

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**July 8, 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

Special meeting of June 17, 2015, and Regular meeting of June 24, 2015.

5. CHIEF OF POLICE'S REPORT

Budget, staffing, training updates, and other items.

6. CHAIR'S REPORT

7. PRC OFFICER'S REPORT

Status of complaints; announcements.

8. 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; and including review of mutual aid practices and policies.

i) Review and discuss event narratives.

ii) Continue review and approval of or changes to BPD recommendations in its report of the December 6 & 7, 2014 events.

iii) Review proposed changes to general orders.

b. Participation in National Night Out (August 4, 2015)

9. NEW BUSINESS (discussion and action)

- a. Determine appropriate follow-up to Commission's prior action on revisions to General Order N-17.
- b. Whether to initiate a policy review of the matter raised by Tesfaye Tsadik.
- c. Whether to initiate a policy review based on the policy complaint filed by Carol Denney.

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

11. 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

12. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

Complaint #2368.

End of Closed Session

13. 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, 3rd floor, during regular business hours.

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

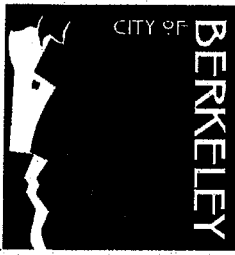
COMMUNICATIONS FOR PRC REGULAR MEETING July 8, 2015

MINUTES

June 17, 2015 <i>Special</i> Meeting	Page 5
June 24, 2015 <i>Regular</i> Meeting	Page 9

COMMUNICATIONS

Communication #1299 – Revisions to General Order N-17: Council Referral, PRC action, and adopted language.	Page 15
Communication #4392 – Letter from Tesfaye Tsadik to the BPD Chief re citation #155474. Location: Hopkins at Gilman.	Page 19
Communication #4160 – PRC Policy Complaint #2377 from Carol Denney.	Page 23
Communication #4272 – Commissioner Attendance Report for the period January 1 through June 30, 2015.	Page 41
Communication #4392 – Letter from a citizen to BPD re: Assaulted and Robbed in Grove Street Park.	Page 45
Communication #4392 – Letter from a citizen to BPD re: Attack and Assault of Senior Citizen in Berkeley.	Page 47
Communication #4392 – E-mail from a citizen re: Questions for BPD & December Report.	Page 49



Police Review Commission (PRC)

POLICE REVIEW COMMISSION
SPECIAL MEETING
MINUTES
(unapproved)

June 17, 2015
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY ACTING CHAIR PEREZVELEZ AT 7:10 P.M.

Present: Commissioner Alison Bernstein
Commissioner George Lippman
Commissioner George Perezvelez (Acting Chair)
Commissioner Ann Rogers (Acting Vice Chair)
Commissioner Michael Sherman
Commissioner Bulmaro Vicente

Absent: Commissioner Benjamin Bartlett

PRC Staff: Katherine J. Lee, PRC Officer; Beneba Thomas, PRC Investigator

BPD Staff: Chief Michael Meehan, Lt. Dave Frankel, Sgt. Dan Montgomery

2. APPROVAL OF AGENDA

Motion to approve the agenda as written.

Moved/Seconded (Bernstein/Rogers) Motion Carried

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

Noes: None

Abstain: None

Absent: Bartlett

3. PUBLIC COMMENT

There were six speakers.

4. ELECTION OF OFFICERS (discussion and action)

- a. Election of Chairperson to fill unexpired term.

Motion to elect Alison Bernstein Chairperson.

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

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

Noes: None

Abstain: None

Absent: Bartlett

(Chairperson Bernstein presided over the rest of the meeting.)

- b. Election of Vice-chairperson (needed only if current Vice-chairperson is elected Chairperson).

No action needed.

5. CHAIR'S REPORT

Vice-chairperson Perezvelez reported that today he participated on an oral board panel for the vacant BPD captain's position. Commissioners thanked Vice-chairperson Perezvelez for his hard work and leadership during his tenure as Acting Chairperson.

6. PRC OFFICER'S REPORT

The PRC Officer introduced Beneba Thomas, who has been hired as a part-time, temporary investigator for the investigation into the December 2014 events. A BOI was scheduled for June 11, but the complainant did not appear, so the complaint was dismissed. Four BOI hearings will be scheduled in July and early August. The difference between complaint filing with IA and the PRC was explained. A live link to the call for witness testimony will be done soon.

7. 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; and including review of mutual aid practices and policies.

- i) Discuss policy recommendations.

By general consent the Commission agreed to spend the next 45 minutes asking Chief Meehan and his staff questions.

(At the Chief's request, a moment of silence was observed for the six people killed and seven injured by a balcony collapse two days ago.)

By general consent the Commission agreed it should produce its own view of the events, and then identify the areas in which improvement is needed. PRC Officer to condense public testimony and distribute, along with Commissioners' notes on video. Commissioners to send to the PRC Officer their ideas of a narrative by Sunday night; she will synthesize for distribution at the next meeting; it can be amended as necessary.

8. NEW BUSINESS (discussion and action)

a. 2014 Annual Report

Review and comment

By general consent, the item was tabled until the next meeting.

b. Outreach Activities

Consider participating in various upcoming events (including Juneteenth, June 21; National Night Out, August 4; Solano Stroll, September 13) to publicize the PRC and its mission.

By general consent, the Commission agreed that it should participate in Juneteenth if possible (Commissioners Bernstein and Vicente volunteered to staff a table or booth); forgo participating in this year's Solano Stroll; discuss National Night Out at the next meeting; and re-agendize the broader topic of outreach for a September meeting.

c. Establish Mutual Aid Agreements Subcommittee

Motion to establish a Mutual Aid Agreements Subcommittee.

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

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

Noes: None

Abstain: None

Absent: Bartlett

The Chair appointed herself and Commissioners Lippman and Vicente to the subcommittee.

d. Request for research topics from U.C. student

By general consent the Commission agreed to inform Mr. Mabanta that the PRC will be making a series of policy recommendations in the coming weeks, and some of those may be suitable for referring to his group.

9. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATION

Attached

10. PUBLIC COMMENT

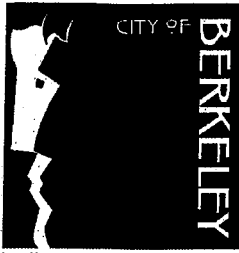
There were 3 speakers.

11. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Seconded (Rogers/Sherman) **Motion carried by general consent.**

Meeting was adjourned at 9:55 p.m.



Police Review Commission (PRC)

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

**June 24, 2015
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 7:07 P.M.

Present: Commissioner Benjamin Bartlett (left at 9:40 p.m.)
Commissioner Alison Bernstein
Commissioner George Lippman
Commissioner Terry Roberts
Commissioner Ann Rogers
Commissioner Michael Sherman
Commissioner Bulmaro Vicente

Absent: Commissioner George Perezvelez

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Cynthia Harris, Capt. Dave Frankel, Sgt. Benjamin Cardoza,
Sgt. David Lindenau, Ofc. Darrin Rafferty (all left at 9:00 p.m.)

2. APPROVAL OF AGENDA

The agenda was approved by general consent

3. PUBLIC COMMENT

There was one speaker.

4. APPROVAL OF MINUTES

Motion to approve minutes of Special and Regular meetings of June 10, 2015.

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

Ayes: Bernstein, Lippman, Rogers, Sherman, and Vicente.

Noes: None

Abstain: Bartlett, Roberts

Absent: Perezvelez

5. CHIEF OF POLICE'S REPORT

None.

6. CHAIR'S REPORT

None.

7. PRC OFFICER'S REPORT

A mediation occurred and will be brought for closure at the next meeting. A new policy complaint was filed and will be agendized for the next meeting. No new individual complaints filed since late April. The policy complaint for McKinley Avenue staging is still open; PRC Officer will check with Capt. Greenwood re status.

8. OLD BUSINESS (discussion and action)

a. 2014 Annual Report

Motion to adopt 2014 annual report with Commissioner Lippman's recommendation to state that data on ethnicity, gender, and age of complainants are self-reported.

Moved/Seconded (Sherman/Bartlett) **Motion Carried**

Ayes: Bartlett, Bernstein, Lippman, Rogers, Sherman, and Vicente.

Noes: None

Abstain: Roberts

Absent: Perezvelez

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, as both are more fully identified in the regular meeting agenda of February 25, 2015; and including review of mutual aid practices and policies.

i) Review and discuss event narratives.

ii) Continue steps in investigation, including policy findings and recommendations.

(The Commission voted on some of the recommendations of the Berkeley Police Department in its "Response to Civil Unrest – December 6th and 7th, 2014" report ("Report"). The BPD's recommendations appear in *italics*.)

Recommendation #1

We recommend the Department get clarity on the availability of regional radio interoperability for common encrypted radio channels to improve communications with mutual aid partners during large scale events.

Motion to replace recommendation No. 1 with the language from page 46 of the Report: "We recommend the Department investigate and determine the availability of regional radio interoperability for common tactical and recorded radio channels to improve communications with mutual aid partners during large scale events."

Moved/Seconded (Rogers/Vicente)

Motion to amend the recommendation by adding, at the end, "... and that the department communicate directly with EBRCS and ask for a speedy

resolution to these questions and any appropriate training that is necessary.”

Moved by Bernstein/Accepted by Rogers

Motion, as amended, Carried

Ayes: Bartlett, Bernstein, Roberts, Rogers, Sherman, and Vicente.

Noes: None

Abstain: Lippman

Absent: Perezvelez

Motion to approve Recommendation #2, #3, and #4 as written.

Moved/Seconded (Sherman/Bartlett)

Request by Commissioner Lippman to sever into three separate motions granted by Chair.

Recommendation #2

We recommend the Department use social media proactively before and during the event to communicate with participants. As dispersal orders are given over the loud speaker social media could be used to communicate more detailed information to the crowd.

Motion that Recommendation #2 be approved as written.

Moved/Seconded (Sherman/Bartlett)

Motion to approve Recommendation #2 with additional language, “All communications be clearly identified as coming from BPD,” and urging the City to adopt rules for BPD’s use of social media as quickly as possible.

Moved by Bernstein/Accepted by Sherman

Motion, as amended, Carried

Ayes: Bartlett, Bernstein, Roberts, Rogers, Sherman, and Vicente.

Noes: None

Abstain: Lippman

Absent: Perezvelez

Recommendation #3

Explore the use of BPD Negotiators to enhance communication with the crowd and crowd leadership before and throughout the event.

Motion to replace BPD’s recommendation with the following: The BPD should focus on enhancing tools for communication during the course of a demonstration to ensure it is peaceful, and that the tools include the use of BPD negotiators; the PRC urges a focus on two-way communications to facilitate peaceful demonstrations.

Moved/Seconded (Rogers/Bartlett)

Motion to amend the recommendation with additional language [see below, following Recommendation #4].

Moved by Lippman, rejected by Rogers

Substitute motion to amend the recommendation including the same additional language.

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

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

Abstain: Bartlett, Sherman Absent: Perezvelez

Original motion (Rogers/Bartlett) Carried

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, Sherman, and Vicente.

Noes: None Abstain: None Absent: Perezvelez

Recommendation #4

BPD should acquire a high quality mobile mounted public address system. This equipment would also be an asset during natural disasters.

Recommendation #4 was approved by general consent.

Motion to adopt Commissioner Lippman's language previously proposed, as a preamble to the section of recommendations regarding Communication: Police officers will seek to navigate complex and confusing crowd situations which may have mixed elements of legal and illegal, peaceful and violent behavior. Facilitation of free expression, de-escalation of tension, and peaceful resolution of conflict are primary goals of police interaction with crowds.

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

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, Sherman, and Vicente.

Noes: None Abstain: None Absent: Perezvelez

Recommendation #5

Tactical command decision making and responsibility should be relocated from the Department Operations Center to the field. We recommend coordination of squad movements happen in the field.

Motion to approve Recommendation #5 as written.

Moved/Seconded (Bartlett/Sherman) **Motion Carried**

Ayes: Bartlett, Bernstein, Roberts, Rogers, Sherman, and Vicente.

Noes: None Abstain: Lippman Absent: Perezvelez

By general consent, discussion and action on Recommendation #6 and #7 was tabled until the Commission is able to consult with the BPD.

By general consent, after discussion on two motions made, amended, and withdrawn, the Commission agreed that members would submit language on Recommendation #8 to the PRC Officer by next week for discussion at the July 8 meeting.

Recommendation #14

Explore technology that can improve the quality and timeliness of information available to decision makers.

Motion to replace the BPD's recommendation with the following: Before BPD implements the use of any additional surveillance and data gathering technology, the use of that technology shall be brought to PRC and the City Council for approval.

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

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, Sherman, and Vicente.

Noes: None

Abstain: None

Absent: Perezvelez

- c. Participation in National Night Out (August 4, 2015)

Item tabled to next meeting.

9. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

- a. Accreditation Subcommittee

Consider dissolution of subcommittee.

By general consent, the Commission dissolved the subcommittee.

- b. Regulations Subcommittee

Consider dissolution or renewal of subcommittee.

Motion to renew Regulations Subcommittee

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

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, Sherman, and Vicente.

Noes: None

Abstain: None

Absent: Perezvelez

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

11. PUBLIC COMMENT

No speakers.

Closed Session

12. REVIEW OF CALOCA DECISION

The ALJ's decision in the Caloca appeal of Complaint #2338 was discussed.

End of Closed Session

13. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Seconded (Sherman/Roberts) **Motion carried by general consent.**

Meeting was **adjourned** at 10:05 p.m. in memory of the nine people recently killed in Charleston, SC.

Action Calendar - Public Hearing

City Council 10.28.2014

COMMUNICATION No. 1299

12. Agreements With Other Law Enforcement Agencies, Police Departments or Private Security Organizations

Attachment 1, Exhibit A, Pt. 1

Attachment 1, Exhibit A, Pt. 2

From: City Manager

Recommendation:

- 1. Conduct a public hearing, and upon conclusion, adopt a Resolution approving agreements, understandings or policies existing or revised as of May 15, 2014 between the Berkeley Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations in order to maintain the current level of police resources and emergency services.
- 2. Review attached Suspicious Activity Reports provided annually as per City Council request.

Financial Implications: None

Contact: Michael Meehan, Police, 981-5900

Public Testimony: The Mayor opened the public hearing. 8 speakers.

Action: M/S/C (Bates/Moore) to close the public hearing.

Vote: Ayes – Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Maio.

Action: M/S/Failed (Arreguin/Anderson) to approve all agreements except Northern California Regional Intelligence Center (NCRIC).

Vote: Ayes – Anderson, Arreguin; Noes - Worthington, Bates; Abstain – Moore, Capitelli, Wengraf, Wozniak; Absent – Maio.

Action: M/S/Failed (Arreguin/Anderson) to hold over the NCRIC agreement for further review.

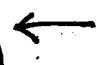
Vote: Ayes – Anderson, Arreguin, Worthington; Noes – Capitelli, Wozniak, Bates; Abstain – Moore, Wengraf; Absent – Maio.

Action: M/S/C (Capitelli/Bates) to:

- 1. Adopt Resolution No. 66,836–N.S. to adopt a Resolution approving agreements, understandings or policies existing or revised as of May 15, 2014 between the Berkeley Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations in order to maintain the current level of police resources and emergency services.

- 2. Review General Order N-17 in first quarter of 2015 including consultation with the Police Review Commission.

Vote: Ayes – Moore, Capitelli, Wengraf, Wozniak, Bates; Noes – Worthington; Abstain – Anderson, Arreguin; Absent – Maio.



PRC 5.6.2015

7. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

a. Suspicious Activity Reports Subcommittee

Proposed recommendation on revisions to General Order N-17; other updates.

Motion to adopt the recommendation of the Suspicious Activity Reporting Subcommittee to revise General Order N-17, as submitted.

Friendly amendment (Lippman, accepted by Finley): Omit the prefatory language.

Moved/Seconded (Finley/Vicente) Motion Carried

Ayes: Finley, Lippman, Rogers, Sherman, and Vicente.

Noes: None **Abstain:** None **Absent:** Bartlett, Bernstein, Perezvelez

Motion to direct PRC Officer to write a letter to the Chief of Police, with a copy to the City Manager, requesting that he provide full SARs on a quarterly basis to the PRC for review; and if the full reports cannot be disclosed, to provide the statutory, regulatory, or policy that requires withholding.

Moved/Seconded (Vicente/Rogers) Motion Carried

Ayes: Finley, Lippman, Rogers, Sherman, and Vicente.

Noes: None **Abstain:** None **Absent:** Bartlett, Bernstein, Perezvelez

sent to Capt. Harris 5-20-2015

Revisions to G.O. N-17 adopted by the PRC May 6, 2015

Insert new wording in Paragraph 4, the first paragraph under the Limitations heading, to read:

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

Insert the above-cited sections of the Code of Federal Regulations as subsections to Paragraph 4:

- (a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.
- (b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

Add a new Paragraph 6 to the Limitations heading, after Paragraph 5 and before the Policy heading (will require current Paragraphs 6 through 19 to be re-numbered).

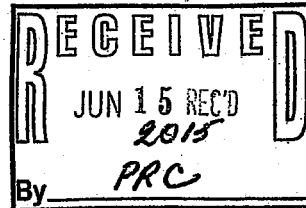
- 6 - SARs must not be submitted based on ideology, social or political opinion or advocacy or religious beliefs or association with a particular group. Criminal activity that would not ordinarily result in a SAR does not become worthy of a SAR report when the subject's speech or expression indicates a particular ideological viewpoint or association.

June 10, 2015

Michael Meehan
 Chief of Police
 City of Berkeley
 2180 Milvia Street
 Berkeley, CA 94704

Tesfaye W. Tsadik
 1736 Franklin Street, 10th Floor
 Oakland, CA 94612
 Telephone (510) 839-3922

Re: **Citation # 155474**
Location: Hopkins at Gilman



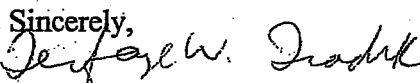
Dear Chief M Meehan;

I am writing this letter to complaint and get a response regarding your officers "erroneous" completion of the Notice to Appear Form. I was stopped allegedly for failure to stop at a stop sign, at Hopkins and Gilman, at around 8:00 a.m. on Sunday morning. May 31, 20015. After I returned home that day, I noticed that on the Notice to Appear Form, on the Race column the officer entered "O", which I believe stand for "Others- neither black nor white. I am offended and insulted by this designation. The citation is attached as Exhibit "A". I am black and not "others" No one who looks at me would designate me anything else other than black. This immediately prompted in my mind why would a well trained officer would make such a blatant "mistake".

I understand that the Notice to Appear Form, where the governmental authorities collect the race of citizens the police encounter may be useful statistical information for policies related to law enforcement. In fact, I have heard or read statistical information that suggest police officers disproportionatley stop (arrest) blacks for minor traffic infractions. Correctly collected information may provide some useful information to train and, if necessary, to reign on bad officers. If the data collected is tampered or improperly gathered, the information loses it reliability/credibility except for those who cook the numbers to prove their point.

The question still remains why this particular officer made this obvious "mistake". I assume, at the minimum, your officers are trained on know how to fill out this form and are familiar with various racial categories. I hate to entertain the notion that this may be a deliberate policy and practice of the police department/city of Berkeley to rig the statistics regarding the demographic of their traffic citations and that the officer is merely faithfully implementing such policy.

Looking forward to hearing from you.

Sincerely,

 Tesfaye w. Tsadik

cc: City Manager
 Police Review Commission

Berkeley Police Department

Misdemeanor

155474

NOTICE TO APPEAR

Traffic Non-Traffic

1 Date of Violation: 7/27/74 Time: 7:45 PM AM/Day of Week: TH Case No.: 155474

2 Name (Last, Middle, First): WILSON, JAMES Operator Responsibility (Veh. Code § 4000)

3 Address: 1000 14th St State: CA ZIP Code: 94607

4 City: Berkeley

5 Driver's Lic. No.: 1A123456 State: CA Age: 24 Birth Date: 7/27/50 Juvenile (Phone No.):

6 Sex: M Hair: B Eyes: B Height: 5'10" Weight: 170 Race: W Other Description:

7 Vehicle No. or VIN: 1A123456789 State: CA COMMERCIAL VEHICLE (Veh. Code § 15010(b))

8 Year of Veh. Make: 74 Model: Mustang Body Style: 2dr Color: Black HAZARDOUS MATERIAL (Veh. Code § 355)

9 Evidence of Financial Responsibility: Yes Same as Driver

10 Registered Owner or Lessee: James Wilson Same as Driver

11 Address: 1000 14th St State: CA ZIP Code: 94607

12 City: Berkeley

13 Yes No Constable Violation (Veh. Code § 40610) Description: Code 22492 - 5th W. 5th St. M.I. Booking Required Misdemeanor or Infraction (Grade): M.I.

14 Yes No Description: Code 22492 - 5th W. 5th St. M.I. Booking Required Misdemeanor or Infraction (Grade): M.I.

15 Yes No Description: Code 22492 - 5th W. 5th St. M.I. Booking Required Misdemeanor or Infraction (Grade): M.I.

16 Yes No Description: Code 22492 - 5th W. 5th St. M.I. Booking Required Misdemeanor or Infraction (Grade): M.I.

17 Speed Approx: 35 P.P./Max Spd: 30 Veh. Lmt. Sate: 30 Radar: Yes Continuation Form Issued: N

18 Location of Violation: 5th St. W. 5th St. Collision: S

19 Comments (Weather, Road & Traffic Conditions): Clear

20 Violations not committed in my presence, declared on information and belief.

21 I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

22 Arresting/Citing Officer: J. Wilson Serial No.: 155474 Date Of: 7/27/74

23 **WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW**

X Signature: James Wilson

24 WHEN: CONTACT COURT CLERK AFTER 30 DAYS BUT NO LATER THAN 8/27/74 AM/PM

25 WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE

26 Where: Superior Court of California, Alameda County

Criminal: Wiley W. Manual Courthouse, 661 Washington St, Oakland, CA 94607, 510-827-4702

Oakland Traffic Court Clerk: Wiley W. Manual Courthouse, 661 Washington St, First Floor, Oakland, CA 94607, 510-827-4701

27 To Be Notified: You may arrange with the clerk to appear at a night session of the court

DEFENDANT COPY SEE REVERSE TR-130

Judicial Council of California Form Rev. 11/67 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40500, Pen Code, § 853.9)

Exhibit "A"

BERKELEY POLICE DEPARTMENT

DATE ISSUED: 12/31/2014

GENERAL ORDER B-4

SUBJECT: FAIR AND IMPARTIAL POLICING

PURPOSE

- 1 - This policy is intended to reaffirm the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way.

California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This Department policy explicitly prohibits racial profiling and other biased policing. This policy describes the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in making law enforcement decisions.

DEFINITION

- 2 - Bias based policing: Any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being engaged in criminal activity.

POLICY

- 3 - Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause.

Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities except when officers are:

- (a) seeking specific person(s) who have been described in part by any of the above listed characteristics, or
- (b) the person(s) are being sought for a specific law enforcement purpose.

Discrimination or harassment based on a trait or class described above is considered a "serious allegation" of misconduct (Police Regulations 200 and 201).

BERKELEY POLICE DEPARTMENT

DATE ISSUED: 12/31/2014

GENERAL ORDER B-4

Responsibility to Report and Take Corrective/Investigative Action

- 4 - Employees who become aware of another employee engaging in biased policing shall adhere to reporting procedures set forth in Police Regulation 200.
- 5 - A supervisor or command officer who becomes aware of biased policing shall adhere to notification and administrative procedures set forth in Police Regulation 201 and General Order P-26.
- 6 - All reports of biased policing shall be investigated in accordance with General Order P-26.

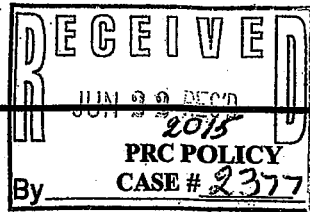
Training

- 7 - All sworn officers will participate and successfully complete courses of instruction on the subject of "racial profiling" approved by the Commission on Peace Officer Standards and Training (POST).
- 8 - The Personnel and Training Bureau shall schedule training on the subject of "racial profiling" at an interval prescribed by POST for continuing education.

Demographic Data Procedures

- 9 - All sworn officers shall provide demographic statistical data for:
 - (a) All vehicle detentions.
 - (b) All pedestrian detentions up to five persons.
 - (c) Consensual contacts are not included under this directive.
- 10- Officers shall provide demographic statistical data when closing the related Computer-Aided Dispatch (CAD) System event.

References: Penal Code §13519.4
General Orders C-2, P-26 and R-31
Police Regulation 200, 201, 234, 248, 250 and 273
A Resource Guide on Racial Profiling Data Collection Systems from the
United States Department of Justice, Published in 2000



POLICY COMPLAINT FORM

Police Review Commission

1947 Center Street, 3rd Floor, Berkeley, CA 94704

Website: <http://www.ci.berkeley.ca.us/prc>

E-mail: prc@ci.berkeley.ca.us

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received

6-22-15

1

Name of Complainant: Denney Carol Roth
Last First Middle

Home Address: 1970 San Pablo #4, Berkeley CA 94702
Street City State Zip

Home Phone: 510 548-1512 Alt Phone: _____

E-mail address: cdenney@lqc.org

Occupation: Member relations asst. Gender: F Age: 61

Ethnicity (For statistical purposes only):

- Asian
- Black
- Caucasian
- Hispanic/Latino
- Multiethnic: _____
- Other: _____

2

Please identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

Public health ordinances regarding second hand smoke and/or aerosol exposure are not even communicated, let alone respected or utilized as intended by the city council.

3

Please provide a factual description of the incident that forms the basis of your complaint. Please be specific and include what transpired, and how the incident ended. see attached

Location of Incident (if applicable) Civic Center Park, Martin Luther King

Date & Time of Incident (if applicable) around 2:00pm @ Center
June 17, 2015

COMMUNICATION No. 4160

Revised 1-13-15

4

What changes to BPD policy, practice, or procedure would you propose?

See attached

5

Is there any additional information you can provide the PRC about your complaint?

6

VERIFICATION

I hereby certify that, to the best of my knowledge, the statements made herein are true.

Carl Drey
Signature of Complainant

6-18-2015
Date signed

7

How did you hear about Berkeley's Police Review Commission?

- Internet
- Publication: _____
- Referral: _____
- Other: _____

For Office Use Only

Complaint Received By _____

Policy Complaint regarding e-cigarette ordinance and communication issues

From: Carol Denney

To: the Police Review Commission

3. On Wednesday, June 17, bike officers Schultz and Roberts were in Civic Center park in the mid-afternoon when I noticed someone smoking nearby. I asked them if they could please instruct the person that our parks are smokefree.

Officer Schultz insisted that it was not a conventional tobacco cigarette, but rather an electronic cigarette and thus not covered by Berkeley's law. I told him that the law had been amended to include electronic cigarettes, but he insisted that this was not the case. His partner also dismissed the idea that electronic cigarettes were included in the law.

They were dismissive and sarcastic to me, but that is not my concern. I had confirmed within the hour that yes, the ordinance which was adopted by the Berkeley City Council on September 30, 2014, was enacted 30 days later on October 30, 2014. This is a matter of public record.

This is the second time in only a handful of years in which I have encountered police officers who have no idea what the operative laws are governing secondhand smoke in Berkeley and actively resist even hearing information regarding relevant law. I appreciate that for them it seems like a low priority, but for some of us, including children, pregnant women, and people with immune deficiencies, cardiovascular and pulmonary difficulties or histories of cancer, it is a serious matter.

4. BPD's chain of communication needs re-examined in light of the fact that important life-saving legislation is being treated as irrelevant or not communicated at all to police.

I would also suggest that the serious damage to public health policy by police officers who have for nearly a year treated the electronic cigarette amendment to our secondhand smoke ordinance as though it didn't exist needs to be actively addressed by the police themselves as they patrol. While secondhand smoke violations may remain a lower priority than active police shootings, the Berkeley Police need to make up for the serious confusion they have caused in our community and the needless exposure we have suffered in consequence.

Carol Denney
1970 San Pablo #4
Berkeley, CA 94702
510-548-1512

12.70.020 Definitions.

- A. "Bar" means any area or a room utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the serving of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages. Although a restaurant may contain a bar, the term bar shall not include a restaurant or any dining area. Although a nightclub may contain a bar, the term bar shall not include a place of entertainment commonly known as a nightclub irrespective of the fact that payment for entertainment may be made through the purchase of alcoholic beverages.
- B. "Business" means a sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- C. "Commercial area sidewalk" means any sidewalk in front of or adjoining any property designated on the City's Official Zoning Map appended to the City's Zoning Ordinance with a "C" prefix.
- D. "Common area of multi-unit residence" means any enclosed area or unenclosed area that may be used by more than the residents of a single unit or room, including but not limited to shared lobbies, courtyards, lounges, hallways, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, living and dining areas, kitchens, bathrooms, laundry rooms, lobbies, waiting rooms, and television rooms.
- E. "Contract employee" means any person who performs work for a business or non-profit entity, but who is paid by an agency which contracts with said business or non-profit entity to supply such workers.
- F. "Dining area" means an enclosed area containing a counter or table upon which meals are served.
- G. "Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances, including but not limited to any device manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.
- H. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity. Employees include those employed full-time, part-time, temporary or contracted for from a third party.
- I. "Employer" means any person, partnership, corporation, including a municipal corporation, business entity or non-profit entity, who employs the services of one or more individual persons.

- J. "Enclosed" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.
- K. "Health care facility" means all public and private health care facilities, including, but not limited to, hospitals, health clinics, mental health clinics, physician's offices, and dentist's offices.
- L. "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.
- M. "Multi-unit residence" means a building or portion thereof that contains more than one unit.
- N. "Non-profit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds of which are committed to the portion of objects or purposes of the organization and not for private gain.
- O. "Open to the public" means available for use by or accessible to the general public during the normal course of business conducted by either private or public entities.
- P. "Place of employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, conference and class rooms, employee cafeterias, employee lounges and restrooms, hallways, and work areas. A private residence is not a place of employment unless it is used as a childcare or health care facility.
- Q. "Public place" means any enclosed or designated outdoor areas in Section 12.70.030 to which the public is invited or in which the public is permitted, including but not limited to:
1. Banks.
 2. Educational facilities.
 3. Health care facilities.
 4. Public transportation facilities.
 5. Reception areas.
 6. Restaurants.
 7. Retail stores.
 8. Retail service establishments.
 9. Retail food production and marketing establishments.
 10. Waiting rooms.
 11. A private residence is not a public place unless used as a licensed childcare, licensed adult care or health care facility.

R. "Recreational area" means any outdoor area, owned or operated by the City of Berkeley, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, tot play areas, playgrounds, or sports fields, walking paths, gardens, hiking trails, bike paths, athletic fields, skateboard parks and amusement parks;

S. "Restaurant" means any coffee shop, cafeteria, short order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or catering establishment, and any other eating establishment, organization, club (including veterans club), boardinghouse, guest house or political subdivision, the primary function of which is to give, sell or offer for sale, food to the public, guests, patrons, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term restaurant shall not include a tavern or cocktail lounge if said tavern or cocktail lounge is a "bar" as defined in subsection A of this section.

T. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and tobacco accessories and in which the sale of other products is merely incidental.

U. "Service area" means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, waiting rooms, and cab stands.

V. "Smoke" or "smoking" means and includes either (1) inhaling or exhaling upon, burning, or carrying any lighted smoking equipment for tobacco, nicotine or any other plant or product used for personal habit commonly known as smoking or (2) inhaling or exhaling upon, vaporizing, or otherwise using any electronic smoking device.

W. "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.

X. "Senior citizen residence" means an apartment house, retirement home, boarding house, or residence hall which is developed for or substantially rehabilitated or renovated for senior citizens.

Y. "Tot play area" means a designated play area within a public park designed for use by children under five years of age. Where such areas are not contained by a fence, the boundary of a tot play area shall be considered ten feet from the perimeter of the play area as defined by the edge of the resilient surface safety material surrounding the sand area.

Z. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, including but not limited to a dwelling unit as defined in Chapter 23F.04, an apartment, a common interest development such as a condominium, townhouse or tenant-in-common, a room in a group living accommodations as defined in Chapter 23F.04, a room in a senior citizen residence, a room in a nursing home, or assisted living facility, a dormitory room, and a Single

Residential Occupancy (SRO) room. Unit shall include any associated exclusive-use enclosed or unenclosed areas, including but not limited to a private balcony, porch, deck, or patio.

AA. "Work area" or "workplace" means any area of a place of employment, including outdoor construction sites, in which two or more employees are assigned to perform work for an employer. (Ord. 7369-NS § 2, 2014; Ord. 7321-NS § 2, 2013; Ord. 7026-NS § 1, 4/22/08; Ord. 7009-NS § 2, 12/11/07; Ord. 6569-NS § 2, 2000; Ord. 6358-NS § 1 (part), 1996; Ord. 6161-NS § 1 (part), 1992; Ord. 5743-NS § 1 (part), 1986; Ord. 5713-NS § 2 (part), 1986)

Compile Chapter

The Berkeley Municipal Code is current through Ordinance 7402-NS, passed May 12, 2015.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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City Clerk (<http://www.cityofberkeley.info/clerk>) , 2180 Milvia Street, Berkeley, CA 94704
Questions or comments? Email: clerk@cityofberkeley.info (<mailto:clerk@cityofberkeley.info>) Phone: (510) 841-5000

12.70.030 Locations where smoking is prohibited.

Smoking shall be prohibited in all public places including but not limited to the following unless otherwise provided and in all places where the owner or person in charge of the establishment has posted a nonsmoking sign:

- A. Restaurants, including any outdoor seating area provided by or attached to a restaurant;
- B. Elevators in buildings generally open to the public, including elevators in apartment buildings, irrespective of the number of living units in such apartment buildings;
- C. In all rooms, wards, waiting rooms, lobbies and public hallways of every health care facility. The exemptions set forth in Section 12.70.050 shall not apply to this subsection;
- D. Within every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City during such time as a public meeting is in progress;
- E. In waiting rooms, lobbies, public hallways and all other areas of every building under direct or indirect control of the City;
- F. Within all parts of any buildings which are primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance, including nightclubs, and within any room, hall or auditorium that is occasionally used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance during the time that said room, hall or auditorium is open to the public for such exhibition; provided, however, that smoking is permitted on a stage when such smoking is part of a stage production;
- G. In museums, libraries, aquariums and galleries;
- H. In all enclosed parts of hotels, motels and resorts open to the general public, including, but not limited to guest rooms, registration areas, lobbies, hallways and conference rooms; provided, however, that 25 percent of the rooms rented to guests may be maintained as fixed smoking rooms;
- I. In buses, trains, taxicabs and other means of public transit while operating within the boundaries of the City, and in ticket areas and waiting rooms of transit terminals and stations;
- J. In sports arenas and outdoor theaters;
- K. Within all areas open to the public in business establishments dealing in goods or services and not otherwise mentioned in this section, including, but not limited to food and grocery stores, drugstores, supermarkets, automobile showrooms, banks, savings and loan offices, insurance offices, and attorneys offices;
- L. Public restrooms;
- M. Service areas;

N. All enclosed areas available to and customarily used by the general public in all businesses or non-profit entities patronized by the public, including, but not limited to, attorney offices and other offices, banks, laundromats, hotels and motels;

O. In all enclosed common areas in senior citizen residences, including but not limited to, laundry rooms, lobbies, lounges, hallways, waiting rooms, television rooms and dining areas. The City Council finds that smoking should be prohibited in senior citizen residences in particular in light of the increased health risks and discomfort which secondhand smoke may create for senior citizens who may be confined to limited areas within their residences;

P. Bars;

Q. Video arcades, card rooms, game rooms, pool halls, dance halls, bingo parlors and other amusement centers;

R. Parking garages;

S. All outdoor areas used for public seating in conjunction with any retail or food establishment in an exclusively pedestrian area that is enclosed on at least three sides, whether or not provided by or attached to a restaurant;

T. Recreational areas;

U. Within 50 feet of any entrance, exit, operational window, or air intake vent to any building that is used as a health care facility, licensed child or adult care facility, or senior center, and within 25 feet of any entrance, exit, operational window, or air intake vent to any other building that is open to the public, except while passing on the way to another destination. For purposes of this section, entrance or exit shall mean an opening into a building from a contiguous street, sidewalk, walkway or parking area, and "air intake vent" shall mean an opening into a building that draws in air from the outside as part of a building ventilation system;

V. Within 25 feet of any bus stop;

W. Commercial area sidewalks;

X. Licensed child and adult care facilities; and

Y. Senior centers. (Ord. 7321-NS § 3, 2013; Ord. 7009-NS § 3, 12/11/07; Ord. 6793-NS § 1 (part), 2004; Ord. 6713-NS § 1, 2002; Ord. 6569-NS § 3, 2000; Ord. 6407-NS § 1, 1998; Ord. 6397-NS § 1, 1997; Ord. 6358-NS § 2, 1996; Ord. 6161-NS § 1 (part), 1992; Ord. 5743-NS § 2 (part), 1986; Ord. 5713-NS § 2 (part), 1986)

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(<http://www.ci>)
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(http

12.70.110 Violations and penalties.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to comply with its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- C. Any person who violates any provision of this chapter shall be guilty of an infraction as set forth by Chapter 1.20 of this code. (Ord. 6161-NS § 2 (part), 1992; Ord. 5713-NS § 2 (part), 1986)

Compile Chapter

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Questions or comments? Email: clerk@cityofberkeley.info (mailto:clerk@cityofberkeley.info) Phone: (510) 862-3100

BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: September 23, 2008

NUMBER: 276

**SUBJECT: CITY OF BERKELEY SMOKING RESTRICTIONS
(BMC CHAPTER 12.70)**

PURPOSE

This Training and Information Bulletin describes the City of Berkeley ordinance regarding smoking restrictions and tobacco control policies, and the expanded locations at which smoking is prohibited, **including on commercial sidewalks and in parks.** The City Council's findings are included as background and rationale for the recently amended ordinance, and to promote understanding of the described enforcement recommendations.

BACKGROUND

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are elderly people. Individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, broncho-constriction, and broncho-spasm.

THE SMOKING POLLUTION CONTROL ORDINANCE

Legislative Intent

The intent of the City Council in enacting this ordinance was:

- (1) Protect public health and welfare by prohibiting smoking in public places, places of employment, and specially designated public play areas where small children are at risk of choking on or ingesting cigarette butts and other toxic tobacco litter;
- (2) Guarantee the rights of nonsmokers to breathe smoke-free air, and to recognize that the right to breathe smoke-free air shall have priority over the desire to smoke; and,
- (3) Promote self-enforcement through educational outreach regarding smoking prohibitions.

Definitions

- **"Smoke" or "smoking"** means and includes inhaling or exhaling upon, burning or carrying any lighted smoking equipment for tobacco, or any other plant or product used for personal habit commonly known as smoking.
- **"Commercial Area Sidewalk"** means any sidewalk in front of or adjoining any property designated on the City's Official Zoning Map appended to the City's Zoning Ordinance with a "C" prefix, which are listed on the Map as General Commercial, Central Commercial, Elmwood Commercial, North Shattuck Commercial, South Area Commercial, Solano Avenue Commercial, Telegraph Commercial, and West Berkeley Commercial.
- **"Recreational Area"** means any outdoor area, owned or operated by the City of Berkeley, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, tot play areas, playgrounds, or sports fields, walking paths, gardens, hiking trails, bike paths, athletic fields, skateboard parks and amusement parks.
- **"Health care facility"** means all public and private health care facilities, including, but not limited to, hospitals, health clinics, mental health clinics, physician's offices, and dentist's offices.
- **"Open to the public"** means available for use by or accessible to the general public during the normal course of business conducted by either private or public entities.
- **"Service area"** means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, waiting rooms, and cab stands.
- **"Work area" or "workplace"** means any area of a place of employment, including outdoor construction sites, in which two or more employees are assigned to perform work for an employer.

Regulated Locations

The Smoking Pollution Control Ordinance is codified in Berkeley Municipal Code §12.70, enacted in 1986 and recently revised in April 2008. The Ordinance prohibits smoking in all public places including, but not limited to, the following locations:

- On sidewalks in all commercial zones.
- At parks and recreational areas (including picnic areas, tot play areas, playgrounds, sports fields, walking paths, gardens, hiking trails, bike paths, athletic fields, and skateboard parks).

- **At services areas (including ATMs, ticket lines, bus stops, and cab stands).**
- **Restaurants, including any outdoor seating areas provided by or attached to a restaurant.**
- **Bars, video arcades, card rooms, game rooms, pool halls, dance halls, bingo parlors, and other amusement centers.**
- **In enclosed public places (banks, schools, supermarkets, drugstores, other retail establishments, restaurants, health care facilities, public transportation facilities).**
- **At outdoor places open to the public, including outdoor theaters, stadiums, sports arenas, swimming pools.**
- **Parking garages.**
- **At work areas or workplaces, including all enclosed facilities within a place of employment (e.g., common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, hallways, cafeterias, employee lounges, stairs, restrooms, vehicles) and at outdoor worksites having two or more employees.**
- **Within 50 feet of any door or operational window or air intake vent to any building used as a health care facility, hospital, licensed child or adult care facility, or senior center.**
- **Within 25 feet of any door or operational window or air intake vent to any building that is open to the public.**
- **Within 25 feet of any bus stop.**
- **Licensed child and adult care facilities and senior centers.**
- **Common areas of multi-unit housing and senior citizen residences.**
- **Inside all public transit (including taxis, buses, and trains) while operating in Berkeley, and in ticket areas and waiting rooms of transit terminals and stations.**

Ashtrays shall not be located within 50 feet of an entrance or exit to a health care facility, licensed child or adult care facility, or senior center, or within 25 feet of an entrance or exit to any other building that is open to the public.

Specific descriptions of effected locations and modes of transportation can be found in BMC §12.70.030.

Places Not Regulated By Ordinance

The Ordinance does not regulate smoking in retail tobacco stores or private residences, unless the residence is used as a **licensed child or adult care facility, a senior center,**

or a health care facility. Notwithstanding this exemption, the owner or person in control of the business may designate the entire establishment as nonsmoking.

Required Signage

The Ordinance requires the posting of "No Smoking" or "Smoke Free" signage at or near regulated locations. Though a person responsible for posting signage may be held liable for violating the signage requirement, persons who smoke in protected places may not use the presence or absence of signage as a defense to avoid responsibility for their violation.

Violations and Penalty

Set forth in BMC §12.70.110, any person who violates the provisions of this Ordinance shall be guilty of an infraction and subject to fine. The following subsections describe particular unlawful activity:

- (A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this Ordinance to fail to comply with its provisions.
- (B) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance.

ENFORCEMENT

The Berkeley Police Department (or any other law enforcement agency) is authorized to enforce BMC Chapter 12.70. Self-enforcement and gaining compliance through education and responsible party cooperation is preferred to issuing citations. Police officers who observe violations of the ordinance should educate and inform violators of the law's provisions and request compliance. In most cases, advice and warning should prove sufficient. However, in some instances, specifically when encountering a known, chronic violator, or after repeated warnings have failed to have the desired effect, an officer may exercise discretion and issue a citation. Similarly, should a community member be insistent in their request to have a citation issued, and an officer observes the violation, a citation may be written.

The Health and Human Services Department is authorized to enforce the provisions as to facilities inspected and permitted by the Division of Environmental Health.

The Ordinance provides: "Any owner, manager, operator or employee of any establishment controlled by this (Ordinance) shall have the right to inform persons violating this (Ordinance) of the appropriate provisions thereof." Similarly, private citizens may "bring legal action" to enforce this Ordinance. As in all aspect of our profession, officers should be responsive to public requests for law enforcement assistance.

SUMMARY

The City of Berkeley's Smoking Pollution Control policies are designed to reduce the public health hazards created by smoking and breathing secondhand smoke in public places, and to protect the right of nonsmokers to breathe smoke-free air in public places. The ordinance seeks to enhance public health and welfare through considered regulation and promotion of self-enforcement through educational outreach, with acknowledgement of and respect for an adult's choice to smoke tobacco products in private places. Police Department cooperation in this effort will serve to further these goals.



Douglas N. Hambleton
Chief of Police


Reference: Berkeley Municipal Code §12.70

Appendix A, City of Berkeley Zoning Maps

Note for PRC agenda packet of July 8, 2015: To save resources, and because of its remote relevance to the policy complaint, Appendix A, consisting of five colored pages, is not included this packet. The PRC Officer will have Appendix A available at the meeting.

SUMMARY

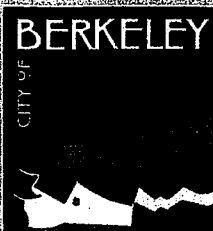
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Douglas N. Hambleton
Chief of Police

Reference: Berkeley Municipal Code §12.70

Appendix A, City of Berkeley Zoning Maps

Note for PRC agenda packet of July 8, 2015: To save resources, and because of its remote relevance to the policy complaint, Appendix A, consisting of five colored pages, is not included this packet. The PRC Officer will have Appendix A available at the meeting.



Commissioner Attendance Report

For the Period January 1 through June 30, 2015

(Scroll down for information on completing this form.)

COMMUNICATION No. 4272

Commission Name POLICE REVIEW COMMISSION
 Secretary Name Katherine J. Lee

Commissioner Name	# of Meetings Attended	# of Meetings Not Attended/Absent	% of Meetings Attended	Meetings Absent* (List dates, ex. 1/8)	Excused Absences* (List dates, ex. 1/8)
1. Bartlett, Benjamin	6	3	67%		
2. Bernstein, Alison	6	4	60%		
3. Lippman, George	10	0	100%		
4. Perezvelez, George	9	1	90%		
5. Roberts, Terry	1	0	100%		
6. Rogers, Ann	8	2	80%		
7. Sherman, Michael	8	1	89%		
8. Vicente, Bulmaro	7	2	78%		
9.					

* Only complete if the commissioner has missed 50% or more of regular meetings.

Was any member absent from 3 consecutive regular meetings? (otherwise, leave blank)

Commissioner Name	Dates of Missed Meetings (List dates, ex. 1/8)	Dates of Leave(s) of Absence (List dates, ex. 1/8)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

Instructions for Completing the Form

Only report the attendance for commissioners that are *active* as of the end of the reporting period. Do not include temporary appointments or commissioners that have already been terminated from the commission.

Report regular meetings only! Do not include special meetings or subcommittee meetings.

In the "# of Meetings Attended" column, input the number of meetings the commissioner attended (ex. "2"). In the "# of Meetings Not Attended/Absent" column, input the number of meetings the commissioner did not attend or was absent (ex. "4"). These two columns added together should equal the total number of meetings held during the reporting period (ex. 2 + 4 = 6).

If the "% of Meetings Attended" column reflects 50% or less, complete the "Meetings Absent" and "Excused Absences" columns. If the commissioner attended 51% or more of meetings, do not complete these columns.

Only complete the lower portion of the form if a commissioner was absent from 3 consecutive regular meetings. If a commissioner was absent from 3 consecutive regular meetings, list the individual's name, dates of meetings missed, and dates of leaves of absence (if any).

Additional Attendance Rules

- a) A member must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purpose of attendance.
- b) If a commissioner was appointed part way through the reporting period, the "meetings attended" and "meetings not attended/absent" is based on the number of regular meetings held since their appointment and through the end of the reporting period. These commissioners must have attended more than half of all regular meetings held since being appointed.
- c) The City Clerk shall note any commissioner reported as being absent from 50% or more of all regular meetings held during the six (6) month period reported. The appointment of the commissioner shall expire on the date the attendance report is received by the City Clerk.
- d) Commissioners may be granted a leave of absence of up to three months by their appointing Councilmember. These approved leaves do not count against lack of attendance.
- e) Commissioners may request that an absence from a meeting be excused due to a conflict resulting from observance of religious or cultural holidays. This request needs to be made on the "Excused Absence Form" and submitted to the Secretary prior to the meeting for which the commissioner's absence is to be excused. The Secretary then excludes the absence from the semi-annual attendance report. (BMC 3.02.030)

COMMISSIONERS SEMI-ANNUAL ATTENDANCE REPORT WORKSHEET JANUARY THROUGH JUNE 2015

10 meetings

No.	Name	Meetings		1-14	1-28	2-11	2-25	3-11	3-25	4-8	4-22	5-13	5-27	6-10	6-24
		Attended	Absent												
1.	BARTLETT	6	3	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
2.	BERNSTEIN	6	4	✓	Cancelled	Cancelled	✓	✓	✓	NO	✓	✓	✓	✓	✓
3.	LIPPMAN	10	0	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
4.	PEREZVELEZ	9	1	✓			✓	✓	✓	✓	✓	✓	✓	✓	NO
5.	ROBERTS	1	0	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
6.	ROGERS	8	2	✓			✓	✓	NO	✓	✓	✓	NO	✓	✓
7.	SHERMAN	8	1	✓			✓	✓	✓	✓	NO	✓	✓	✓	✓
8.	VICENTE	7	2	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
9.															

Commission\Reports\Attendance Report-Semi Annual Attendance Rpt Blank Worksheet

Charles and Kikuko Jackson 2714 McGee Avenue Berkeley, California 94703

TO: City of Berkeley Police Department, Copy to City Clerk Berkeley City Council, Berkeley Police Review Commission

April 25, 2015

Re: Assaulted and Robbed in Grove Street Park

Attacked, Assaulted and Robbed by approximately 5 to 7 young men of different ethnics alleged informants in the south Berkeley grove street park while scores stood by watching.

It was hot and sunny about 4pm when I entered the park by the basketball court bleachers the mostly young people were playing ball and while others were sitting in the bleachers watching them play. I believe that the 5 to 7 young men were already stalking me since early that day and that the attack against me was provoked and the robbery staged and the police arrived within minutes after being called by their own informants on their walky talky continuous video cameras.

I left my home pushing my bicycle to return 3 overdue library books located across MLK Jr way, directly across from the Grove street park on Russell street where the attack assault robbery against me occurred. There were approximately, 4 black, 2 brown and 1 white young toughs involved in the robbery.

I have been under constant harassment stalking and surveillance for nearly 14 years now. Along with my wife, friends and my now deceased mother there in contra costa county. And we have been under extreme surveillance, intimidation and harassment.

Therefore when I walked past the park and basketball court I observed being videotaped by 2 to 3 of the same young men who attacked and robbed me of my \$399 new Lumix 270 digital/video camera a few minutes later. I continued on to the library and returned my books. On my way back I stopped at the ball court pulled out my new camera to photograph and video the players and then I slowly panned over to the bleachers to video shoot the young informants who had photographed me just minutes earlier and before I could return my camera to the bag inside my backpack, I could see a large group of men already reaching for my camera and backpack and pulling me off of my bike as me and my bike went down to the hard concrete basketball court and I was unable to hold on to the straps of my camera while the robbers jerked the camera out of my grasp as I lay battered and injured on the ground.

COMMUNICATION No. 4392

The BPD was called and arrived within minutes. They were called by a female informant who witnessed and videotaped the entire assault and robbery. I identified one youngster who was handcuffed and remained at the scene with the officers and their 6 vehicles.

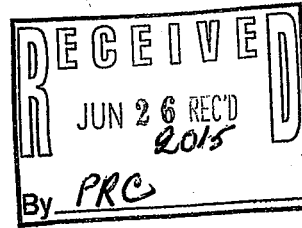
I was never able to find out who the man was that I identified or the informant who called to report. The BPD will not give me the names of anyone involved nor give me any information. We intend to file both criminal and civil action against the man I identified as one of the persons who assaulted and robbed me that day. The police will not share with me any information nor will they give me the names of the informant, who has the video tape, or give me the name of the youngster who robbed me or give me any info regarding the progress of the case or about my property that was taken from me. They continue to harass, follow and videotape our family.

COPY

Complaint Report To: City of Berkeley Police Department, cc to Clerk, City Council and Berkeley Police Review Commission.

June 1, 2015

Re: Attack and Assault of Senior Citizen in Berkeley



Dear Chief Meehan:

On or about 20 May 2015, I was walking and pushing my bicycle westbound on Oregon beside the Grove street park tennis court. At a glance I could see about 3 or 4 men in the bleachers near the basketball court. When I was about ten yards from MLK Jr. Way there suddenly appeared from around the corner and walking fast and heading straight towards me a 200 lb. man, fist clenched and in a big hurry.

Just then I could see that it was a man that had promised to do violence against me and my family in 2010 and again in 2012 and he threatened me and my wife Kikuko in the recent past, he calls himself, "big willie", and he has renewed this threat against our family 6 months ago in front of our house at 2714 Mcgee, avenue ,Berkeley,ca

First, big willie grabbed the handle bars of my bicycle and started to push the bike backwards hard into me and at the same time he punched and attempted to kick me until I fell backwards on the ground and the bicycle landed on top of me there on the sidewalk.

The big bully kept right on walking west bound on Oregon street saying, "get that shit away from me man!" meaning get myself and my bike out of his way.

The man sits and sells the community newsletter at eastside of Bowl Mkt on Shattuck almost everyday.

I want to file charges against this known bully for assault and battery and elder abuse , (age 78 at time of assault), we are asking the city of Berkeley police dept to tell us how to do it. And since the city of Berkeley refuses to protect us against these bullies, by the way, are these bullies and informants in the employ of the city of Berkeley? The city clerk?The BPD? What does the chief of police suggest that we do to protect ourselves ?

Please advise

Yours Truly

Charles and Kikuko Jackson 510-848-3755 2714 Mcgee Avenue, Berkeley, CA 94703

COMMUNICATION No. 4392

100

From: Rasheed Shabazz [mailto:hopein510@gmail.com]
Sent: Tuesday, June 30, 2015 12:49 PM
To: PRC (Police Review Commission)
Subject: re: Questions for BPD & December Report

Greetings Katherine,

My name is Rasheed Shabazz. I'm a freelance journalist who asked a few questions during the PRC meeting mid-June.

I had not emailed my questions as suggested. If possible, I'd still humbly request commissioners ask these questions of BPD.

Please share this correspondence with members of the body.

Thank you!

Rasheed

Questions for PRC Commissions to ask BPD

Was the use of smoke/teargas within current department policy?
What prevented communication between the chief/designate based on

What was the source of the "Fuck the Police" flyer used in presentation?

How many people were arrested each night of the Berkeley protests? How many people arrested have pending investigations?

How many people arrested have been charged by the district attorney?

How many people arrested have been exonerated?

The videos seemed to include only violence by protesters towards each other. Does BPD have footage of use of force by officers?

Were any officers disciplined for use of force?

At the meeting it was both stated that all videos were from Internet and news media, but it was also stated that internal video was recorded by BPD with outdated equipment. How much video did BPD record? (either in time or GB/data)

Did BPD deploy plain clothes officers at the protest? IF so, did they record BPD's limited footage?

Who in the UC Berkeley BSU did BPD speak to?

Was there any discipline for the failure to file After Action Report (AAR)?

COMMUNICATION No. 4392

