticket/Case Number	Date	Statute
Case# 2014-00045122	8/2/2014	11357 (A)
Case# 2014-00046618	8/9/2014	11359
Case# 2014-00047244	8/12/2014	11357 (A)
Case# 2014-00047644	8/14/2014	11359
Case# 2014-00047658	8/14/2014	11357 (A); 11360 (A)
Case# 2014-00047690	8/14/2014	11361 (A); 11360 (A); 11359
Case# 2014-00047704	8/14/2014	11360 (A)
Ticket# 40661	8/14/2014	11357 (A)
Ticket# 40575	8/14/2014	11357 (A)
Case# 2014-00048878	8/20/2014	11360 (A); 11359
Case# 2014-00048888	8/20/2014	11360 (A); 11359
Case# 2014-00048893	8/20/2014	11360 (A); 11359
Ticket# 40762	8/20/2014	11357 (A)
Ticket# 40838	8/20/2014	11357 (A)
Case# 2014-00049381	8/22/2014	11360 (A); 11359
Case# 2014-00049406	8/22/2014	11359
Case# 2014-00049606	8/23/2014	11359
Case# 2014-00049901	8/25/2014	11357 (A)
Case# 2014-00050857	8/29/2014	11359
Case# 2014-00052322	9/5/2014	11360 (A); 11359
Case# 2014-00052554	9/5/2014	11357 (A)
Case# 2014-00052789	9/6/2014	11357 (A); 11359
Case# 2014-00053445	9/10/2014	11360 (A); 11359
Case# 2014-00053462	9/10/2014	11357 (A)
Case# 2014-00053572	9/10/2014	11357 (A)
Case# 2014-00057006	9/26/2014	11357 (A)
Case# 2014-00057385	9/27/2014	11359
Case# 2014-00057857	9/29/2014	11359
Case# 2014-00059813	10/8/2014	11357 (A)
Case# 2014-00059956	10/8/2014	11359
Case# 2014-00060565	10/11/2014	11357 (B); 11357 (A)
Case# 2014-00060577	10/11/2014	11357 (B)
Case# 2014-00060898	10/13/2014	11357 (A)
Case# 2014-00062542	10/20/2014	11357 (C)
Case# 2014-00064975	10/31/2014	11357 (A)
Case# 2014-00065069	11/1/2014	11359

January 14, 2015

Re: Semi-Annual Report of Marijuana Enforcement Activity

Ticket/Case Number	Date	Statute
Case# 2014-00066424	11/7/2014	11359
Case# 2014-00066577	11/8/2014	11359
Case# 2014-00067984	11/15/2014	11359
Case# 2014-00068677	11/18/2014	11359
Case# 2014-00073838	12/18/2014	11359
Case# 2014-00074842	12/23/2014	11359

cc: **Police Review Commission**
Beth Pollard, Interim Deputy City Manager
Mark Numainville, City Clerk
Ann-Marie Hogan, City Auditor
Michael K. Meehan, Chief of Police
Matthai Chakko, Public Information Officer



Office of the City Manager

COMMUNICATION No. 4393

INFORMATION CALENDAR

February 10, 2015

To: Honorable Mayor and Members of the City Council
 From: *CD* Christine Daniel, City Manager
 Submitted by: Michael K. Meehan, Chief of Police
 Subject: City Manager Referral: Police Department LeadsOnline Program

INTRODUCTION

This report is in response to a referral to the City Manager from Councilmember Worthington requesting the Police Department consider upgrading its service agreement with LeadsOnline, a vendor providing services related to tracking property sold at Pawn shops and second-hand dealers.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Police Department receives numerous reports of burglaries and thefts each year. Detectives conduct follow-up investigations with the goal of identifying, arresting, and charging offenders. Since 2007, the City of Berkeley Police Department has contracted with LeadsOnline to provide online search access for records of reported purchases made by pawn and secondhand stores. This service is used by BPD Property Crimes Detectives to attempt to locate stolen property which is subsequently sold to a pawn shop or second-hand dealer. This service also allows investigators to review records of sales made by individuals to pawn and second hand stores across the country. Use of this service has contributed to the successful closing of cases, and is regarded as a valuable resource by investigators.

BACKGROUND

LeadsOnline is a private vendor which offers services beneficial to both businesses and law enforcement. Though second-hand dealers and pawn brokers are required to report (by means of paper or fax) their sales to the state, these businesses are not required to use the LeadsOnline service to report their purchases to the state.

LeadsOnline provides law enforcement clients access to their records as obtained from LeadsOnline client businesses. LeadsOnline provides for three levels of service to the law enforcement market. BPD currently contracts with LeadsOnline for their primary service level. This allows for access to pawn shop and second-hand stores records (including seller identities, and, on occasion, photographs of purchased property). It allows for statewide searches and for searches of records for the current and past three

calendar years. Each additional service level offers additional features for the end user, at a predetermined cost.

Following this referral, LeadsOnline was contacted to provide updated quotes for their service levels. Staff discussed the desirability of the increased service levels. Staff regards LeadsOnline as a valuable resource at the current service level. Should funds be made available, adding one level of service would be desirable, but is not regarded as an investigative necessity.

The Department's current cost for LeadsOnline services is \$6,468. Upgrading LeadsOnline services to the "Total Track" product would carry an additional annual cost of \$2,390. Upgrading to their "PowerPlus" product would carry an additional annual cost of \$4,120. There are no identified funding sources to cover an increase in costs.

The Department is also aware that the State of California Department of Justice is working to implement an online service, the California Pawn and Second-Hand-Dealer System (CAPPS). CAPPS, once implemented, will greatly reduce manual paper flow issues, both within the Department and the State, and will increase the timeliness and accuracy of information from second-hand dealers and pawnbrokers. Second-hand dealers and pawnbrokers will be required to enter seller and item information directly into CAPPS through a web interface, and will no longer fax or mail forms to local law enforcement agencies and the state. Law Enforcement personnel will have also have query access to CAPPS records. This free system may result in changes in our LeadsOnline usage.

POSSIBLE FUTURE ACTION

Should discretionary funding increase, staff may consider increasing the service level of LeadsOnline, within a context of a variety of competing priorities and options. The State's implementation of CAPPS—including access to all transaction records—may cause LeadsOnline to review their business models, and potentially focus on providing information and services not otherwise available through CAPPS. If and when LeadsOnline develops other options, alternative plan and pricing options may arise.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

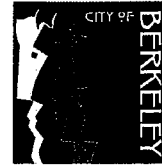
With no anticipated increases in Division funding in FY16 and FY17, commitment to ongoing annual cost increases would reduce funds available for other goods and services, supplies, equipment, and training. Alternative service plans may offer cost savings in the future, and would be considered as they arise.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Capt. Andrew Greenwood, Investigations Division Commander, 981-5810



NACOLE™ Northern California Regional Forum

This conference will be a great opportunity to network with colleagues and friends in the Northern California region and to discuss relevant topics in the field of police oversight, including the rising use of on-body cameras by officers.

WHEN: Wednesday, March 4, 2015

WHERE: Joseph P. Bort Building—Auditorium
101 Eighth Street, Oakland, CA
(directly across from Lake Merritt
BART Station)

TIME: 9:00 a.m. - 4:00 p.m.
Continental breakfast and lunch will be served

**RSVP is required to agrayso@bart.gov by Friday,
February 27, 2015**

Sponsored by: BART Office of Independent Police Auditor and City of Berkeley

COMMUNICATION No. 4193



January 30, 2015

Charles H. Ramsey
Co-Chair
President's Task Force on 21st Century Policing

COMMUNICATION No. 1106

Laurie O. Robinson
Co-Chair
President's Task Force on 21st Century Policing

Ronald L. Davis
Executive Director
President's Task Force on 21st Century Policing

Re: NACOLE President Brian Buchner's Oral Testimony for the President's Task Force on 21st Century Policing, Policy and Oversight Listening Session, in Cincinnati, Ohio

Dear Co-Chairs Ramsey and Robinson, Executive Director Davis, and Distinguished Members of the Task Force:

On behalf of the National Association for Civilian Oversight of Law Enforcement (NACOLE), its Board of Directors, and our membership thank you for the opportunity to address this task force today.

It's time to stop thinking and talking about civilian oversight in simple terms; oversight is a process, and like policing it is complex. There are more than 200 oversight entities across the United States. No two are exactly alike. There are civilian review boards, monitors, auditors, and inspectors general, among other models. Citizen review is not an advocate for the community or for the police. This impartiality allows oversight to bring stakeholders together to work collaboratively and proactively to help make policing more effective and responsive to the community. Civilian oversight alone is not sufficient to gain legitimacy; without it, however, it is difficult, if not impossible, for the police to maintain the public's trust.

This afternoon I would like to put forth five recommendations to increase the impact and effectiveness of civilian oversight in building public trust and improving public safety.

They are as follows:

- **First: Fund oversight initiatives.** The Department of Justice's Office of Community Oriented Policing Services (COPS Office) should promote civilian oversight and show its support by funding it, just as they do local law enforcement, with resources

P.O. Box 87227 ♦ Tucson, Arizona 85754 ♦ (317) 721-8133
E-mail: info@nacole.org ♦ Website: www.nacole.org

for training for oversight practitioners, as well as for the development of best practices and community engagement and outreach. At NACOLE's 20th Annual Conference, COPS Office Director Ron Davis spoke about the important role of citizen oversight in community policing initiatives and building public trust. Effective oversight leads to more effective policing. An investment in oversight is an investment in the police. The COPS Office should actively promote and support civilian oversight, and not just in the aftermath of a critical incident, but as a part of its regular efforts to advance community policing.

- **Second: Consent Decrees.** The Department of Justice (DOJ) should include in every consent decree and negotiated settlement agreement (NSA) a provision to create civilian oversight where it does not exist or strengthen it where it does. Further, the DOJ should require a process for sustained community engagement in consent decrees. Civilian oversight has already been featured in a number of consent decrees, but not all. Placing civilian oversight in the consent decree or NSA allows for the work and progress of oversight to be shaped and monitored by the Federal courts, with input from the involved law enforcement agency, and the public. It also helps to ensure that these oversight agencies receive the proper resources and support, in the short term to achieve compliance with the NSA and in the long-term to achieve sustainable reform. And when the consent decree concludes and court supervision ends, oversight provides a mechanism for ongoing public accountability.
- **Third: Expertise.** The DOJ should include civilian oversight experts in all of its "pattern or practice" investigations, even in those jurisdictions where oversight does not currently exist. Similarly, the COPS Office should involve oversight in all of its collaborative reform initiatives. Civilian oversight practitioners are from diverse backgrounds, and include lawyers, investigators, researchers, former law enforcement officers, and community volunteers. As the practice of citizen oversight has evolved, those providing oversight services have developed a sophisticated understanding of policing, the law, and of the community's values and needs. They are uniquely positioned for objectiveness and strive to achieve the right balance between over-identification with the police and over-identification with the community.
- **Fourth: Research.** The DOJ, through its research arm, the National Institute of Justice (NIJ), should expand its justice research agenda to be more comprehensive and include civilian oversight. The NIJ recently announced its research priorities in policing for FY2015, which include such topics as police use of force, body-worn cameras, and procedural justice, among others. While proposals related to research on police oversight might fit into several of these topical areas, it is not highlighted by the NIJ in any of them. The NIJ should specifically invite research into civilian oversight and its impact on, and relationship to, policing in one or more of these areas.
- **Fifth, and finally: Effectiveness.** The NIJ must fund a national study of civilian oversight to measure the effectiveness of various approaches to oversight. The lack of research into the effectiveness of different civilian oversight models and practices limits our understanding about what works and what doesn't in oversight, as well as how to improve its effectiveness. Effective oversight leads to more effective policing, and its

time that research catches up to practice. Citizen review is now found in cities and counties both large and small, and in every geographic region of the nation. It's time that the NIJ support a study that enhances our understanding of oversight and the critical role it plays in supporting effective policing.

Thank you for allowing NACOLE the opportunity to provide input into this important process. We are committed to supporting the work of this Task Force, and NACOLE, with its vast network of oversight practitioners and community stakeholders, is ready to work together to strengthen the critical relationship between the police and the communities they serve.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'B. Buchner', with a long horizontal stroke extending to the right.

Brian Buchner
President
NACOLE

Exclusive: 23-minute delay for paramedics during Berkeley protests, patient later died

By Emilie Raguso

February 5, 2015 11:59 am

A man in this building died after paramedics were delayed from reaching him during Berkeley protests in December. Photo: Emilie Raguso

They were just two minutes away, but it took paramedics 27 minutes during the Berkeley protests in December to reach a patient who later died, according to documents obtained by Berkeleyside under a Public Records Act request.

For 23 of those minutes, paramedics were waiting for a police escort, as per a standing city protocol, to ensure they could avoid the protests Dec. 7 and reach the man safely after he collapsed and struggled to breathe in a large affordable housing complex downtown. The Berkeley Fire Department's average response time is 5.5 minutes.

Read complete Berkeleyside coverage of the protests.

The response time was so delayed that a Berkeley paramedic was required by law to file an "Unusual Occurrence" form with Alameda County. Paramedic supervisor Rachel Valenzuela filed the form Dec. 9, less than two days after the Dec. 7 call on Kittredge. The form indicated that patient care had been affected during the call, and replied in the affirmative to the question of "Could this event cause a community reaction or represent a threat to public safety?" Berkeley Fire Chief Gil Dong said Tuesday he could not clarify what "this event" referred to, but said the addendum to the form provided additional detail.

Nearly all medical information was redacted from the documents, but they did reveal that three paramedics provided advanced life support to the man during his 8-minute journey to the hospital, where he arrived about 52 minutes after dispatchers first received a 911 call about his condition.

The Alameda County coroner's office identified the man Thursday as Alvin Henry Jones Jr., a 63-year-old Berkeley resident who died of natural causes. According to the coroner's office, Jones died Dec. 9 at Alta Bates Summit Medical Center in Berkeley. Jones reportedly is survived by a sister who lives in New York, but Berkeleyside was unable to locate her prior to publication.

DEC. 7: THE TIMELINE

6:39 p.m. Caller informs dispatch that paramedics are needed on Kittredge

6:40 p.m. Engine and medic are dispatched, but told to wait at the station for police

6:40 p.m., 6:49 p.m., 6:55 p.m., 7:03 p.m. Medical condition notes redacted

7:03 p.m. Police arrive at Berkeley Fire Station 2 (23 minutes elapsed)

7:05 p.m. Police and fire arrive at Kittredge (25 minutes elapsed)

7:07 p.m. Paramedics reach patient (27 minutes elapsed)

7:23 p.m. Paramedics and patient en route to hospital (43 minutes elapsed)

7:31 p.m. Paramedics arrive at hospital (52 minutes elapsed)

In the addendum, Valenzuela wrote that an engine and medic were dispatched at 6:40 p.m. to Kittredge Street — minute after the initial call — but were directed by a commander "to stage in quarters due to protest activity in the immediate area of the call. It was reported to the crews a large group of protestors were within a block of the call and the medical response were to stage in quarters until a police escort could escort us to the call."

COMMUNICATION No. 4400

The team waited for police at Fire Station 2, at 2029 Berkeley Way, and received periodic updates on its computer system about the call, according to the addendum. At 6:46 p.m., according to another Berkeley Fire Department report that included a log with timestamps, the reporting party from Kittredge called dispatch again. Details about that call were redacted, as were other updates related to the man's medical condition at 6:40 p.m., 6:49 p.m. and 7:03 p.m.

Berkeleyside reviewed scanner recordings to learn more about the incident. In those recordings, the man was identified as a 62-year-old who had collapsed on the fifth floor of 2175 Kittredge St. A fire dispatcher said the man was having "difficulty breathing, and sweating," adding: "The subject will be in front of the elevator."

The crowd — which had begun walking from campus through the Southside neighborhood and on into downtown at about 6 p.m. — at that point was described on the radio as 800-strong. The group was said to be moving westbound on University Avenue from Shattuck. There was also a police barricade set up, blocking Martin Luther King Jr. Way between Addison and Center streets.

Demonstrators (marked by the bullhorn) were between paramedics on Berkeley Way and an urgent medical call on Kittredge on the second night of significant protests in Berkeley earlier this month. Image: Google Maps

Police arrived at 7:03 p.m. to Station 2, at 2029 Berkeley Way just west of Shattuck Avenue, according to the addendum. The police and firefighter team left for Oxford Plaza, a 97-unit affordable apartment complex on Kittredge, and arrived two minutes later, just before 7:05 p.m.

Paramedics went into the building, where they made contact with the patient at 7:07 p.m. Police officers "stayed on scene for protection," according to the report. The patient was "quickly brought to the ambulance due to protest getting closer." The supervisor wrote that there was a "slight delay on scene" related to the extrication of the patient, but no further detail was provided. (Dong said Tuesday he could not comment on the nature of the extrication due to medical privacy laws.) One source familiar with the call said paramedics had to revive the man at the scene before taking him to the hospital.

"While in front of building prior to transport [redacted], multiple police officers were on scene protecting EMS crews and BFD BC [Battalion Chief] was on scene stating immediate transport needed due to volatile protest and scene safety," according to the addendum.

The man was taken to a local hospital at 7:23 p.m., with a "Code 3" status, meaning lights and sirens were used. Three paramedics provided advanced live support during the 8-minute trip, which ended at the hospital at 7:31 p.m., 52 minutes after the first call had come in about the man's condition.

Parts of the Kittredge Street call were redacted by the Fire Department, which cited medical privacy laws. Image: Berkeley Fire Department

One neighbor told Berkeleyside in January that a houseguest of hers had called police after the man collapsed inside an elevator on the east side of the building. The neighbor, who did not wish to provide her name, said she did not know the man. Berkeleyside spoke with a handful of other neighbors in January, but none knew about the man who died, or whether he had been a resident of the apartment building.

Neighbors said Oxford Plaza — which opened in 2009 — is not a close-knit community, and that management had canceled regular meetings it used to hold for residents due to low attendance.

"They say that we're a community, but yet they didn't say: 'Oh, one of our community members passed away,'" said one woman, Rhonda, who has lived at Oxford Plaza for five years. She and others expressed frustration that management does not make efforts to inform residents about critical news in the building. A representative for Oxford Plaza did not respond to repeated requests for comment.

Several city workers aware of the case told Berkeleyside the man who was assisted by paramedics later died at the hospital, and was believed to have had a heart attack. There is no way to know whether the man might have survived had

paramedics reached him sooner, given the amount of information that has been released, but prompt treatment has been shown to make a difference in the treatment of heart attacks.

“When a heart attack happens, delay in treatment can be deadly,” according to the U.S. Department of Health and Human Services’ National Heart, Lung, and Blood Institute. “Treatment works best when it’s given right after symptoms occur.... Many more people could survive or recover better from heart attacks if they got help faster. Of the people who die from heart attacks, about half die within an hour of the first symptoms and before they reach the hospital.”

According to the records reviewed by Berkeleyside, it took first responders about 27 minutes to reach the man, and another 16 minutes to get him into the ambulance to leave for the hospital. The Fire Department’s average response time is 5.5 minutes.

It’s not the first time local protests have been linked to a death in Berkeley. In 2013, the city of settled a lawsuit with the family of Peter Cukor, a man who was attacked and killed outside his Berkeley Hills home in 2012, after authorities said they had waited to respond to the call — which initially was not categorized as an emergency — to ensure they had enough resources on hand to respond to protests in Oakland. The city admitted no fault in that matter, but agreed to change dispatching procedures as a result.

Some blame city policy, rather than protests, in man’s death

Fire Chief Dong said he could not release any details related to the man’s health, or ultimate health outcome, citing privacy laws covering medical records. Berkeleyside first reported the death in December after several city employees confirmed, under condition of anonymity, that the man died after emergency crews were delayed in reaching him due to protests in the city Dec. 7. Since then, the city’s Police Review Commission has pledged to look into the movement of emergency vehicles as part of an independent investigation into the police response to the protests.

Some supporters of the protests reacted strongly to the December story, and said they believe the death should have been more properly attributed to a city policy that determines under what circumstances firefighters are accompanied to calls by police officers. Wrote someone identified only as “justiceplease”: “The protests in themselves didn’t do anything. Either the police delayed the help, or the paramedics delayed the help because they chose to wait for the police escort.”

Added a commenter who identified himself as Michael: “This is tragic, but it’s awfully knee-jerky to lay this squarely at the feet of protesters, the majority of whom were peaceful. Civil disobedience is disruptive. You can bet that MLK delayed an ambulance or two in his time; it’s so shortsighted to draw from this one tragic incident the conclusion that the entire movement is without merit.”

Others questioned the logic of decisions made Dec. 7 by first responders, said the crowd was unlikely to have posed an obstacle for an ambulance, and said the Fire Department should have tried harder to get to the man sooner.

Fire Chief: “We can’t predict whether or not it’s going to be peaceful”

Berkeley Fire Chief Dong said in December that longstanding department policies prohibit firefighters from entering active protest zones without police escorts. Those policies date back to the late 1980s and 90s, he said, when there were riots in People’s Park as well as other demonstrations in Berkeley following the Rodney King beating by police in Los Angeles .

Berkeleyside sought all available documents regarding the Dec. 7 medical call to Kittredge to look more closely at the timeline, as well as what role the protests reportedly played for first responders that night.

Dong told Berkeleyside in December that his department fielded 16 calls in and around areas overtaken by demonstrations in Berkeley from Dec. 6-8. Those calls saw “extended delayed response times” of 5-25 minutes due to the protests, either because ambulances were unable to get through streets blocked by crowds, or because police escorts were not immediately available because officers were busy with other demonstration-related duties.

Dong said this week that Berkeley’s protocol regarding when police escorts are needed is a standard approach that is widely used. He did not have a document citation immediately available, but said he would try to locate it.

"Police and firefighters have been killed and injured nationwide getting in to violent scenes," Dong said Tuesday. "That's why we're cautious when we enter any scene, whether it's an individual assault victim or a protest that is violent, with the potential for rock or bottle throwing ... which we observed on Dec. 6, 7 and 8."

Read more from Dong about how the protocol came about.

Authorities said protesters threw projectiles at police, injuring officers, on Saturday night, Dec. 6. Members of the crowd also hurled items at police Sunday, Dec. 7, though police kept their distance from the demonstrations throughout most of the night.

"When there are protests, and there is movement of protests, we can't predict whether or not it's going to be peaceful," said Dong. "Fire departments and firefighters are not immune from getting hurt or injured during protests.... We've seen the protests get violent, so we're going to approach things cautiously and with safety for all responders and others involved at all times."

Dong said there is a "standing protocol" that firefighters will not enter a scene until police determine it is safe if there is a potential for violence. He said it's not a decision made on the fly.

"Dispatchers know to ask police, who advise when it's safe to enter," he said. "That's passed on to the Berkeley Fire Department. We work with, and wait for, the law enforcement determination about when it's safe to enter."

Dong said the Fire Department does not track fatalities in the city and does not keep a record of wait times on calls for police escorts. He said, in addition, he could not speculate about how current police staffing numbers might be impacting those wait times.

"Generally, when we get calls that involve violence, the police department gets there pretty quick," Dong said. "Response times are generally pretty fast when there's violence or the potential for violence."

Next week, the Berkeley City Council is set to consider as part of its action calendar several protest-related items that were held over from two meetings in January. Stay tuned to Berkeleyside for updates. Freelance reporter Seung Y. Lee provided translation services that aided in the completion of this story.

Related:

Citizen panel on police to launch Berkeley protests probe (01.20.15)

Berkeley town hall examines race, police relations (01.15.15)

Arrested anti-police protesters may wait up to a year to find out if they will be charged (01.07.15)

Exclusive: Man died after Berkeley protests delayed help (12.19.14)

Police Review Commission asks for suspension of tear gas (12.12.14)

City of Berkeley told police to use restraint, avoid tear gas, on second night of protests (12.08.14)

Photo Gallery: Two nights of protests, riots in Berkeley (12.08.14)

Protesters take to streets for second night: violence, vandalism of local businesses, looting (12.07.14)

Ferguson demo: injuries reported, tear gas used, property vandalized; arrests (12.06.14)

Cukor family settles lawsuit against Berkeley police (10.22.13)

Do you rely on Berkeleyside for your local news? You can support independent local journalism by becoming a Berkeleyside member. You can choose either a monthly payment or a one-time donation.

Lee, Katherine

From: Lee, Katherine
Sent: Tuesday, February 17, 2015 9:01 AM
To: Lee, Katherine
Subject: FW: FBI director talk

COMMUNICATION No. 2301

Dear PRC Commissioners,

See below from Commissioner Bernstein. I also found it to be very interesting. And here's a description:

In a Feb. 12 speech at Georgetown University, FBI Director James B. Comey called on the nation's law enforcement personnel and the citizens they serve to participate in a frank and open conversation about the disconnect that exists in places like New York City and Ferguson, Missouri—and communities across the country—between police agencies and many citizens, particularly in communities of color.

-Kathy

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

From: Alison Bernstein [<mailto:alibernstein@gmail.com>]
Sent: Friday, February 13, 2015 1:18 AM
To: Lee, Katherine
Subject: FBI director talk

Hi Kathy,

Can you please share this link with other commissioners. <http://youtu.be/sbx4HAM6Rc8>

I found it to be a very interesting framing of the issues surrounding bias in policing. Although its substantive content was markedly similar to atty general holder's, it is reportedly being far better received by the law enforcement community.

Thanks,

Alison

Typed on a mobile device with a tiny keyboard. Please excuse typos, arcane abbreviations and other symptoms of technology run amok.

from Commissioner Rogers

Publication: San Francisco Chronicle; Date: Feb 17, 2015; Section: Opinion; Page: A8

E.J. DIONNE JR.

The FBI's subversive chief James Comey

In the days of the civil rights movement, FBI Director J. Edgar Hoover was focused not on the quest for justice but on his fear of Communists.

In "Parting the Waters," the first volume of his magisterial biography of Martin Luther King Jr., Taylor Branch tells of a 1956 Eisenhower administration meeting during which Hoover "expressed no sympathy for civil rights and painted an alarming picture of subversive elements among the integrationists."

Last Thursday's speech by FBI Director James Comey at Georgetown University was remarkable on its own terms, but revolutionary in the context of his agency's history. You wonder if Hoover would have accused Comey of subversive intent.

"All of us in law enforcement must be honest enough to acknowledge that much of our history is not pretty," Comey said. "At many points in American history, law enforcement enforced the status quo, a status quo that was often brutally unfair to disfavored groups."

He explained why he keeps on his desk a copy of Attorney General Robert Kennedy's approval of Hoover's request to wiretap Dr. King: "The entire application is five sentences long, it is without fact or substance, and is predicated on the naked assertion that there is 'Communist influence in the racial situation.'" He calls agents' attention to the document, he said, "to ensure that we remember our mistakes and that we learn from them."

Yet Comey was unabashedly pro-cop. He fondly recalled his grandfather, William J. Comey, who rose to head the Yonkers, New York, Police Department. "Law enforcement is not the root cause of problems in our hardest-hit neighborhoods," the FBI director said. "Police officers — people of enormous courage and integrity, in the main — are in those neighborhoods, risking their lives, to protect folks from offenders who are the product of problems that will not be solved by body cameras."

Comey wasn't just giving a let's-respect-each-other speech. He argued that the problems of race, racism and injustice go deeper than policing. His two most concrete suggestions were a call for "more and better data related to those we arrest, those we confront for breaking the law and jeopardizing public safety, and those who confront us," and support for President Obama's "My Brother's Keeper" initiative.

He urged attention to the "the disproportionate challenges faced by young men of color," noting that "the percentage of young men not working or not enrolled in school is nearly twice as high for blacks as it is for whites." The goal should be to "grow drug-resistant and violence-resistant kids."

Let's face it: If Obama or Attorney General Eric Holder had given the same speech (and they've said many of these things), the response would have been political and in some cases nasty. This only underscores why it was essential for the words to come from a white director of the FBI.

Was Comey trying to shift some of the heat away from police and toward society as a whole? No, because he was clear on law enforcement's need to examine and reform itself. But yes, he was trying to concentrate our energies on the root causes of crime, and good for him.

It's worth remembering that liberals were once attacked for being "root causers" trying to downplay the problem of criminality itself. But maybe it takes a cop's grandson to prod us to act on both the problem of racism and the economic, sociological and familial challenges faced by young African American men.

In this sense, Comey really is a subversive. He's trying to subvert and thus transform a debate that leads us into ideological cul-de-sacs. He must stay at it.

© 2015, Washington Post Writers

Group

E-mail: ejdionne@washpost.com. Twitter: @EJDionne.

from Commissioner Lippman

The New York Times

http://nyti.ms/1vOHcql



The Opinion Pages | OP-ED COLUMNIST

A Kaffeeklatsch on Race

FEB. 16, 2015

Charles M. Blow

In our collective imaginations, we tend to conceive of the constantly called-for “national conversation on race” as having the formality of some grand conclave of consciousness — an American Truth and Reconciliation equivalent, a spiritual spectacle in which sins are confessed and blame taken and burdens lifted.

This may be ideal, but it is also exceedingly unlikely in this country, particularly in this political environment. There will be no great atoning. Reparations will not be paid. There will no sprawling absolution.

Yet we can still have a productive conversation. Indeed, I would argue that we are in the midst of a national conversation about race at this very moment. Its significance isn’t drawn from structure but from the freedom of its form.

Every discussion over a backyard fence or a cup of coffee is part of that conversation. It is the very continuity of its casualness that bolsters its profundity.

We need to stop calling for the conversation and realize that we are already having it.

Last week the F.B.I. director, James Comey, added his voice to that conversation, particularly as it relates to the relationship between law enforcement and communities of color. There were portions I found particularly potent coming from a man in his position.

He gave a list of “hard truths,” the first of which was an admission that the history of law enforcement in this country was not only part of the architecture of oppression but also a brutal tool of that system. As Comey put it, “One reason we cannot forget our law enforcement legacy is that the people we serve and protect cannot forget it, either.”

His second hard truth acknowledged the existence of unconscious racial bias “in our white-majority culture” and how that influences policing.

Third, he acknowledged that people in law enforcement can develop “different flavors of cynicism” that can be “lazy mental shortcuts,” resulting in more pronounced racial profiling.

But as in all discussions, there were portions of the speech to which I took exception.

First, Comey seems to falsely conflate condemnation of poor policing — sometimes predatory policing, in particular — with a condemnation of all policing. He makes a straw man argument, “Law enforcement is not the root cause of problems in our hardest hit neighborhoods.” Who said it was?

This is a twisting of motive and purpose of the voices of recent protesters that undermines and mischaracterizes both. Minority communities want policing the same as any other, but they want it to be appropriate and proportional. They want not to be afraid of the cops as well as the criminals. They want officers to display an equitable modicum of discernment in treating the law-abiding differently from the lawbreaking.

The discussion is not about police officers being a “root cause of problems” in a given neighborhood, but rather that they shouldn’t be a problem at all, anywhere. We are not geographically confined. We can move in and out of high-crime neighborhoods. We can’t move in and out of our own skin.

At another point, Comey states that cynicism “becomes almost irresistible and maybe even rational by some lights.” This is dangerous and unconditionally false. “Lazy mental shortcuts” — in other words, racial profiling — aren’t rational in any light. That violates not only an American principle but also a human one: that no person should be punished for the crimes or sins of another.

His fourth hard truth focused on how crimes among “many young men of color become part of that officer’s life experience.” But in seeking to offer context, he mentioned “environments lacking role models, adequate education, and decent employment.” Here he moves perilously close to a racial pathology argument, as if there were something inherent in blackness and black culture that predisposes one to criminality. This, too, is a “lazy mental shortcut.”

What too few people mention when discussing crime is the degree to which concentrated poverty, hopelessness and despair are the chambermaids of violence

and incivility. These factors are developed and maintained through a complicated interplay of structural biases — historical and current — interpersonal biases, environmental reinforcements and personal choices.

Even as I disagree on portions, I take the larger point, and I applaud the endeavor and its purpose. Comey seems to be making a genuine effort to be part of the conversation and the solution, and that is more than I can say for some.

One doesn't have to possess the certitude of gospel to have a positive impact on this discussion — for oneself and others. Just an earnest desire for insight and mutual understanding.

This is more than one can say of the hard of heart, those resistant to engagement and, therefore, beyond enlightenment. The stone cannot absorb no matter how much you drench it.

I invite you to join me on Facebook and follow me on Twitter, or e-mail me at chblow@nytimes.com.

A version of this op-ed appears in print on February 16, 2015, on page A17 of the New York edition with the headline: A Kaffeeklatsch on Race.

© 2015 The New York Times Company

