

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**September 9, 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 August 12, 2015.

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

Budget, staffing, training updates, and other items.

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

ii) Review and approve findings. *(To be delivered.)*

iii) Discuss remainder of report and its structure.

b. Disclosure of full Suspicious Activity Reports by BPD.

**7. NEW BUSINESS (discussion and action)**

a. Review General Order W-1, Right to Watch  
From: Commissioner Lippman

- b. Discuss proposed work plan for addressing PRC tasks, including reviving the work of the Transgender General Order Subcommittee and the possible establishment of new subcommittees to:
- Investigate BPD response on December 7 & 8, 2014 (PRC-initiated)
  - Review and make recommendations on BPD policies and orders, including G.O. C-64, U-2, and M-2 (Council referral)
  - Develop plan to implement body-worn and in-vehicle cameras (Council referral)
  - Outreach to community (Comm. Bernstein)
- c. Clarification of Motions to Lay on the Table and to Postpone Indefinitely  
From: PRC Officer

**8. CHAIR'S REPORT**

**9. PRC OFFICER'S REPORT**

Status of complaints; announcements.

**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.)*

**12. ADJOURNMENT**

**Communications Disclaimer**

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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 SPECIAL MEETING September 9, 2015

## MINUTES

August 12, 2015 *Special* Meeting Page 7

## COMMUNICATIONS

**Communications #4400**– Memo dated August 25, 2015 to Honorable Mayor and Councilmembers re Status of PRC's Investigation of Police Response to December 6, 2014, Protests, and Plan for In-Vehicle and Body-Worn Cameras. Page 13

**Communication #4400** – PRC Recommendations Regarding BPD Response on December 6 & 7, 2014 (through August 12). Page 15

**Communication #4400** – Investigative Report – proposed outline. Page 27

**Communication #1299** – BPD General Order W-01 issued July 21, 2015, The Right to Watch. Page 29

**Communication #1299** – BPD Training and Information Bulletin Number 91, dated August 23, 1983, re The Right to Watch. Page 31

**Communication #1299** – Article related to BPD General Order W-01 "Right to Watch." Page 33

**Communication #4431** – Senate Bill No. 411, Chapter 177, An act to amend Sections 69 and 148 of the Penal Code approved by Governor August 11, 2015. Page 35

**Communication #4307** – Proposed PRC work plan for remainder of 2015. Page 39

**Communication #4370** – Commissioners Serving on Subcommittees as of September 1, 2015. Page 41

**Communication #4393** – Memo from PRC Officer re Motions to Lay on the Table; to Postpone Indefinitely. Page 43

**Communication #1299** – Information Calendar dated September 15, 2015. Memo to Mayor and City Council: Recommended Changes to Page 45

## COMMUNICATIONS

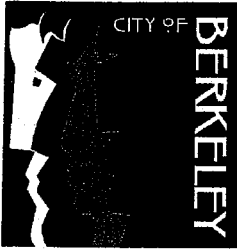
Berkeley Police Department General Order N-17, Suspicious Activity Reporting and Relationship With the Northern California Regional Intelligence Center.

**Communication #4371** – A Letter to Mayor Tom Bates and the Berkeley City Council From the Oakland Privacy Working Group Regarding Urban Shield and Police Militarization. Page 53

**Communication #4419** – Announcement from Berkeley NAACP re Berkeley NAACP – Race, Equity and Gentrification Forum on August 29, 2015. Page 57

**Communication #3034** – An email from a citizen dated August 26, 2015 re Recent Bicycle Arrests on Bicycle Boulevard. Page 59

**Communication #4393** – An email from a citizen dated September 1, 2015 re Police Participation in the August Wildland Urban Interface Fire Exercise. Page 61



Police Review Commission (PRC)

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

**August 12, 2015**  
**6:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 6:12 P.M.**

Present: Commissioner Benjamin Bartlett  
Commissioner Alison Bernstein (Chair)  
Commissioner George Lippman  
Commissioner Terry Roberts  
Commissioner Ann Rogers  
Commissioner Bulmaro Vicente  
Commissioner Ari Yampolsky

Absent: Commissioners George Perezvelez, Michael Sherman

PRC Staff: Katherine J. Lee, PRC Officer;

BPD Staff: Capt. Dave Frankel, Lt. Dan Montgomery, Sgt. Spencer Fomby (all present 6:55 p.m. – 8:40 p.m.)

**2. APPROVAL OF AGENDA**

The agenda was approved by general consent.

**3. PUBLIC COMMENT**

There were 7 speakers.

**4. APPROVAL OF MINUTES**

**Motion to approve minutes of July 22, 2015 *Regular* meeting.**

Moved/Seconded (Bartlett/Roberts) **Motion Carried by general consent**

**Motion to approve minutes of July 29, 2015 *Special* meeting.**

Moved/Seconded (Vicente/Rogers) **Motion Carried by general consent**

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

None.

**6. 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 factual findings. (Changes noted below are to the document "Compilation of Commissioner Factual Findings by PRC Staff With Commissioner comment – Draft 8-10-2015.")

**Motion to replace the last sentence of Paragraph 5 with the following: "BPD's strategies and tactics unreasonably focused on this small group of agitators and vandals rather than facilitating a peaceful protest."**

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

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

Noes: None Abstain: Yampolsky Absent: Perezvelez, Sherman

**By general consent, the Commission agreed to:**

**Delete "Factual" from the title and first paragraph.**

**Delete all but the first and last sentences of footnote 4, p.2.**

**In paragraph 7, second sentence, delete "Under the current BPD policy," and revise the footnote to specifically refer to the state OES guide cited in the BPD report.**

**Revise the last sentence of paragraph 10 to state that the safety zone is one arm's length "plus the length of a baton."**

**Affirm or correct references to "BPD" or to "police" based on BPD's confirmation.**

**Approve the last sentence of paragraph 15 (lines 7-8, before the additional language approved below).**

**Have staff merge and revise paragraphs 13, 17, and 18.**

**Have staff to revise the document to eliminate redundancies and tighten up the language.**

**Motion to revise the second sentence of paragraph 11 to read, "At this time and as the crowd approached, the Commission received no evidence that any member of the police department acted aggressively or was confrontational."**

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

Ayes: Bartlett, Lippman, Roberts, Rogers, and Vicente



Noes: Bernstein      Abstain: Yampolsky      Absent: Perezvelez,  
Sherman

**Motion to add, at the end of paragraph 15, "BPD reports using smoke canisters at this location."**

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

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, and Vicente  
Noes: None      Abstain: Yampolsky      Absent: Perezvelez,  
Sherman

*(The Commission discussed Item 6.a.ii following Item 6.a.iii.)*

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

**Motion to adopt, as an alternative to BPD Recommendation #15, "The PRC recommends that the current City policy regarding use of helicopters should be retained."**

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

Ayes: Bartlett, Bernstein, Lippman, Rogers, and Vicente  
Noes: Roberts      Abstain: Yampolsky      Absent: Perezvelez,  
Sherman

*(The Commission discussed item 7.a. between discussions on BPD Recommendation #19.)*

**Motion to adopt, as an alternative to BPD Recommendation # 19, "The PRC recommends that BPD's policy regarding the use of less-lethal munitions be revised to reflect that less-lethal weapons should only be direct-fired at a specific target, may never be used indiscriminately against a crowd or group of persons, and may be used only against a specific individual engaged in conduct that poses an immediate threat of loss of life or serious bodily injury."**

Moved/Seconded (Lippman/Vicente)

**Friendly amendment to add: "All less-lethal operators, including mutual aid responders, should be briefed regarding the rules of engagement for the specific mission prior to deployment. Command should review the use of force with all operators, including mutual aid responders, as it relates to accomplishing mission objectives prior to deployment."**

*(Moved by Bernstein; Accepted by Lippman)*

**Motion, as amended, Carried**

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, and Vicente  
Noes: None      Abstain: Yampolsky      Absent: Perezvelez,  
Sherman

**Motion to adopt, as an alternative to BPD Recommendation #21, "The numerous reports from citizens of being struck by batons as they were engaged in peaceful, lawful demonstrations are a cause of significant**

concern. BPD, in conjunction with the PRC, should review its policy regarding the use of batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs and rakes. Overhead strikes should be prohibited in crowd control and crowd management."

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

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

Noes: None                      Abstain: None                      Absent: Perezvelez Sherman

- ii) Further discuss structure of report and work plan for completing it.

**By general consent, the Commission agreed to:**

**Have the PRC Officer write to the Council to explain that despite working diligently, due to the scope of the investigation into the December 2014 events, the PRC did not complete the report it in the 6 months requested, and will aim for completing it later in 2015 (possibly the December 1 Council meeting, contingent on confirming that date).**

**Schedule a Special Meeting on October 21, 2015, for purposes of continuing its work on the investigative report.**

- b. Report on National Night Out.

*(This was the last item discussed before adjournment.)*

Commissioners Lippman, Vicente, Rogers, Bartlett and Roberts reported on their experiences on National Night Out.

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

- a. Officer protection during responses to armed suspects.

**Motion to reaffirm PRC's support of last year for the BPD acquisition of a van-type bullet-proof vehicle.**

Moved/Seconded (Roberts/Bartlett)

**Motion to table the main motion.**

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

Ayes: Lippman, Roberts, Rogers, and Vicente.

Noes: Bartlett, Bernstein                      Abstain: Yampolsky

Absent: Perezvelez, Sherman

- b. Status of revisions to Regulations for Handling Complaints Against Members of the Police Department.

*(Carried over to next meeting.)*

- c. Disclosure of full Suspicious Activity Reports by BPD.  
(Carried over to next meeting.)

**8. CHAIR'S REPORT**

None.

**9. PRC OFFICER'S REPORT**

Status of complaints: A BOI was held yesterday; special thanks to Commissioners Lippman, Perezvelez and Roberts, as the hearing lasted from 3:00 p.m. to almost 9:00 p.m. The officer in another BOI who went on emergency leave has returned and the continuation of the BOI will be rescheduled. Two new complaints were filed this week, the first since late April.

The Council referred the issue of body-worn cameras to the PRC at the same time the investigation was referred; the PRC Officer will include this topic in her letter to the Council regarding the delay in the investigation.

With the change of City staff management, PRC Officer will now be reporting to Interim Deputy City Manager Gil Dong.

This week's packet contains a copy of the Standing Rules. They have not been changed substantively but were reprinted due to an error in page numbering.

**10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

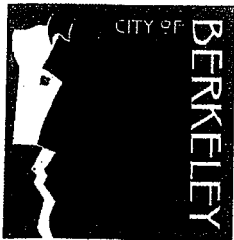
**11. PUBLIC COMMENT**

No members of the public spoke, but Commissioner Vicente announced his impending resignation.

**12. ADJOURNMENT**

**Motion to adjourn the meeting carried by general consent.**  
Meeting was **adjourned** at 9:45 p.m.






Office of the City Manager

COMMUNICATION No. 4400

August 25, 2015

**To:** Honorable Mayor and Councilmembers  
**From:**  Dee Williams-Ridley, Interim City Manager  
**Re:** Status of PRC's Investigation of Police Response to December 6, 2014, Protests, and Plan for In-Vehicle and Body-Worn Cameras

The Police Review Commission (PRC) would like to update the City Council of its progress on two City Council referral items: 1) The investigation into the Berkeley Police Department's response to the protests on the night of December 6, 2014, and 2) the development of a plan for the use of police in-vehicle (dash) cameras and body-worn cameras. The Council requested a report back on both items by August 10, 2015.

With respect to the investigation into the December 2014 protest response, the PRC has been working diligently, but has not finished its report. The PRC expects to finish its investigatory report in time for publication on the December 1, 2015 Council agenda.

The scope of what occurred over some eight hours on the night of December 6, coupled with the significant policy issues raised, have required an enormous amount of time to review and assess. The PRC, which normally meets twice monthly, has held seven special meetings since March to devote more time to the investigation, while clearing its agendas of all other items except the most pressing matters.

The PRC met on 11 of 13 Wednesday nights from May through July, and met on August 12 when it usually takes an August recess. Between meetings, Commission members have reviewed hundreds of pages of documentation, collectively viewed some 400 video clips of the events, and drafted and reworked findings and policy recommendations to be considered during meetings.

On the second item, the PRC expects to recommend a plan for in-vehicle and body-worn cameras in early 2016. The PRC appreciates your understanding and patience as it deliberates over these important subjects.

**CC:** Gil Dong, Interim Deputy City Manager  
Mark Numainville, City Clerk  
Ann-Marie Hogan, City Auditor  
Matthai Chakko, Public Information Officer  
Katherine Lee, Police Review Commission Officer  
Michael Meehan, Chief of Police



PRC RECOMMENDATIONS REGARDING BPD RESPONSE ON DECEMBER 6 & 7, 2014

COMMUNICATION No. 4400

Communication

- ***New Recommendation as a preamble to the Communication section***

**PRC (6.24.15)**

**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.**

- ***Recommendation #1***

*BPD*

*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.*

**PRC (6.24.15)**

**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, and that the department communicate directly with EBRCS and ask for a speedy resolution to these questions and any appropriate training that is necessary.**

- ***Recommendation #2***

*BPD*

*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.*

**PRC (6.24.15)**

**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; all communications be clearly identified as coming from BPD. We urge the City to adopt rules for BPD's use of social media as quickly as possible.**

- **Recommendation #3**

*BPD*

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

**PRC (6.24.15)**

**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.**

- **Recommendation #4**

*BPD*

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

**PRC (6.24.15)**

**(The PRC endorsed BPD's Recommendation #4 as written.)**

**Tactical Command**

- **Recommendation #5**

*BPD*

*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.*

**PRC (6.24.15)**

**(The PRC endorsed BPD's Recommendation #5 as written.)**

- **Recommendation #6**

*BPD*

*Command should make efforts to ensure as much mission clarity as possible when resources are dispatched.*

**PRC (7.22.15)**

**(This recommendation is an alternative to both Recommendations #6 and #7 of the BPD.)**

**The PRC agrees that a lack of mission clarity hampered the BPD's success on December 6, but where the BPD sees lack of clarity as a tactical confusion about the priority of specific tasks, we find a strategic lack of clarity. Deployments during demonstrations should include clear and**



**specific objectives. Field Commanders should be given specific guidelines and priorities to consider when making deployment decisions, including whether a given police action will improve the situation, or escalate tension and confrontation between police and protesters, and should make redeployment decisions proactively based on known situational awareness and the approved guidelines.**

- **Recommendation #7**

*BPD*

*We recommend commanders in the field make redeployment decisions proactively based on known situational awareness.*

**PRC (7.22.15)**

(See PRC Recommendation to #6 above.)

- **Recommendation #8**

*BPD*

*Opportunities for the police to deescalate from crowd control to crowd management tactics need to be recognized and seized.*

**PRC (7.15.15)**

- 1) The City considers non-violent demonstrations of concern about community issues to be positive and healthy activities. The City will interact with such demonstrations primarily as events to be facilitated rather than as threats to public safety. ~~Therefore, the BPD should not be the primary point of contact between the City and demonstrations.~~**
- 2) Heavily armed, massed police using crowd control tactics may inflame an assembly and incite rather than prevent violent clashes. They can intimidate peaceful demonstrators and promote alienation and confrontation.<sup>1</sup> The need for sufficient police resources must also be balanced against the chilling effect of a large and visible police presence.<sup>2</sup>**
- 3) BPD orders call for protecting First Amendment activities (freedom of speech and assembly).<sup>3</sup> For this protection to have meaning, police must win the trust of the assembly that they can demonstrate in safety.**
- 4) Police interaction with a demonstration or other public event should**

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<sup>1</sup> "Tony Ribera, San Francisco police chief from 1992 to 1996, said law enforcement agencies are usually most successful at handling demonstrations when they approach with a non-confrontational stance and ramp up when necessary. 'It's hard to have a confrontational situation, then pull back from that.'" See: <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>.

<sup>2</sup> OPD Crowd Control policy.

<sup>3</sup> Berkeley General Order C-64 Crowd Control, paragraph 26.

**begin with a posture of crowd management, unless the event commences as an illegal assembly. Current BPD policy requires that a clear and present danger of imminent violence as a prerequisite for declaration of an illegal assembly, making it clear that non-violent civil disobedience is not grounds for such a declaration.<sup>4</sup> If police must move to a crowd control posture, the goal should be to de-escalate back down to crowd management. Police officers must make every effort to reduce tension and de-escalate conflict, with support from non-sworn City staff and elected/appointed officials.**

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

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

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

### Deployment

- **Recommendation #9**

*BPD*

*Deploy resources flexibly in crowd management roles designed to keep events peaceful.*

**PRC (7.22.15)**

(This recommendation is an alternative to both Recommendations #9 and #10 of the BPD.)

**BPD should review its operational deployment of its resources, such as bicycle, and parking enforcement officers, in crowd management roles in order to provide greater mobility, flexibility and accessibility. The review should focus on areas of opportunity focusing on the peaceful maintenance of events, crowd/department communication and violent element identifications. Training and resource proposals should be developed by BPD to achieve this end and should be reviewed with the**

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<sup>4</sup> Berkeley General Order C-64 Crowd Control, paragraph 62.

**PRC.**

- **Recommendation #10**

*BPD*

*Increase staffing of bicycle officers, motorcycle officers and parking enforcement officers for large scale crowd management events.*

**PRC (7.22.15)**

(See PRC Recommendation to #9 above.)

- **Recommendation #11**

*BPD*

*Deploy joint police and fire scout teams to manage small fires and scout medical calls.*

**PRC (7.22.15)**

**(The PRC endorsed BPD's Recommendation #11 as written.)**

**Maneuver**

- **Recommendation #12**

*BPD*

*Have a contingent of officers to move with the crowd, so that violent elements in the crowd will see a continuous police presence.*

**PRC (7.29.15)**

**As an alternative to this Recommendation #12, reference is made to PRC Recommendations #8 and #9 above.**

- **Recommendation #13**

*BPD*

*Deploy squads with dedicated drivers who remain with the vehicles to facilitate maneuvers and vehicle security.*

**PRC (7.22.15)**

**(The PRC endorsed BPD's Recommendation #13 as written.)**

### Situational Awareness

- **Recommendation #14**

*BPD*

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

**PRC (6.24.15)**

**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.**

- **Recommendation #15**

*BPD*

*Consider proposing changes to the City Council Resolution 51,408-N.S., to permit the use of helicopters in instances of significant civil unrest.*

**PRC (8.12.15)**

**The PRC recommends that the current City policy regarding the use of helicopters should be retained.**

### Dispersal Orders

- **Recommendation #16**

*BPD*

*Issue fewer dispersal orders and record evidence that the crowd was able to hear the orders.*

**PRC (7.22.15)**

**Consistent with existing policy, dispersal orders should only be given if there is clear evidence that the focus of the crowd has become violent. If and when it is determined that a dispersal order is necessary, several quality dispersal orders should be given. BPD should record the orders to establish that the orders were audible to the crowd. BPD should take appropriate steps to ensure that a dispersal order is audible throughout the entire crowd. After an initial dispersal order has been given, if a crowd reassembles in a different location, that new location must be reevaluated to determine if it is an unlawful assembly, and a new dispersal order must be given. We specifically recommend that BPD discontinue the practice of continuous dispersal orders.**

- **Recommendation #17**

*BPD*

*Revise the dispersal order script to include specific types of force that may be used to disperse the crowd including the use of CS gas.*

**PRC (7.29.15)**

**Revise the dispersal order script to include specific types of force that may be used to disperse the crowd including the use of CS gas; the PRC should review the proposed new script before it becomes BPD policy.**

Use of Force

- **Recommendation #18**

*BPD*

*We recommend that BPD review its policy regarding the use of CS gas and batons in crowd control situations.*

**PRC (7.29.15)**

**BPD, in conjunction with the PRC, should review its policy regarding the use of CS gas and batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs, rakes or overhead strikes, and with the intent of putting substantial constraints on the use of CS gas in crowd control and crowd management.**

- **Recommendation #19**

*BPD*

*Less Lethal operators should be briefed regarding the rules of engagement prior to deployment. Command should review the use of force as it relates to accomplishing mission objectives with less lethal operators, prior to deployment.*

**PRC (8.12.15)**

**The PRC recommends that BPD's policy regarding the use of less-lethal munitions be revised to reflect that less-lethal weapons should only be direct-fired at a specific target, may never be used indiscriminately against a crowd or group of persons, and may be used only against a specific individual engaged in conduct that poses an immediate threat of loss of life or serious bodily injury. All less-lethal operators, including mutual aid responders, should be briefed regarding the rules of engagement for the specific mission prior to deployment. Command should review the use of force with all operators, including mutual aid responders, as it relates to accomplishing mission objectives prior to deployment.**

- **Recommendation #20**

*BPD*

*Skirmish lines should be deployed only in situations where the use of force that may be necessary to enforce the line is warranted by the objective of deploying the line.*

**PRC (7.22.15)**

**(The PRC endorsed BPD's Recommendation #20 as written.)**

- **Recommendation #21**

*BPD*

*We recommend that the Department continue to train and reinforce disciplined use of baton strikes by officers to avoid striking people in no strike zones.*

**PRC (8.12.15)**

**The numerous reports from citizens of being struck by batons as they were engaged in peaceful, lawful demonstrations are a cause of significant concern. BPD, in conjunction with the PRC, should review its policy regarding the use of batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs and rakes. Overhead strikes should be prohibited in crowd control and crowd management.**

- **Recommendation #22**

*BPD*

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

**PRC**

- **Recommendation #23**

*BPD*

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

**PRC**

## Accountability

- **Recommendation #24**

*BPD*

*To comply with our existing policies an After Action Report (AAR) should be written after each incident even if only in summary form.*

**PRC (7.22.15)**

**BPD should comply with its existing policies and an After Action Report (AAR) should be written after each incident, even if only in summary form, within 72 hours.**

- **Recommendation #25**

*BPD*

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

**PRC**

## Training

- **Recommendation #26**

*BPD*

*All officers should continue to receive crowd management training every two years. We recommend the following trainings be developed:*

- *Commanders should conduct crowd management table top exercises, in addition to departmental training, to explore topics such as planning, command and control, mutual aid management, tactics, and operations center logistics.*
- *All crowd management trainings should include legal update training in the area of crowd management case law as well as a review of first amendment case law.*
- *Mobile Field Force training with regards to conducting targeted arrests. Including a tactical review of how to deploy in order to better support a mission of targeted arrests while maintaining the ability to transition into crowd control formations.*
- *Train sufficient personnel to use higher quality camera systems to gather better video evidence at protests.*

**PRC**

- **Recommendation #27**

BPD

*Commanders should attend training to improve their understanding of BPD's current capabilities and limitations in crowd management and control which should enhance planning and tactics.*

PRC

- **Recommendation #28**

BPD

*We recommend the creation of a document on BPD website which will provide information on how to conduct or participate in a protest in a safe and legal manner.*

PRC

## Media

- **Recommendation #29**

BPD

*We recommend the BPD Public Information Officer investigate the viability of establishing a regional media credentialing system.*

PRC

- **Recommendation #30**

BPD

*We recommend the Department develop a collaborative training for press to enhance their safety and safeguard the First Amendment right of a free press.*

PRC



## Equipment

- **Recommendation #31**

BPD

*We recommend the Department invest in quality video cameras, live stream capability and video capture software to improve situational awareness.*

PRC

- **Recommendation #32**

BPD

*The Department should investigate the use of body armor to be worn underneath a uniform of the day, to protect officers from projectiles while minimizing the projection of force to protestors.*

PRC



**INVESTIGATIVE REPORT – proposed outline**  
(and staff notes)

**I. INTRODUCTION**

(Staff suggests it draft this for Commissioners' review)

What the PRC is/does

Dec. 6 protests - one para. description

Council referral to PRC

PRC investigation steps (review evidence – docs and video, hear public comment, hear BPD presentation of its report, ask PBD questions, review BPD and other agencies' policies, special meetings, etc.)

**II. FINDINGS**

(Almost done)

**III. DISCUSSION? ANALYSIS?**

(Perhaps staff should draft after getting some direction from Commissioners?)

**IV. RECOMMENDATIONS**

(Make sure all topics in Council referral are covered.)

**A. General - ?**

(Staff's idea, but maybe omit.)

**B. Specific**

(Recommendations you've been working on – response to BPD recommendations; additional recommendations.)

**V. CONCLUSION**

COMMUNICATION No. 4400



# BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 21, 2015

GENERAL ORDER W-01

**SUBJECT: THE RIGHT TO WATCH**

## PURPOSE

- 1 - The purpose of this General Order is to adopt policies and procedures regarding a citizen's right to observe, photograph or video record officers during the course of the officers' public duties.

## POLICY

- 2 - It shall be the policy of the Berkeley Police Department to minimize restrictions on public observation, photographing or video recording of police officers' performance of their duties, while ensuring the safety of the public and the officers.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously. Officers should restrict the practice of requesting that onlookers withdraw only to those instances where a potential threat to safety is involved.

## PROCEDURES

- 3 - At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe; photograph and video record the officers from a safe distance. Citizens also have the right to communicate with the detained person, provided, however:
  - a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.
  - b. that the observer's actions or communications do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's attention. An officer may instruct an observer to maintain a safe distance from the scene, with the understanding that what constitutes a "safe" distance may vary depending on the circumstances.
  - c. that the confidentiality of the matter being discussed with a suspect, victim, witness, or reporting party is not compromised except with concurrence of the citizen and the officer involved.

COMMUNICATION No. 1299



**BERKELEY POLICE DEPARTMENT  
TRAINING AND INFORMATION BULLETIN**



**DATE: August 23, 1983**

**NUMBER: 91**

**SUBJECT: THE RIGHT TO WATCH**

At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe the behavior of officers. These persons also have the right to communicate with the detained person, provided, however:

- that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any public officer engaged in the duties of his/her office.
- that the observer's actions do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's investigation.
- that the confidentiality of the matter being discussed with a suspect/victim/witness is not compromised except with concurrence of the citizen and the officer involved.

It is Departmental policy to set the least possible restriction on public observation of police officer conduct.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously officers should restrict the practice of requesting onlookers to withdraw only to those instances where a threat to safety is involved.

RONALD D. NELSON  
Chief of Police

COMMUNICATION No. 1299





Lee, Katherine

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**From:** PRC (Police Review Commission)  
**Sent:** Monday, August 24, 2015 8:20 AM  
**To:** Lee, Katherine  
**Subject:** FW: Right to Watch

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

COMMUNICATION No. 1299

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**From:** Andrea Prichett [mailto:prichett@locrian.com]  
**Sent:** Sunday, August 23, 2015 4:22 PM  
**To:** PRC (Police Review Commission); PRC (Police Review Commission)  
**Subject:** Right to Watch

Dear Police Review Commission,

I am writing to ask you to consider the "Right To Watch" General Order (W-0) and to examine its impact on citizen monitoring of the police.

## **Berkeley Police Must Respect the Right to Observe**

### **The whole policy needs to be revised with the help of community input**

A new Berkeley Police Department General Order (W-01) issued on July 21, 2015 marks a serious abridgement of the right to observe in Berkeley even though it looks much like a training bulletin that has been around for years. The previous training bulletin on "The Right To Watch (Training Bulletin 91 issued in 1983 and reissued by Chief Meehan) required officers to put the **"least possible restriction on citizen observation of police officer conduct."** In the new general order, the language is changed to say that officers should "minimize restrictions on public observation", but it doesn't say to what degree they should do this. This change has big implications for Copwatchers in the streets trying to record citizen-police interactions.

The old training bulletin meant that police were expected to make every effort to accommodate citizen observation of police. The new general order makes it sound like our ability to observe is going to be up to each officer depending on the situation. What in this policy will protect us from officers who claim that there is a threat to safety when really they just want to prevent us from observing?

The policy also includes some problematic language such as "citizens have the right to observe; photograph and video record the officers **from a safe distance.**" Copwatch does not believe that it is the officers who should get to decide what is a "safe distance". There is no legal definition of "safe distance" and, as we have seen numerous times, some police believe that a "safe distance" is farther (sometimes several blocks away) from the scene. There is already a law (Penal Code 148) against interfering with police officers. BPD officers have routinely threatened observers and copwatchers for merely witnessing scenes and have often demanded that observers remove themselves even when no credible threat to safety existed.

(This copwatch video from 8-5-15 demonstrates how the new policy might impact the right to observe and raises many important issues that the PRC and City Council must decide: <https://www.youtube.com/watch?v=Aeg2SD1A6LA>)

Worst of all, is the third section of the General Order that says that citizens can observe police but that "the confidentiality of the matter being discussed with a suspect, victim, witness, or reporting party is not compromised except with concurrence of the citizen and the officer involved." This policy suggests that citizens can't witness a conversation between a cop and a detainee if

the cop doesn't give consent. This is not acceptable and it is not constitutional. BPD needs to get familiar with current legal interpretations.

Two court cases have been decided by Federal courts that affirm the 1<sup>st</sup> Amendment protection of our right to "petition the government for a redress of grievances". The first one was Simon Glik vs. City of Boston. The other case was from ACLU vs. Alvarez coming out of Chicago and challenged the anti-video interpretation of wiretapping statutes. In both cases, the court found that we have RIGHTS that are not subject to the consent of any police officer and we can videotape so long as we don't interfere.

Berkeley Copwatch urges the Berkeley City Council and the Police Review Commission to do all in their power to protect the right of all our citizens to watch police and to punish officers who threaten, harass or intimidate people from copwatching and documenting officer conduct in our city. Copwatch organizers are calling on members of the public to read and help to rewrite the new General Order and demand that the Police Review Commission hold a public hearing on this issue.

Thanks for your consideration of this important issue,

Andrea Prichett  
Berkeley Copwatch

Senate Bill No. 411

CHAPTER 177

An act to amend Sections 69 and 148 of the Penal Code, relating to crimes.

[Approved by Governor August 11, 2015. Filed with  
Secretary of State August 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 411, Lara. Crimes.

Under existing law, every person who deters or prevents an executive officer from performing any of his or her duties, or knowingly resists the officer, is punishable by a fine or imprisonment, or both, as specified.

This bill would provide that the fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of the above-mentioned provision.

Under existing law, every person who willfully resists, delays, or obstructs any public officer, peace officer, or emergency medical technician in the discharge or attempt to discharge any of his or her duties shall be punished by a fine or imprisonment, or both, as specified.

This bill would provide that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of the above-mentioned provision, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

*The people of the State of California do enact as follows:*

SECTION 1. Section 69 of the Penal Code is amended to read:

69. (a) Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.

(b) The fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he

COMMUNICATION No. 4431

or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a).

SEC. 2. Section 148 of the Penal Code is amended to read:

148. (a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(2) Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Except as provided in subdivision (c) and notwithstanding subdivision (a) of Section 489, every person who removes or takes without intent to permanently deprive, or who attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer, while the officer is engaged in the performance of his or her lawful duties, shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

- (1) The officer's holster strap was unfastened by the defendant.
- (2) The firearm was partially removed from the officer's holster by the defendant.
- (3) The firearm safety was released by the defendant.
- (4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.
- (5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.
- (6) The defendant's fingerprint was found on the firearm or holster.

(7) Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.

(8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician are victims.

(f) This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.

(g) The fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a), nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.



Proposed PRC work plan for remainder of 2015

COMMUNICATION No. 4307

Sept. 9

Old Business:

Investigation – Dec. 6 (Council referral)

SARs – disclosure by BPD (from Aug. 12)

New Business:

G.O. W-1: Right to Watch (G. Lippman)

Possible new subcommittees –

- Investigation into Dec. 7 & 8 (PRC-initiated)
- Revision of General Orders, incl. C-64, U-2, M-2 (Council)
- Body worn and dash cameras (Council)  
*\*\*\* Note: This is currently on Council's calendar for presentation at a March 29, 2016 work session; report must be ready by February 25.*
- Outreach (A. Bernstein)

Revive Transgender G.O. Subcomm (has been dormant during investigation)

Sept. 24

Old:

Investigation – Dec. 6

New:

BPD acquisition of non-military armored vehicle (A. Bernstein)

Mutual Aid Agreements (Subcomm. Report)

Oct. 14

Old:

Investigation – Dec. 6

New:

Identification of race on traffic citations (policy review prompted by Mr. Tsadik's experience)

Oct. 21

Old:

Investigation – Dec. 6

Revisions to Regulations – Status of Meet & Confer  
(from Aug. 12)

Oct. 28

Old:

Investigation – Dec. 6

Proposed PRC work plan for remainder of 2015

Nov. 18

New:

Smoking control ordinance (policy complaint)

How to read CAD reports (subject to availability of Comm. Center  
Manager -- postponed from Jan. 2015)

BOI procedures and underlying authority (Copley Press, PSOBRA, BPA  
v. COB, etc. -- A. Bernstein)

Dec. 9

New:

Seizure of homeless persons' property (A. Bernstein; prompted by public  
commenter)

Notes on other outstanding items:

- McKinley Ave. staging (policy complaint) -- Chief Meehan has said the final report will be incorporated into the BPD's final recommendations, which will come after they receive the PRC's report of investigation.
- B-4, Fair & Impartial Policing -- PRC Officer needs to get update from Capt. Harris and will report to PRC, who can then decide on next action to take, if needed.

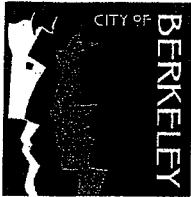


**COMMISSIONERS SERVING ON SUBCOMMITTEES**  
As of September 1, 2015

Commissioner	Total	Regulations	Suspicious Activity Reporting	Transgender G.O.	Investigation Steering	Mutual Aid Pacts
Bartlett	0					
Bernstein	4	x	x	x		x
Lippman	3		x		x	x
Perezvelez	2			x	x	
Roberts	0					
Rogers	3	x	x	x		
Sherman	1					x
Vicente	2		x			x
Yampolsky	0					

COMMUNICATION No. 4370





Police Review Commission (PRC)

COMMUNICATION No. 4393

September 1, 2015

To: Police Review Commission

From: Katherine J. Lee, Police Review Commission Officer *AK*

Re: Motions to Lay on the Table; to Postpone Indefinitely

At your August 12, 2015 meeting, a commissioner made a "motion to table" a pending motion regarding the PRC's support for the BPD's grant request for a van-style armored vehicle. A question arose about the effect of the motion to table; my opinion, shared by the Chair, was that it had the effect of putting the vote on the main motion off for that meeting, and that the matter could be re-agendized for a future meeting.

Subsequent research into Robert's Rules of Order<sup>1</sup> reveals that the "motion to table" is incorrect. "The motion to *Lay on the Table* enables the assembly to lay the pending question aside temporarily when something else of immediate urgency has arisen or when something else needs to be addressed before consideration of the pending question is resumed . . ." (RONR, p. 208, ll. 26-30) "This motion is commonly misused in ordinary assemblies in place of the motion to *Postpone Indefinitely* . . . , or other motions. Particularly in such misuses, it also is known as a motion 'to table.' By adopting the motion to *Lay on the Table*, a majority has the power to halt consideration of a question immediately without debate. Such action violates the rights of the minority and individual members if it is for any other purpose than the one in the [first sentence quoted above]." (RONR, p. 210, ll. 1-9.) The main motion can be made pending again if the body votes to *Take from the Table*, which can be done at the same session, or the one after that; if not taken from the table during those time limits, the question dies, although it can be reintroduced later as a new question. (RONR, p. 330, ll. 2-5, p. 302, ll. 1-8.)

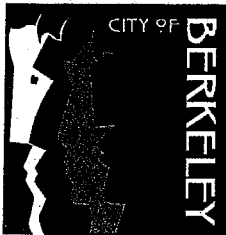
"*Postpone Indefinitely* is a motion that the assembly decline to take a position on the main question. Its adoption kills the main motion (for the duration of the session) and avoids a direct vote on the question." (RONR, p. 126, ll. 4-7.) "A motion that has been indefinitely postponed . . . is no more difficult to renew at a later session than any other motion that is subject to such renewal." (RONR, p. 216, ll. 29-33.)

In my opinion, the commissioner's intent in moving to table the pending motion last month was not to Lay on the Table, but to Postpone Indefinitely. I suggest that this be clarified at your next meeting and, in the future, attention be paid to the distinction between these two motions.

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<sup>1</sup> *Robert's Rules of Order Newly Revised* (11<sup>th</sup> ed.) ("RONR").





Police Review Commission

COMMUNICATION No. 1299

INFORMATION CALENDAR

September 15, 2015

To: Honorable Mayor and Members of the City Council  
From: Police Review Commission  
Submitted by: Alison Bernstein, Chairperson, Police Review Commission  
Subject: Recommended Changes to Berkeley Police Department General Order N-17,  
Suspicious Activity Reporting and Relationship With the Northern  
California Regional Intelligence Center

INTRODUCTION

At its October 28, 2014 meeting, the City Council directed the City Manager and Police Department, in consultation with the Police Review Commission, to review General Order N-17 in the first quarter of 2015. This directive was issued in conjunction with the Council's annual review and vote approving mutual aid agreements between the BPD and other law enforcement, military, and intelligence agencies.

CURRENT SITUATION AND ITS EFFECTS

Through its agreement with the Northern California Regional Intelligence Center (NCRIC) the BPD submits to it information related to potential terrorism and other violent criminal threats, in the form of Suspicious Activity Reports (SARs). The NCRIC accord was singled out for review last fall due to concerns that inappropriate and unnecessary information was being shared, raising the possibility that individuals' right to privacy and First Amendment rights were being violated.

Following the Council's October 2014 action on General Order N-17, the PRC established a Suspicious Activity Reporting Subcommittee. BPD command staff were present at the subcommittee's meetings. At its May 6 meeting, the PRC adopted the recommendation of the SAR Subcommittee to revise General Order N-17. (M/S/C Finley/Vicente. Ayes: Finley, Lippman, Rogers, Sherman, and Vicente; Noes: None; Abstentions: None; Absent: Bartlett, Bernstein, Perezvelez.) The recommended revisions, shown on Attachment 1, consist of adding language from 28 Code of Federal Regulations (CFR) Part 23, Criminal Intelligence Systems Operating Policies. While the General Order already states that those Federal guidelines must be followed, the PRC believes that restating certain pertinent sections in General Order N-17 will assist BPD in ensuring that all SARs it submits are appropriate.

The PRC clarified its direction to staff at its July 8, 2015, meeting, voting to send these recommended revisions directly to Council as an agenda item. (M/S/C Lippman/Vicente.

Ayes: Bartlett, Bernstein, Lippman, Perezvelez, Roberts, and Vicente; Noes: None;  
Abstentions: None; Absent: Rogers, Sherman.)

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The Council may direct the City Manager and Police Department to revise General Order N-17 as recommended here.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

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

Attachments:

1: General Order N-17 with recommended revisions redlined.

**BERKELEY POLICE DEPARTMENT**

**ISSUE DATE: September 18, 2012**

**GENERAL ORDER N-17**

**SUBJECT: SUSPICIOUS ACTIVITY REPORTING AND RELATIONSHIP WITH THE  
NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER**

**PURPOSE**

- 1 - The terrorist attacks of September 11, 2001, and subsequent attacks throughout the world have demonstrated the necessity of an organized and integrated information sharing system at all levels of law enforcement. In order to prevent, prepare for, respond to, and investigate potential acts of terrorism and other violent criminal threats, it is necessary to establish an efficient system of communication whereby critical information can be quickly disseminated within the Berkeley Police Department (BPD) and to various local, state and federal law enforcement agencies.
- 2 - National guidelines have been developed and implemented throughout the United States through the National Criminal Intelligence Sharing Plan, the Findings and Recommendations of the Suspicious Activity Report Support and Implementation Project and the Nationwide Suspicious Activity Reporting Initiative (NSI) to establish a means for the sharing of information, known as Suspicious Activity Reporting (SAR). The information sharing plan was developed by law enforcement agencies to establish an all-crimes approach to gathering, processing, reporting, analyzing, and sharing of suspicious activity related to potential terrorism and crime. By maximizing information from citizens, law enforcement, and public safety officials, criminal acts can be detected and disrupted and incidents that have occurred can be properly investigated.
- 3 - The Berkeley Police Department will continue to attempt to detect crime before it occurs, including terrorism, through various means such as Suspicious Activity Reporting (SAR). The SAR program will provide a format for the Department to accurately and appropriately gather record, analyze and share suspicious activity or, in cases of named or identified individuals or groups, information that gives rise to a reasonable suspicion of criminal activity, including those activities related to foreign or domestic terrorism.

**LIMITATIONS**

- 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.

(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.

- 5 - Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.
- 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.

### POLICY

- 6 - Effective immediately, all sworn BPD personnel will document incidents with an actual or potential terrorism nexus or other suspected criminal activity and submit those proposed Suspicious Activity Reports as outlined in this policy. All Department members will adhere to the procedures and responsibilities described in this policy whenever potential terrorism related activity is encountered, observed or reported.

### DEFINITIONS

- 7 - Suspicious Activity: Behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, or criminal activity. Suspicious behavior must have a criminal predicate (defined below), and must rise to the level of reasonable suspicion (defined below) in order to be reportable as a SAR in circumstances involving a named or identified individual or group.
- 8 - Criminal Predicate: The standard by which the determination as to whether information may be used to create a SAR is made in circumstances involving a named or identified individual or group. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount to a misdemeanor or felony.
- 9 - Reasonable Suspicion: Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization is involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.



PROCEDURES

- 10 - Examples of behaviors that could be reported as a SAR are as follows (all of these behaviors have been verified as behaviors which have preceded and been linked to actual terrorist incidents as well as common criminal acts):

<b>DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY</b>	
<b>ISE-SAR CRITERIA GUIDANCE Category Description</b>	
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Theft/Loss/Diversions	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents {classified or unclassified}, which are proprietary to the facility).
Sabotage/Tampering/ Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Aviation Activity	Operation of an aircraft in a manner that reasonably may be interpreted as suspicious, or posing a threat to people or property. Such operation may or may not be a violation of Federal Aviation Regulations.

<b>POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT INFORMATION DURING INVESTIGATION<sup>1</sup></b>	
Eliciting Information	Questioning individuals at a level beyond mere curiosity about particular facets of a facility's or building's purpose, operations, security procedures, etc., that would arouse suspicion in a reasonable person.
Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.

- 11 - Examples of behavior which cannot be reported as a SAR unless: 1) the activity rises to the level of criminal conduct, or 2) the person taking part in the activity is not identified, and therefore, not subject to possible investigation by state and federal investigative agencies:

Recruiting	Building of criminal operations teams and contacts, personnel data, banking data or travel data
Photography	Taking pictures or video of facilities, buildings, or infrastructure in a manner that would arouse suspicion in a reasonable person. Examples include taking pictures or video of infrequently used access points, personnel performing security functions (patrols, badge/vehicle checking), security-related equipment (perimeter fencing, security cameras), etc.

- 12 - **Employee's Responsibilities:** All personnel are reminded that Constitutional rights will be honored at all times and nothing in this policy diminishes Constitutional protections. Personnel are specifically reminded of Fourth Amendment protections and that persons cannot be arrested without probable cause, detained without reasonable suspicion, and that evidence cannot be seized except pursuant to a warrant or an existing recognized exception to the warrant requirement. Any BPD employee receiving any information regarding suspicious activity potentially related to terrorism shall:
- (a) Notify their direct supervisor.
  - (b) Notify a department Terrorism Liaison Officer (TLO)
  - (c) Document the incident as described in this policy.
- 13 - **Responsibilities of Supervisors:** Upon notification that personnel have received information regarding a potential SAR, the BPD Supervisor shall:
- (a) Determine if any further law enforcement response is needed, will consult with a BPD (TLO) if available and determine if immediate notifications to the Chief of Police, and/or the City Manager or his/her designee is required.
  - (b) Provide the information in written form to the TLO for consideration of SAR submittal.
  - (c) Review the reports and ensure the proper reporting has been completed.
- 14 - **Responsibilities of the TLO and TLO Coordinator (TLOC):** Terrorism Liaison Officers (TLOs) have received training in the identification, handling and reporting of potential terrorism related incidents. TLOs will be available as a resource for SAR related incidents.
- (a) TLOs will review proposed SARs from officers, and supervisors, and forward them to the TLO Coordinator (TLOC) for further review. If the report meets sufficient criteria for submission as a SAR, the TLOC will submit it to the Operations Division Commander or his designee for submission approval.

- (b) The TLOC shall maintain a written log of all SARs submitted, and prepare an annual report to be provided to City Council.
- 15 - Responsibilities of the Operations Division Commander:
  - (a) Review of proposed SARs, and approval/rejection as appropriate.
  - (b) Forward all SARs to the City Manager and Chief for review
  - (c) Ensure that a written log is maintained and an annual report prepared by the TLOC.
- 16 - Responsibilities of the NCRIC: It is the policy of the NCRIC to make every effort to accurately and appropriately gather, record, analyze, and disseminate information that could indicate activity or intentions related to threats to homeland security and submit such information to the Federal Bureau of Investigation – Joint Terrorism Task Force (FBI-JTTF) and the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) in the form of an NSI suspicious activity report. These efforts shall be carried out in a manner that protects the information and the privacy, civil rights, and civil liberties of individuals. Suspicious activity information shall be recorded and maintained in strict compliance with existing federal and state guidelines.
- 17 - The NSI has established a unified process for reporting, tracking, and assessing terrorism-related SARs throughout the nation. The NSI adheres to the guidelines established by the Intelligence Reform and Terrorism Prevention Act and the Information Sharing Environment Suspicious Activity Reporting (ISE-SAR) Functional Standard. These guidelines call for all terrorism-related suspicious activity reporting to be routed through designated fusion centers for appropriate vetting and review before the information can be shared within the nationwide system. The NCRIC as a component of California's State Threat Assessment System has been designated as the review agents for all terrorism-related suspicious activity reporting in the region.
- 18 - The NCRIC will then make the decision to share the SAR information with the NSI based on the standards established by the NSI. The NCRIC is also responsible for ensuring that all TLOs, line officers and other first responders in the region have received appropriate training in the collection and reporting of terrorism-related suspicious activities and the responsibilities related to protection of privacy, civil rights and civil liberties of individuals. The NCRIC also works closely with the NSI Program Management Office to ensure a statewide implementation of suspicious activity reporting.
- 19 - Reporting a SAR: All Suspicious Activity Reports (SARs) will be submitted through the [www.ncric.org](http://www.ncric.org) website. When the SAR involves a criminal act or attempted criminal act, a written BPD police report shall be submitted (and BPD case number created) identifying the suspected criminal behavior and referencing the systems and personnel notified of the SAR.



## **A Letter to Mayor Tom Bates and the Berkeley City Council From the Oakland Privacy Working Group Regarding Urban Shield and Police Militarization**

Cc: Berkeley City Manager  
CC: Berkeley Police Review Commission  
CC. Berkeley Peace and Justice Commission

Received by PRC  
AUG 19 2015

American law enforcement uses lethal force against a citizen every eight hours, killing on average 3.2 people a day in 2015. In July, at least 121 citizens were reported as killed by police, putting us on pace to reach 1,100 by years end. These facts are relevant because the Berkeley Police Department will again participate in Urban Shield in September.

We ask that BPD refrain from participation in Urban Shield this year (and beyond), or alternatively, that the city and BPD require that de-escalation and negotiation techniques are emphasized over assault practice drills as a condition of BPD's participation.

It's often said in sports that practice makes perfect, and first-responder training is likely no different from athletic endeavors in this regard. We find this concerning, because BPD will be practicing at Urban Shield how to aggressively take down people, but not how to diffuse tense situations. The police/citizen interactions in the Black Lives Matter protests of December, 2014 support the growing demand that de-escalation be at the forefront of any training protocol for law enforcement.

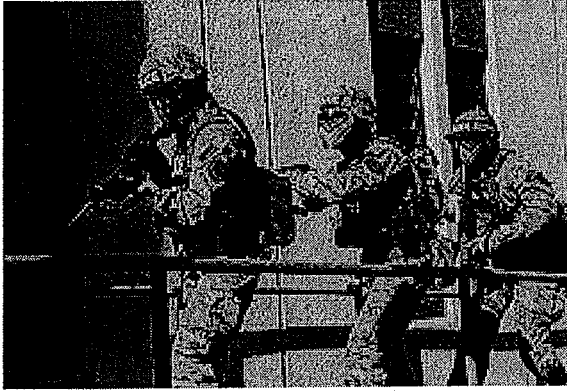
According to a Police Executive Research Forum survey, the typical police cadet receives 58 hours of training on how to use a gun, 49 hours of defensive training to protect themselves, and 8 hours on de-escalation techniques (see The New York Times story "Police Start to Reconsider Long-Standing Rules on Using Force," 5/5/15).

There is a telling quote in that article from Dallas Police Chief David O. Brown: "Sometimes it seems like our young officers want to get into an athletic event with people they want to arrest. They have a 'don't retreat' mentality. They feel like they're warriors and they can't back down when someone is running from them, no matter how minor the underlying crime is."

And warrior mentality is what Urban Shield is selling. From "assassination" game scenarios with Israeli Special Forces, other 2014 scenarios included "assault on hijacked truck," "assault on Amtrak train," "vehicle takedown with ambush," and "BART Transbay tube assault." Lacking are events that emphasize how to calm down situations so that any use of force is unnecessary. The vendor trade show only enhances the "shiny gadget" mentality of getting new souped-up military grade weapons to carry out assault maneuvers. Urban Shield awards

COMMUNICATION No. 4371

1900



BPD at Urban Shield 2014

top performers for SWAT, fire, explosive ordinance disposal, and maritime exercises. This reflects the organization's priorities, and these priorities are not de-escalation skills.

And as UC Berkeley sociologist Nick Adams, releasing a study last year on police escalation, wrote "Everything starts to turn bad when you see a police officer come out of an SUV and he's carrying an AR-15." His study found that protests tend to turn violent when officers use aggressive tactics such as approaching demonstrators in riot gear or lining up in military

formations, things existing Urban Shield exercises promote.

The recent hearings by the Berkeley Police Review Commission and preparations for a lawsuit by 14 community members against the City of Berkeley for BPD's handling of the December protests indicate a clear need for improved and respectful policing and community relations, and that unlawful use of force against citizens must not be tolerated. De-escalation and demilitarization keeps everyone safer, including the officer. If BPD won't be learning techniques at Urban Shield to help achieve these community goals, our taxpayer dollars should not fund their participation at this event.

- Brian Hofer and JP Massar (Berkeley resident), on behalf of the Oakland Privacy Working Group.

*The Oakland Privacy Working Group, established after the Snowden revelations, fights for privacy and against police militarization. OPWG was instrumental in bringing together a broad coalition to successfully oppose Oakland's Domain Awareness Center and actively supports privacy legislation both in the Bay Area and in the California legislature. Find us @oaklandprivacy and at <https://oaklandprivacy.wordpress.com/>*

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manager@cityofberkeley.info,  
PRC@CityofBerkeley.info,  
EBrenman@CityofBerkeley.info





Lee, Katherine

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**From:** PRC (Police Review Commission)  
**Sent:** Wednesday, August 26, 2015 9:08 AM  
**To:** Lee, Katherine  
**Subject:** FW: Berkeley NAACP - Race, Equity and Gentrification Forum - Flier Attached - Sat. August 29th - 1:00 pm  
**Attachments:** Race & Equity Forum 2015Final (4).doc

COMMUNICATION No. 4419

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**From:** Berkeley NAACP [mailto:berkeleynaacp@gmail.com]  
**Sent:** Tuesday, August 25, 2015 8:40 PM  
**To:** O'Connor, Katherine P.; Scott, Jeff; Erickson, Christina; Merker, Mary Ann; Talley, Leah; Brown, Don L.; Geiken, Delfina M.; Brenman, Eric; Al-Hadithy, Nabil; Bustamante, Tanya; Burns, Anne M; Brannigan, David; Klein, Jordan; DeSnoo, Neal; Iyengar, Savith; Wicker, Andrew; Davidson, Amy; Wong, Wingyin; Zarnowitz, Sally; Hollander, Eleanor; Greene, Elizabeth; Patterson, Carol; Miller, Roger; Abel, David; Amoroso, Alexander; PRC (Police Review Commission); Rose, Sean; Berreman, Janet; Javandel, Farid; gbryant@CityofBerkely.info; Schneider, Andrew; Kelekian, Jay; Berkeley NAACP  
**Subject:** Berkeley NAACP - Race, Equity and Gentrification Forum - Flier Attached - Sat. August 29th - 1:00 pm

Hello Commissioners,

Attached is our forum flier; we are requesting your support for the development of a Race and Equity Department/Unit and an African American Holistic Resource Center in South Berkeley.

We look forward to seeing you at the forum and/or receiving your response.

Thanks,  
The Berkeley NAACP

(This Event is Free)

**BERKELEY NAACP**

**RACE, EQUITY & GENTRIFICATION**

***"The Politics and Control of Black Bodies"***

**SPEAKERS - COMMUNITY CONVERSATION - ACTION**

***\*\*City of Oakland Councilmember Desley Brooks\*\****

***\*\*Black Lives Matter Panel Discussion\*\****

**SATURDAY, AUGUST 29, 2015**

**1:00 PM - 4:00 PM**

**South Berkeley Senior Center - 2939 Ellis Street, Berkeley CA**

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**Brooks' Victory for Oakland's New Department of Race and Equity - Community support for historic measure garnered council's unanimous vote**

By Ashley Chambers Posted June 26, 2015 3:35 pm

**After months of debate, the City Council unanimously voted this week to create a Department of Race and Equity to address systemic racism and inequality in the City of Oakland.**

This victory for the Department of Race and Equity makes Oakland one of few cities around the country, along with Portland and Seattle, that have created departments to ensure equality and fairness for all residents.

Among other issues, the department will need to look at unequal enforcement of city zoning policies, said Brooks.

"It's the planning and the zoning decisions that have allowed for auto body shops to be next door to somebody's house, that allow for environmental issues to impact communities of color, that allow for West Oakland to have (a higher) asthma rate because of the bad conditions," she said.

**"We need a Department of Race and Equity because we have normalized the conversation of race," Brooks said.**

Link: <http://postnewsgroup.com/blog/2015/06/26/brooks-victory-oaklands-new-department-race-equity/>

Lee, Katherine

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**From:** PRC (Police Review Commission)  
**Sent:** Wednesday, August 26, 2015 9:10 AM  
**To:** Lee, Katherine; Norris, Byron  
**Subject:** FW: Recent Bicycle Arrests on Bicycle Boulevard

COMMUNICATION No. 3034

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**From:** Stephen Pitcher [mailto:pitchbat@gmail.com]  
**Sent:** Wednesday, August 26, 2015 6:54 AM  
**To:** PRC (Police Review Commission)  
**Subject:** Recent Bicycle Arrests on Bicycle Boulevard

Hello. Below is a letter I just sent to the Police Department. I STRONGLY resent being harassed as a bicyclist, particularly on an avenue specifically designed to conduct bicycle traffic away from major conduits like Shattuck.

The police activity in these two incidents were totally obvious cash grabs. I was endangering no one. Aren't the police supposed to be protecting people? Instead, they're out arresting elderly bicyclists

I can't afford the fines : \$600? for riding through two stop signs on a "Bicycle Boulevard"? It's insane.

Below is the letter I submitted along with my "Courtesy" notification.

I thought both incidents (which happened twice in one week) were shameless. The second time I was arrested that week (for an additional \$300) the officer informed me I had been going 10 miles an hour through a stop sign at Parker and Milvia.

Guilty. I was going 10 MPH. On a bicycle. There was no one else on the road but the cop.

I was a major danger to society?

These cops were just out grabbing change, and as someone who is doing something right for the planet by not driving a car, which i'm not ordinarily pious about but it's true, it kind of vexes me that they were TARGETING people on a "Bicycle Boulevard," which they obviously were.

Stephen Pitcher

re: Docket #0000968070

Stephen Pitcher

I was arrested twice in one week for riding my bicycle through stop signs on Milvia Street, a so-called "Bicycle Boulevard." On neither occasion

did I pose any threat to anyone – the only other occupant of the street was the police man.

This was a perfectly obvious “sting” operation, and everybody knew it. The effect will be that bicyclists who have been shifted to Milvia because they annoy motorists on Shattuck will simply relocate to Shattuck, to annoy motorists again. How much sense does that make?

There are something like a dozen stop signs on Milvia between downtown Berkeley and my home by the Oakland line. NOBODY stops at all of them. I suspect policemen riding bicycles don't even stop at all of them. You slow down, check cautiously, and go through, to conserve your momentum. It's ludicrous to expect a bicyclist to come to a complete stop at every stop sign on the “Bicycle Boulevard” Milvia.

Is the Berkeley Police Department really so starved for cash that they require \$600 from an elderly (and indigent) person who is doing the planet a favor by not driving a car?

Lee, Katherine

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**From:** PRC (Police Review Commission)  
**Sent:** Tuesday, September 01, 2015 8:48 AM  
**To:** Lee, Katherine  
**Subject:** FW: Police Participation in the August Wildland Urban Interface Fire Exercise

COMMUNICATION No. 4393

**From:** VQL [mailto:vqlegg@gmail.com]  
**Sent:** Monday, August 31, 2015 5:38 PM  
**To:** PRC (Police Review Commission)  
**Cc:** Rateaver, Andrew; Roman, Abraham  
**Subject:** Police Participation in the August Wildland Urban Interface Fire Exercise

I am extending my thank you to all the first responders who participated in the exercise for their very fine, professional and courteous conduct and I am extending a special thank you to the police officers who participated.

In my neighborhood, a group of us were to shelter in place while fire fighters were doing their best to protect us. A police officer charged with notifying residents of an announced evacuation elected to continue scouting the neighborhood rather than stay with us. I admired her decision to put the life safety of residents ahead of her own safety and comfort.

While observing on Friday, August 21, I met several officers who had come to the exercise on their own time just for the opportunity to have this training. I appreciate their dedication and seriousness to their mission should Berkeley ever face a situation similar to the 1991 Tunnel Fire, still the worst in WUI zone history.

Victoria Q. Legg  
Member of the Disaster Fire Safety Commission  
CERT Volunteer

