

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**Wednesday, March 28, 2018  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**  
*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)*
- 4. APPROVAL OF MINUTES**  
Regular Meeting of March 14, 2018. *(To be delivered.)*
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**
  - a. Status of complaints; other items.
  - b. Prioritizing new agenda items **(discussion & action)**
- 7. CHIEF OF POLICE'S REPORT**
  - a. Crime, budget, staffing, training updates, and other items.
  - b. Presentation of 2017 annual crime report
- 8. SUBCOMMITTEE REPORTS (discussion & action)**  
Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:
  - a. General Orders C-64, etc. Subcommittee
  - b. Homeless Encampment Subcommittee
  - c. Commission Reform Subcommittee

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

- a. Ways to address BPD staffing shortage.
- b. Commendations of BPD personnel:
  - i) Establish process for review and communication back to BPD.
  - ii) Review commendations of BPD personnel for January to August 2017 and direct PRC Officer to communicate to BPD.  
(See materials attached to January 24, 2018 agenda packet, pp. 25-125.)
- c. Decide how to address City Council referral regarding City's enrollment in the Department of Defense 1033 Program.  
From: City Council
- d. Establish subcommittee or other means to review and make recommendations on Lexipol policies from BPD.
- e. Process for requesting information from BPD.  
From: Commissioner Matthews
- f. Assess BPD's After-Action reporting and response to Public Records Act Request.  
From: Commissioner Prichett
- g. Review of General Order C-45, Police Chaplain Program  
From: Commissioner Prichett  
(See materials attached to Feb. 28, 2018 packet, p. 45)

**10. NEW BUSINESS (discussion & action)**

- a. Consider whether to have a table publicizing the PRC at the Berkeley Juneteenth Festival on Sunday, June 17, 2017.
- b. Inquiry into BPD's handling of rape test kits; request for policy review of department's policies and procedures regarding the kits.  
From: Commissioner Lippman

**11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached.

**12. PUBLIC COMMENT**

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

**13. ADJOURNMENT**

**Communications Disclaimer**

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



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

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (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, 1st floor, during regular business hours.

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



# PRC REGULAR MEETING ATTACHMENTS

## March 28, 2018

### MINUTES

March 14, 2018 Regular Meeting Minutes (*to be delivered*)

### AGENDA-RELATED

- Item 6.b.** – Prioritization of PRC Tasks in order of rank. Page 7
- Item 7.b.** – 2017 Annual Crime Report. Page 9
- Item 8.** – PRC Subcommittees List as of 3-20-18. Page 17
- Item 9.b.i)** – Memo from the PRC Officer to PRC Commissioners, dated Feb. 22, 2018: Proposed process for handling BPD employee commendations. Page 19
- Item 9.c.** – City Council Annotated Agenda for Nov. 14, 2017 – Item 19: Require City Council Approval of Any Proposed Acquisition of Material from the Department of Defense 1033 Program and Request Report and Related Documentation of Material Transferred. Page 21
- Item 9.d.** – Emailed list of 25 Lexipol Policies sent to PRC Officer Dec. 4, 2017, from BPD staff. Page 25
- Item 9.f.** – Email from PRC Commissioner Prichett to PRC Officer, dated Mar. 2, 2018: PRA Request: After Action Report 2-8-18. Page 27
- Item 9.f.** – Response from the City Attorney, dated Mar. 6, 2018, to Commissioner Prichett's PRA request. Page 29
- Item 10.b.** – Article from the San Francisco Chronicle, dated Mar. 20, 2018: Efforts to clear California's rape kit testing backlog fall short. Page 49
- Item 10.b.** – Berkeley Police Department Training and Information Bulletin, Number: 33: Sexual Assault Investigation Procedures, dated Jun. 12, 2008. Page 59

### COMMUNICATION(S)

- Letter to the Mayor and Councilmembers from the PRC Chair, issued Mar. 14, 2018: PRC's recommendations to the City Council regarding the 2018 Agreements with Other Law Enforcement Agencies, Police Departments, and Private Security Organizations. Page 69

Ordinance NO. 7,592–N.S. – Acquisition and Use of Surveillance Technology. Page 73

Article from [www.berkeleyside.com](http://www.berkeleyside.com), dated Mar. 15, 2018: Officials approve new rules on city surveillance; may be first in the nation. Page 81

Memo to the Mayor and Councilmembers from Councilmember Kriss Worthington, dated Mar. 27, 2018: Berkeley Community United for Police Oversight Ballot Measure. Page 85

Email to the PRC Commission from the PRC Officer dated Mar. 16, 2018: Constitutionality of police chaplain programs. Page 87

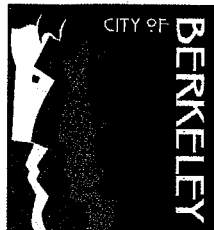
KJL:mgm

**Prioritization of PRC Tasks**

<b>Overall rank or priority</b>	<b>Tasks in order of rank (lower rank = higher priority)</b>	<b>Status 3.7.2018</b>	<b>Average numerical rank (scale = 1 to 5)</b>
1	-Body-Worn Camera Policy	Awaiting policy from BPD	1.625
1	-MOUs/Mutual Aid - NCRIC; Council Committee on UASI and NCRIC	PRC recommendations for this year done	1.625
3	-Police Accountability Reforms (Increase PRC power)	In progress	1.750
4	-Fair & Impartial Policing - follow-up on recommendations	PRC report to Council; awaiting CPE report	2.125
5	-BPD staffing shortage	In progress	2.250
5	-G.O. U-2, Use of Force revision	Awaiting policy from BPD	2.250
7	-Review BPD budget	Done -- part of performance audit request?	2.625
7	-General Orders C-64, U-2, M-2 re Crowd Control [Subcomm]	In progress	2.625
9	-Dept. of Defense 1033 Program	3.14 agenda	2.750
10	-Review Lexipol policies	3.14 agenda	2.875
11	-Commendations of BPD personnel	3.14 agenda	3.000
11	-BPD Accountability Plan for Training/Professional Development	Done. Ltr to CM 2.21.	3.000
11	-June 20, 2017 (Review of BPD Response at Council meeting)	Draft to BPD 1.31; awaiting response.	3.000
14	-Process for considering informal complaints	To be agendized	3.250
14	-PRC Regulations re Commissioner challenges	Meet-and-confer requested	3.250
14	-Armored Van Policy	Done. Ltr to Council 2.16.	3.250
17	-Homeless Encampments [Subcomm]	In progress	3.375
18	-Outreach - publicize existence of PRC and its services to community	To be agendized	3.500
19	-Review of DUI checkpoints	To be agendized	3.875
20	-Regional radio interoperability for common encrypted channels	To be agendized	4.000
20	-Media Credentialing	To be agendized	4.000
22	-BPD's policy for shelter-in-place directive to schools	To be agendized	4.125







Office of the City Manager

WORKSESSION  
March 20, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police

Subject: 2017 Annual Crime Report

INTRODUCTION

At the request of City Council, the City Manager provides regular reports on crime in Berkeley and strategies undertaken by the Berkeley Police Department to safeguard our community. This report includes 2017 Part One crime information, as well as recent organizational developments and changes initiated within the Berkeley Police Department in 2017.

CURRENT SITUATION AND ITS EFFECTS

In 2017, total Part One crime in Berkeley increased by 12% overall. Part One Violent Crime increased by 11.9% (71 crimes), while Part One Property Crimes increased by 12.1% (652 crimes).

Decreases in Part One Crimes were seen in Residential Burglary and Auto Theft. Increases were seen in Rape, Aggravated Assault, Commercial Burglary, Larceny (Grand Theft, Petty Theft and Auto Burglary) and Arson.

The City of Berkeley was negatively impacted by regional crime trends. Offenders travel across city lines, and commit offenses in communities across the greater Bay Area. In Berkeley, these offenses included street robberies, laptop thefts from cafes, high-end retail shoplifts or robberies, and auto burglaries—especially in parking lots near freeway entrances. In these cases, BPD investigators frequently head out of town to apprehend suspects. Investigators frequently work with other agencies, sharing information and collaborating in order to arrest offenders whose organized crime efforts are impacting all of our communities.

### Homicides

There was one homicide in Berkeley during 2017. The case was closed with the arrest of the suspect two days later. The suspect has been charged by the District Attorney's Office, and the case is currently awaiting trial.

### Robberies

Robberies were essentially even for the year, with 364 in 2017 compared to 362 in 2016. This year's number reflects a slight decrease in pedestrian robberies and a corresponding increase in commercial robberies. The Robbery data include not only robberies on the street or in a business, but also those which start as "shoplifting" incidents, but where the situation escalates, and the suspect uses force or the threat of force to escape, often with the suspect shoving an employee, or fighting to avoid being stopped. The robberies also include several laptop thefts, where a victim or witness end up in a struggle with the suspect, a trend which we saw develop in 2017.

### Aggravated Assaults

Aggravated Assaults increased 19.8% in 2017, with 218 reports, compared to 182 in 2016. The majority of aggravated assaults involve people known to each other, where conflict escalates into physical assault. This year a portion of these incidents occurred during the 2017 demonstrations.

### Rape

Reported rapes increased 64% in 2017, with 87 reports as compared to 53 in 2016. This increase is a reflection of the nationwide increasing awareness of sexual assault, and a willingness to report sexual assault. We encourage reporting of sexual assault and work to fully investigate each report to the fullest extent possible.

### Burglary, Larceny and Auto Theft

Burglaries increased by 4.7% as compared to 2016. Residential burglaries decreased by 2.6% while commercial burglaries increased by 14.9%. Larcenies increased by 16% to 4556 cases as compared to 3927 in 2016. The larceny figures include Auto Burglary which increased 32% from 1602 in 2016 to 2107 in 2017. Auto Thefts decreased 4.5% from 647 cases in 2016 to 619 this year.

### Arson

Reported arsons increased by 65% for a total of 33 versus 20 in 2016. There have been three recent arrests of arson suspects, one of whom is a serial arsonist with a history of drug use and mental health issues. None of the arson cases were major incidents.

### Data

Data on serious crime is collected annually by the Federal Bureau of Investigation (FBI) from over 17,000 law enforcement agencies representing over 90% of the U. S. population. The FBI's primary objective in the Uniform Crime Report (UCR) is to

generate a reliable set of crime statistics for use in law enforcement administration, operation, and management in the United States. The UCR tracks the following crimes:

Violent Crimes

Murder  
Rape  
Robbery  
Aggravated Assault

Property Crimes

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

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

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

**The Berkeley Police Department in 2017; Strategies and Accomplishments**

2017 was a remarkable year for the men and women of the Berkeley Police Department, and focus on our mission of safeguarding and engaging our community was evident throughout our Department's work in 2017.

Of particular note, the Department was called upon to craft strategies and manage an unprecedented series of large-scale demonstrations, all in the national spotlight, with overall excellent results and outcomes. Shortly after the demonstrations ended, we provided an unprecedented level of mutual aid efforts to support law enforcement and emergency response to the fires in Sonoma County.

Along with these efforts, the Berkeley Police Department strove to reduce the level of Part One Crime experienced in previous years. Department members continued to implement strategies focused on community safety, crime response, and community engagement, and other strategic goals of the Department, including:

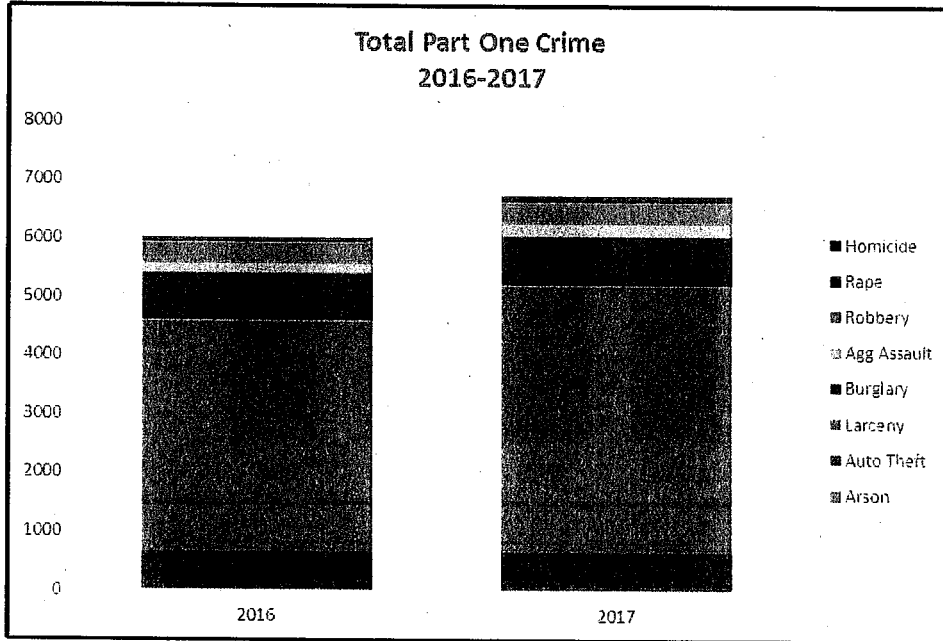
- Prioritizing Patrol Team staffing to support rapid response to in-progress crimes and emergencies;
- Relentless investigative focus on apprehending and prosecuting the small number of offenders involved in gun violence; 2017 saw a 42% drop in shootings, from twenty-six incidents in 2016 to fifteen in 2017;
- Leveraging technology, e.g. smartphone and laptop tracking capabilities, to pursue and arrests suspects, and recover stolen property;
- Continued focus on apprehending bike thieves;
- Continued collaboration with the Berkeley Unified School District to support the second year of two full classes in the Law and Social Justice program at Berkeley High School, preparing students for potential careers in criminal justice, including, we hope, with the Berkeley Police Department;

- Supporting community safety at BUSD and other institutions through safety trainings, including active-shooter trainings, to enhance safety for all involved;
- Expanded use of social media and directed emails, increasing community messaging on crime, crime prevention, community safety, and engagement opportunities;
- Conducted four Chief's Forum's, town-hall style meetings throughout the community, and hosted an Open House event at BPD;
- Expanded "Coffee with a Cop" events, held at coffee shops throughout the City;
- Conducted Toys-for-Tots and the annual Turkey Basket holiday meal program;
- Formally participated in LGBT Pride month for the first time, showing support through attending the Pride Parade in San Francisco, issuing uniform pins for uniform wear, and display of the Pride flag in the PSB Lobby;
- Developed in-house Principled Policing class, to train personnel in concepts of Procedural Justice and bias-awareness, with training in late 2017 and continuing into 2018;
- Continued internal focus on recruitment and hiring, amidst a competitive and challenging environment, with greater use of social media and advertising, having staff work recruitment booths at fairs and events, focused email campaigns, and working with the City's Human Resources Department to conduct more frequent recruitments.
- Increased focus on employee wellness and resiliency, including trainings in Building Psychological Resilience, Introduction to Yoga, and Emotional Survival for Law Enforcement (in early 2018); established a Wellness and Resiliency Workgroup for further work on this organizational priority.

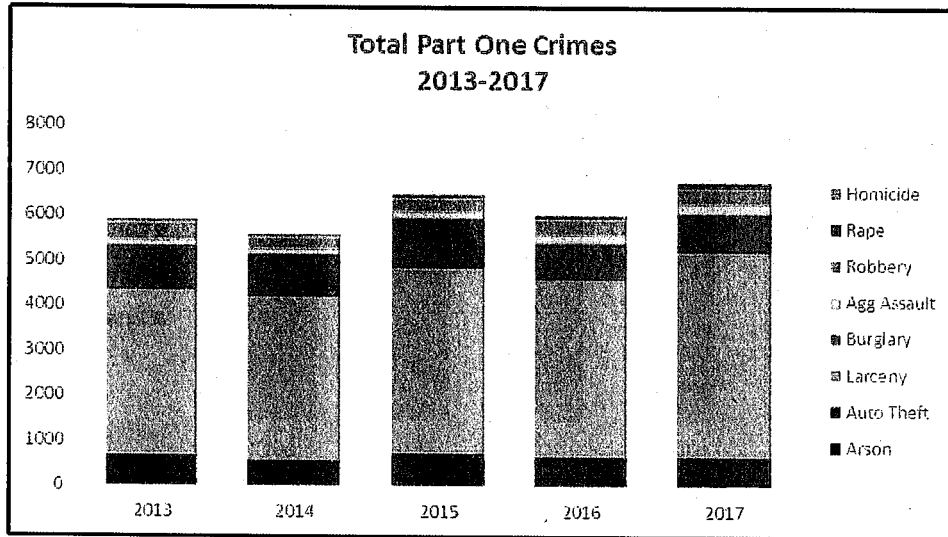
Attached to this report are the annual totals of UCR data for Part One Violent and Property Crimes for 2016 and 2017 in Berkeley, as well as five-year trends in Part One Violent Crimes and Part One Property Crimes.

Graphs below include:

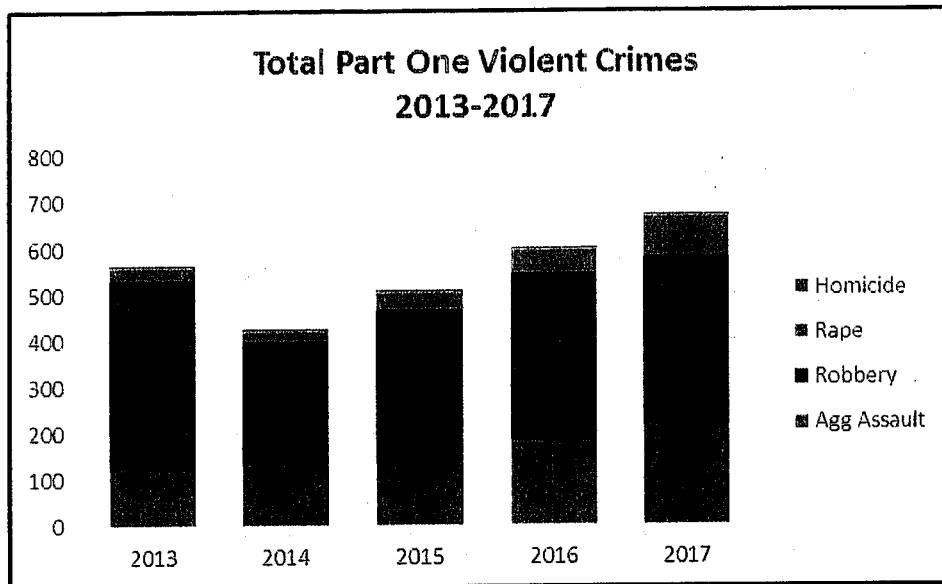
- UCR Part One Violent and Property Crime, two year trend
- UCR Part One Violent and Property Crime, five year trend
- UCR Part One Violent Crime, five year trend
- UCR Part One Property Crime, five year trend



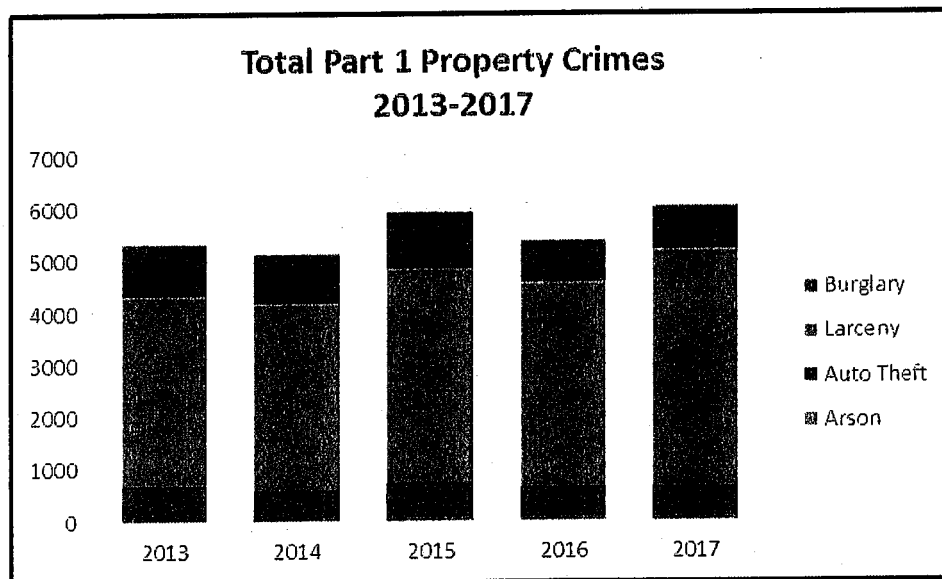
	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2016	2	53	362	182	803	3927	647	20
2017	1	87	364	218	841	4556	619	33



	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2013	4	29	409	122	978	3664	668	16
2014	3	25	265	132	934	3624	556	16
2015	1	41	331	135	1089	4118	713	20
2016	2	53	362	182	803	3927	647	20
2017	1	87	364	218	841	4556	619	33



	Homicide	Rape	Robbery	Agg Assault
2013	4	29	409	122
2014	3	25	265	132
2015	1	41	331	135
2016	2	53	362	182
2017	1	87	364	218



	Burglary	Larceny	Auto Theft	Arson
2013	978	3664	668	16
2014	940	3622	559	16
2015	1089	4118	713	20
2016	803	3927	647	20
2017	841	4556	619	33

ENVIRONMENTAL SUSTAINABILITY

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

cc: Andrew Greenwood, Chief of Police

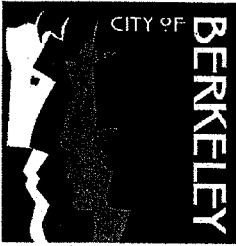




**POLICE REVIEW COMMISSION  
SUBCOMMITTEES LIST  
Updated 3-20-18**

<b>Subcommittee</b>	<b>Commissioners</b>	<b>Chair</b>	<b>BPD Reps / Others</b>
<b>General Orders on Crowd Control C-64, U-2, M-2</b> Formed 1-13-16 Renewed 3-22-17 Renewed 3-14-18	Lippman Prichett		Lt. Michael Durbin
<b>Homeless Encampments</b> Formed 2-1-17 Renewed 1-24-18	Prichett Sherman	Prichett	
<b>June 20, 2017 (Review of BPD Response at City Council Meeting)</b> Formed 7-12-17	Matthews Prichett Roberts  <i>Public member:</i> Elliot Halpern	Roberts	Chief Andrew Greenwood Sgt. Sean Ross
<b>Commission Reform</b> Formed 3-14-18	Allamby Perezvelez Roberts Sherman	Perezvelez	Chief Andrew Greenwood





Police Review Commission (PRC)

February 22, 2018

To: Police Review Commissioners

From: Katherine J. Lee, PRC Officer 

Re: Proposed process for handling BPD employee commendations

Here is a suggestion on how you might handle the letters of commendation of Berkeley Police Department employees that are forwarded to the PRC.

Background. In the recent past, Commissioners have gone through the commendations one by one, and if any one Commissioner felt the employee/s in question deserved special mention, the employee/s names were included in a letter to the Chief as being recognized for extraordinary service. (The vast majority of commendations involve sworn police officers, but occasionally, other department employees, such as community service officers and administrative staff, are praised.) Most Commissioners think that that process needs revising.

Proposal. The following is offered to spur your thinking and to have something concrete to discuss at your February 28 meeting.

Step 1: Before the meeting, each Commissioner reviews the commendations in the packet and selects up to five employees he or she feels are deserving of special recognition.

Step 2: At the meeting, the Chair opens the floor for "nominations," at which time each Commissioner presents the employees he/she has selected. If at least two other Commissioners agree, that employee is added to a list for special mention.

Step 3: The Commission votes on a motion that all those recognized in Step 2 above are recognized by the Commission for their extraordinary efforts (or however you want to frame it) and the PRC Officer should write a letter to the Chief to that effect, with a copy to each commended officer, and publish their names in the minutes of the meeting.

Again, this is staff's proposal for you to think about. The ultimate process is up to you to agree upon.



## Council Consent Items

**18. Healthy Black Families, Inc.: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds**

**From: Councilmembers Bartlett, Hahn, Maio, and Davila**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount to be determined by each Councilmember to the Healthy Black Families Inc. annual holiday celebration.

**Financial Implications:** Unknown

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

**Action:** Adopted Resolution No. 68,226–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Wengraf - \$100; Councilmember Maio - \$100; Councilmember Davila - \$75; Councilmember Harrison - \$100; Councilmember Hahn - \$100; Councilmember Worthington - \$250.

**19. Require City Council Approval of Any Proposed Acquisition of Material from the Department of Defense 1033 Program and Request Report and Related Documentation of Material Transferred**

**From: Councilmember Harrison**

**Recommendation:** 1. Adopt a Resolution requiring City Council ("Council") to review and approve any proposed acquisition of material prior to the Berkeley Police Department applying for material through the Department of Defense ("DOD") 1033 Program. 2. Refer to the City Manager a request for a report on the dates, contents, and uses of the transfers of materials to the Berkeley Police Department through the 1033 Program that have occurred to date. Direct that the City Manager issue the report by December 5, 2017. 3. Refer to the Police Review Commission a request for a report considering the City's enrollment in the 1033 Program.

**Financial Implications:** Staff time

Contact: Kate Harrison, Councilmember, District 4, 981-7140

**Action:** Moved to Action Calendar. 5 speakers. M/S/C (Harrison/Maio) to adopt Resolution No. 68,227–N.S.; Recommendation approved as amended in Supplemental Reports Packet #2 and with the change to Recommendation #2 to request an off-agenda memo from the City Manager on the equipment previously obtained through the 1033 program.

**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.

**20. Coyote Management and Co-Existence Educational Materials**

**From: Councilmember Wengraf**

**Recommendation:** Request that the Animal Care Commission add to their work plan a project to create educational materials and web content for the City of Berkeley website that informs Berkeley residents of coyote behavior and suggests best ways to co-exist with coyotes without conflict. Information on coyote behavior, management strategies, recommended responses to coyote encounters and attacks, and other pertinent information should be included.

**Financial Implications:** Minimal

Contact: Susan Wengraf, Councilmember, District 6, 981-7160

**Action:** Councilmember Davila added as a co-sponsor. Recommendation approved.

RESOLUTION NO. 68,227-N.S.

REQUIRING CITY COUNCIL APPROVAL OF ANY MATERIAL FROM THE  
DEPARTMENT OF DEFENSE 1033 PROGRAM

WHEREAS, the equipment provided to and utilized by the Berkeley Police Department ("BPD") must be consistent with the will of the Berkeley community; and

WHEREAS, Bay Area Police Departments such as the University of California at Berkeley Police Department and the San Francisco Police Department have acquired military material through the 1033 Program, and the BPD is enrolled in the 1033 program and may acquire material through the program in the future.

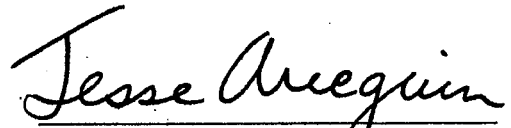
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it shall review and approve any proposed acquisition of material provided through the 1033 Program prior to the Berkeley Police Department applying for material.

The foregoing Resolution was adopted by the Berkeley City Council on November 14, 2017 by the following vote:

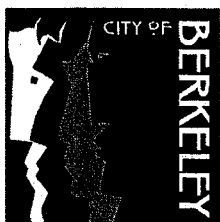
Ayes: Bartlett, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: Davila.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk



Office of the City Manager

November 28, 2017

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: 1033 Program Report

On November 14, 2017, City Council approved Item 19, regarding the Department of Defense's "1033" program. With this item, Council requested "a report on the dates, contents and uses of the transfers of material to the Berkeley Police Department through the 1033 program that have occurred to date." This memorandum serves to report on the information as requested by Council.

The program provides a website where lists of available equipment can be viewed. Staff has access to this site. In 2016, staff looked at the program in order to explore the possibility of acquiring a second robot for the Emergency Ordinance Disposal ("EOD") unit, commonly referred to as the department's "bomb squad." EOD Units are subject to Federal certification. An EOD Unit is required to have at least one robot, which keeps officers safe when dealing with potentially lethal explosive devices. The desired robot cost approximately \$170,000 and would represent a valuable, additional resource for our Department. However, the equipment we sought is currently unavailable. We have registered our interest with the program, and will seek Council approval should the equipment become available. Our existing robot was obtained through UASI grant funds years ago.

While some staff remember procuring ballistic helmets through this program over ten years ago, they were ultimately not useful due to size, and they have not been a part of the Department's inventory for many years. Protective helmets are critical, as demonstrated this spring when individuals at social media-driven protests threw quarter sticks of dynamite at officers' heads.

The Berkeley Police Department currently has no materials received through this program.

The Berkeley Police Department is dedicated to serving according to our community's values. Our purchases of equipment – as with the implementation of policy,

Page 2 of 2  
November 28, 2017  
Re: 1033 Program Report

development of training and daily practices – also seek to mirror those values. Our pursuit of outside funding is part of our commitment to reduce costs to Berkeleyans while improving our service to our community.

If you have any questions, please let me know.

cc: Jovan Grogan, Deputy City Manager  
Andrew Greenwood, Chief of Police  
Ann Marie Hogan, City Auditor  
Mark Numainville, City Clerk  
Matthai Chakko, Assistant to the City Manager / Public Information Officer



Lee, Katherine

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**From:** Speelman, Samantha M.  
**Sent:** Monday, December 04, 2017 5:08 PM  
**To:** Lee, Katherine  
**Subject:** Lexipol Policies 1 of 3  
**Attachments:** 101 Chief Executive Officer PRC.docx; 102 Oath of Office PRC.docx; 103 Policy Manual PRC.docx; 200 Organizational Structure PRC.docx; 204 Electronic Mail PRC.docx; 205 Administrative Communications PRC.docx; 206 Retiree Concealed Firearms PRC.docx; 302 Handcuffing and Restraints PRC.docx; 307 Vehicle Pursuits PRC.docx; 308 Canines PRC.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

I'm sending you 25 of the Lexipol policies, they are out of order since others are in various stages of research and approval.

10 of 25

1	<b>101</b>	Chief Executive Officer
2	<b>102</b>	Oath of Office
3	<b>103</b>	Policy Manual
4	<b>200</b>	Organizational Structure and Responsibility
5	<b>204</b>	Electronic Mail
6	<b>205</b>	Administrative Communications
7	<b>206</b>	Retiree Concealed Firearms
8	<b>302</b>	Handcuffing
9	<b>307</b>	Vehicle Pursuits
10	<b>308</b>	Canines
11	<b>309</b>	Officer Response to Calls
12	<b>310</b>	Domestic Violence
13	<b>311</b>	Search and Seizure
14	<b>312</b>	Temporary Custody of Juveniles
15	<b>313</b>	Adult Abuse
16	<b>314</b>	Discriminatory Harassment
17	<b>315</b>	Child Abuse
18	<b>318</b>	Victim and Witness Assistance
19	<b>319</b>	Hate Crimes
20	<b>320</b>	Department Use of Social Media
21	<b>323</b>	Report Preparation
22	<b>324</b>	Media Relations
23	<b>330</b>	Death Investigation
24	<b>331</b>	Identity Theft
25	<b>332</b>	Communications with Persons with Disabilities



**Lee, Katherine**

---

**From:** Andrea Prichett <prichett@locrian.com>  
**Sent:** Friday, March 02, 2018 2:26 PM  
**To:** Lee, Katherine  
**Subject:** Fwd: RE: PRA REQUEST: After Action Report 2-8-18

Hello again, Kathy.

Please include this communication in the next PRC packet. Thanks!

----- Forwarded Message -----

**Subject:** RE: PRA REQUEST: After Action Report 2-8-18  
**Date:** Fri, 23 Feb 2018 18:46:24 +0000  
**From:** Valderas, Lester <LValderas@cityofberkeley.info>  
**To:** 'Andrea Prichett' <prichett@locrian.com>

Good morning Ms. Prichett,

This email is regarding your below California Public Records Act request dated February 13, 2018. Please be advised that the City is extending the response period by fourteen additional calendar days to March 9, 2018, based on the need for consultation with two or more components of the agency having substantial subject matter interest therein. Gov't Code §6253(c)(3).

If you have any questions or concerns regarding your CPRA request, please feel free to contact me by email at [lvalderas@cityofberkeley.info](mailto:lvalderas@cityofberkeley.info).

Thank you.

**Lester A. Valderas** | *Paralegal*  
City of Berkeley, City Attorney's Office  
2180 Milvia St., 4<sup>th</sup> Floor, CA 94704  
**Phone:** (510) 981-6984 **Fax:** (510) 981-6960  
**Email:** [lvalderas@cityofberkeley.info](mailto:lvalderas@cityofberkeley.info)

---

**From:** Andrea Prichett [<mailto:prichett@locrian.com>]  
**Sent:** Tuesday, February 13, 2018 3:50 PM  
**To:** Norman, Latargie <[lnorman@cityofberkeley.info](mailto:lnorman@cityofberkeley.info)>; Norman, Latargie <[lnorman@cityofberkeley.info](mailto:lnorman@cityofberkeley.info)>  
**Subject:** PRA REQUEST: After Action Report 2-8-18

Dear Custodian of Records for the Berkeley Police department,

Pursuant to the California Public Records Act, I would like to obtain copies of the following:

**1. Operational Plan for the police action for 2-8-18** at old City Hall to remove a homeless encampment

**2. After Action report** (as required in General order C-64) including the estimated costs of the police action at 2134 Martin Luther King Jr Way on 2-8-18

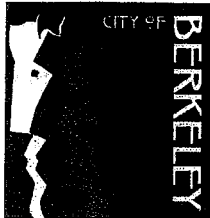
**3. Copies of planning documents related to the removal of the encampment at the same location** including but not limited to

a. emails, communications, planning documents, timelines, announcements between agencies including Neighborhood Services, Public Works, Berkeley Mental health, City Manager and City Council members

Thank you in advance for your kind assistance.

**Please provide these responses via email at:**  
**[prichett@locrian.com](mailto:prichett@locrian.com)**

Andrea Prichett



Office of the City Attorney

March 6, 2018

Via e-mail at [prichett@locrian.com](mailto:prichett@locrian.com)

**RE: Public Records Act Request Dated February 13, 2018**

Dear Ms. Prichett:

This letter is in response to your California Public Records Act request below dated February 13, 2018, in which the City of Berkeley's response time was subsequently extended on February 23, 2018:

*"Pursuant to the California Public Records Act, I would like to obtain copies of the following:*

1. *Operational Plan for the police action for 2-8-18 at old City Hall to remove a homeless encampment*
2. *After Action Report (as required in General order C-64) including the estimated costs of the police action at 2134 Martin Luther King Jr Way on 2-8-18*
3. *Copies of planning documents related to the removal of the encampment at the same location including but not limited to*
  - a. *Emails, communications, planning documents, timelines, announcements between agencies including Neighborhood Services, Public Works, Berkeley Mental Health, City Manager and City Councilmembers."*

Please be advised that the Operational Plan is exempt from disclosure as a record of operations and security procedures pursuant to Gov't Code §6254(f) and is not required to be disclosed under the Public Records Act. Additionally, the After Action Report is exempt from disclosure as it is an investigative record and is not required to be disclosed. This action was in response to lodging on public property and not pursuant to BPD General Order C-64. Lastly, please find documents responsive to your 3<sup>rd</sup> request regarding planning documents, attached to this letter as a courtesy.

With this response, staff has completed their work to process and respond to your California Public Records Act request. If you have any questions concerning your request, please contact Paralegal Lester Valderas by e-mail at [lvalderas@cityofberkeley.info](mailto:lvalderas@cityofberkeley.info).

Sincerely,

A handwritten signature in black ink, appearing to read "Farimah Brown".

Farimah Brown  
City Attorney

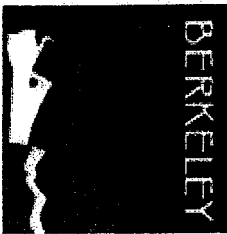
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**From:** Grogan, Jovan  
**Sent:** Wednesday, February 07, 2018 3:02 PM  
**Subject:** Notice to Old City Hall Encampment  
**Attachments:** OCH Posting Notice\_020618.pdf

***This email is being sent to the Mayor, Councilmembers, and all legislative staff.***

Council:

Attached to this email, please find the notice that was provided to the encampment at Old City Hall earlier today. There has been growing concern about health and safety conditions at this location, including human waste and trash accumulations, as well as recent fires, which have been the subject of numerous complaints from neighboring residents and businesses. The notice advises members of the encampment to immediately collect their belongings and vacate the premises. Staff from the Homeless Outreach Team also visited the encampment today. Please feel free to contact me with any questions.



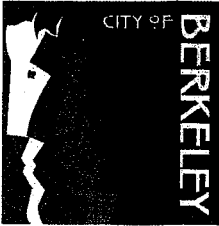
**Jovan D. Grogan**  
Deputy City Manager  
City of Berkeley  
2180 Milvia Street, 5th Floor, Berkeley, CA 94704  
(510) 981-7014 / [jgrogan@cityofberkeley.info](mailto:jgrogan@cityofberkeley.info)



...the City of Berkeley

\*Most City offices are closed the second Friday of each month for cost-saving measures. For a complete schedule of City closures and exceptions, please visit the [Holiday and Reduced Service Day Schedule](#).

**Administrative Assistant:** Melanie E. McLean / (510) 981-7005 / [MeMcLean@cityofberkeley.info](mailto:MeMcLean@cityofberkeley.info)



*Note: For purposes of the PRC agenda packet, duplicate copies of this Public Notice, which were attached to numerous emails that follow, are not reproduced. Omissions are indicated by a handwritten asterisk.*

# **PUBLIC NOTICE**

Date: February 6, 2018  
To: Persons Lodging at 2134 Martin Luther King Jr. Way (Old City Hall)  
Notice of Violation of BMC section 13.36.065.C and Administrative Rule 1.15, Penal Code (PC) 647e  
From: City of Berkeley Neighborhood Services  
Subject: **Encampments Located at 2134 Martin Luther King Jr. Way (Old City Hall)**

You are hereby notified that BMC 13.36.065 and Administrative Rule 1.15 prohibit persons from doing any of the following:

- "Set up, place, maintain or install any structure or large object in or on the exterior grounds of a City building without a City-issued permit. A structure or large object as used herein is any object with a footprint or coverage area of 10 square feet (i.e., 3.3 feet by 3.3 feet) or more, including but not limited to a tent or table exceeding that size."
- "Leave or store any unattended personal property in or on the exterior grounds of a City building regardless of the size."
- Remain "inside of or on the curtilage of a City building without a purpose related to conducting business, accessing services, or contacting an occupant on the premises."

See [http://www.cityofberkeley.info/uploadedFiles/City\\_Manager/Level 3 - General/AR%201-15\(1\).pdf](http://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/AR%201-15(1).pdf).

You are further hereby notified that Penal Code Section 647(e) prohibits lodging on public property without permission of the property owner. PC 647 provides that "... every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

- (e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

**Lodging on the property at 2134 Martin Luther King Jr. Way is not permitted. Please take this opportunity to immediately collect your belongings and leave this location. The City prefers not to have to resort to citation or arrest to gain your compliance with this notice. However, absent voluntary compliance, failure to comply may result in citations and arrest. Arrested individuals may be booked into the Berkeley jail in appropriate circumstances.**

Any property which is left unattended will be handled in accordance with City policy regarding temporary storage of unattended property. Individuals who wish to reclaim their property may contact 311 Customer Service Center during regular business hours (Monday – Friday, 8:00 AM to 5:00 PM): (510) 981-2489.

There has been growing concern about health and safety conditions at this location, including human waste and trash accumulations, as well as recent fires, which have been the subject of numerous complaints from neighboring residents and businesses.

The City of Berkeley provides a number of services that you are encouraged to utilize:

The City of Berkeley funds an emergency storm shelter for adults (18+ years old) who are living on the streets in Berkeley, with accommodation provided on a first-come, first-served basis. **Hours:** 6:00 PM to 7:00 AM through April 15, 2018. **Location:** 1925 9<sup>th</sup> Street @ University

If you are interested in shelter and/or housing, **contact the Hub** by:

- Calling 211 between 9 AM and 12 PM on Tuesdays;
- Attending a housing workshop at the Berkeley Drop-In Center (3234 Adeline St.) @ 10:30 AM on Tuesdays;
- Meeting a Hub assessor at the Community Meal (Mondays, 3:30 - 4:45 PM at 1744 University Avenue) or Community Breakfast (Tuesdays, 7:00 - 8:00 AM, 2138 Cedar Street)

Free meals are available throughout Berkeley during the week, including the following:

- **Dorothy Day House.** **Hours:** Monday - Saturday mornings, 7:00 AM - 8:15 AM. Coffee is served @ 6:30 AM. **Location:** Christ Church, 2138 Cedar Street.
- **Berkeley Food and Housing Project.** **Hours:** Monday, Tuesday, Thursday and Friday, 3:30 - 5:00 PM. **Location:** 1744 University Avenue at the Lutheran Church of the Cross.
- **McGee Avenue Baptist church.** **Hours:** Monday, Wednesday, and Friday, 12-1 PM. **Location:** 1640 Stuart @ McGee. **Contact:** (510) 843- 1774.
- **St. Paul's AME Church.** **Hours:** Tuesdays, 11:30 AM-12.30 PM. **Location:** 2024 Ashby Avenue @ Adeline **Contact:** (510) 848- 2050.
- **South Berkeley Community Church.** **Hours:** Thursdays, 12- 1PM. **Location:** 1802 Fairview street @ Ellis. **Contact:** (510) 652-1040.

Weekend meals:

- **All Souls Episcopal Church.** **Hours:** every 2<sup>nd</sup> Sun.@ 4 PM. **Location:** 2220 Cedar Street @ Spruce **Contact:** (510) 848- 1755.
- **St. Mary Magdalene.** **Hours:** 1<sup>st</sup> & 4<sup>th</sup> Sundays @ 3 PM. **Location:** 2005 Berryman St. @ Henry St. **Contact:** (510) 526-4811

Shower, laundry, and daytime respite available in Berkeley:

- **The Multi-Agency Service Center** offers showers and laundry. **Location:** 1931 Center Street (entrance in the front) **Hours:** 8:00 AM - 12 PM, 7 days a week.
- **Willard Pool Showers** **Location:** corner of Telegraph and Derby **Hours:** 8:00PM - 9:00 PM on Monday - Friday and 9 AM – 10 AM on Saturday & Sunday mornings.
- **Berkeley Drop-In Center:** provides restrooms, storage lockers, packaged meals, free phone services, message services, counseling, and more. **Location:** 3234 Adeline St. **Hours:** Monday – Thursday, 9:00 AM - 4:00 PM; Friday 9:00 AM - 2:00 PM.
- **Women's Daytime Drop-In Center:** provides respite, restroom, case management services, and referrals to community services, and more to women and children. **Location:** 2218 Acton St. **Hours:** Monday – Friday, 8:00 AM - 4:00 PM (closed 1st Fridays). **Contact:** (510) 548-2884

Medical Services:

- **Suitcase Clinic/ ASUC Youth/LGBTQ+ Clinic.** **Hours:** Mondays, 6 PM – 9 PM. **Location:** 2300 Bancroft Way **Contact:** (510) 423-3303.
- **Suitcase Clinic/ASUC Women's Clinic.** **Hours:** Mondays, 7 pm – 9 p.m. **Location:** 2140 Dwight Way **Contact:** (510) 423-3659.
- **Suitcase Clinic/ASUC General Clinic.** **Hours:** Tuesdays, 6:15 pm – 9 p.m. **Location:** 2407 Dana Street **Contact:** (510) 269-7242.

**For more service referrals, contact the Hub by calling 211 or (866) 960-2132.**



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**From:** Elgstrand, Stefan  
**Sent:** Wednesday, February 07, 2018 11:55 AM  
**To:** Harrison, Kate  
**Cc:** Naso, Christopher  
**Subject:** Public Notice to Old City Hall Encampment  
**Attachments:** Public Notice 2-6-18.pdf

\*  
Attached is the notice that we received this morning. It was delivered to the encampment yesterday evening/late afternoon.

Stefan Elgstrand  
Assistant to the Mayor  
Office of Mayor Jesse Arreguin  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
(510) 981-7103 phone  
(510) 981-7199 fax  
[SElgstrand@cityofberkeley.info](mailto:SElgstrand@cityofberkeley.info)  
[www.jessearreguin.com](http://www.jessearreguin.com)

*Sign up for our [monthly newsletter](#).*

---

**From:** Steffen, Erin  
**Sent:** Tuesday, February 06, 2018 5:21 PM  
**To:** Radu, Peter  
**Cc:** Burke, Bill; Bourgault, Lynne S.  
**Subject:** Public Notice Services  
**Attachments:** OCH Posting Notice\_020618.docx

**Importance:** High

Hi Peter,

Thank you for reviewing the language on services for this notice. Please reply back before 8:30 AM tomorrow if you have any updates to the contact information regarding services on page 2. Let me know if you have any questions.

Thanks,  
Erin

---

**From:** Burke, Bill  
**Sent:** Wednesday, February 07, 2018 9:43 AM  
**To:** Steffen, Erin  
**Subject:** RE: Public Notice Services

Sorry Erin, I did not think to change the date. That shouldn't be a problem as the date was when the notice was created, not when it was posted. It is generally accepted that the notice be posted within 24 hours of the date of the notice. And it was clear that it became effective at the time of posting. 39 camps were posted, as well as several unclaimed piles of personal property, the trees and traffic poles along MLK, the entry pillars to OCH, , the Public Notice board fronting OCH, and other perimeter trees. Juumane videotaped.

Bill Burke  
City of Berkeley  
Office of the City Manager  
Code Enforcement Supervisor  
2180 Milvia Street  
Berkeley, CA 94704  
Tel: 510-981-2492

**From:** Steffen, Erin  
**Sent:** Tuesday, February 06, 2018 5:21 PM  
**To:** Radu, Peter <pradu@cityofberkeley.info>  
**Cc:** Burke, Bill <BBurke@cityofberkeley.info>; Bourgault, Lynne S. <LBourgault@cityofberkeley.info>  
**Subject:** Public Notice Services  
**Importance:** High

Hi Peter,

Thank you for reviewing the language on services for this notice. Please reply back before 8:30 AM tomorrow if you have any updates to the contact information regarding services on page 2. Let me know if you have any questions.

Thanks,  
Erin

---

**From:** Chakko, Matthai  
**Sent:** Thursday, February 08, 2018 12:17 PM  
**To:** Frankel, Andrew J.; Burke, Bill; Steffen, Erin  
**Subject:** RE: Encampment Flyer  
**Attachments:** OCH Posting Notice\_020618.pdf

**From:** Frankel, Andrew J.  
**Sent:** Thursday, February 08, 2018 11:57 AM  
**To:** Chakko, Matthai <MChakko@cityofberkeley.info>; Burke, Bill <BBurke@cityofberkeley.info>; Steffen, Erin <ESteffen@cityofberkeley.info>  
**Subject:** Encampment Flyer

Good morning,

Does anyone have an e-copy of the flyer which was posted yesterday?

Andrew

ANDREW J. FRANKEL, Sergeant, S-29  
Public Information Officer  
City of Berkeley Police Department  
Office: (510) 981-5780  
Cell: (510) 812-4082  
Email: [afrankel@ci.berkeley.ca.us](mailto:afrankel@ci.berkeley.ca.us)

---

**From:** Reece, David K.  
**Sent:** Wednesday, February 07, 2018 1:20 PM  
**To:** Spiller, Edward  
**Cc:** Greenwood, Andrew; Louis, Jennifer A.; Hart, Alyson L.  
**Subject:** Encampment Clearing

The City has decided to vacate the encampment tomorrow at 0500. We will brief at 0430 in the MPR. We need all of DD and Motors to add to CSB and patrol. Can I get a head count ASAP please.

Sent from my iPhone

---

**From:** Reece, David K.  
**Sent:** Wednesday, February 07, 2018 1:56 PM  
**To:** Spiller, Edward  
**Cc:** Greenwood, Andrew; Louis, Jennifer A.; Hart, Alyson L.  
**Subject:** FW: Encampment - Help Needed

The ask from Kevin. This needs to be more than a volunteer situation.

*Captain Dave Reece C-4*

Berkeley Police Department  
Professional Standards Division  
(510) 981-5760 office  
(510) 981-5704 fax  
dreece@ci.berkeley.ca.us

**From:** Schofield, Kevin M.  
**Sent:** Wednesday, February 07, 2018 1:55 PM  
**To:** Reece, David K. <DRreece@cityofberkeley.info>  
**Cc:** Durbin, Michael R. <MDurbin@cityofberkeley.info>; Rodrigues, Veronica <VRodrigues@cityofberkeley.info>  
**Subject:** Encampment - Help Needed

Captain-

Tomorrow (Thursday) morning, BPD and other city departments will be clearing out the homeless encampment that is around Old City Hall. We will need approximately 25 officers to assist. The encampment currently houses an unknown number of people and has 39 currently erected structures. We noticed the encampment this morning with direction to leave. At a previous cleanout of the same location we used 25-30 officers.

Thus far we only have 2 weekend officers that volunteered to come in (DeBruin and Hom) and 4 from CSB. I'm also looking for 4 PEO's and have contacted Traffic.

Can you please help us gather approximately 20 more officers/sgts from other areas including Traffic and DD? I will clear officers out to return to their assignments as quickly as I can.

Mike- I'm sure we can pull a few Team 4 and Team 1 to help, I want to be careful about not making patrol too short or counting on them in case there is a major incident. Maybe we pull patrol people as needed to help get us to the number we need after hearing back from DD and Traffic?

Briefing in the MPR at 0430hrs., on scene at 0500hrs.

Thank you, Kevin

---

**From:** Reece, David K.  
**Sent:** Wednesday, February 07, 2018 2:52 PM  
**To:** Greenwood, Andrew  
**Subject:** FW: Encampment - Help Needed

FYSA only. Doing this tomorrow 0500 with same concept of operation. Will have 35 or so officers as there are almost 40 tents. I will keep you apprised. Get well.

*Captain Dave Reece C-4*

Berkeley Police Department  
Professional Standards Division  
(510) 981-5760 office  
(510) 981-5704 fax  
dreece@ci.berkeley.ca.us

**From:** Schofield, Kevin M.  
**Sent:** Wednesday, February 07, 2018 1:55 PM  
**To:** Reece, David K. <DRreece@cityofberkeley.info>  
**Cc:** Durbin, Michael R. <MDurbin@cityofberkeley.info>; Rodrigues, Veronica <VRodrigues@cityofberkeley.info>  
**Subject:** Encampment - Help Needed

Captain-

Tomorrow (Thursday) morning, BPD and other city departments will be clearing out the homeless encampment that is around Old City Hall. We will need approximately 25 officers to assist. The encampment currently houses an unknown number of people and has 39 currently erected structures. We noticed the encampment this morning with direction to leave. At a previous cleanout of the same location we used 25-30 officers.

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Thank you, Kevin

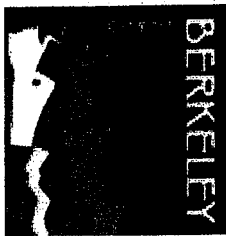
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**From:** Grogan, Jovan  
**Sent:** Wednesday, February 07, 2018 3:02 PM  
**Subject:** Notice to Old City Hall Encampment  
**Attachments:** OCH Posting Notice\_020618.pdf

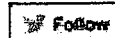
***This email is being sent to the Mayor, Councilmembers, and all legislative staff.***

Council:

Attached to this email, please find the notice that was provided to the encampment at Old City Hall earlier today. There has been growing concern about health and safety conditions at this location, including human waste and trash accumulations, as well as recent fires, which have been the subject of numerous complaints from neighboring residents and businesses. The notice advises members of the encampment to immediately collect their belongings and vacate the premises. Staff from the Homeless Outreach Team also visited the encampment today. Please feel free to contact me with any questions.



Jovan D. Grogan  
Deputy City Manager  
City of Berkeley  
[2180 Milvia Street, 5th Floor, Berkeley, CA 94704](#)  
[jgrogan@cityofberkeley.info](mailto:jgrogan@cityofberkeley.info) / (510) 981-7014



...the City of Berkeley

Most City offices are closed the second Friday of each month for cost-saving measures. For a complete schedule of City closures and exceptions, please visit the [Holiday and Reduced Service Day Schedule](#).

**Administrative Assistant:** [Melanie E. McLean / \(510\) 981-7005 / MeMcLean@cityofberkeley.info](#)



---

**From:** Reece, David K.  
**Sent:** Thursday, February 08, 2018 8:28 AM  
**To:** Williams-Ridley, Dee; Grogan, Jovan; Chakko, Matthai  
**Cc:** Greenwood, Andrew; Spiller, Edward; Hart, Alyson L.; Louis, Jennifer A.  
**Subject:** This Mornings Operation

We just cleared Old City Hall. All in all, things went smooth and coordination between City departments was good.

Of note, Nancy Temple Armstrong arrived and was arrested for obstructing a public officer. Armstrong essentially ducked under the police line, was confronted by officers, failed to obey their direction, then passively resisted.

Also of note, CM Davila and Andrea Pritchett responded. Pritchett harassed a number of my officers in the presence of CM Davila.

Community Services Bureau staff will patrol today to ascertain where they land next. They believe they may be headed to the railroad tracks near South Aquatic Park.

Respectfully,

*Captain Dave Reece C-4*

Berkeley Police Department  
Operations Division  
(510) 981-5800 office  
(510) 981-5704 fax  
dreece@ci.berkeley.ca.us

---

**From:** Williams-Ridley, Dee  
**Sent:** Thursday, February 08, 2018 10:37 AM  
**To:** Arreguin, Jesse L.; Bartlett, Ben; Davila, Cheryl; Hahn, Sophie; Harrison, Kate; Droste, Lori; Maio, Linda; Wengraf, Susan; Worthington, Kriss  
**Cc:** SET  
**Subject:** Old City Hall Encampment - Update

**Importance:** High

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

Dear Mayor and Council:

I wanted to provide you with a brief update about the encampment at Old City Hall, which was peacefully cleared this morning. Campers were noticed on Wednesday on a personal basis, with civilian staff leaving copies of the notice and a list of supportive services at every tent and with every individual. The City's homeless outreach team also followed up with a visit to those at the site. As a result, many people left peaceably on Wednesday.

Those individuals who remained this morning also left peacefully and with no incident.

The multi-departmental effort included staff from Mental Health, Neighborhood Services, Parks, Police and Public Work. Their professionalism, compassion and dedication make operations like this successful.

As you know, the growing health and safety concerns – including human waste, trash and two fires – created an untenable situation. Numerous neighbors, residents and merchants have issued complaints about their comfort, safety and ability to walk through the area and the encampment's impact on their confidence and comfort in Berkeley.

One individual, Nancy Temple Armstrong, who was not a camper and who later came to the site was arrested for obstructing a police officer.

Please feel free to direct any media inquiries to Matthai Chakko, the City's PIO.

Thank you,  
Dee

---

**From:** Steffen, Erin  
**Sent:** Wednesday, February 07, 2018 9:04 AM  
**To:** Slimick, Breanne  
**Subject:** FW: Public Notice Services  
**Attachments:** OCH Posting Notice\_020618.docx

**Importance:** High

\*  
Here's the final notice, Peter had no corrections.

Cheers,  
Erin

**From:** Steffen, Erin  
**Sent:** Tuesday, February 6, 2018 5:21 PM  
**To:** Peter Radu (pradu@cityofberkeley.info)  
**Cc:** Burke, Bill; Bourgault, Lynne S.  
**Subject:** Public Notice Services  
**Importance:** High

Hi Peter,

Thank you for reviewing the language on services for this notice. Please reply back before 8:30 AM tomorrow if you have any updates to the contact information regarding services on page 2. Let me know if you have any questions.

Thanks,  
Erin

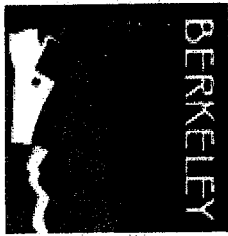
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**From:** Grogan, Jovan  
**Sent:** Wednesday, February 07, 2018 3:02 PM  
**Subject:** Notice to Old City Hall Encampment  
**Attachments:** OCH Posting Notice\_020618.pdf


***This email is being sent to the Mayor, Councilmembers, and all legislative staff.***

Council:

✱  
Attached to this email, please find the notice that was provided to the encampment at Old City Hall earlier today. There has been growing concern about health and safety conditions at this location, including human waste and trash accumulations, as well as recent fires, which have been the subject of numerous complaints from neighboring residents and businesses. The notice advises members of the encampment to immediately collect their belongings and vacate the premises. Staff from the Homeless Outreach Team also visited the encampment today. Please feel free to contact me with any questions.



**Jovan D. Grogan**  
Deputy City Manager  
City of Berkeley  
2180 Milvia Street, 5th Floor, Berkeley, CA 94704  
(510) 981-7014 / [jgrogan@cityofberkeley.info](mailto:jgrogan@cityofberkeley.info)

 ...the City of Berkeley

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**Administrative Assistant:** Melanie E. McLean / (510) 981-7005 / [MeMcLean@cityofberkeley.info](mailto:MeMcLean@cityofberkeley.info)

---

**From:** Radu, Peter  
**Sent:** Tuesday, February 06, 2018 5:30 PM  
**To:** Steffen, Erin  
**Cc:** Burke, Bill; Bourgault, Lynne S.  
**Subject:** RE: Public Notice Services

Looks fine to me, Erin! Thanks.

**From:** Steffen, Erin  
**Sent:** Tuesday, February 06, 2018 5:21 PM  
**To:** Radu, Peter <pradu@cityofberkeley.info>  
**Cc:** Burke, Bill <BBurke@cityofberkeley.info>; Bourgault, Lynne S. <LBourgault@cityofberkeley.info>  
**Subject:** Public Notice Services  
**Importance:** High

Hi Peter,

Thank you for reviewing the language on services for this notice. Please reply back before 8:30 AM tomorrow if you have any updates to the contact information regarding services on page 2. Let me know if you have any questions.

Thanks,  
Erin

---

**From:** Elgstrand, Stefan  
**Sent:** Wednesday, February 07, 2018 11:55 AM  
**To:** Harrison, Kate  
**Cc:** Naso, Christopher  
**Subject:** Public Notice to Old City Hall Encampment  
**Attachments:** Public Notice 2-6-18.pdf

✕  
Attached is the notice that we received this morning. It was delivered to the encampment yesterday evening/late afternoon.

Stefan Elgstrand  
Assistant to the Mayor  
Office of Mayor Jesse Arreguin  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
(510) 981-7103 phone  
(510) 981-7199 fax  
[SElgstrand@cityofberkeley.info](mailto:SElgstrand@cityofberkeley.info)  
[www.jessearreguin.com](http://www.jessearreguin.com)

*Sign up for our [monthly newsletter](#).*

---

**From:** Buddenhagen, Paul  
**Sent:** Tuesday, February 06, 2018 5:34 PM  
**To:** Ahmed, Eve  
**Cc:** Yavneh, Tenli; Grolnic-McClurg, Steven  
**Subject:** Need Hott at old city hall

Hi Eve,

Please have a pair of Hott outreach staff go to the encampment at old city hall tomorrow morning and offer services inform of services.

There was a fire there today that threatened the building and the city is going to notice removal at 8 tomorrow morning with enforcement on Thursday.

Call me if you have questions/concerns.

Thanks  
Paul

Sent from my iPhone





Local



# Efforts to clear California's rape kit testing backlog fall short

By Melody Gutierrez and Kimberly Veklerov | March 16, 2018 | Updated: March 17, 2018 1:44pm

2

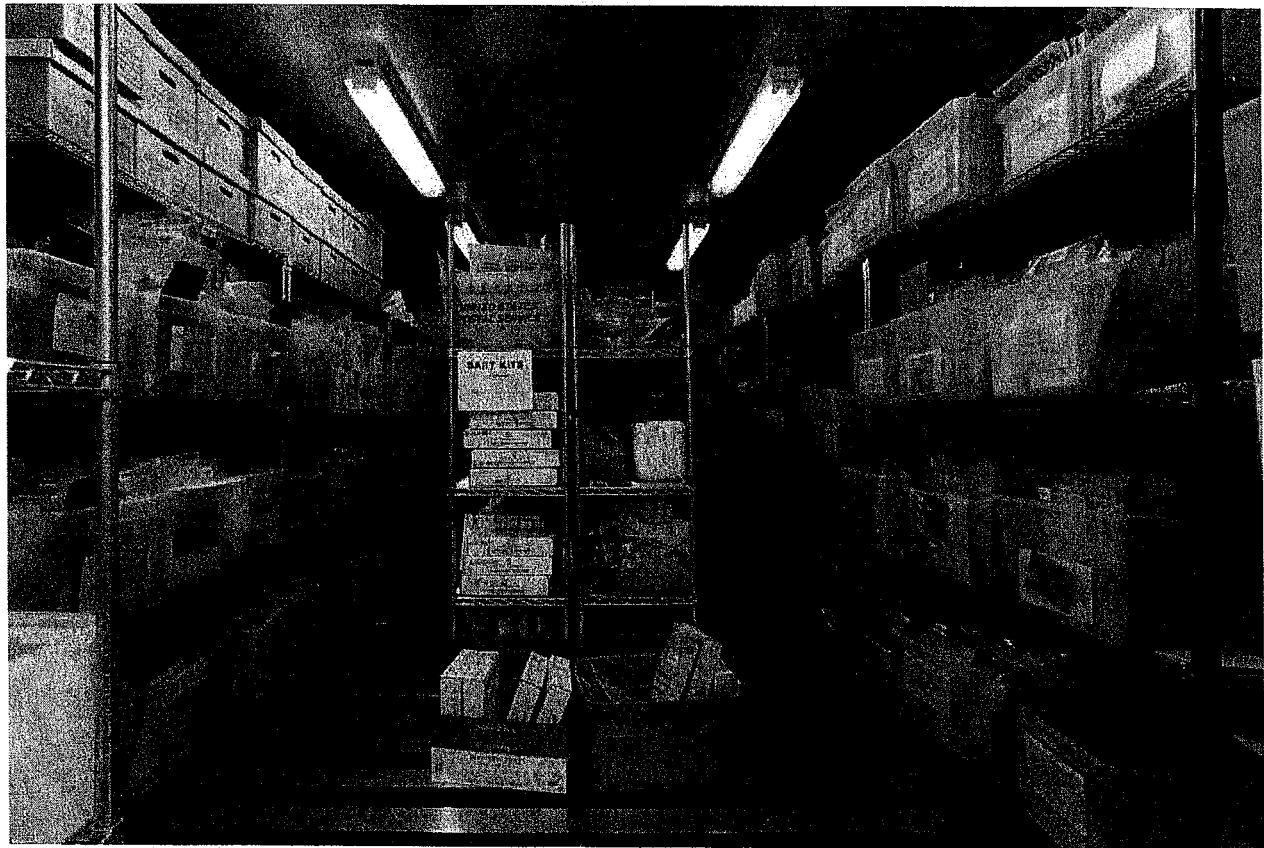


Photo: Peter DaSilva, Special To The Chronicle

Rape kits in cold storage freezers at the California Department of Justice forensic lab in Richmond.

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The case of an Antioch man accused of murder who evaded capture while a rape kit implicating him years earlier sat on a shelf has caught the attention of lawmakers and activists. But chances are, he's not the only one.



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**Get It Now**

The untested rape kit in Berkeley was one of 1,900 overlooked in Alameda County alone when it was examined in 2014, six years after the rape occurred. But how many are there statewide now?

"California doesn't know how many rape kits are on the shelves," said Assemblyman David Chiu, D-San Francisco.

And efforts by lawmakers to require the more than 500 law enforcement agencies across California to count them and test them have so far fallen short amid opposition by some law enforcement groups who have argued that the state needs to pay for that mandate.

As other states have combed through thousands of rape kits that were ignored for years and, in some cases decades, prosecutors across the country have reported a high incidence of serial offenders.

The case of Keith Kenard Asberry Jr., reported Wednesday in The Chronicle, inspired outrage and renewed calls for all rape kits to be tested after the paper reported that murder charges were added to the suspected serial rapist's case.

Asberry is awaiting trial in Alameda County Superior Court for sexual assaults against five women ranging in age from 15 to 46, and for the 2015 killing of one rape victim, Randhir Kaur, who was a UCSF dental student. All of the cases are linked by DNA evidence. Prosecutors say Asberry kidnapped his victims at gunpoint, in one case tying or binding a woman, and robbing and raping them.

In one of the earlier cases, Berkeley police never sent a rape kit from a 19-year-old victim in 2008 to a crime lab for testing.

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**RELATED**

**Bay Area leaders outraged at Berkeley police lapse on rape kit**



**Editorial: Changing Bay Area's rape kit backlog**



**Man stayed free while rape kit went untested; is accused of**

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Instead, the evidence was found in 2014 as part of a countywide effort to clear rape kit backlogs. If the police had sent it to a lab for testing, it could have implicated Asberry at that time. He had been in the national DNA database of known criminals since a 2005 felony gun conviction.

The state does not require that rape kits — which contain evidence from a forensic exam of victims, such as swabs of the mouth, genitals and anus — be inventoried or tested. The only way to know how many rape kits remain untested across the state is to ask each of California's hundreds of law enforcement agencies to count them.

That's what Chiu is requesting in a bill he's writing this year.

AB3118 would require law enforcement, crime labs and any other agency that handles rape kits to report to the state Department of Justice how many they have by July 1, 2019. The justice department would then submit a detailed report to the Legislature on how many rape kits are untested across the state by July 1, 2020.

Another bill, SB1449 by Sen. Connie Leyva, D-Chino (San Bernardino County), would require all new rape kits to be sent to laboratories so

that the agencies don't accumulate new backlogs, with \$2 million in new state funding attached to help pay for the mandate.

Both bills will be heard in their first committee in the coming weeks.

The state has suggested timelines for forwarding rape kits to crime labs. California requires law enforcement agencies to report how many rape kits they have collected and examined, then disclose why any kit is not being tested. But that law, written by Chiu, only applies to new rape kits collected as of Jan. 1.

"Rape kit reform means taking serial offenders off the streets, who are often engaged in other crimes," said Ilse Knecht, director of policy and advocacy at the Joyful Heart Foundation, which tracks rape kit backlogs across the country.

The group estimates California has more than 13,000 untested rape kits, a number tallied from media reports, public record requests and data submitted by law enforcement agencies when applying for federal grants to test rape kits. But that data only include a patchwork of agencies in the state, and it's unclear how current the figures are.

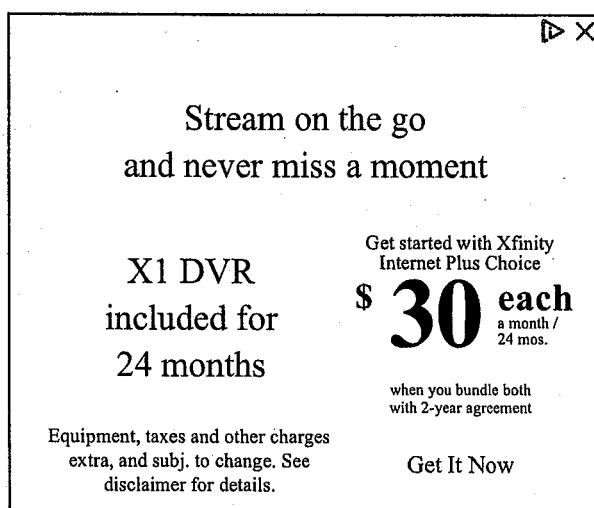
Other states and cities have been much more forthcoming in what their backlogs have yielded.

"For example, Detroit, which had 11,341 untested rape kits, moved to analyze each and every one," Knecht said. "So far, they have identified more than 830 potential serial rapists who have committed crimes in 40 states."

Shelving evidence also means some cases face the statute of limitations. In the Asberry case, his public defender used the delay in testing the 2008 rape kit to argue that some counts should be dropped. A judge agreed, in part, striking a second-degree robbery charge, as well as sex-offender and multiple-victim enhancements sought by prosecutors, court records show.

Stanford Law School Professor Robert Weisberg called the delay in testing the evidence by Berkeley police "outrageous" and apparently "some combination of negligence and insufficient staffing."

"There are limitations on the sentence he could receive now because of the foregone possibility of introducing prior convictions," Weisberg said. He said "multiple losses" stem from not testing the rape kit — solving that crime, connecting it to others, running afoul of a statute of limitations, among others.



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Get It Now

UC Hastings College of the Law Professor Rory Little said the Asberry case shows why rape kits should be tested quickly.

"The answer isn't to get rid of statute of limitations but to get the government to fund adequate testing of rape kits and other forensic evidence on time," Little said.

Many California agencies are reporting that they have cleared their backlogs already, including the San Francisco Police Department.

In 2016, the San Francisco Police Commission required the department to publicly report twice a year how many rape kits it collects and send to labs. The city police had faced criticism and a lawsuit over its backlog of hundreds of unprocessed rape kits and its failure to notify victims about the results when evidence was tested.

In its most recent report in February, the department said it collected 184 rape kits from July 1, 2017, to Jan. 5, 2018, of which 88 had enough DNA to upload into the national database, leading to 26 matches. All of the evidence kits were sent to a crime lab, although 15 were not sent within the state-recommended five days. The department reported that changes were under way to ensure future rape kits are forwarded more quickly.

In Alameda County, District Attorney Nancy O'Malley led efforts in 2014 to count and collect all untested rape kits from 19 law enforcement agencies in the county, using money from her own budget and federal grants. In all, her office found 1,900 untested rape kits in evidence rooms. Over three years, the rape kits were sent in batches to a lab in Virginia for testing, with the last ones sent last year.

O'Malley said in an interview last year that new rape kits are sent for testing within days. She could not be reached Friday for comment.

Of the first 319 rape kits tested, DNA extracted from 124 kits matched 55 suspects, O'Malley said in a previous interview.

One of the rape kits sent in the first batch belonged to a 19-year-old Berkeley woman who said she was raped in 2008 at gunpoint in a car near Berkeley High School. A 15-year-old girl in the car with the woman told police she was digitally penetrated at gunpoint by the man. The victims also said they were robbed. They immediately went to a hospital where police were called, and a trained nurse performed a forensic exam on the 19-year-old.

Berkeley police said they do not know why the evidence from that exam was not tested for six years. The department said it now sends all rape kits to a lab for testing. While a warrant was issued in 2014 for Asberry's arrest, he is accused of committing two additional crimes.

Police said Asberry's DNA was found on the shirt of a 46-year-old woman who fought off an attacker in her North Berkeley home. Investigators said Asberry's DNA linked him to the rape and killing of Kaur, the dental student, in Albany in March 2015. In that case, court documents show, police said Kaur's clothing were found in a garbage can with Asberry's DNA.



Last year, El Cerrito police linked Asberry to a 2005 rape of a 20-year-old woman after police there retested evidence using newer technology.

On Friday, Asberry stood behind a glass window in a red-and-white jumpsuit in an Oakland court, where his attorney said he wasn't prepared to enter a plea on some of the charges. He has pleaded not guilty to the three sexual assaults in Berkeley. Asberry did not speak during the brief hearing.

A woman who identified herself as Asberry's mother grew upset when she realized a Chronicle reporter was speaking with his public defender and told the reporter not to write a story.

Melody Gutierrez and Kimberly Veklerov are San Francisco Chronicle staff writers. Email: [mgutierrez@sfchronicle.com](mailto:mgutierrez@sfchronicle.com), [kveklerov@sfchronicle.com](mailto:kveklerov@sfchronicle.com) Twitter: @MelodyGutierrez, @KVeklerov



**Melody Gutierrez**  
Political Reporter



**Kimberly Veklerov**  
East Bay Reporter



# BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: June 12, 2008

NUMBER: 33

SUBJECT: SEXUAL ASSAULT INVESTIGATION PROCEDURES

## PURPOSE

The purpose of this Training and Information Bulletin is to remind patrol officers and sergeants of relevant statutory requirements for advocate notification and admonition of specific victim rights, and effectively guide their investigation of sexual assault offenses.

## VICTIM'S REQUEST FOR CONFIDENTIALITY

Penal Code §293 requires any law enforcement employee receiving a report of a sex offense to advise the victim of that offense their name will be a part of the public record, as required by Government Code §6254(f)(2), unless they request otherwise. This requirement is applicable in the following Penal Code offenses: §§220, 261, 261.5, 262, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75 and 646.9.

Should the victim, or their parent or guardian if the victim is a minor, request their name be withheld from the public record, the investigating officer will only document that information on page one of the Universal Report Form and in the header of associated narrative or supplemental report pages. In all other references, the victim shall be referred to as "VI." Multiple victims may be identified by appropriate modification of this moniker (e.g., VI#1, VI#2, etc.)

## SEXUAL ASSAULT ADVOCATE / SUPPORT PERSON ADMONITION

Penal Code §264.2(b)(1) requires the investigating officer, or their agency, notify the local rape victim counseling center whenever a victim of a sexual assault is transported to a hospital for any medical evidentiary or physical examination. Both this statute and Penal Code §679.04 establish the victim has the right to having that counselor and a support person of their choosing present during the medical evidentiary examination and investigative interview with law enforcement. If the support person's presence is determined to be detrimental to the purpose of the examination, that person may be excluded from the examination.

The officer's admonition pursuant to these statutes may be made orally or in writing. The Victim Advisement and Notification form has been designed to facilitate documentation of this admonition.

SEXUAL ASSAULT / DOMESTIC VIOLENCE RESOURCE CARD

In investigations of specified sex and domestic violence offenses, investigating officers are required to immediately provide the victim with a Victims of Domestic Violence card, pursuant to Penal Code §264.2(a). Our domestic violence pamphlet satisfies the requirements for this card described in Penal Code §13701.

PRELIMINARY INVESTIGATION

Presented in outline format, the following information provides investigative guidelines for crime scene management, working with victims, witnesses and suspects, and handling of evidence.

The Victim

Preliminary Investigation

- A. Initial investigative activities involving the victim should include:
1. Determine the location and the condition of the victim, and if there is a need for immediate medical attention.
  2. Obtain information from the victim about the responsible: description, possession of weapons, current location, direction of flight, and if the person is known to the victim.
  3. Determine what happened and where the crime occurred. Identify areas of entry and paths of egress, and isolate the crime scene to preserve evidence.
  4. Whenever possible, obtain photographs of the victim wearing the clothing she wore during the assault.
  5. Observe and describe in the investigative report the victim's physical and mental condition, including, but not limited to, his/her mental state, evidence of trauma, and condition of his/her clothing (i.e., stains, damage, etc.)
- B. Based on the information obtained during the preliminary investigation, the scene supervisor or Watch Commander will determine if the Sex Crimes Detail or Youth Services Detail (victim under 14 years old) should be contacted.
1. *In all cases of residential rape where the responsible is NOT known to the victim, notify the Detail sergeant or, if unavailable, detective.*
  2. In all other incidents of sexual assault, the officer and his/her supervisor are encouraged to consult with a member of the appropriate Detail, when such a contact is would be beneficial to the investigation.

Medical/Evidentiary Physical Examination

- C. If the sex offense occurred within 72 hours of the reporting time, coordinate a medical evidentiary and physical examination at the local Sexual Assault Response Team (SART)-designated hospital.
1. Transport adult victims to Alameda County/Highland Hospital in Oakland.
  2. If the victim is a juvenile under the age of 14 years, transport him/her to Children's Hospital in Oakland.
  3. If the victim is a juvenile between the ages of 14 and 17 years old, the victim may be taken to Highland Hospital. The determination of whether to use Children's Hospital or Highland Hospital should be made based on these factors: the emotional age of the victim; whether or not the parents are involved at the time of the investigation; and, the victim's personal desires.
  4. Prior to transporting the victim to a hospital, encourage the victim to obtain a complete set of clothing so that clothing worn having evidentiary value may be retained for the investigation.

If the assault occurred more than 72 hours before the reporting time, the assigned Detective Bureau investigator will be responsible for coordinating any examination of the victim at the appropriate SART-designated hospital.

- D. Accomplish statutory public record confidentiality advisements and admonitions regarding victim advocacy and support person presence prior to the initiation of a medical exam or formal interview. These admonitions should be documented on a Victim Advisement and Notification form.
- E. En route to the hospital, ensure hospital staff is notified a sexual assault victim is being brought to the their facility for a sexual assault medical examination. By alerting the hospital, on duty SART personnel and a BAWAR advocate will be notified by hospital staff prior to the victim's arrival.  
Alameda County Highland Hospital: (510) 437- 4559  
Children's Hospital: (510) 428-3000
- F. If the victim and suspect must be taken to the same hospital at the same time, the hospital staff should be notified and requested to insure proper care is employed to protect the victim from contact with the suspect.
- G. Upon arrival at the hospital, advise the registration staff that a sexual assault victim needs to be registered and given an exam by a SART member. Escort the victim to the exam room when directed by a SART member. Unless required, do not remain in the exam with the victim and the SART member for the examination.

## TIB #33 SEXUAL ASSAULT INVESTIGATION PROCEDURES (6/12/08)

1. Determine whether or not the victim may have ingested any drugs or alcohol, and, if so, were they given to the victim by the suspect. The SART member conducting the examination should be advised of this information so appropriate urine and blood samples are collected for analysis and evidentiary purposes.
2. If physical trauma caused by the sex assault is present, make arrangements with the Crime Scene Unit to obtain photographic evidence of the injury(-ies), either at the hospital, Public Safety Building, or other appropriate location of mutual agreement.
3. Discuss the results of the evidentiary exam with the SART member and document them in the investigation report.

### Evidence Handling, "Rape Kit" and Victim Clothing

- H. Prior to leaving the hospital with the victim, ensure the following evidentiary items are received from the hospital staff: the Sexual Assault Examination Report (OCJP Form #923) and associated evidence package (i.e., "Rape Kit"), any clothing worn by the victim during the offense, and any other item of evidentiary value.
1. Mark the upper right hand corner of each page of the medical examination report with the case number. After labeling the upper right corner of each page of the Examination Report with the investigation report number, a copy of the entire report must be attached to the investigation report. The original OCJP Form #923 must be booked as evidence into the Property Room.
  2. To preserve the biologic evidence contained within the "Rape Kit", store it in the temporary storage refrigerator in the Property Room. If not ready for release when ready to transport the victim from the hospital, advise the SART member preparing the "Kit" to call the Communications Center (510-981-5900) and report when it is ready for pick-up. When notified, the Communication Center will assign an officer to obtain the "Kit", and that officer will be responsible for its proper storage at the PSB.
  3. If not seized by the Crime Scene Unit technician, evidence obtained from the victim and/or hospital staff must be properly booked into the Property Room.

### Victim Interview

- I. Interview the victim and obtain a written statement that includes the following information:
1. Determine the victim's activities prior to the time of the offense.
  2. Obtain the victim's account of the offense from the time he/she first observed the suspect through that person's departure from the scene.

**TIB #33 SEXUAL ASSAULT INVESTIGATION PROCEDURES (6/12/08)**

3. Note any distinctive statements made by the suspect.
4. Identify any odd or unusual behavior, and specific 'method of operation' characteristics, demonstrated by the suspect.
5. Indicate if the crime scene was altered in any way (i.e., any items stolen or moved) prior to the arrival of the police, and, if so, by whom.
6. Obtain a detailed chronology of the victim's activities after the offense through the arrival of the police.
  - a. Determine if the victim changed clothes, bathed, or in any way cleaned up prior to the arrival of the police.
7. Obtain a comprehensive description of the suspect, to include, but not be limited to: clothing, jewelry, odors, hair (i.e., color, length, style, texture, etc.), facial hair, hygiene, scars or marks, tattoos, deformities, and vocal quality.
  - a. If an acquaintance, document all information that might lead to the suspect's identification, such as telephone numbers, names and addresses for friends or family, areas where he/she frequents, etc.
- J. Return the victim to his/her home, or to an appropriate alternate safe location, and obtain primary and alternate addresses/telephone numbers at which the victim may be reached.
  1. If not indicated on page one of the Universal Report Form, forward the victim's alternate contact information to the Sex Crimes Detail or Youth Services Detail, as appropriate, via memorandum or email.
- K. Advise the victim to call the Sex Crimes Detail at (510)981-5735, or Youth Services Detail at (510)981-5715, as appropriate, on the next business day to facilitate contact with the victim advocate, as well as any necessary investigative follow-up.

The Suspect

- A. In most investigations, the suspect will not be in custody and every effort should be made to identify him/her. If identified, contacting the suspect may not always be advisable. To ensure a coordinated investigation, *consult with the Sex Crimes Detail supervisor or detective prior to contacting a known, out-of-custody responsible.*
- B. The facts of a particular case will determine the appropriate investigative action necessary in regards to the contact of a responsible. When a suspect is taken into custody, another officer will be needed to assist the Primary Officer with the following:

**TIB #33 SEXUAL ASSAULT INVESTIGATION PROCEDURES (6/12/08)**

1. Examine the suspect for any injury to himself or damage to his clothing that might have resulted from his confrontation with the victim. The injury or damage should be noted and photographed.
2. The clothing of the suspect should be removed and he should be provided with jail clothing during his incarceration. This clothing should be itemized and described in both the narrative of the report and on the Property Room evidence tag, then placed into evidence.
  - a. The suspect shall be given a property receipt with an itemized listing of what evidence is seized.
3. PRIOR TO BOOKING, the suspect should be transported to an appropriate location where a sexual assault evidence collection kit can be completed following the suspect SART protocol:
  - a. Request the Communication Center call Central Medical Laboratory (CML), (800)288-4441, and request a technician respond to the PSB or other designated location (male suspect), or Valley Memorial Hospital in Pleasanton (female suspect), for a "suspect sexual assault evidence examination." Advise CML of the suspect's gender so they can send a technician of the same sex, if possible.
  - b. Obtain the appropriate SART kit (male or female) from the Sergeant's Office storage locker and give it to the CML technician.
  - c. Have sufficient officers present, or with regard to privacy and discretion, in immediate proximity, to maintain security of the suspect and safety of non-police personnel.
  - c. For male suspects, conduct the exam in a private room large enough for four people to occupy comfortably, has manually operable lights, and has available electrical outlets.
  - d. As referenced above for, unless otherwise directed, conduct female suspect examinations at Valley Memorial Hospital in Pleasanton . If the suspect refuses to cooperate with a vaginal swab, request the technician continue with the other non-invasive components of the SART exam.
  - e. The male suspect protocol applies to male juveniles (under 18 years old.) Procedures for female juvenile suspects has yet to be resolved. Dependant on the age of the female juvenile, contact the Sex Crimes Detail or Youth Services Detail for direction.
4. Transport the suspect to the PSB, if not already there, after the evidentiary exam is completed to initiate the booking process.



**TIB #33 SEXUAL ASSAULT INVESTIGATION PROCEDURES (6/12/08)**

5. Unless otherwise directed by the Primary Officer, the transporting officer should NOT initiate any interrogation with the suspect, nor should the suspect be informed of his Miranda rights regarding self-incrimination, unless he is a juvenile. If the suspect volunteers any information relating to the case, his statement must be incorporated into the transporting officer's supplemental report.

**C. If obtained, the suspect's statement should include:**

1. A detailed account of the suspect's movements and whereabouts on the day of the assault, from the time he/she woke up until the time he/she was arrested by the police. Pay careful attention to what the suspect did and where he/she went after the alleged assault.
2. If the suspect claims the sexual conduct was consensual, clarify the specifics of the suspect's understanding of the victim's consent. Ask him/her to describe what the victim said or did that communicated/implied consent.
3. Have the suspect describe, in detail and chronologically, every sexual act he/she engaged in with the victim, and have him/her describe how the victim behaved each time, before, after and during the sexual act.
4. Determine how the suspect knows the victim; when he/she first became aware of the victim prior to the alleged assault. Ask the suspect to describe what the victim looked like, including his/her clothing.
5. Determine if the suspect ingested any alcohol and/or the type of drugs, and if he/she knows whether the victim ingested any alcohol and/or what type of drugs.

- D. Conduct appropriate file checks to determine whether or not the suspect has any prior criminal history and, specifically, if there is any history of sex offenses.

**CRIME SCENE MANAGEMENT**

**A. Locate and secure the crime scene(s).**

1. In the event that a search of the crime scene is impeded by the lack of consent (written consent, whenever possible) of the suspect or other person (i.e., the crime occurred at the suspect's residence and he/she does not give consent to search the location), the scene should be physically secured by officers and a search warrant obtained.
  - a. Regarding search warrant preparation by an assisting officer, it is important to coordinate with the handling officer and/or lead detective, who will likely have specific knowledge about items that

should/could be found in the location to be searched and collected as evidence (specific weapons, items of clothing, other items used to commit felonies against the victim, etc.)

- b. Should a search authorized by warrant be initiated via radio or telephone, the officer obtaining the warrant must clearly communicate the scope of the warrant to the officers who will be conducting the search (i.e., specifically, where and for what items does the warrant authorize a search.)
  - c. Officers are encouraged to consult with the Sex Crimes Detail whenever the preliminary investigation involves preparation and service of a search warrant.
- B. Request the Crime Scene Unit technician respond to process the crime scene for evidence. The officer should provide the CSU technician the known facts regarding the sexual assault. This information will assist the technician in his/her determination of what physical evidence may have value to the investigation.
- C. The handling officer or scene supervisor should assign sufficient officers to accomplish an effective a neighborhood check.
- 1. Unless otherwise authorized/directed, each officer assisting in the neighborhood check should submit a supplemental report documenting their activity, noting each residence contacted, the location of those where no contact was made, and the names and descriptions of the persons interviewed.
  - 2. In the event the suspect is unknown to the victim, a component of the neighborhood check should include the documentation of vehicles (full description, including license plate or vehicle identification numbers) parked in the area of the crime scene.
- D. An assigned officer should prepare a crime scene diagram that shows the scope of the scene, involved vehicles, and the locations where evidence was located and seized. The officer should work closely with the CSU technician and the lead investigator to insure pertinent evidence is documented and consistently identified.
- E. Upon completion of the crime scene search and collection of evidence, secure the premises, if appropriate.

**"JANE DOE" MEDICAL EXAMINATIONS, EVIDENCE KITS**

**There may be an occasion this Department will be called to a local hospital to collect a sexual assault examination kit for a victim who desired medical assistance, but did not want to report the crime to law enforcement. Federal law requires sexual assault victims receive access to a forensic examination**

regardless of whether they choose to make a criminal report or cooperate in an investigation. Hospital personnel, being mandatory reporters, will most likely contact the police agency having jurisdiction over the location where the crime happened (if known) or where the hospital is located (if the location of the crime is not known), so understanding our role and responsibilities is important.

The facilities of, and protocols established by, the involved hospital may preclude their maintenance of "Jane Doe" exam kits. Therefore, it can be anticipated we will be contacted to receive and store collected forensic evidence. Officers who respond to these calls should:

- If possible, speak with the victim and clarify his/her interest in cooperating with law enforcement.
- Receive and store the sexual assault examination kit and report in accordance with established evidence handling procedures.
- Document the alleged crime appropriately (i.e., "PC §261" or "Suspicious Circumstance re PC §261").

#### EVIDENCE MANAGEMENT

Crime Scene Unit technicians who locate and collect evidence at the crime scene are responsible for booking it properly into the Property Room. Similarly, officers who receive evidence are responsible for its storage. The following procedures should be followed when handling sexual assault-related evidence:

- A. Sexual assault examination kits should be placed in the refrigerator specifically dedicated for temporarily holding of such evidence. The refrigerator is located in the Property Room "bag and tag" room. The key for the lock securing the unit is located in the Patrol Sergeants' Office key box.
- B. Book the original SART report (OCJP form #923) into the Property Room.
- C. Items containing biological fluids may need to be dried before booking. Consult with the Crime Scene Unit technician to ensure proper handling of such items. Each item must be itemized and specifically described both in the narrative of the report and on the Property Room tag before placing in the Property Room.
- D. Biological evidence, such as urine and blood samples, should be placed in the Property Room "bag and tag" room refrigerator. Alert the Sex Crimes Detail to this specific evidence in the investigative or supplemental report to insure they are submitted for laboratory examination in a timely manner.

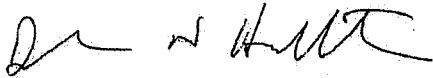
#### DOCUMENTATION

In addition to your preliminary investigation report, ensure all assisting officers submit a supplemental report documenting their portion of the investigation. Review the supplemental reports for content, and include appropriate summary references in the

**TIB #33 SEXUAL ASSAULT INVESTIGATION PROCEDURES (6/12/08)**

narrative of your investigation report. Submit the report package, including all supplementals, copies of relevant documents, and of the SART exam report to a supervisor for review and administrative routing.

As discussed above, Primary Officers are encouraged to consult with the Sex Crimes Detail or Youth Services Detail, as appropriate, at any point in the preliminary investigation to discuss his/her assessment of the investigation and how it should be conducted.



Douglas N. Hambleton  
Chief of Police

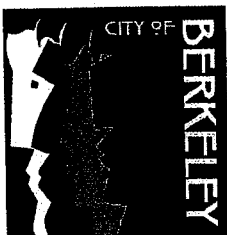
References: **42 USC §3796gg-4(d) (Violence Against Women and Department of Justice Reauthorization Act of 2005)**

Government Code §6254(f)(2)

Evidence Code §1035.2

Penal Code §§264.2, 293, 13701,

General Orders C-2, D-2, I-18, J-18, P-65, and R-31



Police Review Commission (PRC)

March 14, 2017

Berkeley City Council  
Civic Center Building  
2180 Milvia Street  
Berkeley, CA 94704

Re: PRC's recommendations to the City Council regarding the 2018 Agreements with Other Law Enforcement Agencies, Police Departments, and Private Security Organizations

Dear Mayor and Members of the City Council,

Each year the Police Review Commission reviews the annual compendium of the Berkeley Police Department's agreements with other law enforcement agencies, police departments, and private security organizations. As in past years, the PRC formed a Mutual Aid Pacts Subcommittee, which reviewed new and revised agreements, based on the list provided by BPD, and existing agreements that any Subcommittee member wished to assess.

The Subcommittee's recommendations were considered by the full Commission during a series of meetings beginning in December 2017. The PRC debated and voted on four of the MOUs separately, and approved the remaining agreements as a group.

Agreement with the City & County of San Francisco for the distribution of Urban Area Security Initiative (UASI) grant funds (Item #3.6)

The Commission understands that the BPD receives UASI grant funds for equipment and a variety of training. However, UASI funds also support the Urban Shield exercise.

At its December 13, 2017 meeting, the PRC voted to recommend that:

**BPD cease participation in the Urban Shield activity beginning with the 2018 activity. Search for, or create in partnership with other communities, alternatives to replace the positive elements of Urban Shield.**

Moved/Seconded (Prichett/Sherman) – **Motion Carried.** Ayes: Lippman, Prichett, Sherman, and Halpern (temporary); Noes: Allamby, Roberts; Abstain: None; Absent: Ford, Matthews Perezvelez, Yampolsky.<sup>1</sup>

Relationship with the Northern California Regional Intelligence Center (NCRIC)  
(Item #3.12)

On January 10, 2018, the PRC voted to:

**Recommend a one year moratorium on BPD's participation with NCRIC while PRC reviews the City Manager/BPD-supplied information about how the BPD-NCRIC relationship functions.**

Moved/Seconded (Allamby/Prichett) – **Motion Carried.** Ayes: Allamby, Ford, Lippman, Prichett, and Robinson (temporary); Noes: Roberts, Sherman, and Yampolsky; Abstain: Perezvelez; Absent: Matthews.

Law Enforcement Mutual Aid Plan (Item #2.13)

The PRC's Mutual Aid Subcommittee did not make a recommendation to the full Commission on this item. Commissioner Lippman submitted the following recommendation, which the PRC adopted at its February 14, 2018 meeting

**Approve the Law Enforcement Mutual Aid Plan (LEMA Plan), with direction to BPD to modify its General Order M-02, "Mutual Aid And Agreements With Law Enforcement Agencies" as follows:**

**Add a new paragraph in the Procedures section after Paragraph 6, to reflect the City Council's direction on supervision of mutual aid agencies, passed in 1992, that:**

**"[T]he BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum amount allowable by law: . . . prior to deployment in the field, BPD notify mutual aid units of significant BPD crowd management regulations and policies – especially those regarding use of force and reporting policies – and advise such units that they will be expected to comply with those regulations and policies; . . ."**<sup>2</sup>

Moved/Seconded (Lippman/Roberts) – **Motion Carried.** Ayes: Allamby, Lippman, Matthews, Prichett, Roberts, Sherman, and Yampolsky; Noes: None; Abstain: None; Absent: Ford, Perezvelez.

<sup>1</sup> Under the PRC's enabling ordinance, "A majority of the appointed commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take any action." (B.M.C. sec. 3.32.070 E.)

<sup>2</sup> Minutes of the April 28, 1992 Regular Meeting of the City Council , pp. 16-17.

Berkeley's rule on supervision of mutual aid agencies is in accord with California Government Code § 8618 that "the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident, including the direction of personnel and equipment provided him [sic] through mutual aid."

In addition, the (LEMA) Plan currently under consideration interprets Government Code § 8618 to mandate that the jurisdiction requesting mutual aid is responsible for, among other duties, "advising responders what equipment they should bring."<sup>3</sup>

"Unless otherwise expressly provided, or later agreed upon, the responsible local law enforcement official of the jurisdiction requesting mutual aid shall remain in charge....The agency requesting mutual aid is responsible for the following:

...3. Advising responders what equipment they should bring."

Therefore, host agencies have not only the right, but also the responsibility to supervise the performance of invited agencies. The mandate that the host agency supervises the performance of invited agencies explicitly extends to the direction of personnel and equipment.

#### Agreement with the Dept. of Homeland Security, U.S. Immigrations and Customs Enforcement (ICE) (Item #3.4)

The PRC believes that the trust of the community in the law enforcement is damaged when local police are seen as participating in ICE actions.

An August 2017 ICE raid in Oakland resulted in only a civil immigration arrest, demonstrating the risk that involvement with supposed criminal investigations may draw the police into support for civil enforcement.

At its February 28, 2018 meeting, the PRC voted to:

**Approve the ICE MOU with the proviso that it be modified to reflect the following: BPD shall not provide stand-by security service for USICE investigations or enforcement actions or otherwise be involved in any way with facilitating or aiding in an ICE operation. This shall not prevent BPD from responding to a public safety emergency related to an ICE action; in such event BPD shall explain the facts giving rise to its action in a written report to the Berkeley City Council and the Police Review Commission at the earliest opportunity.**

<sup>3</sup> "The agency *requesting* mutual aid is responsible for the following: 1. Identifying numbers and types of mutual aid resources requested. 2. Identifying specific missions for mutual aid responder tasking. 3. Advising responders what equipment they should bring. 4. Establishing an assembly area for responding resources. 5. Identifying communications channels compatible with command and control of field resources. 6. Designating a liaison officer to facilitate a coordinated assimilation of responding mutual aid resources. 7. Preparing a situation briefing including local maps for responders. 8. Providing logistical support such as food, lodging, rest intervals and equipment maintenance as appropriate, for mutual aid personnel." (LEMA Plan, p. 18.)

Mayor and Members of the City Council  
PRC's recommendations to the City Council regarding the 2018 Agreements with Other Law  
Enforcement Agencies, etc.  
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Moved/Seconded (Sherman/Prichett) – **Motion Carried.** Ayes: Lippman, Matthews, Prichett, Roberts, Sherman, and Yampolsky; Noes: Allamby; Abstain: Perezvelez; Absent: None.

Remaining Agreements and Understandings

At its January 24, 2018 meeting, the PRC approved this recommendation:

**Motion to approve all remaining BPD agreements and understandings except the Law Enforcement Mutual Aid Plan.<sup>4</sup>**

Moved/Seconded (Roberts/Matthews) – **Motion Carried.** Ayes: Lippman, Matthews, Prichett, Roberts, Sherman; Noes: None; Abstain: Ford; Absent: Allamby, Perezvelez, Yampolsky.

The Police Review Commission thanks you for considering its views as you review this year's compendium of BPD's agreements with other law enforcement, police departments, and private security organizations.

Sincerely,



Sahana Matthews, Chairperson  
Police Review Commission

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<sup>4</sup> The Commission had not yet acted on the recommendation on the Law Enforcement Mutual Aid Plan when this motion was made. The Commission rescinded its original recommendation on the agreement with the Dept. of Homeland Security/ICE, approved December 13, 2017, and passed a new recommendation (see p. 4).



## ORDINANCE NO. 7,592-N.S.

ADDING CHAPTER 2.99 TO THE BERKELEY MUNICIPAL CODE, ACQUISITION  
AND USE OF SURVEILLANCE TECHNOLOGY

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

## Section 1. Title

This ordinance shall be known as the Surveillance Technology Use and Community Safety Ordinance.

Section 2. That Chapter 2.99 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 2.99**

**Acquisition and Use of Surveillance Technology**

- 2.99.010 Purposes**
- 2.99.020 Definitions**
- 2.99.030 City Council Approval Requirement**
- 2.99.040 Temporary Acquisition and Use of Surveillance Equipment**
- 2.99.050 Compliance for Existing Surveillance Technology**
- 2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns**
- 2.99.070 Oversight Following City Council Approval**
- 2.99.080 Public Access to Surveillance Technology Contracts**
- 2.99.090 Enforcement**
- 2.99.100 Whistleblower Protections**
- 2.99.110 Severability**

**2.99.010 Purposes**

A. Through the enactment of this Chapter, the City seeks to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City's interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.

B. Transparency is essential when the City is considering procurement and use of Surveillance Technology.

C. Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk.

D. Decisions relating to Surveillance Technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.

E. Surveillance Technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any Surveillance Technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.

F. Decisions regarding whether and how Surveillance Technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.

G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures, are important in the protection of civil rights and civil liberties.

H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed.

### **2.99.020 Definitions**

The following definitions apply to this Chapter:

1. "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 2(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in Section 2 (above):

- a. Routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance functions;
- b. Handheld Parking Citation Devices, that do not automatically read license plates;
- c. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;
- d. Devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;
- e. manually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and city-issued cell phones;
- f. Municipal agency databases;
- g. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;
- h. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect

technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity;

i. Stationary security cameras affixed to City property or facilities.

2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:

a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing;

b. Geographic Deployment: Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically;

c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;

d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;

e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;

f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;

g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.

3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:

a. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;

b. Purpose: Information on the proposed purposes(s) for the Surveillance Technology;

c. Location: The general location(s) it may be deployed and reasons for deployment;

d. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;

e. Mitigation: Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in

subsection (d);

f. **Data Types and Sources:** A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;

g. **Data Security:** Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;

h. **Fiscal Cost:** The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;

i. **Third Party Dependence and Access:** Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third-party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;

j. **Alternatives:** A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology. , ; and,

k. **Experience of Other Entities:** To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.

4. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:

a. **Purpose:** The specific purpose(s) that the Surveillance Technology is intended to advance;

b. **Authorized Use:** The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;

c. **Data Collection:** Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including "open source" data;

d. **Data Access:** A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the information, and a description of any and all of the vendor's rights to access and use, sell or otherwise share information for any purpose;

e. **Data Protection:** A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;

f. **Civil Liberties and Rights Protection:** A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from

its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;

g. Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;

h. Public Access: How collected information may be accessed or used by members of the public;

i. Third Party Data Sharing: If and how other City or non-City Entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;

j. Training: Training required for any employee authorized to use the Surveillance Technology or to access information collected;

k. Auditing and Oversight: Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and

l. Maintenance: The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.

5. "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

### **2.99.030 City Council Approval Requirement**

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:

a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;

b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;

c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or

d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.

2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology.

No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police Review Commission to act shall prohibit the City Manager from proceeding with its own review and potential adoption.

3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (1) (a)-(d).

#### **2.99.040 Temporary Acquisition and Use of Surveillance Equipment**

Notwithstanding the provisions of this Chapter, the City Manager may borrow, acquire and/or temporarily use Surveillance Technology in Exigent Circumstances without following the requirements in Sections 2.99.030 and 2.99.040. However, if the City Manager borrows, acquires or temporarily uses Surveillance Technology in Exigent Circumstances he or she must take all of the following actions:

1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged;
2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Surveillance Acquisition Report and Surveillance Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Sections 2.99.030 and 2.99.040; and
3. Include the Surveillance Technology in the City Manager's next annual Surveillance Technology Report.

#### **2.99.050 Compliance for Existing Surveillance Technology**

The City Manager shall submit to the Action Calendar for the first City Council meeting in November of 2018, a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each Surveillance Technology possessed or used prior to the effective date of this ordinance.

#### **2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns**

The City Council shall only approve any action described in Section 2.99.030, 2.99.040, or Section 2.99.050 of this Chapter after making a determination that the benefits to the community of the Surveillance Technology, used according to its Surveillance Use Policy, outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights to the maximum extent possible while serving its intended purposes; and that, in the City Council's judgment, no feasible alternative with similar utility and a lesser impact on civil rights or civil liberties could be implemented.

#### **2.99.070 Oversight Following City Council Approval**

The City Manager must submit to the Council Action Calendar a written Surveillance

Technology Report, covering all of the City's Surveillance Technologies, annually at the first regular Council meeting in November. After review of the Surveillance Technology Report, Council may make modifications to Surveillance Use Policies.

**2.99.080 Public Access to Surveillance Technology Contracts**

To the extent permitted by law, the City shall continue to make available to the public all of its surveillance-related contracts, including related non-disclosure agreements, if any.

**2.99.090 Enforcement**

This Chapter does not confer any rights upon any person or entity other than the City Council to cancel or suspend a contract for a Surveillance Technology. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if he or she is personally obligated to pay such fees.

**2.99.100 Whistleblower Protections**

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016 and including any updates or replacements thereto, shall apply.

**2.99.110 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 13, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.



## **Officials approve new rules on city surveillance; may be first in the nation**

By Emilie Raguso March 15, 2018, 8:39 p.m.

The Berkeley City Council voted unanimously this week to strengthen its approach to “surveillance technologies,” and has reportedly become the first city in the nation to do so, according to the community coalition that drove the initiative forward in its fight for privacy rights.

Tuesday night, council members spent about three hours, of a five-hour meeting, hearing some public comment then painstakingly tweaking the language and scope of the new surveillance ordinance under consideration. The compromise measure from Mayor Jesse Arreguín’s office, as well as Councilwomen Kate Harrison and Sophie Hahn, sought to find a middle way between a more demanding Police Review Commission proposal and a competing item from city staff.

The compromise, its proponents wrote, “seeks to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City’s interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.”

Supporters said they want to put civil liberties and civil rights at the heart of any use of surveillance tech by the city, and require council approval when staff seeks to get a new tool. Officials would have a say in the policies that govern surveillance tools, and would get annual reports on them. Those reports would include whether data was shared, and with whom, where surveillance happened, whether complaints resulted, and information about costs and data breaches, among other issues. There are carve-outs in the ordinance to protect confidential or otherwise privileged information.

The ordinance focuses on devices that are “intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group.”

That could cover, but is not limited to, “cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 2(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.”

City staff has said Berkeley does not have most of these systems, and already goes through a public review and approval process for those it does. There’s no facial recognition software, no Stingray cellphone trackers, no “driver location data” collected. ICE cannot access Berkeley databases. The city has no secret contracts, staff has said, and there already are protections in place to prohibit the sharing of data that’s collected, for example, through automatic license plate readers.

But the coalition behind the ordinance, which included members of Oakland Privacy, the ACLU of Northern California, and the Council on American-Islamic Relations, called the new law “groundbreaking,” even with the compromises put forward by the mayor. The group said the process involved 20 months of review by citizen commissions, privacy advocates, city staff and elected officials. Berkeley’s Peace and Justice Commission and the Disaster and Fire Safety Commission also weighed in.

“Given the president’s rhetoric of increased surveillance of mosques, the Muslim community is particularly concerned with the unfettered use of surveillance technology and how it’s being shared,” said Sameena Usman, with the Council on American-Islamic Relations’ San Francisco Bay Area Office, in a prepared statement from the coalition. “A strong use policy would ensure that our civil liberties and privacy will be protected.”

Elliot Halpern, of the ACLU of Berkeley/North East Bay, said he hopes Berkeley can be a leader in the effort to protect privacy and limit surveillance.

“In other parts of the State and country it has ... been disproportionately used on racial, religious, LGBT groups and 1st amendment protests,” he wrote previously, on the “Berkeley Considers” website where the city collects public input. “There must be transparency and accountability once this equipment is put into use.”

Not everyone has been convinced, however.

Zach Cowan, former Berkeley city attorney, wrote on “Berkeley Considers” that the proposal was “a solution in search of a problem.” He also noted that the PRC had not been able to document a single misuse of “surveillance technology” within the city. Cowan described the PRC item as a “burdensome and paper-intensive approach, incidentally one that threatens individual employees with civil and criminal liability for doing their jobs.”

Parts of his comments referenced the initial PRC proposal, which sought to make “a willful or intentional violation of the ordinance or Surveillance Use Policy a misdemeanor, punishable by a fine of up to \$1000 per violation.”

The mayor’s proposal took away the possibility of misdemeanor charges and fines, and gives the city 90 days to fix any violation that is found. If the city fails to act within that time, only then is there room for legal action. Individual employees are not subject to liability, under the new law. And there’s a \$15,000 cap on the attorney’s fees a plaintiff could seek from the city.

The mayor’s proposal also changed the “willful or intentional” standard proposed by the PRC, in the case of violations, to an “arbitrary or capricious” standard. City attorney Farimah Brown said the latter is the normal legal standard, and is well-supported by case law, as opposed to the “random” alternative that was presented in the PRC language.

Staff previously raised other qualms as the process unfolded. The Berkeley Fire Department, earlier in the year, said it feared the PRC proposal might limit the use of thermal imaging

cameras during firefighting. And the Berkeley Police Department worried the PRC version would have a negative impact “on law enforcement investigations and the apprehension of individuals that commit crimes in Berkeley.” But the chiefs were able to work with the mayor and other officials to have those issues largely addressed.

City unions will still have a chance to weigh in and suggest their own changes before the law can go into effect. There was no indication as of this week as to which unions would be involved or how long that process might take.

As with any new policy, open questions remain. The city has expressed significant concern about the “workload and staffing implications related to the administration of the proposed acquisition, use, reporting, and data tracking requirements,” as noted in a report by the police and fire chiefs earlier this year.

Councilwoman Linda Maio said Tuesday night she shares the unease about the potential burden on staffing.

“It just feels like a huge amount of make-work to me before we know how it really hits the fan,” she said.

Santa Clara County was the first jurisdiction, in 2016, to pass a similar ordinance related to municipal surveillance, according to the ACLU. It remains to be seen whether other cities and agencies will follow Santa Clara and Berkeley’s example. According to the coalition that has been pushing for the ordinance, Davis, Oakland, Alameda County and BART are among others in the Bay Area considering their own versions of the ordinance.





**Kriss Worthington**

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177, EMAIL  
kworthington@cityofberkeley.info

**ACTION CALENDAR**

March 27, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington

Subject: Berkeley Community United for Police Oversight Ballot Measure

**RECOMMENDATION:**

Place the Ballot Measure that has been submitted to the City by Berkeley Community United for Police Oversight on the November 2018 ballot.

**BACKGROUND:**

After lengthy community discussions the group, Berkeley Community United for Police Oversight, has created a ballot measure to address community concerns surrounding police accountability.

In order to show that Council supports a community-driven process, and as a sign of recognition to Berkeley community members in their efforts, Council should place this measure on the ballot. The City Council's decision on whether or not to place the measure on the ballot is a separate decision of any or all councilmembers supporting or opposing the initiative. This will give the voters the opportunity to decide for themselves if they support this measure.

The minimum wage ballot measure discussions continued beyond the dates of adding and removing items to meet the deadline of the registrar voters. On this important issue, we seek to make a prompt decision to avoid as much confusing and controversy as possible in order to allow voters to make this decision

**FINANCIAL IMPLICATIONS:**

Approximately \$10-15 thousand to place a measure on the ballot

**ENVIRONMENTAL SUSTAINABILITY:**

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

**CONTACT PERSON:**

Councilmember Kriss Worthington      510-981-7170

**Attachments:**

- 1. PDF Proposed Ballot Measure



**Lee, Katherine**

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**From:** Lee, Katherine  
**Sent:** Friday, March 16, 2018 10:55 AM  
**To:** Lee, Katherine  
**Cc:** Norris, Byron  
**Subject:** Constitutionality of police chaplain programs

Dear Commissioners,

I was curious about claims during public comment that BPD's (or perhaps all) police chaplain program violates the U.S. Constitution, so I did a little research. Here is a link to a relatively recent law review article on the subject: [http://www.vjspl.org/wp-content/uploads/2012/08/4-Uniquely-Qualified\\_WD-ET\\_3.19.2015.pdf](http://www.vjspl.org/wp-content/uploads/2012/08/4-Uniquely-Qualified_WD-ET_3.19.2015.pdf)

It is long and I haven't yet read the whole article, but here is the abstract:

In October 2013, the American Atheists and the Freedom From Religion Foundation both threatened to sue Montgomery, Alabama over a controversial new initiative: Operation Good Shepherd. This initiative was designed by the city to leverage the resources of local clergy to help prevent crime and comfort victims and their families at crime scenes. While Operation Good Shepherd has received significant media attention following the publication of a September 2013 article in The Atlantic magazine questioning its constitutionality, it is not unique. Dozens of police departments in the past few decades have been teaming up with local clergy to create so-called "police and clergy alliances."

This Note will analyze the constitutionality of Operation Good Shepherd and similar police and clergy alliances by applying several of the Supreme Court's Establishment Clause tests to different aspects of the program. This Note will then argue that police and clergy alliances do not violate the Establishment Clause so long as volunteers respect the programs' secular purposes and refrain from proselyting or talking about religious issues without the consent of program beneficiaries.

I am not expressing an opinion on the constitutionality (or lack thereof) of the BPD's chaplain program; simply pointing out that, according to the above author's analysis, not all such programs are *per se* unconstitutional.

-Kathy

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

