

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**March 25, 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 March 11, 2015.

**5. CHAIR'S REPORT**

**6. CHIEF OF POLICE'S REPORT**

Budget, staffing, training updates, and other items.

**7. PRC OFFICER'S REPORT**

Status of Complaints; announcements.

**8. 2014 CRIME REPORT**

Presentation by Berkeley Police Department

**9. OLD BUSINESS (discussion and action)**

- a. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015: further discussion and action on how to proceed.

- b. Continue review of mutual aid practices and policies: further discussion and action.
- c. Use of police in-vehicle cameras and body-worn cameras by BPD: review General Orders of other agencies.
- d. How to make the BOI process more responsive to complainants, and civilians generally, in light of City Attorney opinion re Possible Disclosure of BOI Findings Report to Complainants.
- e. Discuss City Attorney opinion re Disclosure of BPD Internal Affairs' Records to the PRC.
- f. Standing Rules for PRC: review and comment on first draft.  
From: Commissioner Bernstein
- g. Marijuana enforcement report: review report for July – December 2014 and discuss additional information possibly needed.  
From: Commissioner Bernstein
- h. Status of implementation of amendments to Regulations for Handling Complaints Against Members of the Police Department.

**10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)**

- a. Regulations Subcommittee  
Update/schedule meeting date.
- b. Suspicious Activity Reports Subcommittee  
Report on March 4 and March 19, 2015 meetings; schedule next meeting date.
- c. Transgender General Order Subcommittee  
Report on March 23, 2015 meeting; schedule meeting date.

**11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached

**12. PUBLIC COMMENT**

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

***Closed Session***

**13. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE**

Complaint #2371.

***End of Closed Session***

**14. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION**

**15. ADJOURNMENT**

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**Communication Access Information (A.R.1.12)**

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

**SB 343 Disclaimer**

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

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



# COMMUNICATIONS FOR PRC MEETING March 25, 2015

## MINUTES

March 11, 2015 Regular Meeting

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## COMMUNICATIONS

**Communication #1061** – Crime Report.

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**Communication #4364** – Memo from PRC Commissioners Finley and Lippman, dated March 19, 2015: Questions regarding Mutual Aid.

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**Communication #4424** – Consent Calendar Item dated March 10, 2015: Digital Video Surveillance Cameras at Alcohol Outlets; Adding BMC Chapter 9.12.

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**Communication #4427** – Letter from ACLU to the PRC re Suspicious Activity Reporting Policy, dated March 18, 2015.

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COMMUNICATIONS FOR THE MEETING  
March 28, 2018

MINUTES

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March 28, 2018 Regular Meeting

COMMUNICATIONS

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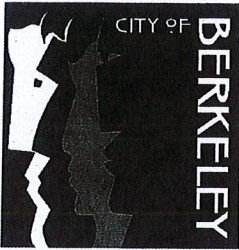
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Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING**

**MINUTES**

*(Unapproved)*

**March 11, 2015  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

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

- Present:** Vice Chair George Perezvelez  
Commissioner Benjamin Bartlett  
Commissioner George Lippman (arrived 7:13 p.m.)  
Commissioner Karen Kiyo Lowhurst  
Commissioner Ann Rogers  
Commissioner Bulmaro Vicente (arrived 7:13 p.m.)  
Commissioner Michael Sherman  
Commissioner Lowell Finley (temporary assignment)
- Absent:** Commissioner Barbara Allen
- PRC Staff:** Katherine J. Lee, PRC Officer
- BPD Staff:** Capt. Michael Meehan, Capt. Andrew Greenwood, Sgt. Joseph Okies,  
Sgt. Benjamin Cardoza,

**2. APPROVAL OF AGENDA**

Agenda approved by consensus.

**3. PUBLIC COMMENT**

No speakers.

**4. APPROVAL OF MINUTES**

Special and Regular Meetings of February 25, 2015.

**Motion to approve minutes of the Special and Regular Meetings of February 25, 2015, as corrected.**

Moved/Seconded (\_\_\_\_\_/\_\_\_\_\_) **Motion Carried**

Ayes: Bernstein, Finley, Perezvelez, Rogers, and Sherman.

Noes: None                      Abstain: Bartlett, Lowhurst                      Absent: Allen, Lippman, and Vicente

**5. CHAIR'S REPORT**

Commissioner Lowhurst announced her impending resignation; she was thanked for her fine service. Commissioners Bernstein, Finley and Rogers, and PRC Officer Lee and Investigator Norris attended the NACOLE regional forum last week.

**6. CHIEF OF POLICE'S REPORT**

Budget discussions are ongoing. There are currently about 168 sworn officers, out of 176 authorized. For the first time, there will be three recruitments this year. He has been meeting with the BUSD superintendent regarding safety in the schools. BPD has submitted a grant for body cameras.

**7. PRC OFFICER'S REPORT**

Status of pending complaints was announced. The circumstances of a rejected complaint were explained.

**8. OLD BUSINESS (discussion and action)**

a. Policy review regarding McKinley Avenue staging in December 2014.

Capt. Andy Greenwood gave an oral report on the BPD's use of the 2100 block of McKinley in early December 2014. (Written report was distributed.)

Capt. Greenwood will return in a couple meetings and report back on whether it makes more sense to adopt a new policy or amend parts of existing policies.

b. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6.

Commission discussed response to PRC's request for documents, audio and video related to protests.

**Motion to ask the Council to provide funds to engage an external investigator or auditor to investigate the events in question.**

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

Ayes: Lippman

Noes: Bernstein, Bartlett, Finley, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente.                      Abstain: None                      Absent: Allen

**Motion to direct PRC staff not to inspect documents or view video unless the issue of Commission's access to the materials is resolve; ask Chief or his representative to attend a special meeting to discuss these points; agendize a special meeting to consider how to move forward.**

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

Ayes: Bernstein, Bartlett, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente.



Noes: None          Abstain: None          Absent: Allen

**By consensus, the Commissioners agreed on March 18 at 7:00 p.m. or March 19 at 7:30 as possible dates for a special meeting.**

c. Continue review of mutual aid practices and policies: further discussion and action.

**By consensus, this item was tabled to the next meeting.**

d. Use of police in-vehicle cameras and body-worn cameras by BPD: review General Orders of other agencies.

**By consensus, this item was tabled to the first meeting in May.**

e. How to make the BOI process more responsive to complainants, and civilians generally, in light of City Attorney opinion re Possible Disclosure of BOI Findings Report to Complainants.

**By consensus, this item was tabled to the next meeting.**

f. Discuss City Attorney opinion re Disclosure of BPD Internal Affairs' Records to the PRC.

**By consensus, this item was tabled to the next meeting.**

g. Urge Council Members and the Mayor to hold annual commissioners' meetings with their appointees.

**Motion to send a letter the Council strongly urging that they hold annual meetings with their Commissioners at their discretion.**

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

Ayes: Bartlett, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente.

Noes: None          Abstain: Bernstein          Absent: Allen

## **9. NEW BUSINESS (discussion and action)**

***By consensus, all new business was tabled to the next regular meeting.***

a. Release of information from BPD to PRC.

b. Standing Rules for PRC: review and comment on first draft.

c. Marijuana enforcement report: review report for July – December 2014 and discuss additional information possibly needed.

d. Status of implementation of amendments to Regulations for Handling Complaints Against Members of the Police Department.

e. Berkeley Police Association report on community outreach.

**10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)**

- a. Regulations Subcommittee  
No report.
- b. Suspicious Activity Reports Subcommittee  
No report.
- c. Transgender General Order Subcommittee  
Will schedule meeting date forthwith.

**11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

**12. PUBLIC COMMENT**

No speakers

*Closed Session*

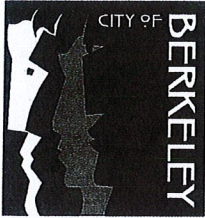
**13. REVIEW OF CALOCA DECISION**

Complaint #2327.

*End of Closed Session*

**14. ADJOURNMENT**

The meeting was adjourned at 10:20 p.m.




Office of the City Manager

01

Worksession Item

COMMUNICATION No. 1061

WORKSESSION  
March 10, 2015

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Michael K. Meehan, Chief of Police  
Subject: Crime Report

#### INTRODUCTION

At the request of City Council, the City Manager provides regular reports on crime statistics in Berkeley. This report provides information on reported Part I crime in 2014 and compares those statistics with crime rates from the previous four years (2010 through 2014). This report provides Council crime statistics with the intent to inform discussion on efforts to reduce crime and victimization in the City of Berkeley.

#### CURRENT SITUATION AND ITS EFFECTS

In 2014, Part One Violent Crime in Berkeley decreased 24.6%, and Part One Property Crime decreased 5.1%, resulting in an overall decrease of Total Part One Crime of 7.0% for the year.

Decreases in Part One crimes were seen in Homicide, Rape, Robbery, Residential Burglary, Grand Theft, Petty Theft, and Auto Thefts. Increases were seen in Aggravated Assault and Commercial Burglaries. Arson remained even with last year.

#### Homicides

Three homicides were committed in Berkeley during 2014, as compared to four in 2013. Two cases have been closed with the arrests of suspects, and prosecution is underway. The investigation is continuing on the third case, which occurred on December 29<sup>th</sup>. (An additional homicide occurred in McLaughlin Eastshore State Park, near University Ave. and West Frontage Road, in the jurisdiction of the East Bay Regional Parks Police, who continue to investigate this case.)

#### Rape

Reported rapes dropped 13.8% in 2014, with 25 reports as compared to 29 in 2013. There were no unusual series to report. Nearly all reported rapes and attempted rapes involved an acquaintance of some type, either recently introduced or previously known to the victim. Alcohol use was an element in many of the cases. It should be noted that with this report, the Department begins its transition to use of the revised Uniform Crime

Report rape definition. This pending change in reporting is discussed later in this document.

### Robberies

Overall robberies for the year decreased 35.2%, as a downward trend seen from the latter half of 2013 continued through 2014. The greatest decline was seen in a 36.0% decline in pedestrian robberies, with 122 fewer robberies reported. The significant decrease in pedestrian robberies helped drive the overall Part One Violent Crimes down 24.6% in 2014.

### Aggravated Assaults

Aggravated assaults increased 8.2% in 2014, with 132 reports, compared to 122 in 2013. Aggravated assaults frequently involved alcohol or drug abuse by victim and/or suspect, and frequently involved acquaintances,

### Burglary

Burglaries decreased by 11.7% as compared to 2013, with a 25.3% decrease seen in residential burglaries, which offset an increase in commercial burglaries of 27.7%. In 2014, several commercial burglary series contributed to an increase in commercial burglaries for the year.

### Larcenies

Larcenies (which include auto burglary, petty theft, and grand theft) declined slightly in 2014, with an overall 1.1% drop. Petty thefts were down 2.3%, grand thefts were down 2.4%, while a 1% increase in auto burglaries was seen. A marked increase in bike thefts kept theft categories from falling further. More information regarding bicycle theft is below.

### Auto Theft

Auto Theft reports decreased 16.8% in 2014. Approximately 86% (over 600) of the vehicles stolen in 2014 have been recovered either locally or in other jurisdictions.

## **BPD Crime Prevention and Response Strategies**

The Berkeley Police Department continued its focus on reducing the level of crime throughout 2014, including implementing several strategies toward that end, including:

- Rapid and robust response to crimes in progress.
- Frequent internal communication regarding crime trends, series, and wanted offenders.
- Weekly Crime Analysis and Response Strategy meetings and coordination of focus and resources.
- Focusing robbery suppression teams in areas and at times when data suggested the highest likelihood of robberies will occur.
- Regularly distributed a periodic Newsletter to provide crime prevention information to residents and businesses.
- Implemented Nixle alert and notification service to keep the community informed about events, crime prevention measures, and occasionally to seek help in finding lost individuals, or identifying suspects in crimes.

- Focusing bike patrols in the downtown area, as staffing allowed, and partnered with UCPD on bike patrols on and around Telegraph Avenue.
- Continuing focus on identifying and apprehending chronic offenders.
- Continuing expansion of the Crisis Intervention Team. Seven additional officers underwent CIT training in 2014; About 20% of officers and 29% of sergeants assigned to Patrol teams are now CIT trained, and the Department's CIT coverage currently extends to all patrol teams.
- Completed the Beat Realignment Project, which was implemented on January 19, 2015.

### **Bicycle Theft Reduction Project**

The Berkeley Police Department, in partnership with the University of California Police Department, has begun a comprehensive bike theft reduction project. This project incorporates community partnerships and focuses on bike registration, bike theft education, and bike theft enforcement, with the goal of reducing bike theft in Berkeley. These efforts will require a coordinated effort from Berkeley PD, UCPD, local bike merchants, bike advocacy groups, and the community.

The Department is working with Bike East Bay ([www.bikeeastbay.org](http://www.bikeeastbay.org)) and local bike merchants to increase the number of registered bikes by Berkeley residents and local merchants' customers. BPD has posted a Bike Theft resource webpage on the BPD website. This page includes bike theft prevention measures and a link to Bike Index ([www.bikeindex.org](http://www.bikeindex.org)), a website that provides free online bike registration service and additional bike theft prevention information.

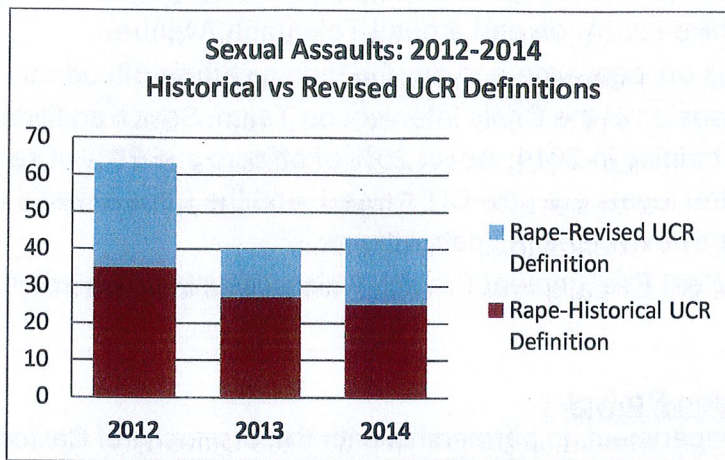
BPD and UCPD officers are working together to apprehend bike thieves. Officers have been successful in identifying and arresting several bike thieves who have been operating in the City. BPD and UCPD are working to secure grant funding which, if awarded, will be used to fund bike theft education and enforcement efforts. The departments will use statistical analysis to identify crime patterns and deploy resources where they will be most effective.

### **Change in Uniform Crime Report Definition of Rape**

In its Crime Reports, the Berkeley Police Department has reported Rape cases according to the 1927 Uniform Crime Report historical definition: "The carnal knowledge of a female forcibly and against her will." This definition excluded several sexual assault offenses, and further excluded reporting where victims were male. The United States Department of Justice has revised and expanded the Federal Bureau of Investigation's UCR definition of rape to include other sexual assault offenses, regardless of victim gender.

Accordingly, BPD is transitioning to reporting sexual assaults according to the revised UCR definition in this and future Council Crime Reports. This means BPD will be reporting larger numbers of crimes under the revised UCR rape classification.

While we are using the historical definition in the charts in this report, we are presenting data for 2012-2014 below, in order to show how the reporting will be impacted by the revised definition. It should be noted that the Berkeley Police Department thoroughly investigates *all* sexual assault crimes, regardless of UCR classification.



	2012	2013	2014
Rape-Historical UCR Definition	35	27	25
Rape-Revised UCR Definition	28	13	18
<b>Totals</b>	<b>63</b>	<b>40</b>	<b>43</b>

### Data

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

#### Violent Crimes

Murder  
Rape  
Robbery  
Aggravated Assault

#### Property Crimes

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

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

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

The attached graphs show annual totals of UCR data for Part One Violent and Property Crimes for 2013 and 2014 in Berkeley, as well as five-year comparisons in Part One Violent Crimes and Part One Property Crimes.

Graphs include:

- Total Part One Violent and Property Crime, two year comparison
- Total Part One Violent and Property Crime, five year comparison

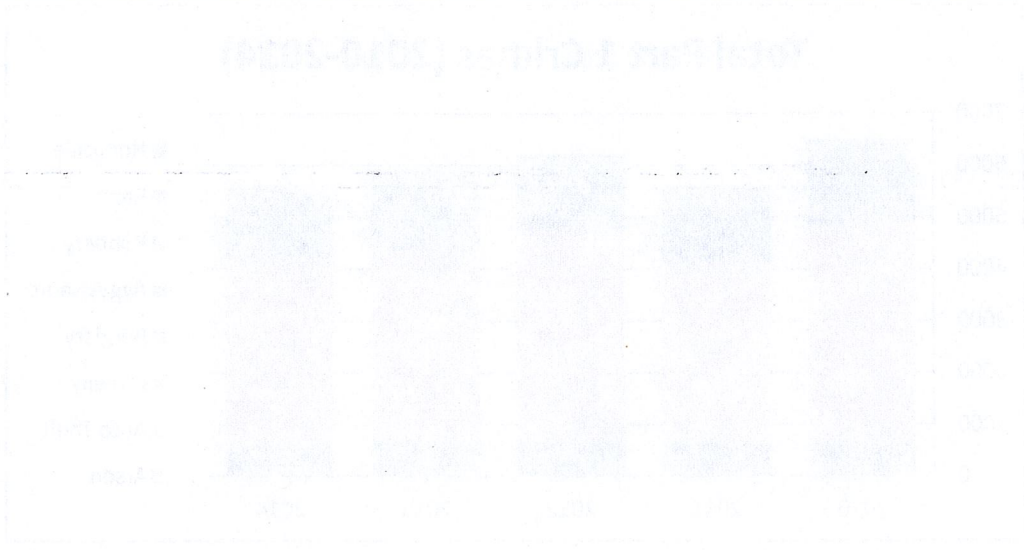
- Total Part One Violent Crime, five year comparison
- Total Part One Property Crime, five year comparison

**ENVIRONMENTAL SUSTAINABILITY**

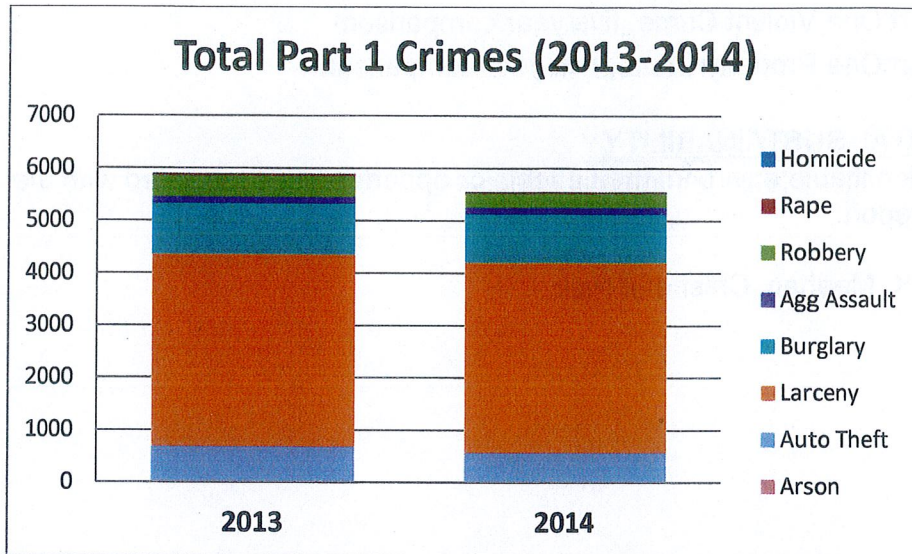
There are no identifiable environmental effects or opportunities associated with the subject of this report.

cc: Michael K. Meehan, Chief of Police

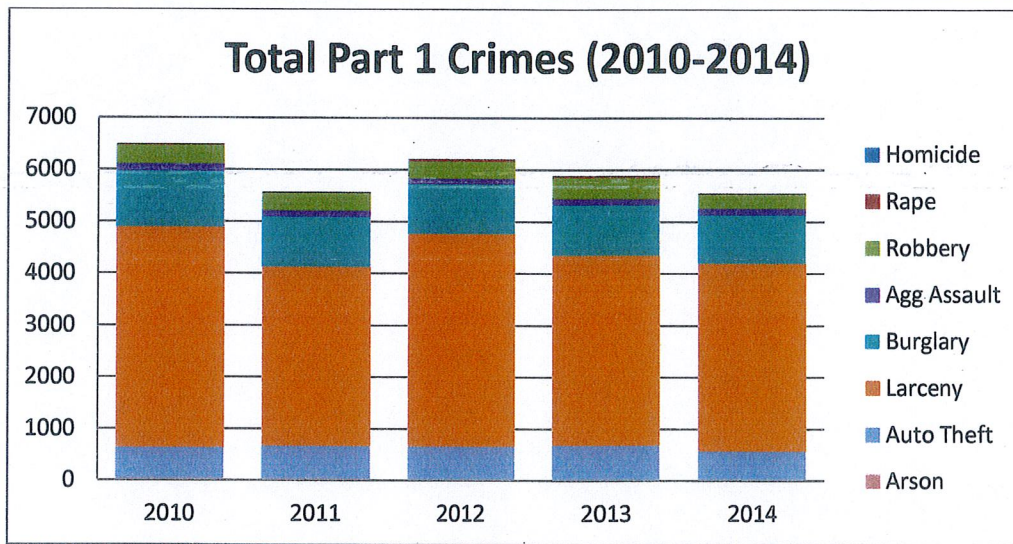
Year	2010	2011	2012	2013	2014	2015	2016	2017
Total Part One Violent Crime	100	100	100	100	100	100	100	100
Total Part One Property Crime	100	100	100	100	100	100	100	100



Year	2010	2011	2012	2013	2014	2015	2016	2017
Total Part One Violent Crime	100	100	100	100	100	100	100	100
Total Part One Property Crime	100	100	100	100	100	100	100	100



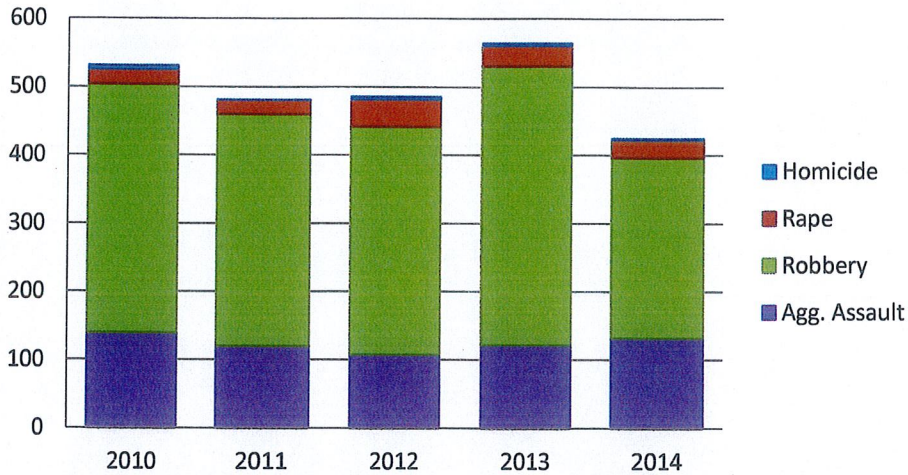
	Homicide	Rape*	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2013	4	29	409	122	978	3664	668	16
2014	3	25	265	132	934	3624	556	16



	Homicide	Rape*	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2010	6	21	364	140	1085	4252	604	23
2011	1	20	340	120	974	3458	634	25
2012	5	39	334	108	967	4102	639	15
2013	4	29	409	122	978	3664	668	16
2014	3	25	265	132	934	3624	556	16

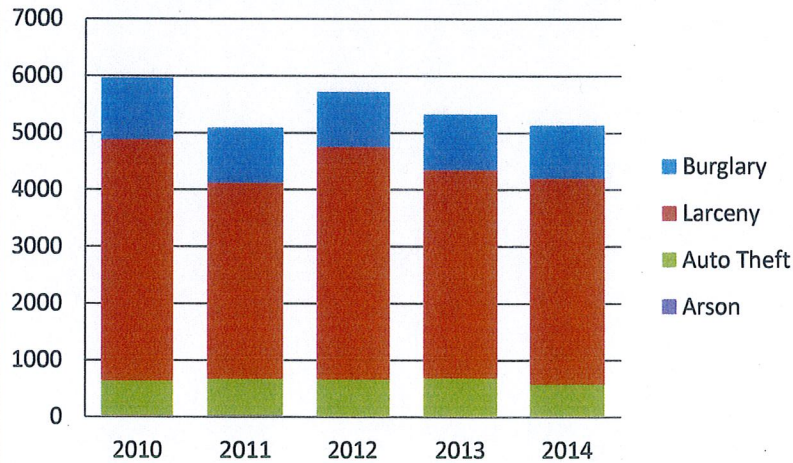


### Total Part 1 Violent Crimes (2010-2014)



	Homicide	Rape*	Robbery	Agg. Assault
2010	6	21	364	140
2011	1	20	340	120
2012	5	39	334	108
2013	4	29	409	122
2014	3	25	265	132

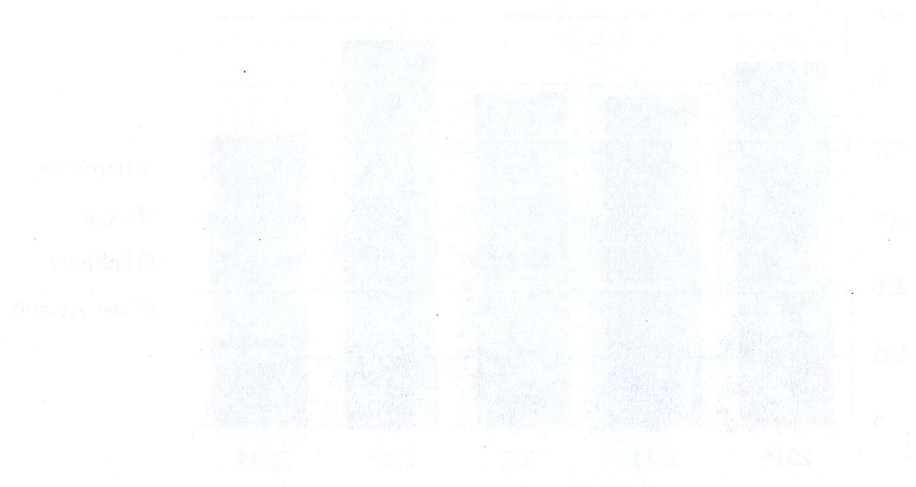
### Total Part 1 Property Crimes (2010-2014)



	Burglary	Larceny	Auto Theft	Arson
2010	1085	4252	604	23
2011	974	3458	634	25
2012	967	4102	639	15
2013	978	3664	668	16
2014	940	3622	559	16

\*Rapes reported according to historic UCR Definition

Estimated Values - 2010-2011



Year	Category 1	Category 2	Category 3	Category 4
2010	75	75	75	75
2011	85	85	85	85
2012	80	80	80	80
2013	85	85	85	85
2014	90	90	90	90

Estimated Values - 2010-2011



Year	Category 1	Category 2	Category 3	Category 4
2010	75	75	75	75
2011	85	85	85	85
2012	80	80	80	80
2013	85	85	85	85
2014	90	90	90	90

March 19, 2015

To: Police Review Commission  
From: Commissioners Finley and Lippman  
Re: Questions regarding Mutual Aid

As the Commission reviews mutual aid in the context of demonstrations and other crowd control situations, it will be important to address precisely what rules are in place and whether they are consistent with one another. This memorandum briefly addresses two questions: Who sets the rules on use of force and on equipment brought into Berkeley by invited mutual aid law enforcement agencies?

### USE OF FORCE

The Law Enforcement Guide for Emergency Operations indicates on page 58 under Administrative Guidelines, that at least with regard to use of force, individual officers follow their own departments' policies:

"Use of Force:

Individual officers are bound by use of force policies of their employing agency. However, use of less-lethal devices...should be used decisively when the situation dictates."

By contrast, page 18 of the Law Enforcement Mutual Aid Plan states:

"Unless otherwise expressly provided, or later agreed upon, the responsible local law enforcement official of the jurisdiction requesting mutual aid shall remain in charge. It is operationally essential that the local law enforcement official coordinate all actions with responding law enforcement agencies to ensure an effective application of forces (Gov. Code sec. 8618)."

This passage uses the mandatory "shall" to direct that the officer in charge for the requesting agency is in charge at all times "unless otherwise expressly provided, or later agreed upon." This could be read to include control over the use of force by all responding mutual aid agencies. But the very next paragraph on page 18 of the Law Enforcement Mutual Aid Plan states:

"The integrity of responding forces and the policies and procedures of their departments must be maintained. Exceptions will require approval of the concerned department. Refer to the Law Enforcement Guide for Emergency Operations for further policy guidance."

The instruction to refer to the Law Enforcement Guide for Emergency Operations could be read as taking us full circle, back to the passage on use of force at the beginning of this discussion.

### EQUIPMENT

What is the policy on invited agencies bringing equipment, such as armored vehicles, that BPD as the inviting agency does not employ? Also on page 18 of the Mutual Aid Plan, we find the following:

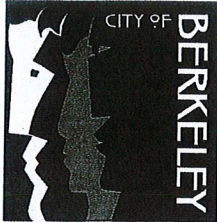
"The agency requesting mutual aid is responsible for the following:

1. Identifying numbers and types of mutual aid resources requested.
2. Identifying specific missions for mutual aid responder tasking.
3. Advising responders what equipment they should bring.

....”

Item (3) in the list of responsibilities of the requesting agency suggests that the requesting agency could direct the responding agency not to bring, for example, an armored vehicle.

In sum, there appears to be a lack of clarity and detail, perhaps consistency as well, in these documents about accountability and authority between host and participating agencies under the state mutual aid system. Questions to the BPD representatives could focus on clarifying these relationships, how they currently operate, and how to address the concern about police practices and technologies, introduced by external agencies, which we do not see fit to utilize in the BPD.




Office of the City Manager

05

COMMUNICATION No. 4424

CONSENT CALENDAR  
March 10, 2015

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Michael K. Meehan, Chief of Police  
Subject: Digital Video Surveillance Cameras at Alcohol Outlets; Adding BMC Chapter 9.12

RECOMMENDATION

Adopt first reading of an Ordinance requiring liquor stores within certain designated commercial corridors to install digital video camera surveillance upgrades to their locations within six months of the passage of the ordinance, and adding Berkeley Municipal Code Chapter 9.12.

FISCAL IMPACTS OF RECOMMENDATION

Costs to the City of passing this ordinance would be limited to police staff time required to assist business owners by providing guidance in selection and installation of equipment. Additionally, there would be staff time required for the annual review of those alcohol outlets that fall within the delineated zones to ensure compliance. The total cost would be approximately 40 hours per year in staff time.

CURRENT SITUATION AND ITS EFFECTS

Problematic street behavior surrounding alcohol outlets in certain commercial corridors continues to have a negative impact on community members, the business community, and the City of Berkeley. This behavior creates concerns about safety for residents and those conducting business in the City.

BACKGROUND

In 2013 two homicides took place within two blocks of the liquor store located at Delaware Street and San Pablo Avenue. Community members have for many years expressed concern about problematic behaviors around liquor stores in certain commercial corridors. Community members have indicated a desire that steps be taken to help mitigate crime problems at these locations. On September 10, 2013 (item 37) the City Council directed staff to examine the idea of requirements for video surveillance cameras at all liquor stores, and to consider the City of El Cerrito's ordinance as a possible model. Discussions with El Cerrito staff indicated some challenges with the very large scope of businesses required to install cameras in accordance with the ordinance, as well as the management and staff time required to properly administer such a broad program. El Cerrito's ordinance requires video surveillance systems for "Every bank, carry-out food and drink

establishment, check cashing business, convenience store, firearm dealer, off sale liquor business, and secondhand dealer”, as well as all shopping centers that contain one of the above listed businesses (El Cerrito Video Surveillance Act of 2007, attached).

Consideration of these issues suggested a more narrowly focused program may be more efficient and effective in the City of Berkeley; a program of El Cerrito’s considerable scope would likely require significant staff resources to manage, with limited return on the investment.

Staff considered approaches to refine the focus of a camera requirement. Staff examined the arrest density for alcohol-related violations for 2012 and 2013, and mapped these violations and the License Type 20 (sale of beer and wine for consumption off premises) and 21 stores (sale of beer, wine, and distilled spirits off premises). The areas of concern, with violations occurring near liquor stores, coincided with the following Commercial Corridors: C-DMU (Downtown), C-1 (University Avenue and Telegraph Avenue near the Oakland border), C-T (Telegraph Avenue), C-W (San Pablo Avenue), C-NS (North Shattuck Avenue) and C-SA (Shattuck and Adeline Avenues) (See maps, attached).

If the proposed ordinance is adopted, liquor stores in these corridors would be required to install high quality digital video surveillance systems with minimum technological standards, as delineated below. Equipment and the placement of the equipment would need to be approved by the Berkeley Police Department. Those businesses affected would be given six months to achieve compliance.

System requirements would ensure that video surveillance was of usable quality (a situation that is currently a problem for the Police Department) and able to be readily accessed in the event of criminal activity. System requirements would be as follows:

1. Camera placement reviewed and approved by the Berkeley Police Department.
2. Media with a nexus to criminal activity shall be reviewable and retrievable at all times during business hours by employees with access to and trained to operate the system who shall allow inspection by Berkeley Police Staff.
3. Recorded audio and video stored in a reviewable and retrievable format for a minimum of 30 days.
4. Indoor and outdoor coverage, including key infrastructure such as entry/exits, cash registers/service counters, parking lots, areas not visible from the street, etc.
5. Modern, hi-quality digital systems capable of recording in all conditions (daylight, night, glare, etc).

6. Compatible with viewing by Police Department personnel in a generally accepted and recognized codec/format.

An initial survey of the impacted businesses shows that many businesses have systems that meet or are close to meeting the standards listed above. What is common among nearly all of the business surveyed was that they did not have staff who were familiar with the system, or who could review and/or download the digital images. It is likely that, with the cooperation of the businesses, many of these issues could be easily and inexpensively resolved in coordination with the Berkeley Police Department.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

The goal of this ordinance is to enhance the safety in areas defined as having problematic criminal street behavior.

The ordinance provides focused improvements which take a phased-in and collaborative approach between the City and local businesses so as not to be overly burdensome to those businesses falling under the new requirements.

#### ALTERNATIVE ACTIONS CONSIDERED

1. Take no action. Many liquor stores and alcohol outlets already have video surveillance systems and will continue to have those systems with or without regulation. Taking no action limits cost to the City and staff time in terms of working with businesses and ensuring compliance. However, this approach would not address the ongoing issues with the poor quality of many systems, inability to find staff who can log into or operate the systems, or the compatibility issues the Police Department frequently encounters when attempting to access video recordings.
2. Replicate the El Cerrito Model. As discussed above, the El Cerrito model would likely require a very significant amount of unbudgeted staff time to be enacted correctly while unnecessarily including many businesses with no current or historical nexus to crime or criminal activity.

#### CONTACT PERSON

Captain Erik Upson, Operations Division Commander, 981-5800

#### Attachments:

1. Ordinance
2. Density Maps
3. El Cerrito Ordinance

### 3. The purpose of this report is to provide information regarding the results of the study conducted by the Communications Section.

The study was conducted to determine the effectiveness of the current system and to identify areas for improvement. The results of the study indicate that the current system is not meeting the needs of the department and that there are several areas where improvements can be made. These areas include the following:

#### ENVIRONMENTAL SUSTAINABILITY

The study also examined the environmental impact of the current system and identified several areas where improvements can be made to reduce the carbon footprint of the department.

#### RATIONALISE THE CURRENT SYSTEM

The study also examined the current system and identified several areas where improvements can be made to make the system more efficient and effective.

The study also examined the current system and identified several areas where improvements can be made to make the system more efficient and effective.

#### CONCLUSION

The study has identified several areas where improvements can be made to the current system. These improvements include the following:

1. Improve the current system by implementing the following changes:

#### CONTACT INFORMATION

For more information, please contact the Communications Section at (617) 552-3000.

Attn: Chief of Police

City of Boston

100 State Street

Boston, MA 02109



ORDINANCE NO. 7,398-N.S.

REQUIRING INSTALLATION OF VIDEO SURVEILLANCE SYSTEMS; ADDING  
BERKELEY MUNICIPAL CODE CHAPTER 9.12

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

Section 1. That a new Chapter 9.12 of the Berkeley Municipal Code is added to read as follows:

**Chapter 9.12 - VIDEO SURVEILLANCE SYSTEMS**

**Sections:**

- 9.12.010 Applicability.**
- 9.12.020 Definitions.**
- 9.12.030 Video surveillance systems required.**
- 9.12.040 Minimum technological standards.**
- 9.12.050 Minimum coverage standards – site assessment – signage – retention.**
- 9.12.060 Inspections.**
- 9.12.070 Police access to media.**
- 9.12.080 Violations and remedies.**
- 9.12.090 City Council authorized to adopt regulations and fees.**
- 9.12.100 Severability.**

**9.12.010 Applicability.**

This Chapter applies to all Off-sale liquor businesses in the City of Berkeley.

**9.12.020 Definitions.**

A. "Media" means material on which audio, video, and electronic data can be recorded for the purposes of making a permanent record to aid in a criminal investigation; that can be enlarged through projection or other means, in a format able to be utilized by the Alameda County district attorney.

B. "Off-sale liquor business" means any establishment required to obtain a Type 20 or Type 21 license issued by the state of California, Department of Alcohol Beverage Control, for the sale or consumption of beer, wine, or distilled spirits off the premises where sold.

C. "Video surveillance system" or "VSS" means a continuous digital surveillance system including cameras, cabling, monitors, and digital video recorders (DVR) that records in color with cameras and lens of a type, minimum resolution, number and location approved by the Chief of Police or his or her designee. This system must be

capable of producing a retrievable and identifiable images and video recordings on approved media that can be enlarged through projection or other means, and can be made a permanent record for use in a criminal investigation.

**9.12.030 Video surveillance systems required.**

A. Every Off-sale liquor business in the following zoning districts is hereby required to install a VSS no later than November 1, 2015:

1. C-DMU
2. C-1
3. C-T
4. C-W
5. C-SA
6. C-NS

B. Off-sale liquor businesses subject to this section that installed surveillance systems prior to the effective date of this Chapter must ensure they are in full compliance with this Chapter no later than November 1, 2015. Video surveillance systems shall be maintained in proper working order at all times and shall be in operation twenty-four hours a day, seven days a week, and shall meet the minimum technological standards established in this Chapter.

**9.12.040 Minimum technological standards.**

The VSS must be capable of delineating on playback of the system the activity and physical features of persons or areas within the premises and must be able to record such images on an approved form of media. Additional minimum technological standards required for VSSs shall be established by resolution of the City Council, which may be updated periodically. The police department shall review the VSS standards bi-annually to ensure that they are consistent with current technology, and shall recommend appropriate updates to the City Council. If a VSS is web-enabled or has wireless capability, the police department shall be provided the ability to access the VSS in a real time.

**9.12.050 Minimum coverage standards – site assessment – signage – retention.**

A VSS shall have, at a minimum, separate cameras dedicated to each register/check-out stand, entrance/exit, loading dock, and parking lot or area designated for customer and/or employee parking use. The placement of cameras included in VSSs required under this Chapter must be approved by the police department. The Chief of Police or his or her designee will conduct an assessment of each site required to install a VSS prior to installation, and upon approval will issue an approval notice which will be placed in plain view inside the premises. This approval notice will also inform customers and employees of the existence of the VSS. A separate notice of the VSS, in a form acceptable to the Chief of Police, shall be placed in the parking area. The establishment shall retain the continuous digital images recorded by this system for no less than thirty days.

**9.12.060 Inspections.**

A VSS shall be subject to regular inspection by the Chief of Police or his or her designee, who may inspect any VSS at reasonable times to determine if it conforms with this Chapter and any regulations adopted by the City Council. If a VSS does not so conform, the business is responsible for it must take immediate steps to bring it back into conformance.

**9.12.070 Police access to media.**

If a crime occurs within range of an Off-sale liquor business's VSS, or an employee believes such a crime has occurred, the Off-sale liquor business shall contact the Police Department immediately and shall provide immediate access to the Media containing the recorded event to the Police Department.

**9.12.080 Violations and remedies.**

A. Violations of this Chapter shall be punishable under Chapters 1.20 and 1.28, and shall constitute a public nuisance.

B. Remedies under this Chapter shall be cumulative

**9.12.090 City Council authorized to adopt regulations and fees.**

A. The City Council may by resolution adopt regulations to implement this Chapter.

B. The City Council may by resolution adopt fees to fund the implementation and administration of this Chapter.

**9.12.100 Severability.**

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

\* \* \* \* \*

At a regular meeting of the Council of the City of Berkeley held on March 10, 2015 this Ordinance was passed to print and ordered published by posting by the following vote:

**Ayes:** Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington and Bates.

**Noes:** None.

**Absent:** None.



March 18, 2015

**Via Electronic Mail**

Police Review Commission  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

COMMUNICATION No. 4427

Re: Suspicious Activity Reporting Policy

Dear Members of the Police Review Commission:

I am writing regarding your ongoing review of the Berkeley Police Department's participation in the Northern California Regional Intelligence Center ("NCRIC") and the Nationwide Suspicious Activity Reporting Initiative. The American Civil Liberties Union of Northern California ("ACLU") was honored to participate in discussions of Berkeley Police Review Commission ("PRC") proposals during the Berkeley City Council meetings on June 19 and September 18 of 2012. Following these discussions, the Berkeley Police Department and City Council undertook a change in policy regarding Berkeley's submission of Suspicious Activity Reports ("SARs") to NCRIC. This policy change allows submission of SARs for "[b]ehavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, or criminal activity but limits submission of SARs to incidents involving "reasonable suspicion" of a criminal predicate that would be a misdemeanor or felony offense. General Order N-17 (Sept. 18, 2012). In addition, "Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs." We commend the Police Chief, the City Attorney's Office, the City Manager, and other City staff and officials for their work on this policy. However, based on a recent submission of SARs to the City Council, it is apparent that the Berkeley Police Department ("BPD") continues to submit SARs that violate the spirit, and arguably even the letter, of the current policy. We urge you to consider amending the General Order to prevent the submission of SARs based on ideology, political opinion, and association with a particular group.

The following examples from the 2013 and 2014 reports suggest that certain individuals' expression of their political beliefs leads to their inclusion in SARs where the underlying criminal conduct is unrelated to "intelligence gathering or preoperational planning" that has a nexus to terrorism:

- On January 23, 2013, BPD officers contacted and arrested a suspect for theft and assault. During the contact, the detainee espoused beliefs and possessed documents consistent with a group which is known to confront law enforcement.
- February 5, 2013, BPD officers had several encounters with a group whose members responded to traffic enforcement stops and have confronted officers during the course of their duties. The stated mission of this organization includes violence against law enforcement officers.<sup>1</sup>
- On June 26, 2013, BPD officers arrested a subject for petty theft. The detainee used terminology consistent with a group that does not "believe in the United States government" and that his arrest was therefore "invalid."
- On 02/03/14, a BPD officer conducted a vehicle code enforcement stop on a car driven by an individual who immediately upon contact utilized language consistent with sovereign citizens. Sovereign Citizens pose a threat to law enforcement because of their strong anti-government beliefs and their history of assaulting and killing police officers. The subject had defaced his driver's license, and signed the citation with the common sovereign term of "without prejudice". This is in violation of CVC 31. Sovereigns believe this to mean they "reserve their right not to be compelled to perform under any contract they did not enter knowingly, voluntarily or intentionally".

Neither the PRC nor the ACLU has access to the full SARs submitted.<sup>2</sup> While it is possible the actual SARs contain additional information that would provide reasonable suspicion of criminal activity that would conform to General Order N-17, the summaries provided that suggest that criminal activity that would not ordinarily result in a SAR—such as petty theft or defacing a driver's license—is being used to justify SAR submissions when the subject's speech or expression indicates a particular ideological viewpoint or association with a known anti-government group.<sup>3</sup> While actual threats to undermine legal authority through illegal means

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<sup>1</sup> This description does not include a criminal predicate that would constitute a misdemeanor or felony offense.

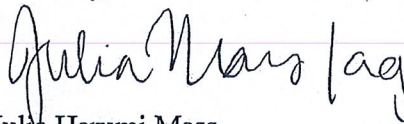
<sup>2</sup> We are informed it is the Police Department's position that it cannot share the full SARs due to federal restrictions. The ACLU is not aware of such restrictions and has in fact received full SAR submissions from other jurisdictions, with identifying information redacted to protect the privacy of individuals named therein. We urge the PRC to demand similar transparency from the Berkeley Police Department.

<sup>3</sup> "Sovereign Citizens" is a loosely affiliated association of individuals with diverse viewpoints and activities. They are particularly known for filing liens and other complex legal proceedings against public officials and for disclaiming the authority of the United States government. See Jason Meisner, 'Sovereign citizen' given 7 years in prison, CHICAGO TRIBUTE, Oct. 14, 2014; Erica Goode, *In Paper War, Flood of Liens Is the Weapon*, NEW YORK

would justify intelligence gathering under federal regulations and City policy, expression of political opinion cannot be used as a justification for SAR submission under either. If the Berkeley Police Department believes that General Order N-17 allows submission of SARs based on expression of an anti-government or anti-police opinion that is accompanied by unrelated criminal conduct, the General Order should be amended change any provision cited to justify the Department's position. Allowing the continued submission of SARs based on a person's perceived sympathy or association with a political movement raises serious First Amendment concerns. We urge the PRC to push the Berkeley Police Department to refrain from this practice and to amend General Order N-17 as necessary to address it.

Thank you for your attention to this matter and please do not hesitate to contact me if you have any questions or concerns that I can address.

Sincerely,



Julia Harumi Mass  
Senior Staff Attorney

cc: Berkeley City Attorney  
Berkeley Police Chief, Michael K. Meehan

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TIMES, Aug. 23, 2013; "Sovereign Citizens Movement," SOUTHERN POVERTY LAW CENTER ("The weapon of choice for sovereign citizens is paper"), available at <http://www.splcenter.org/get-informed/intelligence-files/ideology/sovereign-citizens-movement>.

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