

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**January 28, 2015
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)
- 4. APPROVAL OF MINUTES**
Regular Meeting of January 14, 2015.
- 5. CHAIR'S REPORT**
- 6. CHIEF OF POLICE'S REPORT**
Budget, staffing, training updates, and other items.
- 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.
 - b. Decide how the BPD officers selected at the January 14, 2015 meeting for special recognition should be commended.
 - c. Review, further revise if needed, and approve revised Confidentiality Agreement.
From: PRC Officer
 - 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.

- 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.
- 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.

From: Commissioner Lippman

- 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.

From: Commissioner Lippman

8. NEW BUSINESS (discussion and action)

- a. Consider establishing rules for review and disposition of policy complaints and reviews. (Draft to be delivered.)

From: PRC Officer

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

From: Commissioner Bernstein

- c. Discuss ways to undertake community outreach

From: Commissioner Bernstein

9. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

- a. Wearable Video Cameras Subcommittee

Consider dissolution of subcommittee.

- b. Regulations Subcommittee

Update.

- c. Fair and Impartial Policing Subcommittee

Consider dissolution or renewal of subcommittee.

- d. Budget Review Subcommittee

Schedule meeting date.

- e. N-17 Subcommittee

Schedule meeting date; consider name change.

10. PRC OFFICER'S REPORT

Status of Complaints; announcements

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 WHETHER TO ACCEPT LATE-FILED COMPLAINT

Complaint #2359.

14. REVIEW OF CALOCA DECISION

Complaint #2327.

End of Closed Session

15. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

16. ADJOURNMENT

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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

January 28, 2015

MINUTES

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COMMUNICATIONS

Communication #2312 – BART draft General Order on transgendered persons. Page 13

Communication #2312 – BPD Training & Information Bulletin #275: Transgender Awareness. Page 17

Communication #2312 – January 22, 2015 letter from PRC Officer to Chief Meehan & Chris Stines, BPA, re comments on Transgender General Order. Page 21

Communication #4370 – Confidentiality Agreement – current and proposed. Page 23

Communication #4400 –General Order C-64, Crowd Management and Control. Page 25

Communication #4411 –General Order U-2, Use of Force. Page 39

Communication #4364 –General Order M-2, Mutual Aid and Agreements with Law Enforcement Agencies. Page 49

Communication #4388 – Council Agenda Item: Support the National Demands by Ferguson Action, submitted by Councilmember Arreguin, dated January 20, 2015. Page 53

Communication #4400 – Revised Council Agenda Item: Independent Investigation of Police Response to December 6, 2014 Protests, submitted by Councilmember Jesse Arreguin, dated January 20, 2015. Page 57

Communication #4400 – **#4364** – **#4411** – Revised Council Agenda Item: Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid), and U-2 (Use of Force), submitted by Councilmember Jesse Arreguin, dated January 20, 2015. Page 63

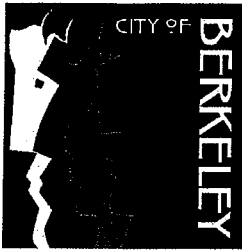
Communication #4424 – PRC's Council Information Item: Security Camera Database, dated January 27, 2015. Page 97

Communication #4424 – BPD's Information Item: Voluntary Security Camera Database to Help Solve Crimes, dated January 27, 2015. Page 99

COMMUNICATIONS

- Communication #4424** – Council Agenda Item: Berkeley Police Department Use of Police Vehicle In-Vehicle and Body-Worn Cameras, submitted by Councilmembers Moore, Arreguin, and Maio, dated January 20, 2015. Page 101
- Communication #4424** – PRC's Information Item: Wearable Video Cameras for Police Officers, dated January 27, 2015. Page 103
- Communication #4424** – BPD's Information Item: Body-Worn Cameras for Police Officers, dated January 27, 2015. Page 109
- Communication #4160** – PRC Subcommittee List updated 1-16-15. Page 113
- Communication #4160** – Information regarding Temporary Subcommittees from the Commissioners' Manual. Page 115
- Communication #4193** – Letter from The National Association for Civilian Oversight of Law Enforcement (NACOLE) regarding The President's Task Force on 21st Century Policing: Building Legitimacy and Public Trust Through Civilian Oversight. Page 117
- Communication #2301** – Communication dated January 12, 2015 from the Peace and Justice Commission to the Mayor and Members of the City Council regarding Policing and Racial Justice in Berkeley. Page 123
- Communication #4404** – Communication dated January 9, 2015 from the City Manager to the Mayor and Members of the City Council regarding a Study on the use of Taser/Electronic Control Weapon; Scope of Services from contract with the Stanford Criminal Justice Center (SCJC). Page 135
- Communication #4393** – Communication from Reverend Albert L. Williams to the Mayor and Members of the City Council regarding BPD staff. Page 139

KJL:mgm



Police Review Commission (PRC)

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

**January 14, 2015
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR ALISON BERNSTEIN AT 7:06 P.M.

Present: Commissioner George Lippman
Commissioner Karen Kiyo Lowhurst
Commissioner George Perezvelez
Commissioner Ann Rogers

Absent: Commissioners Barbara Allen, Oliver Zerrudo

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Michael Meehan, Capt. Cynthia Harris (left 8:15 p.m.), Sgt. Katherine Smith, Sgt. Benjamin Cardoza, Ofc. David Bartalini

2. APPROVAL OF AGENDA

The agenda was approved by consensus.

3. PUBLIC COMMENT

There were 6 speakers.

4. APPROVAL OF MINUTES

Motion to approve minutes of the Regular Meeting of December 10, 2014.

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

Ayes: Bernstein, Perezvelez, and Rogers

Noes: None

Abstain: Lippman, Lowhurst

Absent: Allen, Zerrudo

5. ELECTION OF 2015 CHAIR AND VICE-CHAIR

Motion to elect Commissioner Alison Bernstein as Chairperson.

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

Ayes: Bernstein, Lippman, Lowhurst, Perezvelez, and Rogers.

Noes: None Abstain: None Absent: Allen, Zerrudo

Motion to elect Commissioner George Perezvelez as Vice-Chairperson.

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

Ayes: Bernstein, Lippman, Lowhurst, Perezvelez, and Rogers.

Noes: None Abstain: None Absent: Allen, Zerrudo

6. CHAIR'S REPORT

Chair Bernstein announced that she, former Commissioner Sherman, Commissioner Rogers, PRC Officer Lee and PRC Investigator Norris attended a Fair & Impartial Training along with officers from BPD and other jurisdictions. Former Chair Sherman gave end-of-term remarks and many thanks; he in turn was thanked by Commissioners and others for his many years of dedicated service.

7. CHIEF OF POLICE'S REPORT

Chief Meehan said the next crime report will be issued on March 10; the department is in the midst of budget discussions; currently 176 sworn officers; fair and impartial policing policy has been in place and data collection piece should be in place in about two weeks; he met with BUSD officials; annual MLK Day breakfast to be held Monday, January 19.

8. OLD BUSINESS (DISCUSSION AND ACTION)

- a. Creation of a subcommittee to produce a General Order regarding the treatment of transgendered persons.

By consensus, the Commission agreed that they would use BART's draft General Order on this topic as a starting point, and discuss it at their next meeting; input will be sought from the BPD and BPA as well.

- b. Amend PRC Regulations to exempt certain types of cases from mediation.
From: Commissioner Perezvelez

Motion to refer the matter to the Regulations Subcommittee.

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

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

Noes: None Abstain: None Absent: Allen, Zerrudo

- c. Commendations of Berkeley Police Department employees from January through May 2014: recognition of particular exemplary action.

1) Motion to commend the following officers for special recognition:

Ofc. Valle

Ofc. Rafferty & partner

Ofc. Marble & Ofc. Bonaventure

Ofc. Perkins

And the entire Department for assistance during the Dalai Lama's visit
Moved/Seconded (Bernstein/Perezvelez) **Motion Carried**

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

Noes: None Abstain: None Absent: Allen, Zerrudo

2) By consensus, Commissioners asked the PRC Officer to locate a commendation that seemed to be missing from this meeting's packet.

- d. Request opinion from the City Attorney as to under what circumstances, if any, BPD's Internal Affairs findings on a particular matter can be disclosed to Commissioners.

Motion to make the above request of the City Attorney.

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

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

Noes: None Abstain: None Absent: Allen, Zerrudo

- e. Explore what steps are available to make the BOI process more accessible to the complainant, including asking the City Attorney whether BOI findings and reasoning can be shared with complainants.

Motion to ask the above question of the City Attorney.

Moved/Seconded (Lowhurst/Bernstein) **Motion Carried**

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

Noes: None Abstain: None Absent: Allen, Zerrudo

9. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Policy Complaint #2362 and #2363 regarding use of McKinley Avenue for a staging area beginning December 6, 2014.

Motion to suspend rules to allow public comment on this agenda item.

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

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

Noes: None Abstain: None Absent: Allen, Zerrudo

Public comment: there were several speakers.

Motion to accept Policy Complaint #2362

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

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

Noes: None Abstain: None Absent: Allen, Zerrudo

Motion to accept Policy Complaint #2363 and consider it together with #2362

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

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

Noes: None Abstain: None Absent: Allen, Zerrudo

By consensus, the Commission requested that the PRC Officer locate any applicable General Orders and Training & Information Bulletins that apply to staging, and BPD's ability to limit access to and egress from residences and

businesses; requirement of notice of such limits and whether duration of impact affects such; and any accommodations required.

- b. Consideration of the two urgency items at the December 10, 2014 meeting, in light of BPD input.

No action taken.

Discussion and action on the following three items was combined.

- c. Whether to open a policy review on the use of tear gas.
- d. Whether to open a policy review on the limitation on movement of emergency vehicles on December 6, 7, and 8, 2014.
- e. Whether to open a policy review on any orders regarding BPD engagement during the December 7, 2014 demonstration.

Motion to undertake a policy complaint/review as to 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, and the allegations of non-engagement by BPD during the disturbances on December 7.

Friendly amendment #1 (Lippman; accepted by Perezvelez): include in the review the use of batons in crowd control.

Friendly amendment #2 (Lippman; accepted by Perezvelez): include in the review the firing of projectiles into a crowd.

Moved/Seconded (Perezvelez/Bernstein) Motion Carried

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

Noes: None Abstentions: None Absent: Allen, Zerrudo

The following new business items were carried over to the next meeting:

- f. Consider establishing 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.
- 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.
- h. Approve revised Confidentiality Agreement.

10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (DISCUSSION AND ACTION)

All subcommittee matters were carried over to the next meeting

- a. Wearable Video Cameras Subcommittee
Consider dissolution of subcommittee.
- b. Regulations Subcommittee
Update.

- c. Fair and Impartial Policing Subcommittee
Consider dissolution or renewal of subcommittee.
- d. Budget Review Subcommittee
Schedule meeting date.
- e. N-17 Subcommittee
Schedule meeting date; consider name change.

11. PRC OFFICER'S REPORT

PRC Officer reported on the status of complaints, outstanding requests, and meet & confer over regulations changes; ethics training due for some Commissioners; Council special meetings on January 17 & 20 on police-community relations.

12. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

13. PUBLIC COMMENT

There were 2 speakers.

Closed Session

14. VOTE ON STAFF RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

Complaint #2356.

Motion to approve staff recommendation to administratively close this complaint.

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

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

Noes: None Abstentions: None Absent: Allen, Zerrudo

The remaining closed session items were carried over until the next meeting:

15. VOTE ON WHETHER TO ACCEPT LATE-FILED COMPLAINT

Complaint #2359.

16. REVIEW OF CALOCA DECISION

Complaint #2327.

End of Closed Session

17. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

The vote to administratively close Complaint #2356 was announced.

18. ADJOURNMENT

The meeting was adjourned at 10:25 p.m.

January 7, 2015 DRAFT POLICY – BPOA/MA revisions

INTERACTIONS WITH INDIVIDUALS IDENTIFYING AS TRANSGENDER

PURPOSE

The San Francisco Bay Area Rapid Transit District Police Department (BPD) recognizes and places a high priority on the rights of all people. This directive establishes policies for interactions with transgender people.

DEFINITIONS

Gender Identity:

One's internal, deeply held sense of one's gender. Unlike gender expression (see below), gender identity is not visible to others.

Gender Expression:

External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.

Transgender (adj.):

An umbrella term for people whose gender-identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms, including transgender.

INTERACTIONS WITH TRANSGENDER PEOPLE

BPD officers and employees are to interact with transgender people and the transgender community in a manner that is professional, respectful, and courteous.

Officers shall follow policies governing interactions with transgender people when either of these two conditions is met:

1. A person explicitly informs the officer(s) that they are a transgender person.
2. An officer has good reason to believe that the person is a transgender person.

When a person self-identifies as a transgender person, officers shall not question this identity or ask about the person's transition status unless there are compelling and professional reasons to so inquire that can be clearly articulated.

Under no circumstances shall an officer ask questions or make statements about a transgender person's genitalia, breasts, or transition unless there are compelling and professional reasons that can be clearly articulated.

Whether or not the name on a person's driver's license or identification card coincides with the person's gender identity, an officer shall refer to the person by the name that the person has used to identify him or herself. An officer shall use the pronouns consistent with that name in addressing the person or referring to the person.

Under no circumstances may an officer frisk, search, or otherwise touch any person for purpose of obtaining information about that person's gender status.

DETERMINATION OF LEGAL NAME

In the event a transgender person's legal name is required, this legal name can be obtained in the following manner:

An officer may ask the person directly for their legal name if in a one-on-one situation.

If the contact is in a group environment, the officer should ask the person to step outside the group to obtain the legal name and avoid "outing" the person.

If necessary, (e.g. citing or arresting), officers may request the legal identification from a transgender person.

MEDICAL TREATMENT OF TRANSGENDER ARRESTEES

Whenever a transgender person who is detained by or in the custody of BPD requires or expresses a need for medical attention or medication including hormone therapy, officers shall respond to and address the need with the same urgency and respect as required in connection with any other medical need, illness, or injury experienced by any other detainee or arrestee.

PROSTHETICS AND APPEARANCE-RELATED ITEMS

Appearance-related items, including, but not limited to, prosthetics, clothes of the presenting gender, wigs, or make-up should not be confiscated or removed from transgender people unless such items present a safety hazard, impede the administration of medical attention, or are needed for evidentiary reasons.

PROTECTION OF PRIVACY

Under no circumstances shall officers disclose that a person is transgender to non-police personnel or to other non-relevant BPD personnel without compelling reasons that can be clearly articulated.

JUVENILE TRANSGENDER INDIVIDUALS

All interactions with juvenile transgender individuals shall conform to the mandates set out by this policy. This policy does not affect any other safeguard provided in applicable directives covering the processing and handling of juveniles.

RECORD-KEEPING AND DATA TRACKING

All BPD forms and reports (both paper and computerized/digital), which record the gender of a person, shall be broad and detailed enough to include transgender identity.

BPD shall establish and maintain records concerning the number of calls received from transgender people and the corresponding police service response rate.

All case reports and other reports and non-charging documents shall refer to a transgender person's name as shown on official documents. The person's preferred name shall be listed as an alias or "Also Known As" (AKA). Preferred gender pronouns shall be used in the narrative.

TRAINING

Training on interactions with transgender people and review of this policy should be conducted as directed by the Personnel and Training Section.

All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST) or other departmentally approved training on the subject of interactions with transgender people.

Each sworn member of this department who receives initial training will thereafter be required to complete an approved refresher course if deemed necessary, in order to stay apprised of changing cultural conditions.

**BERKELEY POLICE DEPARTMENT
TRAINING AND INFORMATION BULLETIN**



DATE: January 15, 2000

NUMBER: 275

SUBJECT: TRANSGENDER AWARENESS

PURPOSE

The purpose of this Training and Information Bulletin is to explain transgender identity and the California Penal Code sections that were amended effective January 1, 1999 to define gender and provide penalty enhancements for hate crimes based on gender.

PENAL CODE SECTIONS

§422.75 (a): **now includes gender as one of the protected classes** for which penalty enhancements are provided for felonies against person or property of public agency or private institution because of class membership. § 422.75 (e) covers felony enhancement for prior convictions. [emphasis added]

§422.76: states "**gender**" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth. [emphasis added]

§11410: The Legislature finds and declares that it is the right of every person regardless of race, color, creed, religion, gender, or national origin, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of rights protected by the Constitution of the United States. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The Legislature further finds, however, that the advocacy of unlawful violent acts by groups against other persons or groups under circumstances where death or great bodily injury is likely to result is not constitutionally protected, poses a threat to public order and safety and should be subject to criminal and civil sanctions.

§13023: Commencing July 1, 1990, and subject to availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1st thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of information obtained from local law enforcement agencies pursuant to this section. (Amended by Stats. 1998, c. 933 (A.B. 1999), § 5 to include gender.)

COMMUNICATION No. 2312

TRANSGENDER AWARENESS

Since the expansion of the definition of gender now includes transgendered people, harassment and victimization of individuals who have changed their sex, or who are in the process of sex reassignment, or who have gender presentations or characteristics that seem to conflict with an observer's perception of the individual's sex, is not to be condoned or sanctioned.

Transgender, in its broadest sense, means mixing elements of both genders, sometimes both sexes. The category covers cross-dressers, transsexuals, masculine women and feminine men, regardless of sexual orientation. Victims of "gay bashing" are often singled out for their transgender characteristics, which is assumed to - but may not always - reflect an individual's sexual orientation.

Most people experience their gender identity as being the same as their physiological sex regardless of their sexual orientation. We have been culturally conditioned to believe that gender and sex are the same thing. The terms are used interchangeably, but in fact they are very different. Sex is the type of genitals we have - male or female; sex is something that we do with our bodies when we engage in intimate physical relations with another person. Gender is the expression of masculinity or femininity, which is a sense of self, a reflection of spirit or soul, and which is perceived by others using numerous social signals that have nothing to do with one's sex or sexual orientation. When people hold the conviction that gender identity or presentation and physiology must be the same, their reaction to an individual who contradicts that conviction is confusion, agitation, even rage. When we use terms like sex "roles" or gender "roles," our language subtly conditions us to doubt the authenticity of a person's self-expression. The process of coming to grips with the fact that one's true gender is at odds with one's physiology can be long and frightening. People who identify as transsexual are usually aware of their situation from a very early age, but they have no language with which to express their feelings. Masculine girls and feminine boys are often taunted and ridiculed by their peers, and tolerated or shunned by their parents, if they are not actively abused in an effort to change the behavior that others assume is voluntary. The condition of being a transgendered child is beyond that child's control. By the time the child is old enough to find the language of "trans," he or she is well aware that there is nothing they can do to redeem themselves for being who they are other than to choose to live truthfully, honestly, and with dignity. Sometimes they are so beaten down by "society" that the only survival mechanism they have left is to act out, to tell the self-deprecating joke first, to dare strangers on the street not to notice them. Many transsexuals are deeply wounded by the difficult challenges of negotiating the transition from male to female or from female to male: the social, emotional, financial costs can be extraordinary. It takes a very strong person to endure the process.

Once they have accomplished their transitions, many transsexuals, just like many gay men or lesbians, can keep silent, stay in their closets, and probably pass for ordinary. Some transsexuals can't do that because they don't look ordinary. Many male-to-female transsexuals, in particular, are unusually large or tall or bony - choose whatever discriminatory standard of female beauty you wish. Sometimes women who are taller than average, even those who are strikingly beautiful, are suspected of being male-to-female transsexuals. Sometimes men with long hair are assumed to be transsexuals.

Sometimes women who are muscular are assumed to want to be men. Sometimes men who wear an earring are suspected of being feminine, of being gay, or of being crossdressers; some people think these characteristics are all the same thing.

LAW ENFORCEMENT ISSUES RELATED TO TRANSGENDERED PEOPLE

Law enforcement personnel may encounter transgendered or transsexual people as civilians, as suspects, or as co-workers. An individual's transgender status is not an excuse to treat that person with disrespect.

Identification:

The State of California, as well as most other states, does issue driver's licenses and ID cards to partially as well as fully transitioned people who are in the process of changing their sex under medical supervision. It is unlawful to seize this ID as fraudulent if the only reason you are doing so is because of the individual's gender presentation. Some officers, in some departments, have seized valid DLs because the name or sex indicator conflicts with the officer's perception of the individual's sex. Officers must not insist on using a former name for persons who have legally changed their names and are presenting valid State of California issued identification.

Body Searches:

Pat searches - any officer, regardless of sex, may search any suspect, regardless of sex, for weapons.

Arrest searches - any officer, regardless of sex, may search any suspect, regardless of sex, for weapons or contraband, except when the search requires removal of the last layer of clothing. Outerwear, such as coats, jackets, or rainwear may be removed.

Strip search/body cavity search - State law requires a same-sex officer must perform these types of searches on suspects. Sex is determined by genitalia. Respect for privacy and the basic dignity of the individual should be accorded to the suspect. Transgender or transsexual status does not entitle officers to harass or ridicule the suspect.

Bathroom Usage - Transgendered or transsexual people should be permitted to use the toilet facilities that correspond with the individual's gender presentation. The safety of the transgendered or transsexual person is of as much concern as that of others who may be using the facilities. For example, in spite of the possession of female genitalia, it may not be appropriate for a female-to-male transgendered person to use a women's restroom because his appearance is sufficiently masculine to frighten any women; also, his psychology is largely that of a man, and using women's facilities could be extraordinarily stressful to him.. Likewise, a male-to-female transgendered person (presenting as female, but having male genitalia) might be at risk of assault if she were forced to use male facilities. If single-use toilet facilities are available, transgendered individuals should be directed to use them (rather than public facilities) for their own protection and to reduce the risk of escalating any situations.

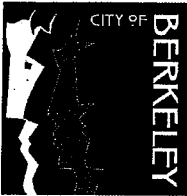
TIB #275 TRANSGENDER AWARENESS

Housing of Detainees or Inmates - Housing is determined by the genitalia of the subject. Some transgendered or transsexual people may have some genital characteristics of both sexes. If at all possible, solitary accommodations should be provided to transgendered or transsexual people for their own safety.

Reporting - If it is not relevant to the situation to enter an individual's transgender status in a report, then do not include it. If it is relevant to the circumstances of your investigation, then it would be appropriate to include a notation such as: "Victim is a male-to-female transsexual." This may be particularly important in the reporting of hate crimes. The same policy should be applied to listing AKAs.



D. E. Butler
Chief of Police



COMMUNICATION No. 2312

January 22, 2015

To: Michael Meehan, Chief of Police
Christian Stines, President, Berkeley Police Association

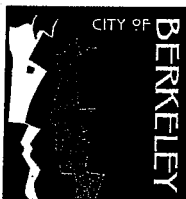
From: Katherine J. Lee, PRC Officer

Re: General Order re Transgendered Persons

At its January 14, 2015 meeting, the Police Review Commission agreed to move forward with the drafting of a General Order regarding the treatment of transgendered persons. They also decided to begin by reviewing the draft general order current under consideration by the BART Citizens Review Board (attached). According to Commissioner Perezvelez, the attached draft has already been reviewed by the BART Police Association, the ACLU, the NAACP, and the Pacific Center.

The PRC seeks the input of the Berkeley Police Department and the Berkeley Police Association as well. Discussion of a General Order regarding transgendered persons will be on the PRC's agenda for its January 28, 2015 meeting. Your comments at that meeting will be welcome; alternatively, you may relay information to the Commission through me.

Attachment



Police Review Commission (PRC)

CONFIDENTIALITY AGREEMENT

This agreement must be signed by each Commissioner permanently or temporarily appointed to the Police Review Commission as soon after appointment as practicable. Until a Commissioner has signed this agreement, he or she is prohibited from participating in a Board of Inquiry or a closed session of the PRC involving a complaint, and from receiving confidential materials relating to Berkeley Police Department personnel.

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. The confidentiality of this information is governed by the Public Safety Officers Procedural Bill of Rights Act (Gov't. Code sections 3300-3319), Penal Code sections 832.5 and 832.7, and case law.

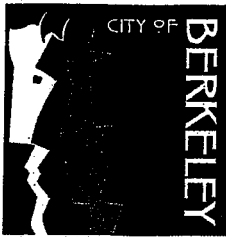
Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, it must not be disclosed to any unauthorized person or organization, and it is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure. It is vitally important to the integrity of the Berkeley Police Review Commission Board of Inquiry process that all parties involved, including Commissioners, understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law.

I have read and understand the above. I will keep confidential and will not disclose to any unauthorized person or organization the nature of any individual complaints against police officers that come before the PRC, and all records relating to the complaints, including, but not limited to, the identity of the officers and the substance of any investigative report.

Print name

Signature

Date



Police Review Commission (PRC)

CONFIDENTIALITY AGREEMENT

All Commissioners shall execute this Agreement.

- I will keep confidential and will not discuss the nature of any individual complaints against officers that come before the PRC, and all records relating to them, including, but not limited to, the identity of the officers and the substance of any investigative report.
- I may discuss or disclose public records such as police reports, department policies or general orders, and other documents released to the public by the City of Berkeley, the Berkeley Police Department or other public agency.

Print name

Signature

Date

1-6-12

G:\Commission\Commissioners\Confidentiality Agreement

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DATE ISSUED: June 11, 2009

GENERAL ORDER C-64

SUBJECT: CROWD MANAGEMENT AND CONTROL

COMMUNICATION No. 4400

PURPOSE

- 1 - The purpose of this Order is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response, and/or deployment of police personnel for crowd situations.

Mission Statement

- 2 - The mission of the Berkeley Police Department in all crowd situations is to appropriately manage events with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.
 - (a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.
 - (b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

POLICY

- 3 - In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.
- 4 - In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.
 - (a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes, or a dispersal order, if the assembly is unlawful.

Use of Force

- 5 - Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in General Order U-2.
 - (a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons, and chemical agents should not be used on persons participating in a crowd situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.

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- (1) Verbal commands to stand followed by control holds (e.g. wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
 - (2) If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
 - (3) Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.
- (b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)
 - (c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.
 - (d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).
- 6 - If physical force becomes necessary to disperse the crowd, make arrests, or move a crowd from an area, only reasonable force shall be used to accomplish the mission.
 - 7 - In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.
 - 8 - Less-than-lethal munitions, chemical agents (excluding OC spray), and/or smoke shall only be deployed in crowd situations as outlined in General Order U-2.

Use of Vehicles

- 9 - Patrol vehicles may be used in crowd control situations by trained officers to employ authorized Mobile Field Force (MFF) tactics at the direction of the Incident Commander.
- 10 - Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.

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- (a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.
 - (b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.
- 11 - Police bicycles employed by specifically trained officers may be used in crowd control situations to physically control or disperse an unlawful assembly.
- (a) The use of police bicycles in crowd control situations should only occur when reasonable and until other officers arrive to assist.

DEFINITIONS

- 12 - Control Hold: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).
- 13 - Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.
- 14 - Crowd Control: Any tactic indicating force may be used to dictate crowd movement or actions. Options include, but are not limited to: show of force (large numbers of officers in riot gear); crowd dispersal; crowd containment; and/or, physical arrest of persons in the crowd.
- 15 - Crowd Management: Tactics used to manage a crowd or event that do not indicate force may be used. Options include, but are not limited to: active involvement in the permit process; communication with crowd monitors; visible monitoring of the crowd; and/or re-direction of pedestrian or vehicular traffic.
- 16 - Crowd Management Team (CMT): Sworn officers who have received special training to deal with crowd management and crowd control situations, and are available for callout at the discretion of the Patrol Division Captain with approval from the Chief of Police.
- 17 - Demonstration: A public assembly of persons to exhibit thoughts, ideas, or opinion.
- 18 - Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.
- (a) During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.

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- 19 - Mobile Field Force (MFF): a statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.
- 20 - Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.
- 21 - Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.
- 22 Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).
- 23 - Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)
 - (a) Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered "passive".
- 24 - Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.
- 25 - Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.
- 26 - Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.
 - (a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations (ref. paragraph 34 of this Order).
- 27 - Riot: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace. (ref. Penal Code §405)

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- 28 - Riot Gear: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.
- 29 - Spontaneous Event: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals, major political events, major news events, or any combination thereof.
- 30 - Squad: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.
- 31 - Squad Leader: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.
- 32 - Team: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.
- 33 - Team Leader: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.
- 34 - Time, Place, or Manner Restrictions: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.
- 35- Unlawful assembly: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner. (ref. PC §407)
- (a) The prohibition in PC §407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence. (ref. *In re Brown* (1973) 9 Cal. 3d 612, 623)

PROCEDURE

Planned Events

- 36 - At such time as a special event or crowd situation comes to the attention of police department personnel, the Patrol Division Captain or Patrol Watch Commander shall be notified, and forwarded all information regarding the event.
- 37 - The Patrol Division Captain or Acting Captain will review the information and determine whether or not a request to call out CMT is warranted.
- 38 - The Incident Command System shall be used for managing all crowd situations.

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- (a) The command structure should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.
 - (b) If CMT is called out for an event, the CMT Commander may be assigned as the Incident Commander.
- 39 - The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.
- (a) Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.
 - (1) Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.
 - (2) If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.
- 40 - Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.
- (a) Initial assessment may include on-duty personnel in the Patrol Division and other divisions within the department.
 - (b) If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies. (ref paragraphs 67-71 of this Order)
- 41 - Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Commanders to secure their participation.
- 42 - Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.
- (a) An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response, and the department resources dedicated to it. (ref. General Order P-23)

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- (b) Upon approval by the Patrol Captain and signed by the Chief of Police, the original Operations Plan shall be routed to the Bureau of Internal Controls in the Office of the Chief, and copies distributed to all appropriate personnel.

Spontaneous Events

- 43 - Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.
- 44 - The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:
 - (a) Broadcast the type of event, if known, and estimated number of participants.
 - (b) Report known or imminent public safety hazards.
 - (c) Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.
- 45 - The on-duty Patrol Division Watch Commander, or if absent or unavailable, the senior Patrol Division Sergeant, shall respond to the event scene and take the following actions:
 - (a) Assume the role and responsibilities of Incident Commander.
 - (b) Assess the potential risks to public safety.
 - (c) Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
 - (d) Assess the number of officers and type of equipment required to maintain order and their manner of response.
 - (e) Assess the potential need for outside resources:
 - (1) On-duty personnel from other police agencies.
 - (2) Fire Department personnel and resources.
 - (3) Media relations personnel.
 - (f) Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.

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- 46 - The Incident Commander should consider the following factors when making decisions regarding the police response:
- (a) The number of people involved in the event and their behavior.
 - (b) The level of vehicular traffic.
 - (c) The level of disruption to those not involved in, but impacted by the event.
 - (d) The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
 - (e) The personnel and equipment available for the task.
- 47 - The Incident Commander may use on-duty personnel from other Divisions or units to assist in the police response to a spontaneous event.
- 48 - The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:
- (a) Assign personnel to monitor the event only.
 - (b) Use personnel to maintain order at the event and/or divert uninvolved, effected traffic away from the area.
- 49 - If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:
- (a) Let the group proceed with no police presence.
 - (b) Assign officers to facilitate the mobile event by providing traffic control.
 - (c) Attempt to direct the path of the mobile event by denying access to certain roadways.
 - (d) Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.
 - (e) Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.
- 50 - There is no required order of response; the Incident Commander shall be responsible for continually accessing the event and adjusting the response strategies and tactics accordingly.

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- 51 - The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished another officer who officially assumes the responsibility.
- (a) Any change of command shall be broadcast on the radio frequency used to manage the police response.

General Event Procedures

- 52 - Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.
- (a) CMT members shall be in approved CMT uniform when assigned to CMT operations.
- (b) Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.
- 53 - Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment. (i.e., helmet, chemical agent mask, etc.)
- 54 - Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander.
- 55 - The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.
- (a) Information communicated in an operational briefing shall include, at minimum:
- (1) The nature of the event.
 - (2) The mission and operational goal(s) of the department.
 - (3) The chain of command managing the event.
 - (4) The individual's assignment and any special equipment he/she may require to accomplish it.
 - (5) When possible, the identity and appearance of all undercover personnel involved in the police response.
 - (i) Undercover personnel should be present at operational briefings for planned events.

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- 56 - Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.
- 57 - Verbal requests or commands should be used before and when advancing on a crowd.
- (a) Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")
- 58 - Employees shall not engage members of a crowd in debate or unnecessary dialogue.
- 59 - When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating law.
- (a) Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.
- 60 - In conformance with procedures set forth in General Order V-10, visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.
- (a) Activities that should be documented via visual recording device include, but are not limited to:
- (1) Criminal activity (misdemeanor or felony);
 - (2) Violation of a Permit condition, City Ordinance, or traffic violation.
 - (3) Use of force by officers.
 - (4) Arrests by officers.
 - (5) Any person who, by words or action, is inciting violence.
 - (6) Dispersal orders issued by police.
- 61 - Employees shall adhere to information release and media liaison protocols set forth in General Orders R-23 and P-29, respectively.
- (a) The Incident Commander shall ensure legitimate "credentialed" members of the media are provided access to areas available to them by law.
- (b) A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.

Dispersal Orders

- 62 - The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.
- 63 - Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:
- (a) "I am (*rank*) (*name*) with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at (*location*) to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal munitions, which may pose a risk of serious injury. The following routes of dispersal are available: (*state options available*) You have (*state time expectation*) to leave the area."
- 64 - Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.
- 65 - The Incident Commander, or his/her designee, shall issue a dispersal order:
- (a) As close to the crowd as practical;
 - (b) In a manner clearly audible to persons in the crowd;
 - (1) Use sound amplification systems when necessary;
 - (2) When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
 - (c) In more than one language, depending on the needs of the crowd; and,
 - (d) A second time, following a reasonable period of time to allow for crowd dispersal.

Mass Arrests

- 66 - When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:
- (a) Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.

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- (b) In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
- (c) Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
- (d) Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
- (e) Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

Mutual Aid

- 67 - An official request for mutual aid resources shall adhere to procedures set forth in General Order M-2.
 - (a) Emergency requests for immediate assistance may be made directly to local agencies.
- 68 - The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.
 - (a) This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.
- 69 - In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications, and response to event location.
- 70 - MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.
 - (a) Personnel should be formed into squads or teams that are easily integrated into squads and platoons.
- 71 - When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

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Post-Event

- 72 - At the conclusion of an event the Incident Commander shall ensure that an After Action Report is prepared.
- (a) An After Action Report shall document arrests, injuries, and property damage, personnel costs, and a critique of the police preparation and response.
 - (b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.

Training

- 73 - When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.
- 74 - When possible prior to a major pre-planned event, update training should be provided to all assigned officers.
- 75 - The CMT will train regularly, and incorporate as appropriate, all General Orders and Training Bulletins related to crowd management and crowd control into their sessions.
- 76 - All newly hired police officers will receive supplementary training on crowd management and crowd control by attending a CMT training session as part of their Field Training Program.

References: *In re Brown* (1973) 9 Cal. 3d 612, 623
Penal Code §§405, 407, 409 and 830.10
General Orders C-1, C-10, M-2, P-23, P-29, R-23, U-2, V-10 and X-1
Police Regulations 225, 226, 249 and 250



SUBJECT: USE OF FORCE

PURPOSE

- 1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

- 2 - Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.
 - (a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.
- 3 - In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.
 - (a) The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The "spoked wheel" is one visual concept of the various options that an officer should consider in a threatening situation.
 - (b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to the threat.

DEFINITIONS

- 4 - Lethal Force: Any use of force that creates a substantial risk of causing death or serious bodily injury.
- 5 - Less-Than-Lethal Force: Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.

COMMUNICATION No. 4411

*Highlighted text is new.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (a) **Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.**
- 6 - Non-Lethal Force: Any use of force other than lethal force or less-than-lethal force.
- 7 - Officer (or) Police Officer: Any sworn peace officer.
- 8 - Authorized Employee: Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.
- 9 - Employee: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."
- 10 - Deploy:
- (a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.
- (b) With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.
- 11 - Use:
- (a) With respect to less-than-lethal munitions, to discharge a less-than-lethal munition.
- (b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

Use of Lethal Force

- 12 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:
- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.

*Highlighted text is new.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
- (c) During other police duty:
 - (1) In supervised Department training sessions at an approved range, or other site.
 - (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

Use Of Vehicles

- 13 -** Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:
- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
 - (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

- 14 -** Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.
- 15 -** Except during authorized training programs, less-than-lethal **force** shall be deployed only at the direction of a sergeant or command officer, **or the Incident Commander in a crowd situation.**

*Highlighted text is new.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- 16 - Less-than-lethal **force** shall only be used in the following situations, and, where feasible, **after** some warning has been given:
- (a) When an act of violence is occurring, or is about to occur;
 - (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
 - (c) To deter a person who is reasonably believed to be armed and is threatening to harm him-/herself, another person, or an officer; or,
 - (d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.
- 17 - When practical, approval for the deployment and use of less-than-lethal **force** will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).
- (a) **Prior to deployment, efforts should be made to ensure an appropriate medical response is available.**
 - (b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal **force** deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.
- 18 - **In crowd situations, less-than-lethal force and/or chemical agents** shall not be used without the **prior** approval of the Chief of Police, or his/her designee, **unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).**
- (a) **In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.**

Use of Non-Lethal Force

- 19 - When lethal force and less-than-lethal **force** are not authorized, officers and authorized employees may use reasonable **approved** non-lethal force techniques and weapons in the following circumstances:
- (a) To protect themselves or another person from physical injury;
 - (b) To restrain or subdue a resistant individual; or

*Highlighted text is new.

- (c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

20 - The following uses of force are prohibited:

- (a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."
 - (1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.
- (b) Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy recommendation that says, in part, "no pepper spray will be used for crowd control by the Berkeley Police Department."
- (c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

21 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17)

Unauthorized Use of Force / Intervention and Reporting

- 22 - When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:
 - (a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.
 - (1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.

*Highlighted text is new.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

Use of Force / Reporting Requirements

- 23 - Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:
- (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
 - (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
 - (c) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
 - (d) When an officer or employee uses a non-lethal *weapon* (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained, except in those situations deemed "Unusual Occurrences" as set forth in General Order U-4 and the Event Management Manual, in which case, the After Action Report will serve as the police report. (See also General Order U-4)
- 24 - The officer or employee must also complete a police or incident report in any of the above four situations.
- 25 - Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a "Use of Pepper Spray Report" form. (See Training and Information Bulletin #216 for detailed instructions in completing this form)

Use of Force / Supervisor Responsibilities

- 26 - A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:
- (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
 - (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
 - (c) When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)

*Highlighted text is new.

- (d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

27 - A supervisor shall complete a Use of Force Report in any of the above four situations.

- (a) A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.
- (b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)

28 - The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Commander through the chain of command.

Use of Force / Administrative Review

29 - The Division Commander shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.

- (a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Commander Review.

30 - The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

31 - Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.

32 - All Use Of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require revision or additional training.

33 - Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

34 - In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:

*Highlighted text is new.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: " ... If any person is seriously injured or killed as a result of an officer's actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."
- (b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings And Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References: *Tennessee v. Garner* (1986) 471 U.S. 1
Graham v. Connor (1989) 490 U.S. 386
Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272
 California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843
 General Orders A-17, C-16, **C-64**, F-2, P-12, **P-26**. R-3 and U-4
 Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332
 Training and Information Bulletin 216
 Lethal and Non-Lethal Force Manual
 Uniform and Equipment Manual
 City of Berkeley Council Resolution No. 52,605 – N.S. (2/14/85),
 "Prohibiting use of 'chokehold' for law enforcement
 purposes in the City of Berkeley"
 National Tactical Officers Association, General Policy Statement
 for Less-Than-Lethal Impact Projectiles (11/22/2002)

*Highlighted text is new.

EXEMPLAR

BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT

This report is to be completed by an on-duty supervisor per General Order U-2 if: (1) Use of any force results in injury or death to a person; (2) Non-lethal weapons (OC/baton) or less-than-lethal munitions are used on a person; or (3) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer.

Date: _____

To: Chief of Police via Chain of Command

From: _____

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): _____

Date / Time of Incident: _____

Location of Incident: _____

Nature of Incident: _____

Officer(s)/Employee(s) Involved: _____

Type of Force used: Physical Baton O.C.
 Firearm Less-than-lethal Other

Was Officer or Police Employee injured? Yes No

If yes, nature of injuries: _____

Medical treatment required: BFD Response - Yes No

*Highlighted text is new.

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

Was a citizen(s) injured during this incident? Yes No

If "yes," nature of injuries: _____

Medical treatment required: BFD Response - Yes No

Investigator(s) and Identification Technician who responded, if any:

Were photographs taken? Yes No

Summary of actions of Officer(s) involved: _____

Supervisor's Comments:

Division Commander Recommendation:

Chief of Police (*Signature*)

(*Date*)

Findings: Within Policy
 Referred for Administrative
Action/Investigation

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

SUBJECT: MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES

PURPOSE

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

POLICY

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

MUTUAL AID

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

PROCEDURES

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

COMMUNICATION No. 4364

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

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

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

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

(b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).

(1) It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

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

(a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.

(b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, and verbally request mutual aid.

(c) Send a*written message to the Alameda County Sheriff's Department. (FAX is acceptable.)*

(d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:

(1) The dates and times that mutual aid personnel are required.

(2) The number of personnel needed to assist.

(3) The staging area for responding personnel to meet.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

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

REQUESTING STATE MUTUAL AID ASSISTANCE

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

BERKELEY POLICE DEPARTMENT

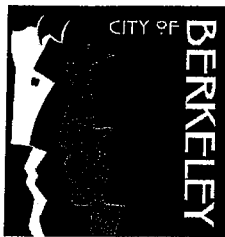
DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

under the command of the State Police.

REQUESTING FEDERAL MUTUAL AID ASSISTANCE

- 8 - Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.
- 9 - The Berkeley City Council reviews and approves agreements with other law enforcement agencies pursuant to California Government Code Section 8617, and in accordance with Berkeley Municipal Code (BMC) Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS 1973).
 - (a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.
 - (1) The agreements are maintained in a **compendium** entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
 - (a) **The compendium is publically available from the City of Berkeley website.**
 - (b) A list of the agreements with other agencies is listed in the table of contents.
 - (b) **The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity -- submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210**

COMMUNICATION No. 4388

Jesse Arreguin
City Councilmember, District 4

ACTION CALENDAR

January 20, 2015

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguin
Subject: Support the National Demands by Ferguson Action

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

BACKGROUND

Every 28 hours, an African American is killed by police officers. Systematic problems on a national scale such as racial profiling and use of tactics such as stop and frisk, along with the increased militarization of police forces have helped contribute to this alarming statistic.

Ferguson Action is an organization that formed in response to the high-profile death of Michael Brown by a police officer in Ferguson, Missouri, and advocates for national changes to these problems. They have published a list of demands (Attachment 1) which includes the demilitarization of local police agencies, supporting the passage of the End Racial Profiling Act, repurposing law enforcement funding to support community based alternatives to incarceration, and a comprehensive review of abuses by local police agencies, including the publication of data relating to racially based policing.

On a regional level, the Alameda County District Attorney has a limited policy on investigations of in-custody deaths to include only those involved with a firearm. This policy should have no restrictions, as all in-custody deaths, regardless of the manner of death, should be independently investigated.

The Berkeley City Council should express its concern over the recent events and show support to people of color who have been affected by police brutality and use of

excessive force. Whether it is a local incident such as Kayla Moore or a national one such as Michael Brown or Eric Garner, the City of Berkeley should make it clear that actions under law enforcement agencies that result in harming communities of color are unacceptable.

ENVIRONMENTAL SUSTAINABILITY

No adverse affects to the environment.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 510-981-7140

Attachments

1. National Demands by Ferguson Action

Attachment 1: National Demands by Ferguson Action
(from <http://fergusonaction.com/demands/>)

NATIONAL DEMANDS

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.

2. A Comprehensive Review of systemic abuses by local police departments, including the publication of data relating to racially biased policing, and the development of best practices.

A comprehensive review by the Department of Justice into systematic abuses by police departments and the development of specific use of force standards and accompanying recommendations for police training, community involvement and oversight strategies and standards for independent investigatory/disciplinary mechanisms when excessive force is used. These standards must include a Department of Justice review trigger when continued excessive use of force occurs.

A comprehensive federal review of police departments' data collection practices and the development of a new comprehensive data collection system that allows for annual reporting of data on the rates of stops, frisks, searches, summonses and arrests by race, age, and gender. These standards must also include a DOJ review trigger when departments continue discriminatory policing practices.

3. Repurposing of law enforcement funds to support community based alternatives to incarceration and the conditioning of DOJ funding on the ending of discriminatory policing and the adoption of DOJ best practices

The repurposing of Department of Justice funds to create grants that support and implement community oversight mechanisms and community based alternatives to law enforcement and incarceration—including community boards/commissions, restorative justice practices, amnesty programs to clear open warrants, and know-your-rights-education conducted by community members.

The development of a DOJ policy to withhold funds from local police departments who engage in discriminatory policing practices and condition federal grant funds on the adoption of recommended

DOJ trainings, community involvement and oversight strategies, use of force standards and standards for independent investigatory/disciplinary mechanisms.

4. A Congressional Hearing investigating the criminalization of communities of color, racial profiling, police abuses and torture by law enforcement

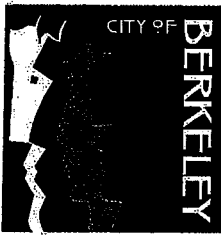
Congressional hearings investigating the criminalization of communities of color and systemic law enforcement discriminatory profiling and other abuses especially at the local level—including an examination of systemic structures and institutional practices and the elevation of the experiences and voices of those most impacted. Congressional hearings will allow for a continuation of the national discussion about police abuse and its underlying causes.

5. Support the Passage of the End Racial Profiling Act

Support for the passage of the End Racial Profiling Act (ERPA) which in law would prohibit the use of profiling on the basis of race, ethnicity, national origin or religion by law enforcement agencies.

6. The Obama Administration develops, legislates and enacts a National Plan of Action for Racial Justice

The development and enactment of a National Plan of Action for Racial Justice by the Obama Administration. The National Plan of Action for Racial Justice should be a comprehensive plan that address persistent and ongoing forms of racial discrimination and disparities that exist in nearly every sphere of life including: criminal justice, employment, housing, education, health, land/property, voting, poverty and immigration. The Plan would set concrete targets for achieving racial equality and reducing racial disparities and create new tools for holding government accountable to meeting targets.



Jesse Arreguin
Councilmember, District 4

COMMUNICATION No. 4400

REVISED AGENDA MATERIAL

Meeting Date: January 20, 2014

Item Number: 29

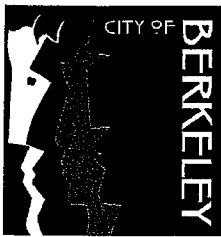
Item Description: Independent Investigation of Police Response to December 6, 2014 Protests

Submitted by: Councilmember Jesse Arreguin

The item has been revised to change the title of the report and recommendation. Changes to the recommendation include referring to the Police Review Commission to initiate an investigation, and not directing the City Manager to hire a third-party independent investigator.

In addition the item directs the Commission to return to Council with its findings no later than six months from the date of adoption of the item.

The item also empowers the Commission to produce documents and witnesses in order to conduct the investigation, including the use of subpoena power if necessary to gather necessary information for the investigation.



Jesse Arreguín
City Councilmember, District 4

REVISED
ACTION CALENDAR
January 20, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Independent Investigation of Police Response to December 6, 2014 protests

RECOMMENDATION

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.

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.

~~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 attached questions to the Police Review Commission for the City Manager and outside investigator to consider in conducting their investigation (Attachment 1).

FINANCIAL IMPLICATIONS

Unknown

BACKGROUND

The killings of Michael Brown and Eric Garner, and the resulting no-indictment rulings led to a nationwide movement against police brutality against the African American community. Berkeley experienced protests on a near-daily basis between December 6 and December 14, 2014.

On December 6, 2014, the first day of the protests, there was a heavy police presence and response, with the Berkeley Police Department (BPD) requesting mutual aid, and multiple law enforcement agencies responding.

Multiple accusations have since been made regarding the police response on December 6, alleging that the Berkeley Police Department and other departments that were invited through Mutual Aid violated procedures and used excessive force against the demonstrators. Video footage taken the night of the incident also corroborates these allegations. These allegations include, but are not limited to:

- Baton strikes (including over the shoulder) and physical use of force against non-violent demonstrators.
- Use of chemical agents such as tear gas in a densely populated area, resulting in unnecessary exposure to bystanders and residents.
- Firing of projectiles such as bean bags and rubber bullets against a retreating crowd.
- Use of force against visibly identifiable members of the media, including baton strikes against observing journalists.
- Violations of General Orders C-64 (Crowd Control) and U-2 (Use of Force).

While BPD will conduct its own review of the events of December 6, 2014, a third-party civilian independent review is necessary to look clearly and objectively at what happened and what changes might be needed to Departmental policies and training to prevent similar incidents from occurring in the future. It will also instill greater public confidence in the results of the review if it is conducted by an independent investigator outside of City staff.

Since the events of December 6th, the Council has received numerous phone calls and emails about the police response and use of force. In addition, at several protests and at the December 16, 2014 City Council meetings, citizens called on the Council to investigate and to reform police response to crowd control situations.

The Berkeley Police Review Commission on December 10, 2014 voted unanimously as an urgency item to call for an investigation into the improper use of tear gas on December 6, 2014.

Initiating an independent investigation after a major policing event is not unusual. For example, the City of Oakland hired an independent firm to investigate allegations of excessive police force in response to the Occupy Oakland protest on October 25, 2011.

The resulting report led to a number of findings and recommendations to improve crowd control policies, procedures, and tactics of the Oakland Police Department.

To address these accusations, the City Council should direct the Police Review Commission to conduct an investigation as soon as possible and empower them to produce documents and witness testimony in order to carry out the investigation, including the use of subpoena power if necessary to gather necessary information to find out what happened on December 6, 2014 and what led to the decisions regarding the use of force.

~~Manager should select a qualified consultant and come back to Council expediently for approval of a contract. To ensure the process is as thorough and independent as possible, the consulting firm must be from out of the region and have no conflict of interest with members of the BPD.~~

ENVIRONMENTAL SUSTAINABILITY

No adverse affects to the environment.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 510-981-7140

Possible items for investigation.

"Less-than-lethal" (or less-lethal) force:

- On December 6, 2014, did police officers fire less-than-lethal projectiles such as beanbags, rubber bullets, or others into a Berkeley crowd? If so, what agency conducted these shootings and under what authorization? What injuries resulted from these shootings?
- Were less-than-lethal projectiles deployed in violation of the following provision of General Order U-2 (Use of Force)?
16 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:
 - (a) When an act of violence is occurring, or is about to occur;
 - (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
 - (c) To deter a person who is reasonably believed to be armed and is threatening to harm him-/herself, another person, or an officer; or,
 - (d) To resolve a potentially violent incident not otherwise described above.
- Do BPD policies require a "clear shot" for less-than-lethal munitions such as rubber bullets?

Baton use.

- Are over-the-head baton strikes permitted or banned to BPD officers?
- How many such strikes were delivered on December 6, by what agency, and under what authorization?

Media.

- Confirm allegations of physical assaults on media representatives carrying visual identification, including a baton strike to the head. What agency conducted these strikes and under what authorization? What steps are being taken to prevent a recurrence, even in a chaotic situation?

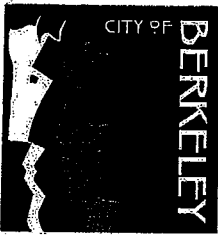
Mutual Aid.

- Did BPD or City of Berkeley management authorize the deployment of armored vehicles on Saturday December 6?
- When responding departments' actions conflict with such BPD or City policies (e.g. deployment of militarized armored vehicles or baton strikes to the head), what action is taken by the BPD command? What is the process for a decision not to invite such a department back for future mutual aid events?

Policing strategy.

- What is the BPD's policing strategy with respect to the particular needs (including cultural and historical needs) of the African American community and other constituencies, including other communities of color, LGBT, homeless, mentally ill, otherwise disabled, and youth?
- How useful are such strategies and technologies (both formal and de facto) in achieving conflict reduction, respectful and restorative police practices, and a positive community perception of the BPD?¹

¹ "Police in riot gear and the tactics and equipment they use on protesters such as in Ferguson, Mo. and the Occupy movement in the Bay Area may not prevent violent clashes as much as inciting them...unnecessarily intimidating and alienating protesters." Nicholas Adams, UC Berkeley, August 22, 2014, "The Deciding Force Project," <http://sanfrancisco.cbslocal.com/2014/08/22/do-riot-police-prevent-violent-clashes-or-incite-them-uc-berkeley-researchers-analyze-police-protester-dynamics/>



Jesse Arreguin
Councilmember, District 4

4400
COMMUNICATION No. 4364
4411

REVISED AGENDA MATERIAL

Meeting Date: January 20, 2014

Item Number: 28

Item Description: Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid), and U-2 (Use of Force)

Submitted by: Councilmember Jesse Arreguin

The recommendation has been revised to refer the Oakland Police Department and San Francisco Police Department Crowd Control and Use of Force policies to the PRC and City Manager to review and suggest revisions to BPD General Orders, rather than proposing specific text amendments to BPD General Orders.

The recommendation regarding the adoption of a temporary City policy on the use of tear gas and other non-lethal force has also been revised.



Jesse Arreguin
City Councilmember, District 4

REVISED
ACTION CALENDAR
January 20, 2015

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguin
Subject: Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid) and U-2 (Use of Force)

RECOMMENDATION

1. ~~4.~~ Refer to the Police Review Commission (PRC) and City Manager the attached policies from the Oakland Police Department and San Francisco Police Department on crowd control and use of force and request that they return to the City Council with proposed changes to BPD General Orders C-64, M-2, U-2 to reflect the policies adopted in these cities.

—, and request that they return to the City Council with recommended revisions to the General Orders.

~~The proposed changes (Attachments 1-3) 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.), rubber bullets and other projectiles 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 by the Police Review Commission is ~~conducted~~ completed ~~as to~~ regarding the Police response to the December 6, 2014 protests, and a review and revisions to of General Orders C-64, M-2, and U-2 are is completed.

FINANCIAL IMPLICATIONS

Unknown

BACKGROUND

The police response to the protests on December 6, 2014 and the use of less lethal force including tear gas, baton strikes and projectiles in dispersing crowds have raised issues regarding whether BPD complied fully with its policies and whether policy changes are

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warranted to adapt police response to demonstrations, planned or spontaneous events and large crowds.

In response to public criticism and lawsuits over the police response to the Occupy protest on October 25, 2011, the City of Oakland initiated an independent investigation that resulted in recommended changes in departmental procedures on crowd control. In reviewing the Oakland Police Department's (OPD) Crowd Control Policy (Index Number III-G) a number of policies differ from BPD's, namely: tactical approaches, permitted uses of force, and policies on media access and maintaining public safety while protecting non violent protesters and bystanders.

Since OPD revised its crowd procedures, the number of police complaints has decreased and it has resulted in a more targeted response that facilitates First Amendment activity while protecting public safety. These policies and tactics should be specified in BPD's crowd control policy.

BPD General Order C-64

One of the biggest concerns raised over the December 6, 2014 protests were the allegations of excessive force when dispersing crowds. Section 5 of BPD General Order C-64 provides some guidelines into use of force for crowd management and control, but more can be done to make the policies clearer as to what constitutes as excessive force. BPD's policy allows for greater use of force than Oakland's policy, and allows certain weapons that are prohibited in Oakland's policy (projectiles).

The Oakland Police Department's policies on crowd control (Index Number III-G, see **Attachment 14**) are explicitly written to protect First Amendment rights and minimize the risk of using excessive force. Examples which are not included in the language of BPD's policy include, but are not limited to: suspending dispersal techniques while a crowd is dispersing, only using batons at physically aggressive persons and banning baton strikes to the head, neck, throat, kidneys, spine, and groin, banning the indiscriminate use of Direct Fired Specialty Impact Less-Lethal Munitions (SIM) such as bean bags, and providing accommodations to the media. The OPD policy also reiterates Penal Code Section 830.10, which mandates officers to clearly and visibly wear a badge or nameplate with their name and identification number, which was allegedly violated during the December 6 protests. OPD policies also point out the importance of remaining professional and not resorting to impulsive or independent actions. To quote Section 12 of Index Number III-G, "the Incident Commander and supervisors shall make every effort to ensure that the police mission is accomplished as efficiently and unobtrusively as possible with the highest regard for the human dignity and liberty of all persons and with minimal reliance on the use of physical force". In amending General Order C-64, policies presented in OPD's Crowd Control and Management should be examined.

BPD General Order M-2

ACTION Calendar
January 20, 2015

The Berkeley Police Department has multiple agreements with regional law enforcement agencies for mutual aid. However, these police agencies are currently free to use whatever tactics, equipment, and techniques their departments use, even if it differs from Berkeley's policies. For example, the Hayward Police Department used an armored vehicle over multiple days in the Berkeley protests, despite public and City Council opposition to the use of such vehicles by the BPD.

As seen during the December 6th protests, outside police agencies allegedly used tactics and equipment not used by BPD and in some cases in violation of BPD policies/procedures, resulting in poor crowd controlling and likely increased allegations of excessive force. Having other police agencies follow the standards and regulations of the BPD while within Berkeley City limits will allow for better transparency and cooperation.

In 2012, in the wake of the police response to the Occupy protests in Oakland and on UC campuses, the Berkeley City Council referred the issue of modifying General Order M-2 to the PRC. The Commission proposed amendments to require that BPD follow its policies and procedures in mutual aid incidents, and to require that the Department seriously evaluate whether to call for mutual aid or respond if the request involves civil disobedience or First Amendment activity and not a threat to public safety. The Council adopted this policy in September 2012. Arguably, the police response on December 6, 2014 did not meet the spirit if not the letter of this policy. In trying to protect officers from threats to physical safety and maintain order, some non-violent protesters (including press) were the subject of unnecessary force including chemical agents, baton strikes and projectiles. While there were some individuals who were engaging in property damage or violence, the widespread use of these tactics against the larger crowd of non-violent protesters is questionable not only in their effectiveness but in their appropriateness.

BPD General Order U-2

The BPD's policy over use of force supersedes all other policies. Section 20 of General Order U-2 provides a list of prohibited uses of force. On September 16, 1997, the City Council passed a policy banning the use of Oleoresin Capsicum (pepper spray) as a crowd control technique. Because of the indiscriminant nature of tear gas, innocent bystanders are often exposed to its harmful effects. Additionally, people with asthma or other respiratory ailments, infants, and the elderly could have a serious or potentially fatal reaction. Therefore, tear gas should also be prohibited for use as a crowd control technique.

Another potentially fatal use of force due to potential head injuries are the use of projectiles and baton strikes above the shoulder. Indiscriminate use of projectiles against crowds can result in innocent persons getting hit or cause property damage and may result in serious injuries. Use of projectiles in crowd control situations should be prohibited. Above the shoulder baton strikes should be banned in any case due to the high risk of potentially fatal head injuries.

PRC Recommendations

At its meeting on December 10, 2014, the Berkeley Police Review Commission on a 5-0-3 (three Commissioners absent) passed two urgency items relating to the police response on December 6, 2014.

The first motion (**Attachment-65**) called on the Council to suspend the use of tear gas for crowd control until an investigation is conducted regarding the use of tear gas to disperse the crowd on December 6, 2014. This item recommends that the Council set a temporary City policy to prohibit the use of tear gas for solely crowd situations, as the PRC suggested.

The second motion (**Attachment-76**) called on the Council to prohibit the use projectiles and over the shoulder baton strikes by BPD until a complete review of General Order C-64 is conducted. This item also recommends that Council set a temporary City policy to prohibit the use of projectiles and over the shoulder baton strikes by BPD until a review of General Order C-64 is completed.

These temporary prohibitions for crowd control situations only will allow the City time to conduct a review into the events of December 6, 2014 and a through review of department policy on crowd control, use of force, and mutual aid, before such tactics are deployed in the future.

The proposed policy would not prohibit use of these non-lethal tactics for non-crowd control situations, such as dealing with armed suspects.

ENVIRONMENTAL SUSTAINABILITY

No adverse affects to the environment.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 510-981-7140

Attachments:

1. Proposed changes to General Order C-64 (Crowd Control)
2. Proposed changes to General Order M-2 (Mutual Aid)
3. Proposed changes to General Order U-2 (Use of Force)
- 4.

1. Oakland Police Department Training Bulletin III-G (Crowd Control)
2. San Francisco Police Department Crowd Control Policy
3. through 5. Current language of BPD General Orders C-64, M-2, and U-2
6. and 7. ~~5. and 6.~~ December 10, 2014 PRC recommendations on Tear Gas and Projectiles

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OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 04 Oct 13

SUBJECT: Revision of Training Bulletin III-G, CROWD CONTROL AND CROWD
MANAGEMENT POLICY (Rev. 28 Oct 05)

The purpose of the revision to this order is to update Departmental policy and procedures regarding crowd control and crowd management.

This following summary of the substantive changes to TB III-G shall not take the place of the review and understanding of the entire document:

- Added Part III, A, 4 (General Principles-Planning): Internal Affairs personnel and civilian staff will not have operational/tactical assignments or decision making roles for crowd control events.
- Added Part III, A, 4 (General Principles-Planning): Internal Affairs and Criminal Investigations Division shall have sufficient personnel available to conduct internal and criminal investigations during a crowd control event.
- Added Part III, A, 5 (General Principles-Planning): The Incident Commander of a crowd control event shall coordinate with the City Attorney and County District Attorney to ensure policies and case law information are current.
- Deleted the following from Part III, C, 1 (General Principles-Policing a Crowd): "Where additional resources are needed, they should be deployed to the greatest extent possible so they are not readily visible to the crowd".
- Deleted the following from Part V, H, 1 (Display of Officers): "Once this tactic is selected, officers should be assembled in formation at a location outside the view of the crowd" and "Do not bluff the crowd."
- Deleted from Part V, H, 3, c (Police Formations and Use of Batons): "When reasonably necessary for protection of the officers or to disperse individuals in the crowd pursuant to the procedures of this policy, batons may be used in a pushing or jabbing motion. Baton jabs should not be used indiscriminately against a crowd or group of persons but only against individuals who are physically aggressive or actively resisting arrest. Baton jabs should not be used in a crowd control situation against an individual who is physically unable to disperse or move because of the press of the crowd or some other fixed obstacle".
- Added Part V, H, 4, d (Non Hand-held Crowd Control Chemical Agents): Indirect use of chemical agents shall not be used unless approved by the Incident Commander. Under exigent circumstance, a commander or supervisor can use chemical agents. The Incident Commander shall be notified immediately upon an exigent use of chemical agents.
- Added Part V, H, 5, a (Hand-thrown chemical agents or pyrotechnic gas dispersal devices): Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used unless approved by the Incident Commander.

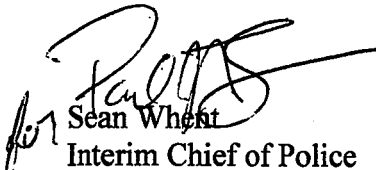
Under exigent circumstance, a commander or supervisor can use hand-thrown chemical agents or pyrotechnic gas dispersal devices chemical agents. The Incident Commander shall be notified immediately upon an exigent use of hand-thrown chemical agents or pyrotechnic gas dispersal devices.

- Added Part VI, G (Electronic Immobilizing Devices): "Officers are not restricted from using Tasers in accordance with Department General Order K-3, USE OF FORCE."
- Added Part VI, I (Munitions Inventory Log): Documentation and responsibilities for a munitions inventory log.
- Added Part VIII, B (Cite/Release and Booking Procedures): "...officers may cite and release arrestees from temporary processing stations or police facilities as near the site of the arrest as possible. While detained during the citation and release process, arrestees shall have reasonable access to toilet facilities and to appropriate medical attention."
- Added Part VIII, C (Cite/Release and Booking Procedures): "No fingerprinting will be done as part of the citation and release process. Arrestees may be instructed to appear for booking prior to or after arraignment. Commanders shall exercise discretion as to whether property searches are necessary. Property of persons who qualify for citation and release will not be confiscated unless it is found to contain contraband. The intention of this policy is to release citation-eligible arrestees as promptly as possible, and to obviate the need to transfer such arrestees to the Sheriff's custody. Persons for whom a valid warrant is confirmed, or who do not produce valid identification or who are otherwise found ineligible for citation will be transferred to the Sheriff's custody".
- Added Part IX, 1-7 (Mutual Aid and Multi-Agency Coordination). Roles and responsibilities.
- Added Part X, 1 (Documentation): "Officers shall utilize their Personal Digital Recording Device (PDRD) in accordance with DGO I-15.1. In addition, officers shall activate their PDRDs whenever taking any enforcement action during a crowd control situation or when ordered to activate their PDRD by a supervisor or commander".
- Added Part XI, B, C, 1-5 (Reporting): The Incident Commander will be responsible for conducting a debrief of the crowd control event within 72 hours and an After Action Report within 30-days.
- Added Part XIV Crowd Management Coordinator): The responsibilities of the Crowd Control Coordinator.

The provisions of Special Orders 7088 and 8135 are incorporated into this order and are hereby canceled.

Personnel shall acknowledge receipt, review, and understanding of this directive in accordance with the provisions of DGO A-1, DEPARTMENTAL PUBLICATIONS.

By order of


for Sean Whelan
Interim Chief of Police

Date Signed: 03 OCT 13



Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.

OPD Crowd Control and Crowd Management Policy

The purpose of this Training Bulletin is to set forth policy and procedures regarding crowd control and crowd management.

I. POLICY

The Oakland Police Department crowd management and crowd control policy is to

- Apply the appropriate level of direction and control to protect life, property, and vital facilities;
- Maintain public peace and order; and
- Uphold constitutional rights of free speech and assembly while relying on the minimum use of physical force and authority required to address a crowd management or crowd control issue.

II. DEFINITIONS

A. Crowd Management

Crowd management is defined as techniques used to manage lawful public assemblies before, during, and after an event for the purpose of maintaining the event's lawful status. Crowd management can be accomplished in part through coordination with event planners and group leaders, permit monitoring, and past event critiques.

B. Crowd Control

Crowd control is defined as those techniques used to address unlawful public assemblies, including a display of formidable numbers of police officers, crowd containment, dispersal tactics, and arrest procedures.

C. First Amendment Activities

First Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression.

Common First Amendment activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, use of puppets to convey a message, street theater, and other artistic forms of expression.



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All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution (First Amendment) and the California Constitution (Article 1, Sections 2 & 3.)

All persons have the right to march, demonstrate, protest, rally, or perform other activities protected by the First Amendment of the United States Constitution and the California Constitution.

The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

D. Demonstration

Demonstration is used generically in this Training Bulletin to include a wide range of First Amendment activities which require, or which may require, police traffic control, crowd management, crowd control, crowd dispersal, or enforcement actions in a crowd situation.

As used in this Training Bulletin, the term, demonstration, means a public display of a group's or individual's feeling(s) toward a person(s), idea, cause, etc and includes, but is not limited to, marches, protests, student walk-outs, assemblies, and sit-ins. Such events and activities usually attract a crowd of persons including participants, onlookers, observers, media, and other persons who may disagree with the point of view of the activity.

E. Crowd Event or Crowd Situation

This Training Bulletin covers all crowd events or crowd situations, including sporting events, festivals, concerts, celebratory crowds, and demonstrations as defined above.

III. GENERAL PRINCIPLES

The Oakland Police Department's Crowd Management/Crowd Control Policy consists of the general principles discussed below.

A. Planning

1. Command staff shall be notified immediately of large or potentially disruptive demonstrations and/or crowd events.
2. The Incident Commander shall be responsible for the development of a written operations plan.
3. The Incident Command System shall be used for managing crowds and acts of civil disobedience.
4. Internal Affairs personnel and civilian staff shall not be included in any planning, tactical or strategy component of an anticipated crowd control or management scenario, other than to help plan for the specific role of IAD functions such as complaint intake and investigations.



Ensure there are sufficient Criminal Investigation Division (CID) and Internal Affairs Division (IAD) personnel that are not assigned to uniformed field assignments where a reasonable possibility of confrontation, force, or subsequent alleged misconduct or officer involved criminal complaints may occur, so that they are available for investigating such allegations.

5. The Incident Commander shall coordinate with the City Attorney and County District Attorney to solicit and ensure information is current regarding but not limited to:
 - a. Criteria for unlawful assembly.
 - b. Appropriate penal codes for enforcement and arrest criteria.
 - c. Appropriate Oakland Municipal Codes for enforcement and arrest criteria.
 - d. Legal updates regarding force, search and seizure and arrest.
6. OPD shall make every effort to follow the principle of establishing contact and communication with the event or demonstration planners.

Stakeholder involvement is critical to the overall success of managing crowd events and/or civil disobedience during demonstrations. If knowledge exists that a demonstration or crowd event may happen or will happen, OPD shall proactively and repeatedly make every reasonable attempt to establish and to maintain communication and cooperation with representatives or leaders of the demonstration or crowd event, without regard to whether a permit has been applied for or issued.

When planning for and responding to demonstrations, crowd events, and civil disobedience situations, Incident Commanders assigned to these incidents shall facilitate the involvement of stakeholders. If and when communication is established, personnel shall make every effort to identify representatives or leaders of the event and identify a primary police liaison. The primary police liaison should be requested to be in continuous contact with an assigned police representative, preferably the Incident Commander or someone with continuous access to the Incident Commander.

A group's failure to respond to OPD attempts to establish communication and cooperation prior to a demonstration shall not mitigate OPD's efforts to establish liaison and positive communication with the group as early as possible at the scene of the demonstration or crowd event.

7. Spontaneous demonstrations or crowd events, which occur without prior planning and/or without prior notice to the police, present less opportunity for OPD planning and prevention efforts. Nonetheless, the same policies and regulations concerning crowd management, crowd control, crowd dispersal, and police responses to violence and disorder apply to a spontaneous demonstration or crowd event situation as to a planned demonstration or crowd event. Incident Commanders shall involve representatives of demonstrators or crowd events when planning and responding to both planned and spontaneous events.



B. Deployment

1. Decisions about crowd dispersal and general strategies about crowd containment or crowd redirection, multiple simultaneous arrests, planned individual arrests, or planned use of force shall be made at the level of the Incident Commander or higher.
 - a. If such decisions are made by higher ranking off-site OPD officials, it is required that the Incident Commander first be consulted about the state of affairs in the field and the potential consequences of the decision.
 - b. All such decisions shall be documented in writing with regard to time, the identity of the person making the decision, and the precise decision and directions given. Such documentation shall be made at the time of the decision or as soon thereafter as possible and included in an After Action Report.

This directive shall not preclude individual commanders, supervisors, and officers from defending themselves or others from imminent danger when the delay in requesting permission to take action would increase the risk of injury.

2. OPD recognizes that the designated police liaison may change during the course of an event and that leadership of certain groups may not exist nor desire to be identified. No retaliatory practices or adverse action shall be taken by OPD against a group because it has failed or refused to appoint a police liaison or otherwise establish lines of communication with OPD.
3. Communication with the identified police liaison shall continue even if enforcement actions commence.
4. As staffing permits, officers should be deployed to the best available vantage points to observe and report crowd actions.
5. Lines of control should be established, especially in events that involve protesters with opposing views. Whenever possible, hostile factions should be separated.
6. Considering the type of crowd involved is an important factor in responding properly to its behavior.
7. Crowds may vary from cooperative or celebratory to non-compliant, hostile, and combative. Organized demonstrations in which some engage in coordinated, nonviolent civil disobedience should be distinguished, to the extent possible, from crowds in which substantial numbers of people are engaged in other types of unlawful acts.

C. Policing a Crowd

1. Sufficient resources to make multiple simultaneous arrests should be available at demonstrations where such arrests are a reasonable possibility. However, this need must be balanced against the fact that a large and visible police presence may have a chilling effect on the exercise of free speech rights.
2. When possible, officers should be at their posts well in advance of arriving participants. If possible, officers should be positioned at a reasonable distance from the crowd to avoid a perception of intimidation.



3. In general, OPD officers shall work together in squads or platoons when policing a demonstration.
4. Each officer shall wear a badge, nameplate, or other device on the outside of his or her uniform or on his or her helmet which bears the identification number or the name of the officer, as required by Penal Code § 830.10.

The number or name shall be clearly visible at all times. The letters or numerals on helmets, jackets, and vests shall be clearly legible at a distance sufficient to provide a measure of safety for both officers and demonstrators/observers and, in no case, shall be less than two inches in height on helmets.

5. Crowd control and crowd dispersal, as well as a show of force in crowd control situations, should be accomplished whenever possible using specialized units of OPD rather than on-duty patrol officers.
6. Regardless of whether a parade permit has been obtained, OPD officers will try to facilitate demonstrations that may temporarily block traffic and/or otherwise use public streets subject to time, place, and manner of circumstances, by regulating and/or rerouting traffic as much as practical.

For a demonstration without a pre-planned route, the Incident Commander shall evaluate the size of the crowd with regard to whether demonstrators should be required to stay on the sidewalk or whether demonstrators should be allowed to be in one or more lanes of traffic.

This directive does not mean demonstrations must be allowed to deliberately disrupt commuter traffic and/or bridge approaches.

The Incident Commander shall balance the level of disruption to traffic against the OPD policy of facilitating First Amendment activity, the practicality of relegating the crowd to sidewalks or an alternate route, the expected duration of the disruption, and the traffic disruption expected in making a mass arrest if demonstrators refuse to leave the street.

OPD shall seek to communicate with organizers through their police liaison to resolve a problem if possible. Traffic control may also be essential at varying points in a demonstration and may help accomplish crowd containment, crowd isolation, or crowd dispersal.

7. It is essential to recognize that all members of a crowd of demonstrators are not the same.

Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent or destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger.

This understanding does not mean OPD cannot take enforcement action against the crowd as permitted under this policy, but OPD shall seek to minimize the risk that force and arrests may be directed at innocent persons.



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Verbal abuse against officers shall not constitute a reason for an arrest or for any use of force against such individuals. Officers shall avoid responding to abusive comments

8. Officers must not be affected by the content of the opinions being expressed nor by the race, gender, sexual orientation, physical disabilities, appearances, or affiliation of anyone exercising their lawful rights.
9. Department personnel must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members. Unprofessional police behavior can inflame a tense situation and make control efforts more difficult and dangerous.

Strong supervision and command are essential to maintaining unified, measured, and effective police response. A response incorporating strong leadership and based upon teamwork is crucial to maintaining control and safety. Impulsive or independent actions by officers are to be avoided.

10. Officers in non-violent crowd situations shall not display weapons before a dispersal order is given or other enforcement action is implemented.
11. OPD officers shall not be sent into an obviously hostile crowd solely for the purpose of communication. OPD officers shall not penetrate a crowd for an individual arrest unless the targeted individual is involved in criminal conduct which endangers persons or property, and the decision to move into the crowd is made by a supervisor or commander.
12. The Incident Commander and supervisors shall make every effort to ensure that the police mission is accomplished as efficiently and unobtrusively as possible with the highest regard for the human dignity and liberty of all persons and with minimal reliance on the use of physical force.

The use of force shall be restricted to circumstances authorized by law and to the degree reasonably necessary in light of the circumstances confronting members. This directive does not preclude police officers from taking appropriate action to direct crowd and vehicular movement; enforce ordinances and statutes; and employ the physical force necessary to maintain the safety of the crowd, the general public, law enforcement personnel, and emergency personnel.

IV. RESPONSES TO CROWD SITUATIONS

A. Spontaneous Event or Incident

1. The Watch Commander shall respond to the scene of spontaneous events, when practical, and take command of the incident as the Incident Commander until relieved by a ranking officer.
2. The Incident Commander shall declare over the police radio that he or she has assumed command of the incident. When practical, a command post shall be established as soon as possible.



3. An immediate assessment of the situation is essential for effective police response. The Incident Commander must ascertain the following information at the earliest possible time:
 - a. The location and type of event.
 - b. First Amendment activities will be evaluated by the Incident Commander to determine lawfulness of the actions by groups and individuals.
 - c. The approximate number of specific individuals engaged in unlawful conduct.
 - d. The likelihood that unlawful behavior will spread to other crowd participants (mimicking).
 - e. Immediate threats to the safety of the public and/or police officers.
 - f. The number of structure(s) or vehicle(s) involved.
 - g. The size of the involved area.
 - h. The number of additional officers and police resources needed as well as requirements for specialized units (Traffic, Tactical Operations Team, Crime Reduction Teams, etc.).
 - i. The appropriate manner of response (Code 2 or 3).
 - j. The staging area.
 - k. The location for a media staging area.
 - l. The ingress and egress routes.
 - m. Additional resources needed (paramedic, fire department, outside agencies, etc.).

B. Planned Event Involving Potentially Large Crowds

1. Upon notification, the Special Operations Division Commander or designee (Incident Commander) shall develop a written operations plan.

The Incident Commander of planned events shall be responsible for the overall coordination of the event as well as for crowd control and management.

Operations plans for large events requiring the redeployment of personnel from regular assignments shall be approved by the Deputy Chief of Field Operations.
2. The following factors shall be considered and addressed in developing the operations plan for a large crowd event, including but not limited to:
 - a. What type of event is to occur?
 - b. Who are the organizers? What is their past record of conduct (peaceful, violent, cooperative, etc.)?



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- c. Will outsiders visibly and/or physically oppose the planned event?
- d. Will the event involve the use or abuse of alcohol or other substances?
- e. Where is the event to occur? Consider the size, location, and ingress and egress points.
- f. What is the optimal site for a command post as well as staging areas?
- g. Have the appropriate permits been issued?
- h. Have other agencies, bureaus, and divisions been notified and included in the planning process (paramedics, fire department, Communications, Intel, etc.)?
- i. Will the EOC be needed? Is Mutual Aid needed?
- j. Will off-duty personnel be involved? Has the commander of any off-duty personnel been made part of the planning process?
- k. Is it possible and appropriate to coordinate with group organizers and explain the Department's mission, preparation, and potential responses?

Information considered sensitive or confidential shall not be released to group organizers if it will jeopardize the safety or effectiveness of police personnel.

- l. Have the proper number of personnel been scheduled to safely handle the event? Should a reserve force be available?
 - m. Has an enforcement policy been formulated and communicated to affected personnel?
3. The OPD Event Coordinator shall perform the following tasks.
- a. Gather and analyze intelligence information about future crowd events, including review of information from both internal and external sources.
 - b. Coordinate with Special Events regarding permits and various Department sections, including bureaus, divisions, and specialized units, to prepare for a planned special event.
 - c. Meet in advance with event sponsors and group leaders to exchange information and to present the Department's philosophy and intent. Details of the department plan and preparation shall not be disclosed except when necessary to ensure success of the operation.
 - d. Coordinate with affected bureaus, divisions, police service areas, and special units to prepare and coordinate the development of an operations plan for a given event that details assignments, traffic and crowd flow, communications, tactics, and training.
 - e. Prepare operations plan as requested.
 - f. Coordinate inspection of protest/event area prior to an event to locate any pre-positioned equipment staged by demonstrators.



- g. Ensure that appropriate equipment and supplies are available.
 - h. Ensure that a video team(s) is established and required video equipment is available (see Part X.)
 - i. Establish protocols and procedures for the processing of arrestees and collection of evidence.
4. Personnel creating an operations plan to address a large crowd event should anticipate a variety of scenarios and devise a police response for each. Such scenarios and responses should be made part of the final plan and communicated to the affected personnel.
 5. When practical, personnel preparing for a large event with the potential for violence shall be retrained; training to include physically practicing various aspects of crowd management and crowd control.

Topics may include but are not limited to Mobile Field Force (MFF), multiple simultaneous arrest procedures, functioning in a tear gas environment, use of specialty impact munitions, applicable ordinances and statutes, protected speech, etc.

6. Personnel shall be briefed on the operations plan and their particular assignments before deployment.

Specific instructions covering topics such as applicable laws, community concerns, appropriate enforcement actions, chain of command, tactics, traffic patterns, etc., shall be clearly presented to personnel. All personnel shall be given a copy of the operations plan.

V. PERMISSIBLE CROWD CONTROL AND CROWD DISPERSAL TECHNIQUES

- A. In the event of a declared unlawful assembly, it is the general policy of the OPD to use multiple simultaneous arrests to deal with a non-violent demonstration that fails to disperse and voluntarily submits to arrest as a form of political protest rather than dispersing the demonstrators by using weapons or force beyond that necessary to make the arrests.
- B. The Incident Commander shall make the final decision as to what control action, if any, will be taken to address a given crowd situation.

Crowd size and available Department resources will also factor into the police response. The following factors will be considered prior to determining what action to take:

1. Will police action likely improve the situation?
2. Will targeting specific violent or disruptive individuals for arrest be more effective or appropriate than applying control tactics to the entire crowd?
3. Are sufficient resources available to effectively manage the incident?



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4. Have clear and secure escape routes been established for both the crowd and the police?
 5. Has the dispersal order been given (loudspeaker, personal contact, etc.)?
 6. Have contingency plans been established in the event initial police efforts are ineffective?
- C. Commanders shall constantly reassess and adjust tactics, as necessary, as the crowd's actions change.
- D. The Incident Commander shall consider and take reasonable and appropriate steps to ensure the safety of bystanders.
- E. When officers take action to move or disperse a crowd, steps should be taken to ensure that the crowd is not moved into a position or place that could be dangerous to persons in the crowd or bystanders, such as pushing them up against glass windows.
- F. When an Unlawful Assembly May Be Declared
1. The definition of an unlawful assembly has been set forth in Penal Code Section 407 and interpreted by court decisions. The terms, "boisterous" and "tumultuous," as written in Penal Code Section 407, have been interpreted as "conduct that poses a clear and present danger of imminent violence" or when the demonstration or crowd event is for the purpose of committing a criminal act.

The police may not disperse a demonstration or crowd event before demonstrators have acted illegally or before the demonstrators pose a clear and present danger of imminent violence.
 2. The mere failure to obtain a permit, such as a parade permit or sound permit is not a sufficient basis to declare an unlawful assembly. There must be criminal activity or a clear and present danger of imminent violence.
 3. The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful.
 4. Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques shall not be initiated until after attempts have been made through contacts with the police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease and the First Amendment activity can continue.
 5. If after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly and the required official declaration has been adequately given.



G. Declaration of Unlawful Assembly

1. When the only violation present is unlawful assembly, the crowd should be given an opportunity to disperse rather than face arrest.

Crowd dispersal techniques shall not be initiated until OPD has made repeated announcements to the crowd, asking members of the crowd to voluntarily disperse and informing them that, if they do not disperse, they will be subject to arrest.

These announcements must be made using adequate sound amplification equipment in a manner that will ensure that they are audible over a sufficient area.

Announcements must be made from different locations when the demonstration is large and noisy. The dispersal orders should be repeated after commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. The announcements shall also specify adequate egress or escape routes. Whenever possible, a minimum of two escape/egress routes shall be identified and announced.

It is the responsibility of the on scene OPD commanders to ensure that all such announcements are made in such a way that they are clearly audible to the crowd.

2. Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with police commands before action is taken.
3. Dispersal orders should be given in English and in other languages that are appropriate for the audience.
4. The Incident Commander should ensure that the name of the individual making the dispersal order and the date/time each order was given is recorded.
5. Dispersal orders should not be given until officers are in position to support/direct crowd movement.
6. Personnel shall use the following Departmental dispersal order:

I am (rank/name), a peace officer for the City of Oakland. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at to immediately leave. If you do not do so, you may be arrested or subject to other police action, including the use of force which may result in serious injury.

Section 409 of the Penal Code prohibits remaining present at an unlawful assembly. If you remain in the area just described, regardless of your purpose, you will be in violation of Section 409. The following routes of dispersal are available (routes). You have (specify amount) minutes to leave. If you refuse to move, you will be arrested.

* If you refuse to move, chemical agents will be used. (* Provide the chemical warning only if use is anticipated).



7. When a command decision is made to employ crowd dispersal techniques, attempts to obtain voluntary compliance through announcements and attempts to obtain cooperation through negotiation shall both be continued. At any point at which a crowd is dispersing, whether as a reaction to police dispersal techniques, through voluntary compliance, or as a result of discussion or negotiation with crowd leaders, OPD dispersal techniques shall be suspended and the crowd shall be allowed to disperse voluntarily. This directive does not preclude a command decision by OPD to reinstate dispersal techniques if crowd compliance ceases.

H. Approved Tactics and Weapons to Disperse or Control a Non-Compliant Crowd

If negotiation and verbal announcements to disperse do not result in voluntary movement of the crowd, officers may employ additional crowd dispersal tactics, but only after orders from the Incident Commander or designated supervisory officials.

The permissible tactics to disperse or control a non-compliant crowd include all of the following (not in any specific order of use):

The use of these crowd dispersal tactics shall be consistent with the Department policy of using the minimal police intervention needed to address a crowd management or control issue in accordance with Department General Order K-3, USE OF FORCE.

1. Display of police officers (forceful presence).

A police formation may be moved as a unit to an area within the crowd's view to assist with crowd management. If a display of police officers, motorcycles, police vehicles, and mobile field forces, combined with a dispersal order, is not effective, more forceful actions may be employed.

Generally, officers should be assigned to squads of sufficient size to be effective. At larger events, the crowd can be divided (with a commander in charge of each squad).

2. Encirclement and Arrest

If the crowd has failed to disperse after the required announcements, officers may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests (see Section VII).

Persons who make it clear (e.g., by sitting down, locking arms) that they seek to be arrested shall be arrested and not subjected to other dispersal techniques, such as the use of batons or chemical agents.

Arrests of non-violent persons shall be accomplished by verbal commands and persuasion, handcuffing, lifting, carrying, the use of dollies and/or stretchers, and/or the use of control holds including the bent-wrist control hold and twist-lock control hold (See Training Bulletin III-I.1, WEAPONLESS DEFENSE, pages 28-31.)

When dealing with non-violent or passive persons, control holds should only be used when a Supervisor or Commander determines that control holds are necessary to accomplish the policing goal after other methods of arrest have failed or are not feasible under the circumstances and when the use of control holds would be a lawful use of force.



In the event control holds are necessary, precautions should be taken to assure that arrestees are not injured or subjected to unnecessary or excessive pain.

A decision to authorize control holds and the reasons for said decision should be documented.

3. Police Formations and Use of Batons

- a. If a crowd refuses to disperse after the required announcements, the police may use squad or platoon formations (skirmish line, wedge, echelons, etc.) to move the crowd along.
- b. Batons shall not be used for crowd control, crowd containment, or crowd dispersal except as specified below.
- c. Batons may be visibly displayed and held in a ready position during squad or platoon formations.
- d. Batons shall only be used as set forth in Department General Order K-3, USE OF FORCE and Department Training Bulletin III-H.2, USE OF THE LONG BATON.

Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine, or groin or jab with force to the left armpit except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person. Batons shall not be used against a person who is handcuffed.

4. Non Hand-Held Crowd Control Chemical Agents

- a. Crowd control chemical agents are those chemical agents designed and intended to move or stop large numbers of individuals in a crowd situation and administered in the form of a delivery system which emits the chemical agent diffusely without targeting a specific individual or individuals.
- b. Chemical agents can produce serious injuries or even death. The elderly person or infant in the crowd or the individual with asthma or other breathing disorder may have a fatal reaction to chemical agents even when those chemical agents are used in accordance with the manufacturer's recommendations and the Department's training. Thus, crowd control chemical agents shall be used only if other techniques, such as encirclement and multiple simultaneous arrest or police formations have failed or will not accomplish the policing goal as determined by the Incident Commander.
- c. Members shall use the minimum amount of chemical agent necessary to obtain compliance in accordance with Department General Order K-3, USE OF FORCE.
- d. Indirect delivery or crowd dispersal spray and/or discharge of a chemical agent shall not be used in demonstrations or other crowd events without the approval of the Incident Commander. Only under exigent circumstances may a supervisor or commander authorize the immediate use of chemical agents.



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The Incident Commander shall be notified immediately when an exigent use of chemical agents has occurred.

- e. Chemical agents shall not be used for crowd control or dispersal without first giving audible warning of their imminent use and giving reasonable time to the crowd, media, and observers to disperse.
 - f. If chemical agents are contemplated in crowd situations, OPD shall have medical personnel on site prior to their use and shall make provision for decontamination and medical screening to those persons affected by the chemical agent(s).
5. Hand-thrown chemical agents or pyrotechnic gas dispersal devices
- a. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control or crowd dispersal without the approval of the Incident Commander. Only under exigent circumstances may a supervisor or commander authorize the immediate use of hand-thrown chemical agents or pyrotechnic gas dispersal devices. The Incident Commander shall be immediately notified when an exigent use of hand-thrown chemical agents or pyrotechnic gas dispersal devices has occurred.
 - b. The use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel. Said devices shall be deployed to explode at a safe distance from the crowd to minimize the risk of personal injury and to move the crowd in the direction that will accomplish the policing objective.
 - c. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control without first giving audible warnings to the crowd and additional reasonable time to disperse.
 - d. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall be used only if other techniques such as encirclement and mass arrest or police formations have failed or will not accomplish the policing goal as determined by the Incident Commander.

VI. WEAPONS PROHIBITED FOR CROWD CONTROL AND CROWD DISPERSAL PURPOSES

A. Lethal Force

The use of lethal force by OPD members is governed by the Department's Use of Force Policy. Nothing about a crowd control situation eliminates or changes any of the constraints and criteria governing the use of lethal force in the Department's Use of Force Policy.

B. Canines

Canines shall not be used for crowd control, crowd containment, or crowd dispersal.



C. Horses

Horses shall be used only for purposes of crowd control in the event of a riot involving substantial numbers of people actively engaged in violence or serious property destruction. Horses shall never be used to disperse non-violent crowds, including persons who are seated or lying down.

Horses may be used for crowd management during festivals and sporting events.

D. Fire Hoses

Fire hoses shall not be used for crowd control, crowd containment, or crowd dispersal.

E. Motorcycles

The technique referred to as the Basic Use of Motorcycle Push Technique (B.U.M.P.) is prohibited. Motorcycles and police vehicles may not be used for crowd dispersal but may be used for purposes of observation, visible deterrence, traffic control, transportation, and area control during a crowd event.

F. Specialty Impact Less-Lethal Weapons

1. Skip Fired Specialty Impact Less-Lethal Munitions (Wooden Dowels and Stinger Grenades) are prohibited.
 - a. Any and all less-lethal specialty impact weapons designed to be skip fired or otherwise deployed in a non-directional non-target specific manner, including but not limited to the Multiple Wood Baton Shell (264W) manufactured by Armor Holdings, Inc. shall not be used at all by OPD during demonstrations or crowd events.
 - b. The use of the Stinger Grenade containing rubber pellets designed to be deployed in a non-directional non-target specific manner is also prohibited for all crowd control use.

2. Uses of Direct Fired Specialty Impact Less-Lethal Munitions (SIM)

Direct Fired SIM are less-lethal specialty impact weapons that are designed to be direct fired at a specific target, including but not limited to flexible batons ("bean bags"), and shall not be used for crowd management, crowd control or crowd dispersal during demonstrations or crowd events. Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.

- a. Direct Fired SIM may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, officers, or the general public or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.

In such instances, Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders.



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- b. The use of Direct Fired SIM must cease when the violent or destructive actions cease. These weapons must not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat to loss of life or serious bodily injury.
- c. Members shall only deploy Direct Fired SIM during a demonstration or crowd event under the direction of a supervisor.
- d. When circumstances permit, the supervisor on the scene shall make an attempt to accomplish the policing goal without the use of Direct Fired SIM as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.
- e. Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID.
- f. No member shall use Direct Fired SIM without formal training.
- g. Direct Fired SIM shall not be used against a person who is under restraint.
- h. Members shall not discharge a Direct Fired SIM at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.

G. Electronic Immobilizing Devices (EID)

EID's such as tasers, stun guns, and stun shields shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Officers are not restricted from using Tasers in accordance with Department General Order K-3, USE OF FORCE.

H. Aerosol Hand-held Chemical Agents

Aerosol, hand-held, pressurized, containerized chemical agents that emit a stream shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Aerosol hand held chemical agents may not be used indiscriminately against a crowd or group of persons, but only against specific individuals who are engaged in specific acts of serious unlawful conduct or who are actively resisting arrest.

Members shall use the minimum amount of the chemical agent necessary to overcome the subject's resistance in accordance with Department General Order K-3, USE OF FORCE.

Officers must be familiar with OPD Training Bulletin V-F.2, USE OF OLEORESIN CAPSICUM (OC), and, specifically, the risk factors associated with aerosol chemical agents and the treatment for individuals subjected to them.

Aerosol chemical agents shall not be used in a demonstration or crowd situation or other civil disorders without the approval of a supervisor or command officer.



When possible, persons should be removed quickly from any area where hand-held chemical agents have been used. Members shall monitor the subject and pay particular attention to the subject's ability to breathe following the application of OC. As soon as practical, members and employees shall obtain professional medical treatment for all persons who have had OC applied to them. Paramedics in the field may administer treatment if no other medical treatment is required. If paramedics are not available in a timely manner, subjects shall be transported to a hospital for treatment within 45 minutes of the application of OC.

A subject who has been sprayed with hand-held chemical agents shall not be left lying on his/her stomach once handcuffed or restrained with any other device.

I. Munitions Inventory Log

The Training Section shall maintain the munitions inventory log for all less-lethal munitions which are checked out during crowd control events. Officers shall update the munitions inventory log after each event to specify how many munitions were used and by which person. A copy of the inventory log shall be included in the after-action report.

VII. ARRESTS

A. Multiple Simultaneous Arrests

1. When a large-scale event involving possible arrests is to be conducted, OPD planners will estimate the number of potential arrestees and will configure arrest teams capable of managing multiple arrests safely.
2. When arrests are necessary, the Incident Commander shall attempt to ensure that sufficient numbers of police officers are present to effect arrests. This tactic can be effective in dispersing the remaining crowd members wanting to avoid arrest.
3. When multiple arrests are contemplated in advance and it is impracticable for arrestees to be cited at the scene as further discussed below, pre-arrangement of transportation shall be made.
4. The Incident Commander or his/her designee shall make the decisions to engage in selective individual arrests or multiple simultaneous arrests as a crowd control technique with consideration given to the following factors:
 - The likelihood that police action will improve the situation relative to taking no action.
 - The seriousness of the offense(s) as opposed to the potential for the arrest to escalate violence or unlawful activity by crowd members.
 - Whether individual or mass arrests will be more effective in ending the criminal activity at issue.
 - Whether clear and secure escape routes have been established for the crowd and police.
 - Whether communication has been established with crowd representatives.
 - What contingency plans are available?
 - What types of force can be used in effecting the arrests, if necessary.



5. Probable cause for each individual arrest:

Individuals may not be arrested based on their association with a crowd in which unlawful activity has occurred. There must be probable cause for each individual arrest.

This principle means the officer must have objective facts based on his own knowledge or information given him by other officers sufficient to believe that each specific individual being arrested committed the offense.

Thus, the only proper basis for a multiple simultaneous arrest of all the individuals encircled at a demonstration is failure to disperse (Pen. Code §409), when the dispersal was properly ordered based on the existence of an unlawful assembly and adequate notice and opportunity to disperse has been given.

To make arrests for violating Vehicle Code §2800 (non-compliance with lawful police order), the officer must have probable cause to believe that each individual arrested willfully failed or refused to comply with a lawful order.

6. The Incident Commander shall ensure that evidentiary items are recovered and preserved, when possible, to corroborate unlawful acts observed by personnel.

B. Arrests for Civil Disobedience

1. Some demonstrators commit "civil disobedience," by sitting down or otherwise blocking streets, intersections, sidewalks, and/or entranceways or by occupying a targeted office.

The proper response to such actions is to verbally advise the demonstrators that they will be subject to arrest if they choose to remain, allow time for some or all the demonstrators to cease the unlawful activity, and to arrest those who deliberately remain in violation of the law.

When practical, demonstrators committing civil disobedience shall be persuaded into compliance rather than being forcibly removed.

2. Passively resisting arrestees (i.e., arrestees who go limp) shall be arrested by handcuffing and then either by verbal persuasion, lifting, carrying, the use of dollies or stretchers, and/or control holds (See Training Bulletin III-I.1, WEAPONLESS DEFENSE, pages 28 - 31) depending on the circumstances and the decision of the Supervisor.

Control holds should be used only when the Supervisor determines that control holds are necessary to accomplish the policing goal after other methods of arrest have failed or are not feasible under the circumstances and when the use of control holds would be a lawful use of force.

In the event control holds are necessary, precautions must be taken to ensure that arrestees are not injured or subjected to unnecessary or excessive pain.

A Supervisor's decision to authorize control holds and the reasons for said decision should be documented.



Planning for demonstrations where civil disobedience and passive resistance to arrest are a possibility should take into account these different arrest techniques for passive demonstrators.

3. In some cases, demonstrators may lock arms or use lock boxes to slow down the arrest process.

Where such demonstrators have been advised that they will be subject to arrest if they choose to remain and refuse to disperse, a member of the arrest team shall individually advise each demonstrator that he or she is under arrest prior to the application of any force to remove locking devices or to move the demonstrators. The officer shall continue to give verbal directions to give the arrestee a chance to comply before force is used to unlock arms or implements used to remove lock boxes.

4. Although dealing with passive resistance may frustrate officers, civil disobedience is usually a nonviolent means of making a political statement, and officers shall remain neutral, non-antagonistic, and professional at all times in their response.

C. Use of Handcuffs

1. All persons subject to arrest during a demonstration or crowd event shall be handcuffed in accordance with department policy, orders, and Training Bulletins.
2. Officers should be cognizant that flex-cuffs may tighten when arrestees' hands swell or move, sometimes simply in response to pain from the cuffs themselves.

Each unit involved in detention and/or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available. The officer applying flex-cuffs shall write his serial number in indelible marker on the cuffs whenever used. When arrestees complain of pain from overly tight flex cuffs, members shall examine the cuffs to ensure proper fit

D. Arrest of Juveniles

Juveniles arrested in demonstrations shall be handled consistent with OPD policy on arrest, transportation, and detention of juveniles.

VIII. CITE/RELEASE AND BOOKING PROCEDURES

- A. Individuals arrested for minor offenses may be cited and released in compliance with Penal Code §853.6 and Department General Order M-7, CITATIONS FOR ADULT MISDEMEANORS, Part III, A-N.
- B. When it is impractical to cite arrestees at or near the site of the demonstration because of a substantial risk that this procedure would allow the unlawful activity to continue or because of specific geographic factors, officers may cite and release arrestees from temporary processing stations or police facilities as near the site of the arrest as possible. While detained during the citation and release process, arrestees shall have reasonable access to toilet facilities and to appropriate medical attention.
- C. No fingerprinting will be done as part of the citation and release process. Arrestees may be instructed to appear for booking prior to or after arraignment.



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Commanders shall exercise discretion as to whether property searches are necessary. Property of persons who qualify for citation and release will not be confiscated unless it is found to contain contraband. The intention of this policy is to release citation-eligible arrestees as promptly as possible, and to obviate the need to transfer such arrestees to the Sheriff's custody. Persons for whom a valid warrant is confirmed, or who do not produce valid identification or who are otherwise found ineligible for citation will be transferred to the Sheriff's custody.

- D. An officer seeking to book a misdemeanor arrestee into jail must have an articulable basis to believe that one of the specified statutory exceptions to mandatory cite and release applies to that individual. This basis must be documented in the police report.
- E. The mere fact that further demonstrations are likely to be held in the near future is not a proper basis to apply subdivision (7) of P.C. 853.6 ("reasonable likelihood that the offense may continue or resume") to individual demonstrators.
- F. There must be an articulable objective basis to believe that, if cited out, those specific individuals would continue the same illegal activity for which they were arrested.
- G. Individuals may not be booked into jail on the sole basis of a felony charge consisting of conspiracy to commit a misdemeanor.

IX. MUTUAL AID & MULTI-AGENCY COORDINATION

For large demonstrations and mass gatherings, OPD may be required to rely on Mutual Aid agencies for assistance (see DGO L-3, ASSISTANCE TO OUTSIDE JURISDICTIONS AND MUTUAL AID.). The Department is responsible for following the protocols of the Mutual Aid Plan in accordance with the California Emergency Services Act, commencing at Government Code Section 8550, for contacting law enforcement partners for assistance. Department leaders and commanders should be familiar with the process and responsibilities of requesting and receiving law enforcement mutual aid. See, the Law Enforcement Mutual Aid Plan and its companion document, Law Enforcement Guide for Emergency Operations, at www.calema.ca.gov. In addition, the IC shall be responsible for ensuring to the extent possible that mutual aid agencies:

- 1. Are briefed and in agreement with OPD's Unity of Command structure under which only OPD Commanders may authorize the use of less lethal munitions for crowd control and dispersal;
- 2. Are briefed on OPD's policy on prohibited weapons and force;
- 3. Do not bring or use any weapons or force that is prohibited under OPD's policy;
- 4. Are provided a copy of OPD's Crowd Control Policy and Use of Force policies;
- 5. Are not assigned to front-line positions or used for crowd intervention, control or dispersal unless there is a public safety emergency;
- 6. Complete required reports prior to being released from duty. Agencies should provide the following documents/reports when they are applicable: Use of force report, arrest report, crime report, injury report, equipment damage report and list of responding personnel; and



7. These provisions do not affect an OPD or mutual aid officer from taking action or using force against an individual in self-defense or in defense of another person or officer.

X. DOCUMENTATION

A. Video and Photographic Recording

1. It is the policy of the Department to videotape and photograph in a manner that minimizes interference with people lawfully participating in First Amendment activities.

Videotaping and photographing of First Amendment activities shall take place only when authorized by the Incident Commander or other supervisory officer.

Officers shall utilize their Personal Digital Recording Device (PDRD) in accordance with DGO I-15.1, PORTABLE VIDEO MANAGEMENT SYSTEM. In addition, officers shall activate their PDRDs whenever taking any enforcement action during a crowd control situation or when ordered to activate their PDRD by a supervisor or commander.

2. Individuals should not be singled out for photographing or recording simply because they appear to be leaders, organizers, or speakers.
3. Each camcorder operator shall write a supplemental report at the end of his/her duty assignment documenting the camcorder operations.
4. Unless they provide evidence of criminal activity, videos or photographs of demonstrations shall not be disseminated to other government agencies, including federal, state, and local law enforcement agencies. If videos or photographs are disseminated or shared with another law enforcement agency, a record should be created and maintained noting the date and recipient of the information.
5. If there are no pending criminal prosecutions arising from the demonstration or if the video recording or photographing is not relevant to an Internal Affairs or citizen complaint investigation or proceedings or to civil litigation arising from police conduct at the demonstration, the video recording and/or photographs shall be destroyed in accordance with Department and city policies.

This directive shall not prohibit the OPD from using these videos or footage from such videos as part of training materials for OPD officers in crowd control and crowd dispersal techniques and procedures. The destruction of any such videos or photographs shall be documented in writing with regard to the date of the destruction and the identity of the person who carried it out.

6. Nothing in this section is intended to alter the disclosure requirements of the California Public Records Act (Government Code §6250 et seq.) or the City of Oakland's Sunshine Ordinance (O.M.C. §2.20 et seq.).



XI. REPORTING

- A. The Incident Commander shall ensure that the Deputy Chief of the Bureau of Field Operations is notified of the incident in a timely manner.
- B. The Incident Commander shall ensure that a debrief is conducted within 72 hours of the critical incident.
- C. The IC shall evaluate the need for an After-Action report which outlines the lessons learned and training opportunities, as well as an assessment of the effectiveness and quality of the Operations Plans. An After Action Report will be completed within 30 days of the event if one of the following events occurs:
 - 1. Mutual Aid is requested;
 - 2. An unlawful assembly is declared;
 - 3. Arrests are made for acts of civil disobedience;
 - 4. Significant police resources are used to control the event; or
 - 5. Chemical agents or SIMS are used

The Operations Plan and After Action Report shall be reviewed by the chain of command and forwarded to the Bureau of Risk Management and the Crowd Control Coordinator for retention.

XII. PUBLIC INFORMATION AND THE MEDIA

- A. The media have a right to cover demonstrations, including the right to record the event on video, film, or in photographs.
- B. OPD members shall accommodate the media in accordance with Department policy.
- C. The media shall be permitted to observe and shall be permitted close enough access to the arrestees to record their names. Even after a dispersal order has been given, clearly identified media shall be permitted to carry out their professional duties in any area where arrests are being made unless their presence would unduly interfere with the enforcement action.
- D. Self-identified legal observers and crowd monitors do not have the same legal status as the professional media and are, therefore, subject to all laws and orders similar to any other person or citizen.
- E. Said personnel must comply with all dispersal orders similar to any other person or citizen. A supervisor or commander may allow a person who self-identifies as a legal observer or crowd monitor to remain in an area after a dispersal order if circumstances permit and if the person's presence would not unduly interfere with the enforcement action.



- F. On request, the Incident Commander or a supervisor may inform the media, legal observers, crowd monitors, police liaison, and/or organizers about the nature of any criminal charges to be filed against arrestees, the location where arrestees are being taken, and the Department's intent for arrestees to be cited out or booked at a custodial facility.
- G. The media, legal observers, crowd monitors, police liaison, and/or organizers shall never be targeted for dispersal or enforcement action because of their status.

XIII. TRAINING

- A. All OPD crowd control policies and procedures shall be set forth in a Crowd Control Training Bulletin.

All other OPD orders and Training Bulletins will be reviewed to ensure consistency with the new policy and Training Bulletin.

- B. All officers must receive training consistent with these new policies and procedures.

All training on crowd control shall include substantial coverage of these Department policies. No officers shall use less-lethal weapons unless they have received the training required by Department policies.

- C. Every OPD officer shall receive this training.

Either independently or in conjunction with other scheduled training, each officer shall receive periodic instruction regarding the key elements of this policy. The Department will seek to improve its ability to manage crowd control events through study and evaluation of past incidents occurring in Oakland and other jurisdictions. Training in crowd management is crucial and shall be an ongoing process. All members of OPD shall be trained in these crowd control policies and procedures and shall then receive additional periodic crowd control refresher training thereafter. Crowd control training shall also become an integral part of the recruit academy curriculum.

- D. All training called for in this section shall be documented with regard to individual officer attendance, dates of training, test scores or other evidence of successful completion of training, and identity of each instructor, and copies of both student curriculum materials and instructor curriculum materials shall be archived.

XIV. CROWD MANAGEMENT COORDINATOR (CMC)

- A. The Chief of Police shall designate a Departmental Crowd Management Coordinator whose responsibilities will include:
 1. Coordinating the training of personnel on crowd control, planning, operations and after-action reporting.
 2. Conducting reviews of crowd control policies and case law.



Crowd Control and Crowd Management, Index Number III-G

3. Conducting quarterly reviews of all crowd control incidents and their respective operation plans and after action reports and providing a quarterly report to the Chief of Police. In the course of the producing the quarterly reports, the Crowd Management Coordinator shall:
 - a. Look to identify training points for publication in Training Bulletins;
 - b. Look to identify Departmental training needs;
 - c. Ensure Departmental policy and training comports with new case law and industry standards;
 - d. Ensure that the City Attorney and District Attorney are consulted when revising Departmental policy and planning Departmental training on crowd control and management and related topics; and
 - e. Produce a non-classified public quarterly crowd control report

CROWD CONTROL

This order establishes general policies and procedures regarding the Department's response to demonstrations and other First Amendment activities, and specifies acceptable crowd control techniques and levels of force.

I. POLICY

A. PROTECTION OF RIGHTS. It is the policy of the San Francisco Police Department to ensure that rights guaranteed by the constitutions of the United States and the State of California are protected for all individuals. A primary mission of police at events involving free speech activity is to protect and respect First Amendment rights to freedom of expression and assembly.

B. RESTRICTIONS

1. LIMITS. The San Francisco Police Department will not attempt to limit the size, location, time or activity at any demonstration, march, protest or picket unless there are articulable facts or circumstances causing reasonable concern for public safety, public health or the safe movement of persons in the area.

2. RESTRICTIONS/CONTROL. The San Francisco Police Department will not seek to restrict or control the content of opinions being expressed, nor shall members let their own personal, political or religious views affect their actions.

C. CROWD CONTROL TACTICS. Crowd control tactics shall not be affected by the content of opinions alone being expressed, nor by the race, sex, sexual orientation, physical disabilities, appearance or affiliations of the participants.

D. ANNOUNCEMENTS. To ensure that the participants can hear and understand the order to disperse, equipment appropriate to the size and noise of the crowd shall be used. The order to disperse shall be given repeatedly over a period of time and, if necessary, from a variety of locations.

E. DISPERSAL. Crowds shall not be dispersed or ordered to move unless there are reasonable and articulable factors justifying the order in accordance with law. Before giving the order to disperse, the event commander must consider whether a dispersal endangers the public or participants in the crowd. If the event commander directs a crowd be moved by any means, including the use of force, time to disperse and a safe and clear route for individuals must be provided and announced in the same manner as the order to disperse.

F. ARRESTS. A proper response to criminal conduct during a free speech activity is to cite or book those individuals engaged in criminal conduct (see DGO 5.06, Citation Release).

G. USE OF FORCE

1. REASONABLE FORCE. When the use of force is justified, the minimum degree of force necessary to accomplish an arrest or dispersal shall be employed. Officers are permitted to use reasonable and necessary force to protect themselves or others from bodily harm, but no more (see DGO 5.01, Use of Force).

2. HORSES, MOTORCYCLES, MOTOR BIKES. Horses shall not be used to move or disperse passive individuals who are sitting or lying down. Motor bikes or motorcycles shall not be driven into a crowd or used to make physical contact with persons.

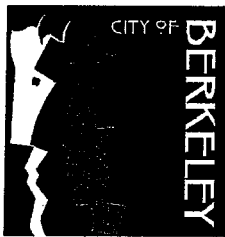
H. USE OF NON-UNIFORMED OFFICERS. See DGO 5.08, Non-Uniformed Officers.

II. PROCEDURES

For detailed policies and procedures concerning crowd control and event planning, see SFPD "Crowd Control Manual" and "Event Management Manual."

References

DGO 8.10, Guidelines for First Amendment Activities
Event Management Manual, SFPD
Crowd Control Manual, SFPD



Police Review Commission

26a

COMMUNICATION No. 4424

INFORMATION CALENDAR

January 27, 2015

To: Honorable Mayor and Members of the City Council
From: Police Review Commission
Submitted by: Michael Sherman, Chairperson, Police Review Commission
Subject: Security Camera Database

INTRODUCTION

At its June 3, 2014 meeting, the Council asked the City Manager to report on the possibility of setting up a database under the purview of the Berkeley Police Department to allow individuals to register their private surveillance cameras with the City, to serve as a resource for police to help them contact camera owners when a Part 1 crime has been committed nearby. This item was also referred to the Police Review Commission.

CURRENT SITUATION AND ITS EFFECTS

The PRC found the general concept of a voluntary registry to be appealing, in that it could save police officers time when seeking out privately owned surveillance cameras or trying to contact their owners. The PRC's primary concern was the potential for the invasion of privacy that could occur by monitoring the activities of individuals through access to live streaming of video. Another concern was the police keeping video footage that is turned over to them if the footage is not used as evidence. Accordingly, at its July 23, 2014 meeting, the PRC passed the following motion (M/S/C: Perezvelez/Allen):

"Inform the Council of the Commission's general support of the creation of a voluntary registry of existing video cameras to be maintained by the Police Department, provided that it is not contemplated that the Department maintain custody of videos or that the Department have access to live feeds."

Ayes – Allen, Bernstein, Lowhurst Perezvelez, Rogers, Zerrudo and Halpern (temporary appointment for Sherman); Noes -- None; Abstain – None; Absent -- Sherman, Cardoza.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The City Council could direct the Police Department to set up a voluntary registry so individuals in the City of Berkeley who choose to participate could inform the Police

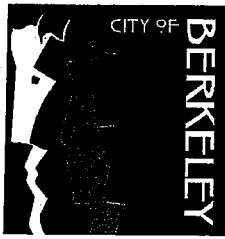
Department that they have a security camera. Police personnel could then contact these individuals if their camera may have captured evidence of a crime.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Police Department staff time to set up and maintain registry.

CONTACT PERSON


Katherine J. Lee, PRC Officer, Police Review Commission, 510-981-4950



COMMUNICATION No. 4424

Office of the City Manager

INFORMATION CALENDAR
January 27, 2015

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Michael K. Meehan, Chief of Police
Subject: Voluntary Security Camera Database to Help Solve Crimes

INTRODUCTION:

The City Council requested that staff consider whether to implement a voluntary database for residents and businesses to register their private security cameras, similar to a program currently in place in the city of Fremont. Staff recommends that the City monitor other jurisdictions efforts to implement voluntary Security Camera Database Programs to determine their effectiveness before undertaking a similar program in Berkeley. There does not appear to be enough data or experience available at this point to evaluate the value of such programs or their impact on privacy. Therefore, staff recommends an evaluation after one year to review available data and survey local agencies to determine their level of satisfaction with this program.

CURRENT SITUATION AND ITS EFFECTS:

A number of cities both throughout the nation and within the region have recently implemented voluntary security camera databases in an effort to reduce property crimes. The programs assert that increasing and improving digital evidence availability to law enforcement will increase the likelihood of apprehension and prosecution of offenders. The City of Berkeley continues to have a high, though declining, number of property crimes and the Berkeley Police Department is open to evaluating innovative tools that may help apprehend the suspects responsible for these crimes. Additionally, there is some anecdotal evidence that this type of community partnership may also have the potential benefit of increasing crime reporting rates and increasing positive interactions between law enforcement and community members.

One concern that arises is related to personal privacy. Some jurisdictions have camera feeds from private residences and businesses being monitored directly by members of the police department. Other agencies maintain a list of locations where cameras exist, and make requests for footage as-needed to support criminal investigations. Under the latter system, community members are not required to provide footage as a condition of being listed in the database, though it is reasonable to expect that most would as they have demonstrated an interest in assisting in the crime fighting mission by voluntarily enrolling in a video database.

FINANCIAL IMPLICATIONS:

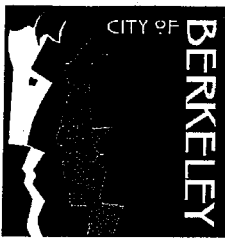
Staff time to undertake the evaluation of other jurisdictions.

ENVIRONMENTAL SUSTAINABILITY:

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

CONTACT PERSON

Michael K. Meehan, Chief of Police, 981-5701

COMMUNICATION No. 4424

CITY COUNCIL

Darryl Moore
Councilmember District 2CONSENT CALENDAR
January 20, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmembers Darryl Moore, District 2; Jesse Arreguin, District 4; and Linda Maio, District 1

Subject: Berkeley Police Department Use of Police Vehicle In-Vehicle and Body-Worn Cameras

RECOMMENDATION

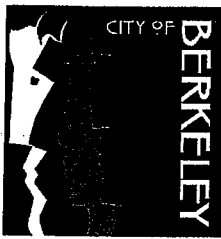
Refer to the City Manager to develop a plan to implement the use of dash cameras and body-worn cameras for the Berkeley Police Department. The report should be presented to the City Council within 3 months.

BACKGROUND

By providing a video record of police activity, in-vehicle and body-worn cameras can improve transparency and can help to resolve questions following an encounter between officers and members of the public. Recording equipment can help to prevent issues from arising in the first place by increasing officer professionalism, helping agencies evaluate and improve officer performance, and allow agencies to identify and correct larger structural problems within the department.

Recording equipment can help agencies identify and correct problems within the department. Cameras can serve as a useful training tool to help improve office performance. Using footage from in-vehicle and body-worn cameras can provide scenario-based training, to evaluate the performance of new officers in the field, and to identify new areas in which training is needed. Using recording equipment in this way, agencies can improve tactics, communication, and customer service. This can help increase the perceived legitimacy and sense of procedural justice that communities have about their police departments. Law enforcement agencies have also found that body-worn cameras can help them to identify officers who abuse their authority or commit other misconduct and to assist in correcting questionable behavior before it reaches that level.

Cameras, particularly body-worn cameras, can significantly improve how evidence is captured for investigations and court proceedings. Along with documenting encounters with members of the public, body-worn cameras can provide a record of interrogations and arrests, as well as what officers witness at crime scenes. Officers are often



CITY COUNCIL

Darryl Moore
Councilmember District 2

focused on securing the scene and performing life-saving measures and that witnesses and victims may not always remember what they had told officers in the confusion .

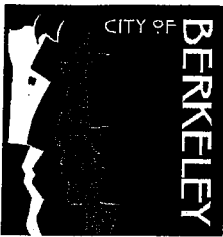
This can lead to conflicting reports when victims and witnesses are asked to repeat their accounts in later statements. Some prosecutors have started encouraging police departments to use body-worn cameras to capture more reliable evidence for court, particularly in matters like domestic violence cases that can be difficult to prosecute.

FISCAL IMPACTS OF RECOMMENDATION

Unknown

CONTACT PERSON

Councilmember Darryl Moore, District 2 981-7120



Police Review Commission

27a

COMMUNICATION No. 4424

INFORMATION CALENDAR
January 27, 2015

To: Honorable Mayor and Members of the City Council
From: Police Review Commission
Submitted by: Michael Sherman, Chairperson, Police Review Commission
Subject: Wearable Video Cameras for Police Officers

INTRODUCTION

At its March 25, 2014 meeting, the City Council asked the City Manager and the Police Review Commission to investigate the police officers' use of wearable video cameras (also referred to as body-worn cameras) by other jurisdictions, and to report back. A recommendation or proposal was not requested. The PRC formed a Wearable Video Cameras Subcommittee on April 9, 2014. After a series of meetings, the Subcommittee presented its report (contained in the "Background" section below) to the full Commission on December 10, 2014; the Commission unanimously approved it for submittal to the Council. M/S/C (Sherman/Bernstein) Ayes: Bernstein, Cardoza, Perezvelez, Rogers, and Sherman. Noes: None. Abstain: None. Absent: Allen, Lowhurst, Zerrudo.

BACKGROUND

The Subcommittee examined the potential use of body-worn cameras by the Berkeley Police Department, and reviewed the extensive literature and consulted with managers of adopted programs. A substantial number of agencies around the country have body-worn camera programs, including BART and the Oakland Police Department. A further substantial number of agencies, including the San Francisco Police Department, have commenced installation of such programs. Entities such as the ACLU, which generally opposes collection of video and audio information about citizens, fully support body-worn camera programs. Police officers, after an initial introductory period, generally support such programs. The Berkeley Police Association has told us that it supports adoption of body-worn-cameras, subject to adoption of a comprehensive policy.

The benefits of adoption of body-worn camera programs include reduced numbers of use of force incidents, reduced number of citizen complaints, usefulness in helping reconciling citizen/officer versions of interactions and improvement in civility of citizen/officer interactions. A year-long study in Rialto, California, confirmed those benefits. The benefits of such programs may be more significant in jurisdictions such as New Orleans and Oakland than in cities such as Berkeley with fewer incidents of serious officer misconduct.

The reason generally given for an agency's failure to adopt or defer adoption of a program is lack of available resources. The cost of adopting and maintaining a program are significant. These costs include the following:

1. The purchase and maintenance of cameras and other equipment;
2. Initial and ongoing training of personnel;
3. Storage, onsite or offsite, of data collected; and
4. Management of and ongoing access to data collected.

BPD has told us that it is securing quotations from a number of potential equipment and service suppliers for the information of the council.

Adoption of a program should proceed in stages so that policies and procedures can be developed appropriate for the Berkeley community. It is essential that an initial written policy be in place before the initial rollout of cameras. The experience of other agencies is that policies are continuously updated as officers encounter new situations.

The written policy must respect the privacy of citizens and of officers. It should be comprehensive and detailed. Among the issues it should cover are the following:

1. Which officers are required to wear cameras;
2. When and where cameras are to be used;
3. Designation of staff responsible for issuance and maintenance of cameras;
4. Processes for downloading, storing and safeguarding of collected data;
5. Method for documenting chain of possession;
6. Times of retention of data for different categories of interactions; and
7. Processes for access and review of recorded data.

A number of agencies have adopted written policies that could assist Berkeley in development of a written policy consistent with Berkeley's needs and values.

If the necessary resources are available, our review and consultations developed no reasons why the Berkeley Police Department should not develop policies for and adopt a body-worn-camera program.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The Council could choose to direct the City Manager and Police Department to explore funding sources for purchasing wearable video cameras and attendant training, maintenance, and storage costs; and direct the City Manager, Police Department, and Police Review Commission to develop written policies for the use of wearable cameras, which take into account the factors listed above.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown at this time, but significant, as identified above.

CONTACT PERSON

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

Attachments:

1: Letter from Berkeley Police Association dated October 14, 2014



BERKELEY POLICE ASSOCIATION

1834 University Avenue • Berkeley, Ca. 94703-1516
510-843-4319

October 14, 2014

**Police Review Commission
1947 Center St.
Berkeley, CA 94704**

Dear PRC Commissioners,

We are writing on behalf of the Berkeley Police Association to provide input regarding both our common interest, and concern about Berkeley Police Officers being equipped with body worn cameras.

Before getting into specific policy and practice concerns, we must touch on the issue of priorities. As you know we are advocating for the deployment of an industry standard, life saving technology: the taser. Both pieces of equipment have a similar price tag for initial implementation and upkeep, but only one is going to prevent needless injuries and deaths, and the ever increasing cost of same. In a City where claims for police officer's action average five times less than those for trips and falls on sidewalks, and injuries caused by fallen branches, there is very little reason to belief that video cameras are going to reveal gross misconduct by officers. Conversely, the likelihood continues to increase that a preventable death will occur in our City due to the lack of an accessible taser. This year alone there have been seven attempted murders, mostly committed with non-firearm weapons, and by mentally ill individuals. Notably, amongst those seven attempted murders, is the near fatal attack on a police officer in April. More and more of our calls for service are bringing police officers armed with only a firearm, and baton/OC into contact with mentally ill people also armed with lethal weapons.

In regards to body worn cameras, we see the clear potential for this technology to reduce complaints and quickly exonerate officers without a lengthy, and often resource intensive investigation. This is a goal that we share with even that small segment of the community, that is concerned that cameras will reveal widespread misconduct. For those more moderate minded folks we also agree that body worn cameras can provide an important piece of the story in a complicated investigation such as an officer involved shooting, or a fatal accident.

Cameras should not be viewed as a replacement for traditional investigative techniques in these complicated cases, however, which leads into the first of our concerns: cameras capture one angle, and a limited frame of reference. They are often obscured by fast movement, objects, and other limitations of the camera which prevent the documentation of the "big picture."

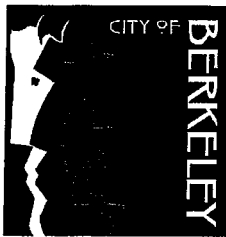
Below please find a more comprehensive list of our concerns:

- 1) Media and politics may drive discipline, criminal prosecutions and policy when videos are involved.
- 2) Employers seeking transparency with video technology are often times not prepared for the consequences; the community may draw conclusions from a video that doesn't represent the totality of the circumstances.
- 3) Where will the camera be situated on the uniform?
- 4) Use of private/personal video cameras.
- 5) To what extent will the officer be responsible for equipment functionality?
- 6) How and when will video be downloaded?
- 7) Has the department addressed storage of video files and integrity of software?
- 8) Batteries, video capacity, storage, and malfunctions.
- 9) When can an officer involved in an OIS review the video?
- 10) When does the policy require activation and deactivation?
- 11) Review for report writing, pending administrative and criminal investigations.
- 12) Limits on use and frequency of department review by supervisors / management.
- 13) What rights do officers have to review video files and when?
- 14) Who has access to files and when?
- 15) Conditions under which video files will be released to the public.
- 16) Prohibited activation during certain private communications.
- 17) What rights does the officer have when accidental recordings occur?
- 18) What are the disciplinary standards when an officer fails to comply with the policy?
- 19) To what extent will the department offer policy training?
- 20) Has the Department conferred with the District Attorney on the policy?
- 21) Who will be required to wear them, Commanders, detectives, the Chief of Police?
- 22) How much discretion does the officer have to activate or not when engaged in:
 - o Citizen contacts
 - o Consensual encounters
 - o Preliminary investigations
 - o Detentions
 - o Arrests
 - o Psychiatric evaluations
 - o Guard assignments
 - o Hospital / medical facility assignments
 - o Informant communication
 - o Pursuits
 - o SWAT callouts

- o Crowd control
- o Transports
- o Searches of person and property
- o Witnesses
- o Victims
- o Victims of sexual crime

Thank you for your consideration of this important matter.

The Berkeley Police Association
Board of Directors



COMMUNICATION No. 4424

Office of the City Manager

INFORMATION CALENDAR
January 27, 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: Body-Worn Cameras for Police Officers

INTRODUCTION

Council requested the City Manager and Police Review Commission investigate and report on the usage of body-worn cameras for police officers in the City of Berkeley. The purpose of this information report is to outline the benefits and issues related to the usage of wearable video cameras. A proposal or recommendation was not requested at this time.

BACKGROUND

The Berkeley Police Department does not currently possess body-worn camera technology. The use of body-worn cameras in policing has been on the rise for the past several years as the technology has continued to develop and advance. Several local agencies including BART PD, Oakland PD, Albany PD, Richmond PD, and Pleasanton PD, have already implemented body-worn camera programs. Body-worn cameras present several benefits for law enforcement and the community. Agencies which deploy the equipment also report attendant issues that can be addressed through sound policy, training and management practices.

DISCUSSION

Benefits:

Agencies that have deployed body-worn cameras report that collected video becomes excellent evidence in prosecutions. Improved evidence may reduce court and trial expenses.

In the case of complaints, agencies report that frivolous complaints against officers are reduced once a complainant becomes aware the interaction was recorded. Many complaints without a basis in fact are unfounded by video evidence and save Internal Affairs significant investigative time.

Other agencies report that video impacts the behavior of officers and suspects alike. Officers have reported it can help them to be more patient and courteous. They report that informing people an interaction is being recorded can cause agitated or difficult contacts to deescalate making things safer for all parties.

Privacy:

In California, Penal Code 632 covers invasion of privacy by surreptitious recording and creates a requirement for the general public to gain the consent of all parties. Penal Code 633 exempts law enforcement from these requirements. Evidence will be admissible so long as the officer's presence giving them the ability to overhear or record was lawful.

There are also privacy concerns for officers wearing the cameras that can be mitigated by sound policies. Policy decisions regarding when a camera should or shall be activated allow agencies to avoid infringing on the privacy of employees while dressing in the locker room, using the restroom, or while having personal and professional conversations with friends, coworkers and superiors that should be confidential without the fear of being recorded.

Access:

Recorded video is accessed through software which is most often a web-based application. Local agencies are also using handheld devices to access, watch and catalog video in the field.

Video will often contain personal information and sensitive situations which should necessitate carefully crafted video access restrictions. Permissions can be graduated so some users could have view only rights, others auditing rights, and others the ability to download video from the system. Generally, agencies grant officers the ability to view and download their own video to prepare reports and evidence for court. Videos of interactions are also valuable evidence and can enhance detail and accuracy. For example, videos allow officers to be precise where paraphrasing would be necessary without digital recording. Users can not edit the footage they have taken and the evidence is stored to digital evidence standards.

Storage:

There are two options for data storage. Some agencies develop an infrastructure to store data on servers owned by their entity and maintained by their Information Technology Department. This solution may be arguably more secure but has issues with scalability, has higher upfront costs, and unknown long-term maintenance costs. Several body-worn camera vendors offer data storage services on a per camera subscription basis. The vendor provides scalable data storage solutions and handles long term maintenance of their own infrastructure. Data storage costs are fixed and predictable by contract. Vendor storage systems facilitate sharing video with the District Attorney's office and would reduce administrative workload.

Accountability:

If an issue were discovered when reviewing an officer's video, even if no complaint has been made, the matter will be investigated. The Police Department takes accountability seriously and deals with issues however they are discovered. This is no different if the violation is discovered when reviewing video than if it was witnessed in person. Initiating a disciplinary action must follow established timeliness regulations and conform to the Police Officer's Bill of Rights. On a case by case basis, violations can prompt additional training, counseling, or further investigation leading to formal discipline.

FISCAL IMPACTS

The cost of the equipment varies greatly as the market is relatively new. For the purpose of this report, we will use the most expensive known system which retails their cameras for \$900 each. Full deployment in the Operations Division would minimally require 100 cameras and cost \$90,000. To equip every sworn officer with a camera, the department would need 150 for every line officer at a cost of \$135,000. These solutions have an ongoing cost of IT staff time as server maintenance costs would be borne by the City. Outside agencies report an ongoing annual equipment replacement and maintenance cost of approximately 10%. These costs can be incurred gradually if the equipment is purchased and deployed over time.

Storage costs vary greatly, however they can be broken down into two categories, agency-owned or vendor-leased. Agency-owned storage solutions have high upfront costs of acquiring large data servers minimally in the low tens of thousands. Vendor leased solutions are becoming available that would allow unlimited data storage on a per camera/per month basis. For example, one vendor charges \$25 per camera/per month for the camera and the data storage. For a full sworn deployment of 150 cameras, that would be \$45,000 per year. There are staffing costs associated with Information Technology related issues if an agency-owned solution is used.

An impact of implementing a body-worn camera program is the impact on staffing and resource allocation. Other agencies report that officers spend approximately 30 minutes a day on body-worn camera administration. This could be downloading video, reviewing video, booking video evidence, and tagging videos with case numbers. When officers spend their time in this way, they are not spending it on other activities such as patrol, investigation, or other valuable activities. If 100 officers spend an average of two hours per week on body-worn camera administration, they will spend 10,400 hours on this activity per year. This is the equivalent work time of 5 full time police officers.

Additionally, agencies report having 1-2 full-time employees to administer the camera related requests including Public Records Act requests, discovery motions and preparing video evidence for prosecutions. Another consideration is understanding and following the law regarding Public Records Act requests. This issue is becoming more relevant due to the experiences of a number of agencies including the Seattle Police Department which has received more requests than they have the capacity to process.

Many agencies with body-worn cameras are struggling with significant personnel costs associated with reviewing and redacting video requested by PRA. Privacy considerations also have yet to be fully explored and case law established.

CONTACT PERSON

Michael K. Meehan, Chief of Police, Police Department, (510) 981-5700

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 1-16-15**

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. Christian Stines Sgt. Montgomery
Regulations Formed 6-26-13 Renewed 6-25-14	Bernstein Rogers (reinstated 4-23-14)	Bernstein	Ofc. Bartalini PRC Officer PRC Investigator
Fair and Impartial Policing Formed 12-11-13	Bernstein		Capt. Harris Sgt. Stines
Wearable Video Cameras Formed 4-9-14	(Allen) Lowhurst Perezvelez		Capt. Harris Sgt. Stines
BPD Budget Review Formed 10-8-14	(Allen) Perezvelez		
N-17 (Suspicious Activity Reporting) Formed 11-12-14	Bernstein Rogers		

COMMUNICATION No. 4160

- Appoints commission members to temporary subcommittees and informal bodies subject to the approval of the full commission.
- Approves the agenda prior to distribution. This is limited to the structure and order of the agenda and does not grant the Chair the authority to remove items submitted by commissioners or staff.
- Signs correspondence on behalf of the commission.
- Represents the commission before the City Council with the formal approval of the commission by motion and vote.
- Approves commission reports to Council.
- The Chair or a quorum of the commission may call a special meeting. The Chair may also cancel a regular meeting.
- Performs other duties necessary or customary to the office.

4) Transfer of Chair

In the absence of the chairperson or his/her inability to act, the vice chairperson presides in place of the chairperson. In the event of the absence or the inability to act of both the chairperson and the vice chairperson, the remaining members elect one of their members to act as temporary chairperson.

If a chairperson is terminated for any reason, the office is vacated and the rules for transfer would apply. If a vice chairperson is terminated, the office is vacated and new election would be held to fill the office. If the officer is reappointed she or he shall not resume the office and must be re-elected to the office by the majority of the membership.

5) Temporary Subcommittees

From time to time the commission or the chairperson, with the confirmation of the commission, may appoint several of its members but fewer than the existing quorum of the present body to serve as a temporary subcommittee. Only commission members may become members of the subcommittee, however, the subcommittee shall seek input and advice from the residents, related commissions, and other groups. Subcommittees must be reviewed annually by the commission to determine if the subcommittee is to continue. Please consult Chapter IV for noticing and agenda requirements applicable to subcommittees. All City of Berkeley commission subcommittees are considered *ad hoc* single purpose committees.

Upon creation of the subcommittee, the parent body shall allow it to operate with the following parameters:

COMMUNICATION No. 4160

1. A specific charge or outline of responsibilities shall be established by the parent body.
2. A target date must be established for a report back to the parent body.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the parent body.

In the rare cases where it is deemed necessary to establish a joint subcommittee between commissions, the joint subcommittee shall be approved by the City Council and members designated by the City Council in accordance with the Fair Representation Ordinance.

Subcommittees make recommendations only to the parent commission. Subcommittee recommendations must be adopted by the parent commission before they can be forwarded to Council. A subcommittee may not represent the parent commission before the Council or other bodies unless it has first received the authorization of the parent commission to do so.

Subcommittees shall conduct their meetings in public and in accessible locations that are open to the public. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular commission meetings except that subcommittee agendas may be posted with 24-hour notice instead of 72-hour notice.

The secretary is not required to attend or take minutes at meetings of subcommittees. City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two. A temporary appointment does not assume the subcommittee membership(s) of the commissioner for which they are substituting on the full commission.

Certain requirements listed above may not apply to subcommittees seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.



COMMUNICATION No. 4193

The President's Task Force on 21st Century Policing:
Building Legitimacy and Public Trust Through Civilian Oversight
Submitted by The National Association for Civilian Oversight of Law Enforcement
January 9, 2015

I. Introduction

The current crisis of mistrust and breaking or broken relationships between police and the communities they are sworn to serve and protect is one of the most pressing challenges facing the nation. In communities of color particularly, policing practices that are perceived to be overly harsh, unjust, or unfair, regardless of whether those practices are deemed lawful, can undermine police legitimacy. A single officer-involved shooting has the potential to not only shake the public's confidence in the police but, as has been seen in Ferguson, Missouri, rock its very foundation. When the members of one racial group are significantly more likely to be stopped, searched, arrested, or even shot by the police, maintaining trust becomes immensely more difficult. A lack of transparency only serves to increase the divide.

Time and again, cities everywhere have found themselves scrambling to establish civilian oversight in the wake of a scandal and complaints of law enforcement misconduct (irrespective of whether or not allegations are substantiated). People are demanding changes, but what does it mean when the cry for civilian oversight is issued?

The public expects, and experience has shown, that strong, independent oversight builds legitimacy and public trust, through increased police transparency and accountability to the public served. Oversight fosters accountability through independent investigations or auditing of police misconduct complaints, and also can identify needed changes in police practices and training, provide a meaningful voice or forum for the public, and form a crucial bridge between the public and the police. Just as importantly, oversight encourages enhanced transparency about the work of law enforcement. Increased transparency, trust, and communication between the police and the public, facilitated through effective oversight, can lead to greater cooperation between the police and the public in achieving the ultimate goal of decreased crime and increased public safety.

Importantly, civilian oversight provides a mechanism to bring together the many stakeholders involved in supporting trusted, respectful, and effective law enforcement efforts. Oversight breaks down the walls between police and the public and enhances their understanding of each other by reminding police that they ultimately serve the public's interests, and by educating the community on the unique and difficult challenges officers encounter every day. While many take polarizing, divisive positions regarding the role of law enforcement, civilian oversight practitioners strive to work collaboratively with all interests involved to ensure careful, unbiased evaluation of facts and policies in order to achieve solutions that address both the needs of police to protect public safety and the needs of the public to trust their police.

Citizen oversight of law enforcement is a critical facet of any well-founded effort to strengthen the relationship between police and communities and to build public trust, all while promoting effective policing. And it is one of the only mechanisms proven to ensure sustainable reforms. Civilian oversight alone is not sufficient to yield the legitimacy in which both the public and law enforcement share an interest; without outside oversight, however, no collection of efforts to secure such legitimacy can be considered complete or directly responsive to the public's demands for greater participation in, and understanding of, their local law enforcement.

II. Background of civilian oversight of law enforcement and NACOLE

In its simplest meaning, civilian oversight may be defined as one or more individuals outside the sworn chain of command of a police department who take up the task of holding that department and its members accountable for their actions. Contrasted with internal accountability mechanisms commonly found in law enforcement (i.e., internal affairs), independent police review offers a method of civilian involvement in accountability that is often, but not always, external to the department. Its independence from the agency or the sworn chain of command that it seeks to hold accountable allows it to address a wide range of concerns without any actual or perceived bias, and to ensure that policing is responsive to the needs of the community.

Civilian oversight may be established in response to recurring problems in a particular law enforcement agency, such as a pattern or practice of the use of excessive force or repeated complaints of racial profiling. Sometimes oversight is initiated proactively by a local municipality to identify and correct such issues before they become more widespread and difficult to rectify. Often, however, oversight is generated in response to a single, particularly high-profile allegation or incidence of police misconduct. Whatever the circumstances, police oversight is now found in cities and counties both large and small, and in every geographic region of the nation, as well as in other countries.

While practices vary according to the roles of the oversight entity or the laws of its jurisdiction, it is common for civilian oversight agencies to be both an independent source and a repository of qualitative and quantitative data. Oversight agencies may issue public reports on the number, type, and outcome of misconduct investigations; lawsuits; uses of force; or detentions and arrests. They may provide on-scene monitoring of critical incidents, such as officer-involved shootings, or of mass social gatherings, including protests and demonstrations; and they may subsequently provide the public with a singularly independent account of the actions taken by the police, evaluating whether those actions were appropriate under the circumstances or showed a need for some measure of reform. In addition to the issuance of public reports, qualified and experienced oversight entities may also assess a police department's policies, training curricula, and recruitment standards, among other procedures, in order to compare them against the prevailing standards in a perpetually dynamic profession. The effectiveness of oversight in any particular community is dependent on a host of factors including political and budgetary support, ready access to information including police files, records, and performance data, the training and expertise of oversight personnel, and acceptance by the local law enforcement agency and community.

In 1995, as citizen oversight experienced significant growth and expansion across the country—one of several growth periods in the last thirty years—the National Association for Civilian Oversight of Law Enforcement (NACOLE) was established as the nation's only professional

association of organizations and individuals working directly in oversight. With hundreds of members across the nation and around the world, NACOLE has legitimized police oversight as a professional field of study and practice and facilitated the development of professional standards, including a Code of Ethics, as well as core competencies and training guidelines for oversight practitioners. NACOLE also hosts an annual training conference where civilian overseers and other interested stakeholders meet and exchange information and ideas about issues facing law enforcement oversight.

III. Defining the role of police in a democratic society

In a democratic society, the principle obligations of the police are to protect citizens' fundamental rights and freedoms and to prevent crime and disorder. Sir Robert Peel recognized that police must maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police. Peel's principles form the basis of American law enforcement, and comprise an approach to policing derived almost exclusively from public cooperation, continuously earned and maintained through public approval, trust, and perceptions of legitimacy.

The proper role for police, thus generally defined, is not static. As society changes, what the public expects from police changes. Broadly, the U.S. Constitution provides a framework of limitations for the police, and state legislatures may also pass laws dictating police roles and conduct; but ultimately, the police are required to be responsive to their specific community. However, the needs and views of that community may change over time. Through active dialogues with the public and law enforcement, civilian oversight brings stakeholders together and provides valuable feedback to law enforcement about how their policies and practices are perceived by their specific community, avoiding divisive discourse and toxic rhetoric. Through review of police practices and training, outside auditors and practitioners can help law enforcement identify areas where their perception of their role has become outdated. Oversight also communicates back to the public about how their police force is performing and whether the department's policies and programs maximize the public's interests and reflect local values.

IV. Building a culture of transparency

Civilian oversight, in even its most basic forms, inherently enhances transparency – it allows individuals from outside a law enforcement agency's sworn chain of command access to the inner workings of that agency, albeit to different degrees. A primary focus of civilian oversight is using this expanded transparency to increase accountability and also to advance community understanding of the work of law enforcement. Police departments are often accused of having an insular culture; those departments that have embraced civilian oversight have been able to neutralize this criticism, and ensure appropriate information is made available for public review. Moreover, in those jurisdictions where strict laws prevent public disclosure of significant amounts of information, a properly designed oversight entity can be the eyes and ears for the public, even if unable to release specific, identifiable information itself.

V. Procedural justice

Central to police legitimacy is the idea of procedural justice: perceptions of fairness in the administration of justice and the fair and impartial exercise of police discretion. And, while officers have an obligation to be impartial and enforce the law fairly, procedural justice also calls upon officers to treat people with dignity and respect, as doing so is equally as important, if not

more so. Procedural justice encompasses not only the way an officer interacts with the public, but also requires that members of the public have an effective procedure to raise concerns about police conduct. Unfortunately, individuals who feel they have been wronged by a police officer are often hesitant to approach the department that employs the officer with their concerns. They may feel intimidated, or doubtful that the department will be interested in, or even capable of, taking a truly unbiased look at their concern. Without an alternative procedure to raise concerns about officer behavior, some members of the public are left to conclude that they have no trustworthy, legitimate avenue for such redress and, even more troublingly, view the entire law enforcement "system" as structured in a way for the police to avoid being held accountable.

Outside review of the police provides an opportunity for those who seek to complain against the police to raise their concerns with fellow citizens, who do not fall within the sworn chain of command of the police department. Acknowledging that oversight agencies' authorities vary from place to place, it is often these agencies that skeptical complainants can turn to in order to feel that their concerns will truly be heard and responded to fairly. Beyond providing procedural justice for specific complaints, overseers can also establish a procedure for review of critical and high profile incidents, such as officer-involved shootings, in-custody deaths, and uses of a TASER, all of which can leave a community clamoring for justice and, potentially, lacking faith in the involved police department's ability to remain unbiased. Furthermore, as civilian overseers look at individual complaints or critical incidents, they gain unique insights and perspectives that put them in a position to identify systemic issues that are most effectively addressed through a change in department-wide policy or training. Ultimately, this impact on systemic issues can further improve police-public interactions and strengthen the community's belief that their police are procedurally just.

Finally, as law enforcement agencies work to adopt a culture of procedural justice, civilian oversight can help communicate to the public the steps being taken and why they are worthy of trust and will serve legitimacy. Police oversight also can audit such efforts to provide the community with reliable information about police agency progress. Law enforcement agencies that are proactively and genuinely striving to provide constitutional policing that is responsive to community needs can find that their own attempts to communicate their efforts to the public are futile because the agency has lost credibility with the public. However, when independent overseers who are charged with looking critically at the department communicate the same message about the department's reform efforts, the public may be more receptive to the message. This is one more illustration of how civilian oversight acts as a bridge connecting, or in some cases reconnecting, law enforcement agencies with the communities they serve.

VI. Protection of civil rights

Police oversight is an important mechanism for ensuring civil rights protections. Civilian oversight has its roots in the Civil Rights Movement. Issues of race and policing are central to the history of oversight, as well as NACOLE. Thus, the oversight community recognizes the important role it plays in identifying, understanding, and addressing discriminatory and unconstitutional police practices. Accordingly, oversight practitioners are at the forefront of investigating, reviewing, and auditing individual cases or patterns of potential civil rights violations, foremost amongst them allegations of racial profiling and biased policing, as well as complaints of illegal searches, excessive force, or unlawful detentions and arrests.

Citizen oversight also helps to ensure police engage in long-term, meaningful outreach to historically disenfranchised and marginalized communities, such as persons with mental illness, the LGBTQ community, homeless individuals, and persons with disabilities. Additionally, independent overseers provide a voice and a forum for these communities, both before and after major incidents involving them and the police have occurred. As with other types of complaints, police oversight entities improve the overall quality of internal investigation of allegations of bias and discrimination in police encounters. With the backing of civilian oversight, many law enforcement agencies across the nation support and vigorously protect the rights of minority and marginalized communities in their jurisdictions.

VII. Recommendations

1. Ensure that police officers continue to have the proper tools, guidance, training, and supervision to carry out their law enforcement responsibilities safely and in accordance with individuals' constitutional rights.
2. Make constitutional policing and transparency core values of policing, as well as building systems of accountability that include independent oversight to carry out those values to support the many police officers who uphold their oaths, engendering greater public trust.
3. Ensure police continue to function as a part of the community; that police continue to work to cultivate legitimacy by engaging with the community fairly, impartially, and respectfully; and, that the police become more directly responsive to the community.
4. Improve the quality and integrity of police disciplinary systems, including investigations of misconduct complaints and uses of force, while vigilantly safeguarding the rights of officers.
5. Ensure that independent oversight is a part of efforts to identify and resolve underlying systemic problems within law enforcement, with a primary focus on reducing and preventing misconduct and enhancing accountability, as well as promoting effective policing and developing strategies for positive organizational change.

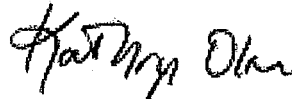
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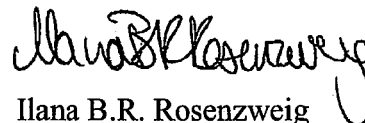
Brian Buchner
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Mark P. Smith
NACOLE Board Member At-Large

Policing and Racial Justice in Berkeley
Peace and Justice Commission Proposal
January 12, 2015

COMMUNICATION No. 2301

Honorable Mayor and Members of the City Council:

The Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code (BMC) Chapter 3.68.070).

The Commission appreciates Council's interest in hearing community input on these issues, as shown in the December 16 listening session, the upcoming special meeting on January 17, and the action meetings on January 20 and February 10. It is critical for civic leaders to respond appropriately to the eruption of concern stemming, in particular, from events in Ferguson, Missouri. The concerns encompass not only the police killing of unarmed African American teenager Michael Brown, but also the grand jury's failure to indict the officer, the heavy-handed treatment of community response, and the exposure of stark disenfranchisement and second-class citizenship for members of the Black community.

In this paper, we address these issues primarily as they resonate in our own city. The Commission is mandated to "develop ways to resolve conflict which do not involve violence and which may be applied on a local level as well as a national level." We believe that solutions can be devised that serve the needs of all sections of the community.

We propose some immediate policy changes focused on crowd management, in order to prevent recurrence of conflicts that took place the night of December 6, 2014. Other concerns, including police impunity, racial bias in policing, militarization of policing, and effective civilian review and oversight are also addressed, but these subjects should be deepened with broad community input over the next few months. Finally, we propose a special community consultation to develop a Plan of Action for Racial Justice, to address racial disparity, disenfranchisement, disempowerment, and discrimination in Berkeley. Only when social and economic justice is vigorously pursued can the drivers of conflict be reduced.

I. Proposed Policy Declarations.

1. Issue a statement of concern and support for people of color, and their families, who have been unjustly injured or killed by law enforcement agencies nationally. Advocate for justice for bereaved families.
2. Advocate for tools such as independent prosecutors and preliminary hearings to promote unbiased investigation and prosecution of police abuse. Local prosecutors often have close relationships with law enforcement, preventing them from operating with full independence. State and federal prosecutions are

1 sometimes necessary, but it is most crucial that local prosecutorial functions be
2 reformed. These measures should be considered on the national, California,
3 regional, and Alameda County levels.¹

- 4 3. Advocate on the county level for change in Alameda County District Attorney
5 policy limiting investigation of in-custody deaths to those involving a police
6 firearm. All in-custody deaths must be investigated by a body outside the police
7 department regardless of manner of death.
- 8 4. Advocate on the state level for change to the Peace Officers Bill of Rights
9 (POBOR),² California Penal Code Section 832.7-8 and its interpretation by the
10 California Supreme Court in *Copley Press v. Superior Court*³ which restricts
11 release of information about citizen complaints about police officers, specifically
12 the officer's name, the allegation, and the disposition of the complaint, on a level
13 far beyond those of the other 49 states. This proposal does not request personal
14 identification such as address, social security number, date of birth, etc.
- 15 5. State the Council's support for the End Racial Profiling Act (ERPA), the John
16 Conyers bill pending in Congress since 2001.⁴

19 II. Policy Changes: Crowd Control and Management, and Use of Force.

20
21 Peace and Justice supports the Police Review Commission's (PRC) resolutions approved
22 on December 10, 2014:⁵

- 24 1. Request that the City Council ban the BPD's use of tear gas for crowd control
25 until the Police Review Commission conducts a full investigation into the
26 improper use of tear gas on December 6, 2014, and to empower the PRC to
27 subpoena documents and witnesses for the purpose of this investigation.
- 28 2. Urge the City Council to prohibit the Berkeley Police Department's use of
29 projectiles and over-the-shoulder baton strikes for crowd control purposes until
30 such time that a complete review of General Order C-64 (Crowd Control and
31 Management) is conducted.

32
33 We offer these further suggestions, adapted when so stated from the Oakland Police
34 Department (OPD) crowd control policy, under the understanding that there is no similar
35 language in Berkeley policy:⁶

- 37 1. Less-than-Lethal weapons: Under no circumstances may "less-lethal" or "less-
38 than-lethal" weapons be used against an individual who is not engaging in
39 conduct that poses an immediate threat of loss of life or serious bodily injury to
40 self, officers, or the general public or in substantial destruction of property which
41 creates an imminent risk to the lives or safety of other persons. In such
42 instances, such weapons shall be used only when other means of arrest are unsafe
43 and when the individual can be targeted without endangering other crowd
44 members or bystanders, also known as a "direct shot." [Adapted from the OPD
45 policy.]
- 46 2. Baton strikes: Officers shall not intentionally strike a person with any baton to
47 the head, neck, throat, kidneys, spine, or groin or jab with force to the left armpit

1 except when the person's conduct is *creating an imminent threat of serious bodily*
2 *injury or death* to an officer or any other person. Batons shall not be used against
3 a person who is handcuffed. [Adapted from the OPD policy.]

- 4 3. Ban physical assaults on media representatives. The media shall be permitted to
5 observe and shall be permitted close enough access to arrestees to record their
6 names. The media, legal observers, crowd monitors, police liaison, and/or
7 organizers should never be targeted for dispersal or enforcement action because of
8 their status. [Adapted from the OPD policy.]
- 9 4. Clarify that BPD is the lead agency when mutual aid responding agencies operate
10 in Berkeley. Where Berkeley has a more restrictive policy on use of force or less-
11 than-lethal force—or a higher level of protection of free expression—compared to
12 a responding department, Berkeley's policies govern. BPD is responsible for the
13 actions of agencies that it invites into Berkeley. If agencies do not comply with
14 Berkeley's standards in policing, every effort would be made to instead invite
15 complying agencies to future mutual aid activities. Adapting OPD's rules, the
16 BPD must ensure that mutual aid agencies (among other rules):
 - 17 a. Do not bring or use any weapons (or equipment) that is prohibited under
18 BPD's policy;
 - 19 b. Are not assigned to front-line positions or used for crowd intervention,
20 control or dispersal unless there is a public safety emergency.
- 21 5. Ban militarized armored vehicles from deployment in Berkeley by mutual aid
22 responding agencies. Council has already declared that these vehicles have no
23 place in Berkeley.⁷ The argument made by a police spokesperson that responding
24 agencies make the decision about what equipment they bring is not acceptable.⁸
- 25 6. Clarify that Berkeley City Council's September 2012 decision to "exempt
26 individuals or groups engaged in suspected non-violent civil disobedience
27 offenses from being subject to intelligence gathering" prohibits BPD from
28 stationing secret undercover agents in largely non-violent demonstrations. In
29 addition, take these steps:
 - 30 a. Ban undercover agents from assuming the disguise of vandals by covering
31 their faces.⁹
 - 32 b. Make covering police ID on a uniformed officer, which is banned under
33 California law under Penal Code 830.10, a firing offense in Berkeley.¹⁰

34 35 36 **III. Processes: Police Impunity, Civilian Review, and Prosecution.**

- 37
38 1. Ensure truly independent civilian review of police practices and officer
39 misconduct. Even under *Copley*, wherein the Boards of Inquiry (BOI) must be
40 confidential, the PRC must be able to review Internal Affairs files, personnel files,
41 officer interviews and the like. Such information will be protected by the same
42 confidentiality that governs the proceedings of the BOI.
- 43 2. Reiterate that the PRC was established by a vote of the Berkeley electorate "to
44 review and make recommendations concerning all written and unwritten policies,
45 practices, and procedures of *whatever kind and without limitations*, in relation to
46 the Berkeley Police Department, other law enforcement agencies and intelligence
47 and military agencies operating within the City of Berkeley, and law enforcement

1 generally....[and] to receive complaints directed against the Police Department
2 and any of its officers and employees, and fully and completely investigate said
3 complaints and make such recommendations...as the Commission in its discretion
4 deems advisable.”¹¹ [Emphasis added] The PRC is an independent advisory
5 body, mandated by vote of the people, appointed by the City Council, its
6 recommendations to be seriously considered by city staff. Its mandate may not be
7 changed except by vote of the people or by court order.

- 8 3. Institute body cameras for BPD officers if they can be used with sufficient
9 safeguards—the video must be available to the public, and the process must not
10 further diminish privacy of civilians.
11

12 13 **IV. Biased Policing.** 14

- 15 1. Direct the BPD to immediately implement the Fair and Impartial Policing policy
16 (B-4) and present its plan for reporting disaggregated data. In June, Council
17 mandated data collection beginning October 17, 2014. On January 17, 2015, the
18 day of the special Council meeting, the department will have been in violation of
19 this order for three months.
- 20 2. Acknowledge that community members have presented compelling evidence of a
21 pattern of race-based encounters and disrespect particularly to African-American
22 youth.
- 23 3. Independently assess the experience of communities of color with the BPD.
- 24 4. Review NAACP Town Hall (July 2013) recommendations on criminal justice for
25 potential action items, including those relevant to the “Drug Task Force.”¹²
- 26 5. Review the purpose and practice of the BPD Drug Task Force (DTF), a
27 specialized unit patrolling primarily South Berkeley to, in the department’s words,
28 “provide a high profile presence.”¹³ The presence of DTF officers, driving in
29 unmarked vans and dressed in paramilitary clothes, is perceived by many in the
30 Black community as “menacing, threatening, and dangerous.” The tactics of
31 police stops are even more frightening to many witnesses.¹⁴
- 32 a. Examine the relative rates of drug usage in various communities of color
33 and the white community, and compare to the police resources and tactics
34 used in those respective communities.
- 35 b. Examine the BPD’s tactics used in South Berkeley and evaluate them
36 against constitutional protections, in particular these tactics:
- 37 i. Use of intimidating vehicles and uniforms.
38 ii. Unnecessary stops and searches.
39 iii. Routine handcuffing of civilians stopped for questioning.
40 iv. Reliance on four-way search clause. Even if police have the legal
41 authority to search anyone on parole or probation, searches should
42 be limited to cases in which there is reasonable suspicion. Random
43 stops including searches are humiliating and alienating, as well as
44 tainting to prosecution that results from the search. Officers must
45 report a reasonable and accurate underlying cause for the stop.

- 1 v. Use of solicited “consent search” (a request to civilians to give up
2 their right to refuse a search without probable cause).
3
4

5 **V. Militarization, equipment, and tactics.**
6

- 7 1. Ban military weaponry and equipment in the BPD, rejecting federal grants from
8 Urban Areas Security Initiative (UASI), Homeland Security (DHS), and the
9 Pentagon’s “1033” program for such equipment, and prohibit other agencies from
10 deploying it in the City.
11 2. Publish a full inventory of all police equipment to enable the community to
12 discuss if any should be eliminated as military-style equipment.
13 3. Evaluate police tactics with the help of various city commissions to determine if
14 any tactics should be eliminated as militaristic tactics.
15 4. Commission a study of the Urban Shield activity to understand this combination
16 paramilitary exercise, weapons show and workshops showcasing “automatic
17 rifles, armored vehicles, surveillance gear, drones, and tear gas.”¹⁵ Examine:
18 a. Evidence that the exercises are concerned with civil disturbance or mass
19 protest and not solely violent crime or natural emergencies.
20 b. The wisdom of participating in an activity reliant on high-tech police work.
21 c. The impact on Berkeley officers of participation in exercises premised on
22 racial, ethnic, or religious identity, or antagonism to political protest.
23 d. The prudence of involvement in a joint exercise with agencies that may
24 not share Berkeley’s values in policing.
25 e. Bolster PRC oversight over the quality of third-party trainings and
26 exercises to ensure consistency with Berkeley’s values and constitutional
27 protections.
28 5. Evaluate, with the help of city commissions, what police tactics and equipment
29 are utilized primarily in interactions with people of color or in historically defined
30 neighborhoods of color (South and West Berkeley). Restrict stops to those with
31 reasonable suspicion of criminal behavior, and searches to those with probable
32 cause.¹⁶
33 6. Examine the unpopular, demeaning, and historically repugnant use of the
34 following technologies:
35 a. Spit hoods, which are reminiscent of the AIDS panic of the 1980s, and
36 which have no governing policy according to a BPD response to a Public
37 Records Act request.
38 b. Handcuffing of un-charged civilians stopped by police for questioning,
39 apparently routine when the civilian is African American.
40 c. The WRAP, a temporary restraint device that immobilizes a body by
41 forcing the restrained individual into a seated position with their legs out
42 straight and perpendicular to the body.¹⁷
43 7. Proceed with great caution on any proposals for technological or weapons-related
44 modifications for the BPD, including Tasers and drones.
45 a. Approval of the Berkeley Police Association request to acquire Tasers,
46 which can have a lethal effect, would be very inflammatory at this time.¹⁸

- 1 8. Institute community-based alternatives to law enforcement and incarceration,
2 such as restorative justice practices, amnesty programs to clear open warrants, and
3 know-your-rights-education conducted by community members.
- 4 9. Commission a review of surveillance practices/technology in use or contemplated
5 in Berkeley, both by public safety organizations and in the general public.
 - 6 a. NCRIC: Opt out of participation in the DHS-NSA sponsored terrorism
7 intelligence fusion network by withdrawing from the Northern California
8 Regional Intelligence Center (NCRIC), and its Suspicious Activity
9 Reporting initiative. Focus the BPD on stopping actual crime, not
10 profiling based on ideology and ethnicity.
 - 11 b. Drones: Council has referred the no-drone proposals from Police Review
12 and Peace and Justice to the Agenda Committee. Peace and Justice
13 followed up with a proposal for a two-year moratorium, which has not yet
14 been heard by Council.
 - 15 c. License-plate readers.
 - 16 d. Google Glass, private drones, and other mechanisms for surveillance are
17 becoming available in the general community and undermining privacy.

20 VI. Policy issues related to deaths in custody in Berkeley.

- 21
- 22 1. As Council, fully review recent in-custody death cases in Berkeley including the
23 police investigation and the *People's Investigation of the In-Custody Death of*
24 *Kayla Moore*. Examine policy suggestions in the *People's Investigation* that
25 might reduce the potential for tragedy in the future.
- 26 2. In particular, extend emergency mental health services to 24 hours so that BPD
27 officers are not the only responders after hours. Review BPD budget to redirect
28 funding from police response to mental health professional response. Identify,
29 staff and fund civilian point of contact for mental health calls. Revise emergency
30 response system protocols so that Berkeley officers are only engaged if the
31 situation has escalated to the point of imminent danger or where a dangerous
32 weapon is involved.
- 33 3. Promote alternatives to police "command and control" approach for mental health
34 interactions. Review the *People's Investigation* for proposed protocol changes,
35 including:¹⁹
 - 36 a. Cease background checks on parties who request assistance, absent
37 reasonable suspicion.
 - 38 b. Create clear distinction between "Command and Control" and "Medical
39 evaluation" protocols.
 - 40 c. Train all officers in crisis intervention.
 - 41 d. Ensure all officers are able and willing to provide rescue breathing.
 - 42 e. Train all officers in recall and respond techniques, disengagement
43 strategies, de-escalation techniques, and transgender awareness.
- 44 4. Assess need for improvement to investigation procedures, including direct
45 transcripts of witness statements instead of paraphrases, and making public
46 primary source documents such as the "Affidavit for Search Warrant" and the

1 investigator's findings and recommendations. For additional items see the
2 *People's Investigation*, "Improving Future Investigations" section.²⁰
3
4

5 **VII. Racial disparity, disenfranchisement, disempowerment, and discrimination.**
6

7 As in Ferguson, the theme "Black Lives Matter" resonates in Berkeley on a far wider
8 scope than police practices alone. The life chances and even the continued existence of a
9 Black community are at stake; Berkeley's African American population has declined in
10 40 years from some 30% to now under 8%. In every key respect, including health status,
11 mental health, homelessness, educational and youth opportunity, environment,
12 employment, income, and labor discrimination, safety, political participation, and basic
13 human dignity, Black lives subsist at a far lower level than white lives. Many of these
14 issues are described in the local compliance report for the International Covenant on Civil
15 and Political Rights (ICCPR) that the Council approved on October 7, 2014.²¹
16

17 At this late date, a de facto Jim Crow color line or a monochromatic city cannot be
18 accepted in Berkeley. For all our sakes, we must have a serious civic conversation about
19 what it will take to reverse these dangerous trends.
20

21 The Ferguson community has proposed a National Plan of Action for Racial Justice,
22 describing it as "a comprehensive plan that addresses persistent and ongoing forms of
23 racial discrimination and disparities that exist in nearly every sphere of life including:
24 criminal justice, employment, housing, education, health, land/property, voting, poverty
25 and immigration. The Plan would set concrete targets for achieving racial equality and
26 reducing racial disparities and create new tools for holding government accountable to
27 meeting targets."
28

29 We propose a similar process on the local level. With the participation of broad segments
30 of Berkeley's community and city leaders, commissions, staff, and academics, Berkeley
31 can address disparities and discrimination that lead African Americans and other
32 marginalized groups into second-class citizenship.
33

34 If we front-load solutions to such disparities, socio-economic equity will advance and the
35 economic drivers of crime will reduce. In a difficult fiscal environment, we propose a
36 thorough and transparent look at the funds currently allocated to law enforcement, with
37 an eye to reinvesting funds into African American communities to create jobs and
38 housing, and improve educational and health status and other key needs.
39
40

41 **VIII. Proposals for community consultation and investigation.**
42

43 Convene an inclusive task force of community people, commissioners, and staff to
44 prepare a community consultation within two months to hear proposed solutions for the
45 following problems highlighted by national events in 2014:
46

- 1 1. The militarization of American policing, and its reflection in Berkeley in both
2 military-style technology and militaristic tactics. Review BPD participation in
3 federal equipment procurement programs and the Urban Shield exercise and
4 weapons show.
- 5 2. Community experience of racial profiling or race-based policing in
6 Berkeley. Delay by the BPD in implementing the Fair and Impartial Policing
7 policy.
- 8 3. The purpose and practice of the BPD's Drug Task Force, its rationale in a low-ebb
9 period for drug-related crime, and its particular impact on the African American
10 community.
- 11 4. County and state practice on police misconduct, with attention given to the
12 potential for investigators and prosecutors independent of the District Attorney.
- 13 5. Civilian oversight and review of policing; what can be done to strengthen the role
14 of the PRC within current law, and to press for changes to state law where
15 appropriate; in particular, Peace Officers Bill of Rights (POBOR), California
16 Penal Code Section 832.7-8 and its interpretation by the California Supreme
17 Court in *Copley Press v. Superior Court*.
- 18 6. Surveillance practices or technology in use or contemplated in Berkeley, and
19 relationship with the intelligence fusion network (NCRIC). Potential or proposed
20 use of license-plate readers and drones.
- 21 7. Alternative, positive (restorative) modes of public safety and conflict reduction
22 appropriate to Berkeley.
- 23 8. A broader Racial Justice Plan for Berkeley to address the underlying problems of
24 disparity, disenfranchisement, disempowerment, and discrimination.

25
26 The task force should report its findings to the Council by the end of May, 2015.

27
28 The Peace and Justice Commission supports the proposal for an independent
29 investigation by the City Council and/or the PRC of police activities on and around
30 December 6, 2014, and BPD policies relevant to those activities. We endorse the list of
31 items for investigation that is attached to Council Member Jesse Arreguin's item on the
32 January 20, 2015 Council agenda, "Independent Investigation of Police Response to
33 December 6, 2014 Protests," as a good beginning.

34
35
36
37 **Appendix.**

38
39 These perspectives are included for reference only.

40
41 A. #BlackLivesMatter: National Demands from Ferguson²²

- 42
- 43 • The De-militarization of Local Law Enforcement across the country
- 44 • A Comprehensive Review of systemic abuses by local police departments,
45 including the publication of data relating to racially biased policing, and the
46 development of best practices.

- 1 • Repurposing of law enforcement funds to support community based alternatives
- 2 to incarceration and the conditioning of DOJ funding on the ending of
- 3 discriminatory policing and the adoption of DOJ best practices
- 4 • A Congressional Hearing investigating the criminalization of communities of
- 5 color, racial profiling, police abuses and torture by law enforcement
- 6 • Support the Passage of the End Racial Profiling Act
- 7 • The Obama Administration develops, legislates and enacts a National Plan of
- 8 Action for Racial Justice
- 9

10
11 B. Berkeley NAACP recommends:²³

12
13 Priority Recommendations:

- 14 • Abolish the Berkeley Police Department's Drug Task Force (DTF)
- 15 • Stop unmarked police cars from making ordinary traffic stops
- 16 • Implement mandatory reporting of aggregated data, collection and analyzing of
- 17 ALL police stops with information and demographics of person stopped
- 18 (including race) – Annual public report to be made available
- 19 • Implement a policy of non-Police involvement with Mental Health Services (BPD
- 20 to have backup role for life-threatening matters)
- 21 • End the use of the “Stop and Frisk” approach, especially in South Berkeley.
- 22
- 23

24 C. Berkeley CopWatch demands:²⁴

- 25
- 26 • End racial profiling in Berkeley! Get the statistics on who is really being detained
- 27 and arrested and stop handcuffing men of color for no reason!
- 28 • No tasers in Berkeley! Spend money to study how to end racial profiling - not
- 29 acquire tasers!
- 30 • End the militarization of the police! No boats, no armored personnel carriers, no
- 31 more weapons and no more military games. Withdraw from Urban Shield!
- 32 • Justice For Kayla Moore!
- 33 • Decriminalize Mental Illness! Civilian emergency response, NOT police!
- 34
- 35

36 D. National Lawyers Guild (SF Bay Area) demands:²⁵

- 37
- 38 • An immediate repeal of the Police Bill of Rights, open access to police
- 39 disciplinary files and other data casting light on police spending and practices,
- 40 and the reversal of Copley Press v. Superior Court - which prevents the disclosure
- 41 of police misconduct records to the public.
- 42 • A redistribution of resources away from police and prisons and toward the basic
- 43 needs of communities: affordable housing, education, healthcare and access to
- 44 employment and community-driven, transformative justice approaches to harm.
- 45 This is far more likely to lead to true safety and security than any police action.

- 1 • That prosecutors drop charges against people taking a stand for police
2 accountability and resisting police violence.
3 • Creation of independent panels empowered to investigate and hold accountable
4 police officers in cases of unlawful violence. Independent panels must not be
5 restricted by current secrecy laws that shield dangerous & violent cops from
6 public scrutiny.

¹ "Kamala Harris sees safeguards in DAs prosecuting police killings," December 22, 2014, <http://www.sfgate.com/news/article/Kamala-Harris-sees-safeguards-in-D-A-s-5972586.php>. The Lawyers Committee for Civil Rights, Natasha Minsker of the ACLUNC, and two former prosecutors have called for independent prosecutors or state oversight for potential criminal cases against police officers. California Attorney General Kamala Harris disagrees, saying her office has the power to take over local police prosecutions. However, the AG's office has conducted no criminal prosecutions of police since at least 2000.

² "California laws strengthened wall of silence around officers," Orange County Register, Dec. 22 2009, updated August 21, 2013, <http://www.ocregister.com/articles/-225344-.html>. The law's author, Assembly member Jim Keysor, states that the law "escalated into a far bigger thing than I imagined...Now it's really hard to get rid of undesirables. They use the bill of rights to protect themselves, and the bosses are really stuck."

³ "Frequently Asked Questions about Copley Press and SB 1019," June 15 2007, ACLU of Northern California, <https://www.aclunc.org/blog/frequently-asked-questions-about-copley-press-and-sb-1019>. "The Copley decision "prevents the public from learning the extent to which police officers have been disciplined as a result of misconduct."

⁴ <http://www.washingtonpost.com/news/post-nation/wp/2014/09/25/new-naacp-report-urges-congress-to-pass-legislation-that-would-end-racial-profiling/>

⁵ These two resolutions, passed unanimously by the commission, were meant as interim measures to offer immediate relief pending further investigation.

⁶ This language is adapted from the Oakland Crowd Control and Management Policy. <http://www.scribd.com/doc/190992131/OPD-Crowd-Control-Policy-4-Oct-13#scribd>

⁷ "When we found out about this grant application we sort of went ballistic," Bates said Thursday. "I mean, why do we need this here in Berkeley, and why would we want to militarize our police force?" Kevin Fagan, SF Chronicle, July 5, 2012, <http://www.sfgate.com/bayarea/article/No-place-in-Berkeley-for-police-armored-car-3686971.php>

⁸ "Asked why Hayward police were at the protests with their armored personnel carrier, Berkeley Police Officer Byron White said it is part of the equipment Hayward Police are trained to use. 'They need all the tools that are part of their training,' he said. 'When you ask for mutual aid, they arrive with their resources.'" Judith Scherr, Dec. 12 2014, Contra Costa Times, http://www.contracostatimes.com/contracosta-times/ci_27108939/berkeley-council-reacts-protests-and-police-tactics

⁹ An example of such infiltration occurred in Oakland on December 10, 2014, with two plainclothes CHP officers marching near Lake Merritt wearing bandanas over their faces. Such masking creates the perception, whether true or not, that the sworn officers are engaging in violent provocative acts and bringing disrepute onto a nonviolent protest activity, while preventing the protestors from determining whether the officers were committing vandalism.

¹⁰ Any uniformed peace officer shall wear a badge, nameplate, or other device which bears clearly on its face the identification number or name of the officer."

<http://codes.lp.findlaw.com/cacode/PEN/3/2/3/4.5/s830.10>

¹¹ http://www.ci.berkeley.ca.us/Police_Review_Commission/Home/Ordinance_4644.aspx

¹² "Town Hall Meeting, Summary and Recommendations," Criminal Justice section, Aug. 27 2013, Berkeley NAACP, p. 9-11, <http://www.berkeleyside.com/wp-content/uploads/2013/09/1-1-1-Town-Hall-Summary-and-RecommendationsFinal.pdf>

¹³ The problem of hard drug dealing has greatly receded in South Berkeley since the 1980s. However, the focus on drug crime remains useful as a justification for intensive police presence. Nationally, the discredited Reagan-era "War on Drugs" contributes to over-policing and mass incarceration, disrupting

family and community life in African American communities. "End the War on Drugs," 2011 series, ACLU, <https://www.aclu.org/end-war-drugs>

¹⁴ Elements of a typical Drug Task Force stop include a pullover on a minor pretext, a search not just of the driver but of all passengers, ordering all passengers out of the car, routine handcuffing of anyone being questioned, often concluding with no ticket or arrest. "Town Hall Meeting, Summary and Recommendations," Berkeley NAACP, op. cit.

¹⁵ "Urban Shield... is a threat to political dissent and democracy. A video from Urban Shield 2012 appears to show heavily armed officers apprehending 'terrorists' with banners saying 'no war for oil' and 'we are 99%'" said Andrew Lichterman, a policy expert with the Western States Legal Foundation. "This raises disturbing questions of who our police are being trained to profile and target as terrorists." <http://www.eastbayexpress.com/SevenDays/archives/2013/10/25/drones-and-automatic-weapons-on-display-in-downtown-oakland-for-urban-shield>

¹⁶ "Biased policing is real—but change is possible," Jack Glaser, SF Chronicle, December 21, 2014, <http://www.sfgate.com/opinion/article/Biased-policing-is-real-and-fixable-5969332.php>. "Law enforcement agencies that have cut back their rates of stops and searches have increased police effectiveness and intruded on fewer people's lives, while reducing racial and ethnic disparities.... we must break the cycle of mass incarceration by reducing the discretion that police have in deciding who to investigate.... Reducing discretion will require prescriptive training on who should be investigated—offering valid, evidence-based criteria for judgments of criminally suspicious behavior."

¹⁷ *People's Investigation of the In-Custody Death of Kayla Moore*. Footnote 19, http://www.berkeleycopwatch.org/resources/Peoples_Investigation_Kayla_Moore_2013.pdf, page 9. There have been several deaths in custody where the WRAP device was used including at least three in California, Kayla Moore (Berkeley, February 13, 2013), Ricardo Escobedo (Redwood City, November 17, 2002) and Shaheed Jamal Daniels (San Jose, July 1, 2000).

¹⁸ On June 9, 2014, the Peace and Justice Commission recommended the Berkeley City Council "reject the proposal for Tasers, and focus the energies of the Berkeley Police Department instead on restorative practices, positive conflict management and de-escalation strategies."

¹⁹ *People's Investigation*, Section VII.1.B, "Recommendations—Procedure/Policy Issues/For BPD," p. 30

²⁰ *People's Investigation*, Section VII.3, "Recommendations—Improving Future Investigations," p. 34

²¹ "Report to United Nations Human Rights Committee: Compliance with International Covenant on Civil and Political Rights," October 7, 2014,

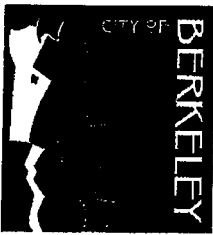
http://www.ci.berkeley.ca.us/uploadedFiles/Health_Human_Services/Commissions/Commission_for_Peace_and_Justice/PJC%20ICCPR%2010072014%20APPROVED%20FINAL.pdf

²² <http://fergusonaction.com/demands/>

²³ "Town Hall Meeting, Summary and Recommendations," Berkeley NAACP, op. cit. See the full report for additional recommendations to address discrimination in health, housing, education, and employment.

²⁴ www.berkeleycopwatch.org

²⁵ <http://www.nlgssf.org/news/no-justice-no-peace-nlg-san-francisco-bay-area-chapter-turns-heat-against-police-violence>



Office of the City Manager

COMMUNICATION No. 4404

January 9, 2015

To: Honorable Mayor and City Councilmembers
From: Christine Daniel, City Manager *CD*
Subject: Study on the use of Taser/Electronic Control Weapon*

On May 6, 2014, the Council directed the City Manager to research and report back to the City Council regarding the history, potential benefits, impacts, and possible unintended consequences of allowing Berkeley police to carry and use Tasers, and to include in the report information regarding other jurisdictions "best practices" and protocols, an analysis of changes in technologies, and the feasibility of doing a pilot program, with further direction that the City Manager also consult with the Police Review Commission and the Community Health Commission.

After an extensive search for an organization that could best perform the necessary research and analysis, the City engaged the Stanford Criminal Justice Center (SCJC) to conduct such a study. The work will be done by SCJC on a pro bono basis. The selection of this organization was made with consultation from representatives of the two commissions.

Founded in 2005, SCJC serves as a research and policy institute focused on the criminal justice system. Its efforts are geared towards policy research for the public sector, as well as providing pedagogical opportunities to Stanford Law School students with academic or career interests in criminal law and crime policy. The project will be overseen by SCJC Executive Director Debbie Mukamal and Professor David Sklansky. The work on the study will begin this month and conclude by June 2015.

cc: Beth Pollard, Interim Deputy City Manager
Zach Cowan, City Attorney
Ann-Marie Hogan, City Auditor
Michael Meehan, Police Chief
Mark Numainville, City Clerk
Matthai Chakko, Public Information Officer

*Since "Taser" is a brand name, the City is using the more generic term "electronic control weapon" for purposes of the study.

Scope of services from contract with Stanford Criminal Justice Center

Purpose

The Berkeley City Council has requested an evaluation of the Berkeley Police Department's possible use of electronic control weapons (ECW's), commonly referred to by one vendor's trade name, Taser. The City Council has specifically requested an evaluation of the history, potential benefits, impacts and possible unintended consequences of allowing Berkeley police to carry and use ECWs. The evaluation will include an analysis of "best practices" and protocols in other jurisdictions and changes in technologies. This analysis will inform a decision about a possible pilot program. The Center has agreed to perform this study for the City.

Study Scope

Policy & Technology Landscape:

- An overview of what other police departments have adopted as best practices, policies, and protocols for use of ECWs. This will provide context for a report on the impact of policies adopted by other jurisdictions;
- Report on current ECW technology and how it compares to previous use-of-force tools, tactics and models, along with general analysis of how future technological developments could affect the outcome-factors addressed in this report; and
- Report on ways that other jurisdictions have integrated ECWs in the context of departmental use-of-force policies and de-escalation techniques, such as Crisis Intervention Training.

Outcomes and Impact in Selected Comparable Jurisdictions:

- Outcomes in other jurisdictions with regard to injuries and health impacts of ECW use, both direct and indirect (e.g., if someone were to be medically injured (heart attack, fall from a height after the neuromuscular incapacitation (NMI) from the ECW "probe" or "drive-stun" ECW pulse);
- Statutes, case-law, claims/litigation outcomes including costs, and other legal issues related to damages to police and subjects from ECW use, and how those factors have affected other jurisdictions (including available data on the volume, type, severity, staff time, and cost of claims and litigation);
- Budget impact reported by other jurisdictions as a result of ECW acquisition training, operations, and maintenance;
- How ECW use has affected employee health and safety, and the impact on workers' compensation injuries and claims (which shall include available data on volume, type, severity, lost staff time, and costs of such injuries); and
- Analysis of the surveyed jurisdictions' uses of policies of advanced "tactical disengagement" practices to de-escalate volatile situations, such as "Crisis Intervention Training," and the impact on the outcome-factors addressed in the report.

received 1-15-2015

Reverend Albert L. Williams
2309 Browning Street
Berkeley, CA 94702

COMMUNICATION No. 4393

To: **Mayor:** Tom Bates
City Council Members: Linda Maio, Darryl Moore, Max Anderson, Jesse Arrequin, Laurie Capitelli, Susan Wengraf, Kriss Worthington, Lori Droste
Chief of Police: Michael K. Meehan

"The Berkeley Police Department's goal is to develop and enhance the relationships (partnerships) within our community." -BPD website

The following communication is not a complaint per se, rather it is an attempt to have our community pursue an honest dialogue with regards to the direction our police department is heading. This letter is an attempt to bring awareness to practices that may or may not be conscientious enforcement policy in our police department.

On January 2, at approximately 9:40 p.m. I was stopped by a Berkeley policeman . Officer Radey (Badge #5) informed me that he pulled me over because I was driving at night without headlights. True, I drove from Food Mart gas station located at San Pablo Avenue and Cedar Street heading south on San Pablo Avenue without headlights. San Pablo Avenue is a brightly lit street. I turned left onto University Avenue, another brightly lit street. It wasn't until I turned right onto Curtis Street that I realized my headlights were not on, at which time I immediately turned them on. When Officer Radey stopped me, my headlights were turned on. It did not bother me so much that the officer had pursued me to inform me that I was driving without headlights, it is what followed that bothers me greatly.

I told Officer Radey that the car was a loaner car (It had a decal on the rear window that read: Nissan Marin.com Courtesy Car.) and that I was still becoming familiar with the vehicle. I explained to him that I was accustomed to my own vehicle's headlights coming on automatically. I had just gotten the loaner car that day. Officer Radey then requested to see my driver's license. I complied. Before he went back to his patrol car to check out my driver's license, he questioned me, asking: "Where are you coming from?" and "Did you take anything?" I felt the questioning was curious; after all, I hadn't committed a moving violation such as speeding or failing to stop at a traffic signal or stop sign. Granted, driving at night without headlights is dangerous, but Office Radey seemed to think that there was something sinister about an old man forgetting to turn on his headlights. His query suggested that I was intentionally driving without headlights.

When he returned from his patrol vehicle, Officer Radey asked me to step out of my car. Again he asked me if I had taken something. In my mind I was thinking, is this real or am I dreaming? He then proceeded with a field sobriety test by having me track his ballpoint pen with my eyes. I complied, and thought to myself, all this because my headlights were not on? Again the officer asked me if I had taken anything.

He then said, "Because you live close by, I will allow you to go, but go straight home." What?!!! Can this be real?

In these times when police departments and police tactics are being heavily scrutinized, I subjected myself to a cooling down period before attempting to write this letter. I have been a Berkeley resident for over forty years. I raised my children here and served this community as an employee of Berkeley Unified School District for nearly thirty years before I retired in 2010. I have observed our police department over the years go from a mentality of community policing to what now appears to be a "head hunter" mentality; i.e. from assertiveness to aggressiveness. Part of me is writing this letter based on my professional experience. I hold degrees in Criminal Justice as well as Divinity. I was a military policeman in the United States Marine Corps. So my perspective on being detained by Officer Radey is twofold.

Around two years ago I was accosted in front of my home by a Berkeley police officer who requested identification from me. After having a heart-to-heart talk with the officer, he admitted he approached me because I was wearing a headlamp! Was it really that I was wearing a headlamp? Because I see people wearing headlamps for various reasons all the time— people who are walking their dogs, cyclists, old farts like me who can't see that well at night. Or was it because I happen to be a black man wearing a headlamp? This is my concern: Does my beloved Berkeley have a police department that is promoting a policy of profiling individuals? It is one thing to read about other police departments profiling certain people, but to experience it first hand in my beloved Berkeley pains me to no end. I was also wearing my headlamp when Officer Radey stopped me on January 2, 2015.

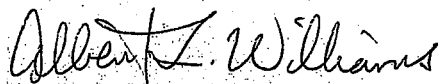
Why did Officer Radey deny me my rights as a citizen of this great country? Having noticed that my headlights were now on in the vehicle I was driving, couldn't he just warn me and send me on my way? One of my favorite professors in undergraduate school, who had retired from the Berkeley Police Department as a Lieutenant in the late 1960's, tried to instill in his students that in law enforcement "the law should be enforced to the Spirit, not always to the Word." Wouldn't it have been in the spirit of the law for Officer Radey to warn me? I think so.

But Officer Radey did something altogether different. He was not enforcing any law, he was suspicious of me. And that suspicion on his behalf led me to believe that his reaction was because I am a black man. Maybe Officer Radey had never seen a black person with blue circles around his irises which can make the pupils seem dilated; thus the continued questioning "Have you taken anything?" (I presume he was talking about drugs or alcohol.) After my initial anger about being detained and given a field sobriety test, I was deeply saddened to be reminded in such a way that I am a "black man," not just a "man."

I find profiling any people, regardless of their race, a detestable practice. And I protest such a policy if it is being implemented in the Berkeley Police Department. We need our police and our police need us citizens. We cannot allow this schism of "we vs. them" to thrive in our community. We need mutual support and trust to exist between the police and the community. We all, the police and the community,

should be proactive in trying to bring about such trust and support. That is why I am writing this letter of concern. Is Berkeley becoming a "tale of two cities?"

Sincerely,

A handwritten signature in cursive script that reads "Albert L. Williams".

Rev. Albert L. Williams

Copy to: The Internal Affairs Bureau
Policed Review Commission

