

Police Department

February 12, 2018

Katherine Lee  
Officer, Police Review Commission  
(via email)

Dear Ms. Lee,

At a recent PRC meeting, a question was raised regarding the use of iPhone applications in conjunction with the Axon Body Worn Cameras (BWCs). I wanted to offer this additional clarifying information to ensure Commissioners have a clear understanding of the apps' functions. Please consider this as supplemental information to Lt. Okies' PRC presentation on December 13<sup>th</sup>, 2017 on Body Worn Cameras. It is intended to clarify the role and capabilities of the smartphone applications that support our BWCs.

We will be using two Axon applications which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These widely-used applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The Department will be using Axon View and Axon Capture, as described below:

#### Axon View

The Axon View application allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. (Note: All videos are uploaded—and thereby removed—from each BWC at the end of each shift. Once removed, these videos are *not* accessible through Axon View.)

Axon View provides significant functionality for the cameras and includes the following features:

- Stream live video from the BWC—This feature allows officers to see what the camera lens is capturing on their phone screen. It is used to properly position cameras at the beginning of shift and, under certain circumstances, ensures that officers properly frame their videos when recording evidence.
- Review video that has been captured by the BWC – This feature allows officers to review evidence in the field and will help to ensure thorough and complete preliminary investigations. Another benefit is that this feature will allow officers to provide detailed suspect descriptions based on video footage.
- Add metadata for each BWC video file – the application has the ability to add case numbers and evidence categories in the field, helping to ensure and support the officer's efficient and accurate work-flow.

- Provides users with critical BWC functional information – Axon View shows officers how much battery life and storage capacity remains on their BWC as well as show the camera's recording status. These features help to ensure officers always have a functioning camera in the field.
- Allows users to change camera settings – Axon View allows officers to easily change camera settings such as alert volume, recording status light, and camera vibration. During some critical incidents and investigations officers must be able to quickly and easily adjust these settings to support their safety and investigative efforts.

#### Axon Capture

The Axon Capture application allows officers to use the city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to evidence.com. This feature not only removes the additional staffing and time requirements of the current processes, it also makes evidence collection and documentation more intuitive and efficient. If, for example, a few photos are needed, officers do not need to wait for a Crime Scene Technician, but rather can take a few pictures themselves, and upload them to evidence.com. Items uploaded from Axon Capture to evidence.com are subject to the same evidentiary standards as video collected from BWCs, which includes both audit trails and access control. Evidence collected with Axon Capture cannot be tampered with, deleted, or reviewed by unauthorized persons.

These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications are widely deployed by Axon customers, using secure technology to add value and efficacy to the BWC program.

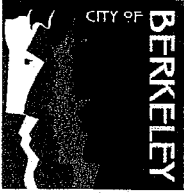
We hope this information clarifies the use of the applications' functions with regards to the Body Worn Camera program.

Sincerely,



Andrew Greenwood  
Chief of Police  
Berkeley Police Department

cc: J. Grogan, Dep. City Manager



Police Review Commission (PRC)

July 6, 2018

To: Dee Williams-Ridley, City Manager  
Andrew Greenwood, Chief of Police

From: George Perezvelez, Vice-Chair, Police Review Commission *GP by KPS*

Re: Request for After Action Reports Related to Dismantling of Homeless Encampments on February 8, 2018, and the week of June 4, 2018

The Police Review Commission is interested in assessing the involvement of the Berkeley Police Department (BPD) during the dismantling of two homeless encampments this year. The Commission believes that it cannot conduct an adequate investigation without being able to view the After Action Reports related to these activities, however.

With respect to the homeless encampment at 2134 Martin Luther King, Jr. Way that was removed on February 8, 2018, the Commission is of the understanding that an After Action Report exists. A Public Records Act (PRA) request for the After Action Report made by Andrea Prichett (acting in her individual capacity) on February 13, 2018 was denied. According to the City Attorney's March 6, 2018 response to the PRA, "the After Action Report is exempt from disclosure as it is an investigative record and is not required to be disclosed."

The Commission is interested in knowing whether the investigation related to the February 8 homeless encampment removal action is completed. If so, it seems that the basis for withholding the After Action Report no longer exists, and that it may be released. Therefore, the Commission requests release of that report.

The Commission voted to make this request of the City Manager and the Chief of Police at its May 23, 2018 meeting. (Moved/Seconded – Ritchie/Prichett; Ayes: Allamby, Calavita, Perezvelez, Prichett, Roberts, Ritchie (temp.); Noes: Price (temp.), Ramsey, Yampolsky; Abstain: None; Absent: Matthews, Sherman.)

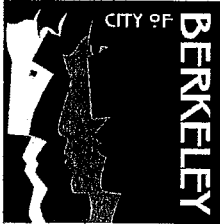
With respect to the City's most recent homeless camp removal action in the area of 2<sup>nd</sup> and Cedar Streets the week of June 4, 2018, the Commission does not know whether the BPD produced an After Action Report for this activity. Thus, at its June 27, 2018 meeting, it unanimously voted to request from the BPD either the After Action Report, or a confirmation that such a report does not exist. (Moved/Seconded – Ramsey/Roberts; Ayes: Allamby, Perezvelez, Prichett,

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Ramsey, Roberts, Yampolsky, Harper (temp.), Price (temp.), Ritchie (temp.);  
Noes: None; Abstain: None; Absent: Calavita, Matthews, Sherman.)

Thank you for considering these requests.

cc: Farimah Brown, City Attorney  
PRC Commissioners



Kate Harrison  
Councilmember District 4

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** July 10, 2018

**Item Number:** 32b

**Item Description:** Direct the City Manager to analyze the Mayor's proposed Police Commission Charter Amendment, and initiate meet-and-confer where required

**Submitted by:** Councilmember Harrison and Mayor Arreguin

- Strike "in instances of large investigations" from Section 13(f) relating to the hiring of a Chief Investigator.
- Convert all instances of "will" to "shall"
- Correct inconsistency in capitalization
- Correct reference in Section 13(h) from 199 to 119
- Reformat Sections 15 and 16 regarding annual reports
- Adds language in Section 2 preserving existing council power over policing issues
- Adds language to allow an implementation ordinance
- Allow PBD up to 30 additional business days to respond to requests for documents

## CHARTER AMENDMENT TO ESTABLISH A POLICE COMMISSION

The People of the City of Berkeley hereby amend the Charter of the City of Berkeley to read as follows:

Section 1. The Charter of the City of Berkeley is amended to add Article XVIII, to read as follows:

### Article XVIII. POLICE COMMISSION AND INDEPENDENT POLICE AUDITOR

#### Section 1. Establishment and purpose.

A Police Commission is hereby established in the City of Berkeley. The purpose of the Police Commission is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department. The Commission shall have the functions and duties enumerated in this Charter, as well as those assigned to the Commission by Ordinance.

The Office of the Independent Police Auditor is hereby established, which shall have the functions and duties enumerated in this Charter, as well as those assigned to the Independent Police Auditor by Ordinance. The purpose of the Independent Police Auditor is to investigate all complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Independent Police Auditor shall also serve as the Secretary to the Police Commission and assist the Commission in carrying out duties prescribed herein.

#### Section 2. Police Commission powers and duties.

(a) The Police Commission has the following powers and duties:

(1) To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including without limitation all written policies, practices, and procedures in relation to the Berkeley Police Department;

(2) Review and recommend for to City Council approval all agreements, letters, or memoranda of understanding, of policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the City of Berkeley Police Department and all other local state and federal law enforcement, intelligence, and military agencies or private security organizations operating in the City of Berkeley;

(3) To review and make recommendations on Police Department policies, practices and procedures as further described below;

(4) To receive and consider the findings and recommendations of the Independent Police Auditor regarding complaints against sworn employees of the Police Department, and to recommend discipline when misconduct is found;

(5) To participate in the hiring of the Chief of Police and command staff as further

described below;

(6) To access records of City Departments, compel attendance of sworn Police Department employees, and exercise the power of subpoena as necessary to carry out its functions and as further described below;

(7) To adopt rules and regulations necessary for the conduct of its business; and

(8) Any other powers and duties as the City Council may assign it by Ordinance.

(b) Nothing in this chapter granting powers and duties to the Police Commission shall limit the Council's independent authority to act on policing issues derived from elsewhere in this Charter, unless explicitly stated.

### **Section 3. Independent agency; budget authority and allocation**

(a) Notwithstanding Article VII of the Charter, the Police Commission, the Independent Police Auditor and its staff shall be independent of the City Manager.

(b) The Commission is authorized to propose a budget to the City Council for its operations, and the Council shall allocate to the Police Commission and Independent Police Auditor a budget sufficient to protect the due process rights of complainants and officers, for the Commission and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Commission.

### **Section 4. Composition of Police Commission; eligibility**

(a) The Police Commission shall be composed of nine Commissioners selected by the City Council. Each member of the Commission must:

(1) Be a resident of the City;

(2) Be of voting age;

(3) Not be an employee, officer, or contractor with the City; a current sworn police officer from any agency; or a current employee, official, or representative of an employee association representing sworn police officers;

(4) Be fair minded and objective with a demonstrated commitment to community service;

(b) Desirable qualities of a Commissioner are familiarity with human resources, law, police procedures, or police oversight; or involvement in civil rights or community organizations.

(c) All appointees to the Commission shall be subject to background checks before final appointment. ~~No person convicted of a~~ A felony shall may serve as a bar to appointment on the Police Commission, at the discretion of the Council.

### **Section 5. Commissioner selection.**

(a) Candidates for the Commission must complete and file with the City Clerk an application form and an affidavit of residency required by Berkeley Municipal Code Section 2.04.145. Commission vacancies ~~will~~ shall be widely advertised and publicly posted. The Mayor and each Councilmember ~~will~~ shall nominate one candidate from an applicant pool at a meeting of the City Council. Each individual nominee must be

approved by a majority vote of the Council.

(b) The Council shall endeavor to establish a Commission that is broadly inclusive and reflective of race, ethnicity, age, sexual orientation, economic status, neighborhoods, and various communities of interest in this City. Toward that end, in soliciting applications for the position of Commissioner positions, the Independent Police Auditor shall reach out to civic, community, and civil rights organizations, among others.

#### **Section 6. Terms; term limits.**

(a) Commissioner terms end four years after appointment, or upon the expiration of the nominating Councilmember's term, whichever is earlier. Commissioners are limited to serving eight consecutive years and may be reappointed following a break in service of at least four years.

(b) To the extent not in conflict with subsections (a) above, the provisions of Berkeley Municipal Code Section 3.02.040, regarding commissioner term limits and the effect of interruption in service, apply.

#### **Section 7. Conflicts of interest.**

Commissioners ~~will~~ shall be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

#### **Section 8. Expiration of term; termination; leaves of absence; removal.**

(a) A Commissioner whose term has expired may continue to serve until a successor Commissioner is appointed, unless the sitting Commissioner's term expires due to term limits.

(b) The term of a Commissioner who fails to remain eligible to serve on the Commission (e.g., by moving out of the City of Berkeley, or becoming an employee of the City) expires automatically as of the date the reason for ineligibility arises.

(c) The provisions of Berkeley Municipal Code Section 3.02.020, establishing a termination procedure for absence from meetings, Section 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate Commissioners, apply to the Police Commission.

(d) A Commissioner may either be replaced by the Council if their term has expired or may be removed during their term by ~~five~~ six votes of the City Council.

#### **Section 9. Commission Chairperson and Vice-Chairperson.**

The Commission shall elect one of its members as chairperson and one as vice-chairperson, whose terms shall be one year each, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof. Following election of the initial chairperson and vice-chairperson, the Commission shall elect subsequent officers each January.

#### **Section 10. Commissioner stipends.**

Each Commissioner is entitled to receive a stipend of \$100.00 for each regular and special full commission meeting attended, and \$20.00 per hour for each subcommittee



meeting attended as a member of the subcommittee. However, the total stipend paid may not exceed \$300.00 per month per Commissioner.

### **Section 11. Commissioner training.**

The Commission shall establish mandatory training requirements for Commissioners, with input from the Independent Police Auditor and Chief of Police.

### **Section 12. Commission meetings; quorum; rules of procedure; subcommittees.**

(a) At the beginning of each calendar year, the Commission shall establish a regular meeting schedule consisting of at least 18 meetings. Special meetings may be called by the chairperson of the Commission or by a majority of the Commission.

(b) A majority of appointed Commissioners constitutes a quorum to conduct business and take any action.

(c) The Commission shall establish rules of procedure governing the conduct of its business.

(d) The Commission may establish subcommittees that it deems necessary to carry out its functions. The chairperson shall appoint subcommittee members at a Commission meeting, and may include members of the public who express an interest in the business of the subcommittee. Public subcommittee members will shall serve without compensation. The Commission may establish further rules and procedures for the appointment of members of the public to subcommittees.

### **Section 13. Office of the Independent Police Auditor.**

(a) The Police Commission shall nominate an Independent Police Auditor subject to confirmation by the City Council. ~~shall appoint an Independent Police Auditor, who shall serve at the pleasure of the Council.~~

The Independent Police Auditor shall serve as secretary to the Police Commission and carry out the work of the Commission as described herein, including, without limitation, day-to-day operations of the Commission office and staff, and performance appraisals and discipline of all subordinate employees.

(b) By majority vote, the Police Commission may recommend removal for cause of the Independent Police Auditor to the Council. The council may remove the Independent Auditor by six votes.

~~(b)(c)~~ In addition to the duties prescribed, upon receipt of a complaint, the Independent Police Auditor shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

~~(e)(d)~~ The Independent Police Auditor shall provide timely updates on the progress of all investigations conducted by the Office of the Independent Police Auditor to the complainant and the Police Department employee who is the subject of the investigation, unless specific facts of the investigation would prohibit such notification.

~~Based on the facts of the investigation, reach an independent finding as to the facts.~~

The Independent Police Auditor shall assess the conduct of the sworn Police Department employee in light of the facts discovered through the investigation, the law, and the policies

and procedures of the Berkeley Police Department.

(d)(e) The Independent Police Auditor shall present the results of their investigative findings and recommendations to the Police Commission who ~~will~~ shall make a recommendation to the Chief of Police regarding the specific complaint.

(e)(f) The Independent Auditor may, with budgetary authority from the Council and the Commission's consent, hire a Chief Investigator ~~in instances of large investigations.~~

(f)(g) The Independent Police Auditor has the sole authority to hire and dismiss consultants, additional investigators, and all subordinate employees as needed.

(g)(h) The powers in this Section 13 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 1199 of this Charter.

(h)(i) The Commission and Independent Police Auditor may use the City's Human Resources Department for hiring, performance evaluation, discipline, and removal of employees.

(i)(j) The Independent Police Auditor shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, ~~with and seek input from the Berkeley Police Association and solicit from them input~~ regarding the work of the Commission and the Office of the Independent Police Auditor.

#### Section 14. Legal counsel.

The Commission and the Independent Police Auditor may use the services of the City Attorney's Office for legal advice. ~~The~~ Commission may also seek the services of outside counsel when it deems necessary.

#### Section 15. Commission reports.

(a) ~~(a)~~ The Independent Police Auditor shall prepare ~~issue~~ an annual report to the public, including but not limited to the following:

1 A description of ~~the~~ the Commission's activities during the year, ~~which shall include~~ including:

i A ~~a~~ summary of the number, type, and disposition of complaints filed with the Commission

ii A ~~a~~ summary of the number, type, and disposition of complaints filed with the Police Department that Commission staff has reviewed

iii P ~~p~~ Policy investigations and reviews undertaken

iv O ~~and such other~~ such information as the Commission may request.

2 The Department's and the Commission's processes and procedures for investigating alleged misconduct, and for determining the appropriate level of discipline for sustained findings of misconduct

3 Trends and patterns regarding Department training and education, and the Department's use of any early warning system;

4 Training and/or policy issues that arise during the investigations of complaints;

5 Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department by race or ethnicity, purpose of the stop and disposition, and location of stop, in compliance with General Order B-4, Fair and Impartial Policing, and any disparate outcomes.

6 Trends and patterns regarding use of force and officer-involved shootings.

(a)(b) This annual report shall be presented to the Commission for approval. Upon adoption by the Commission, it shall be presented to the Mayor and Council, the Chief of Police and the City Manager, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

#### **Section 16. Policy review and approval.**

(a) The Commission may review police policies, practices, and procedures on its own motion, at the request of a member of the public as a result of a policy complaint or an individual complaint against an officer, or the Police Department. Commission staff shall carry out any Commission directives required to fulfill this function.

~~(b) The Commission shall prepare an annual report, summarizing the following:~~

~~(c) The Department's and the Commission's processes and procedures for investigating alleged misconduct, and for determining the appropriate level of discipline for sustained findings of misconduct;~~

~~(d) Trends and patterns regarding Department training and education, and the Department's use of any early warning system;~~

~~(e) Training and/or policy issues that arise during the investigations of complaints;~~

~~(f) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department by race or ethnicity, purpose of the stop and disposition, and location of stop, in compliance with General Order B-4, Fair and Impartial Policing, and any disparate outcomes.~~

~~(g) Trends and patterns regarding use of force and officer-involved shootings.~~

~~(h) This annual report shall be presented to the Commission, the Mayor and Council, the Chief of Police and the City Manager, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.~~

~~(+)(b)~~ Before taking effect, the Chief shall submit all new Departmental policies and revisions to existing policies to the Commission for review and recommendation. If the Police Department and the Commission are unable to reconcile their differences about a policy, the policy shall be sent to the City Manager Council for a final decision.

#### **Section 17. Complaints filed with the Independent Police Auditor.**

(a) The Independent Police Auditor and Commission shall adopt regulations for handling complaints filed from members of the public alleging misconduct by sworn Police Department employees and undertake investigations of complaints as it deems warranted. The regulations must include the following:

(1) A provision for mediation of complaints in lieu of an investigation;

(2) What constitutes a complainant;

(3) The Independent Police Auditor ~~will~~ shall hear and decide findings on allegations of misconduct, at which subject employees must appear to testify and answer questions;

(4) In making findings, the standard of proof ~~will~~ shall be "preponderance of the evidence";

(5) The time limit for investigations and notification of discipline shall be one year, unless a Government Code section 3304(d) exception applies.

(b) Investigation of all complaints filed with the Independent Police Auditor and Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible.

(c) Complaints filed with other offices, boards, bureaus and departments of the City, including the Police Department, shall be referred to the Independent Police Auditor for investigation.

(d) No City employee, officer, official or member of the Police Commission shall attempt to unduly interfere or undermine the work of the Independent Police Auditor or any employee of the Office of the Independent Police Auditor in the performance of the duties and responsibilities set forth in this Charter or by Ordinance.

#### **Section 18. Review of complaints filed with the Berkeley Police Department.**

(a) The Police Department shall provide the Independent Police Auditor with copies of all ~~newly filed complaints~~ newly filed with the Department, both those filed from outside the department and within the department. The Independent Police Auditor shall present each case to the Commission to decide which complaints staff will shall conduct parallel investigations of, after receiving recommendations from its staff. If the Commission staff elects to conducts an investigation, the Department shall share all written and unwritten information, documents, materials and evidence the Department collects during its investigation.

(b) For complaints that the Commission staff does not select for investigation, the Independent Police Auditor shall have the authority to review and discuss those cases with the Department. If the Independent Police Auditor believes that the Commission should open an investigation, s/he may present the case to the Commission to approve an investigation.

(c) The Police Department shall inform the Independent Police Auditor of its planned disposition before closing an investigation into a complaint.

(d) After reviewing a Police Department investigation, the Independent Police Auditor shall advise the Commission of recommended disciplinary action in any sustained finding by the Independent Police Auditor. The Commission may affirm, modify, or reject the recommendation, and its decision shall be submitted to the Chief.

#### **Section 19. Involvement in discipline of sworn department employees**

After reviewing a Police Department investigation, the Independent Police Auditor

~~shall advise the Commission of recommended disciplinary action in any sustained finding by the Independent Police Auditor. The Commission may affirm, modify, or reject the recommendation, and its decision shall be submitted to the Chief.~~

(a) In a confidential personnel meeting, the Independent Police Auditor shall submit their investigative findings and recommendations, ~~including any recommended disciplinary action, including all evidence and documentation obtained or produced during the course of the investigation,~~ to the Police Commission for review. The Independent Police Auditor shall provide the Commission with all evidence and documentation obtained or produced during the course of the investigation to enable their review of the complaint. At said meeting, both the officer who is the subject of the investigation and the complainant must be present to answer questions from Commissioners. To the extent allowed by law, the Independent Police Auditor and Commission shall ensure that both the officer and complainant are able to freely testify. ~~If the Independent Police Auditor Commission makes upholds the Independent Police Auditor's sustained finding on an allegation against a subject employee, they shall also recommend disciplinary action to the Chief of Police.~~

(b) Should the Police Commission agree with the findings and recommendations ~~of the Independent Police Auditor,~~ the report ~~will~~ shall be submitted to the Chief of Police for appropriate action. The Commission may affirm, modify or reject the recommendations. If the Commission modifies or rejects the recommendations of the Independent Police Auditor, it shall issue findings explaining its decision.

~~(c)(a) After reviewing a Police Department investigation, the Independent Police Auditor shall advise the Commission of recommended disciplinary action in any sustained finding. The Commission may affirm, modify, or reject the recommendation, and its decision shall be submitted to the Chief.~~

(d)(c) If the Chief proposes to impose a disciplinary action that differs from the recommendation of the Independent Police Auditor or the Commission, the Commission shall have the opportunity to appeal the Chief's proposal to the City Manager. The City Manager shall make the final determination and explain his or her decision in writing to the Commission within 15 business days of the appeal.

(e)(d) This Article does not prohibit the Chief of Police from investigating the conduct of a Police Department employee or taking disciplinary or corrective action that is otherwise permitted by this Charter and not in conflict with this Article, when such action is warranted; and this Article does not limit or otherwise restrict the disciplinary powers vested in the City Manager and the Chief of Police under other provisions of this Charter, that are not in conflict with this Article.

(f)(e) The City Manager and Chief of Police may impose disciplinary action up to a period consistent with Government Code section 3304. This Section nullifies and supersedes any provisions of agreements to the contrary.

## **Section 20. Access to records of City departments; compelling testimony and attendance.**

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Independent Police Auditor, Police Commission and its staff and, unless prohibited by state or federal law, produce all records and ~~written and unwritten information, documents, materials and evidence the~~

Commission or its staff requests for the purpose of carrying out its duties and functions. The records and information include without redaction or limitation: (1) records relevant to Police Department policies or practices, (2) personnel and disciplinary records of sworn Police Department employees, and (3) Police Department investigative records. Responding departments, officers, or employees of the City shall comply promptly, but in no event later than 10 business days from the date of request, unless additional time is needed to comply. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time ~~within a reasonable period~~ up to 30 additional business days is needed and explain the reasons for delay in producing the necessary records and information.

(b) The Independent Police Auditor, Police Commission and its staff shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

(c) The Independent Police Auditor and Police Commission may require the testimony or attendance at Commission proceedings of any member of the Police Department to carry out the Commission's responsibilities.

(d) The Independent Police Auditor and Police Commission is empowered to issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out its duties and functions; and to enforce subpoenas if necessary.

#### **Section 21. Advice regarding Police Department budget.**

The Commission is empowered to review and make recommendations to the City Council regarding the Police Department budget. The Chief shall submit his or her final budget proposal to the Commission for review and recommendations, but the Commission's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.

#### **Section 22. Hiring of Chief of Police.**

Notwithstanding Article VII, Section 28 of this Charter, the process for hiring the Chief of Police is as follows:

Upon the notice of vacancy of the position of Chief of Police, the City Manager shall engage with the Police Commission on the job requirements and application process. The Police Commission shall play an active role in the evaluation of candidates for the Chief of Police.

#### **Section 23. Hiring of subordinate Departmental staff.**

(a) The Chief of Police shall include a member of the Commission on all oral boards for all command staff positions and allow that Commission member to have input.

#### **Section 24. Chief or command staff to attend Commission meetings.**

The Chief of Police shall attend at least one regular Commission meeting per month, for each month a regular meeting is held and attend a minimum of 12 meetings per year. The Chief shall send a member of his or her command staff to any regular Commission meeting that the Chief does not attend.

#### **Section 25. Berkeley Police Department written reports to the Commission.**

The Chief of Police shall submit reports to the Commission on such subjects and at such intervals as the Commission, in consultation with the Chief, may prescribe. At least one report shall provide information on all use of force statistics, and the number of complaints filed with Internal Affairs, the allegations in each complaint, and the disposition of closed complaints, including any discipline imposed.

#### **Section 26. Contract negotiations.**

The City Manager shall inform the Police Commission of any prospective changes discussed in contract negotiations that may directly affect the work, duties, or responsibilities of the Commission; and provide the Commission reasonable time to evaluate and respond to those proposals.

#### **Section 27. Commendation program.**

The Commission shall establish a regular means of recognizing sworn employees of the Police Department for instances of outstanding service to individuals, the community at large, or the Department.

#### **Section 28. Transition from Police Review Commission to Police Commission.**

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, ~~will~~ shall continue in existence until its functions are transferred to the Police Commission, but no later than June 30, 2019.

(b) To assist in an orderly transition between the Police Review Commission and the Police Commission established by this Article, PRC staff shall serve as interim Police Commission staff until the Police Commission hires an Executive Director and the Executive Director hires subordinate employees.

(c) The Police Review Commission staff shall transfer all PRC files, records, books, publications, and documents of whatever kind to, and for the use and benefit of, the newly created Police Commission.

#### **Section 29. Review of processes.**

The Commission shall conduct a review of its processes every two years after the passage of the initiative in order to ascertain the efficacy of its processes.

#### Section 30. Enabling Legislation

The Commission may make recommendations to the City council for enacting legislation or regulations that will further the goals and purposes of Article XVIII of this Charter. The City Council may, on its own initiative, enact legislation or regulations that will further the goals and purpose of this Charter. Once the Commission is seated, subsequent legislation or regulations, shall be submitted to the Commission for review and comment.

The Commission shall have forty-five (45) days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

**Section 310. Repeal of Ordinance No. 4,644-N.S., as amended.**

Ordinance No. 4,644-N.S. and all amendments thereto ~~will~~ shall cease to be operative and are repealed as of the date of the first meeting of the Police Commission established by this Article.

**Section 321. Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, 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 Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley declare that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Article, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.



Comparison: Current PRC Ordinance and Charter amendments proposed by PRC and Mayor (and Mayor/Harrison)

	Current PRC enabling Ordinance	PRC proposed charter amendment (Section #s in parens.)	Mayor's proposed charter amendment (Same sec. #s as PRC unless noted otherwise)	Mayor & Councilmember Harrison's latest
Body established; purpose	Police Review Commission – community participation in setting/reviewing police policies; conduct impartial investigations of civilian complaints against BPD.	(1) Police Commission – oversight of BPD and interactions with other law enforcement operating in City, by promoting public trust, ensuring community values reflected.	Police Commission – same as enabling Ordinance; AND establish IPA to investigate all complaints against sworn officers and recommend corrective action.	
Place in City organizational structure; budget	PRC staff part of City Manager's office. Commission advisory to Mayor and Council. Budget under CMO.	(3)(a) Commission and staff are independent of the City Manager. (b) Commission proposes Budget to Council.	(a) Commission and IPA are independent of the City Manager. (b) Commission proposes Budget to Council.	3(b) Budget authority language modified
Commissioner selection	Mayor and each Councilmember appoint one member to PRC.	(5) Mayor and each Councilmember nominate a candidate for commissioner subject to approval by the Council	Same as PRC proposal.	
Commission staff	Not designated in enabling Ordinance. In practice: PRC Officer, PRC Investigator, admin. support.	(13) Executive Director; Chief Investigator; support staff; others as needed.	Independent Police Auditor (IPA); Chief Investigator and other staff as needed.	
Hiring/dismissal of Commission staff	PRC Officer & Investigator serve at pleasure of City Manager. Admin support are civil service.	(13)(a) E.D. serves at pleasure of Commission. (b) E.D. hires & dismisses Chief Investigator w/ Commission consent. (c) E.D. hires & dismisses all other staff and consultants as needed.	(a) IPA serves at the pleasure of the Council. (c) IPA may hire Chief Investigator for "large" investigations with Council's consent. (d) IPA hires & dismisses all other needed staff and consultants.	13(a) Commission nominates IPA subj to Council confirmation. (b) Comm. can recommend removal for cause. Council may remove w/ 6 votes.
Hiring/dismissal of Police Chief	Advisory authority implied.	(22) Hiring: City Manager involves Commission in setting job requirements and application process; active role in evaluating and selecting final candidates. Removal: Commission may propose removal to City Manager.	Hiring: same as PRC proposal except no role in selection of final candidates. No role in removal of Chief.	

	<b>Current PRC enabling Ordinance</b>	<b>PRC proposed charter amendment (Section #s in parens.)</b>	<b>Mayor's proposed charter amendment (Same sec. #s as PRC unless noted otherwise)</b>	<b>Mayor &amp; Councilmember Harrison's latest</b>
Hiring of subordinate BPD staff	Advisory authority implied.	(23) Chief must include Commission member on all oral boards for command staff, and chance to participate in interviews for other sworn officer positions.	Same as PRC proposal for command staff.  No role in interviews for other positions.	
Role in policy-making	Advisory only to public, Council, City Manager	(16(c)) Approval authority over all BPD policies, practices, procedures. Disagreements bt. Commission and BPD resolved by Council.  (16(b)) Also, audit/review authority to assess adherence to constitutional policing practices; detailed annual reporting.	(c) Advisory only. Disagreements bt. Commission and BPD resolved by City Manager.  (b) No audit/review function, but detailed annual reporting.	(16(c)) Advisory only. Disagreements bt. Commission and BPD resolved by Council.  (16(b)) Slight change in annual reporting – list of topics is not limited
Authority to receive complaints and conduct investigations; as against whom	Staff receive and investigate complaints directed against any BPD employees. (In practice, investigate as to sworn officers only.)	(2(a)(4)) Same as under enabling Ordinance.	IPA receives and investigates complaints against sworn officers only. Broad responsibilities spelled out.	
Authority to hear and decide allegations of misconduct	Authorized to make recommendations on complaints. In practice, Boards of Inquiry (panel of 3 commissioners) hear and make findings on allegations.	(17(a)(3)) BOI process substantially similar to current practice.	(13(b) and 17(a)(3)) No BOI. IPA hears and decides allegations; sends findings and recommendations to Commission, who make recommendations [on findings?] to Chief.	(13) Language of IPA as fact-finder deleted. (19(b)) IP presents findings & recs. and subject officer & complainant must appear and answer Qs. [But 17(a)(3)]
Regulations for handling complaints	Broad authority to adopt necessary regulations.  In practice, standard of proof and time limit for discipline established through bargaining with BPA.	(17(a)) Broad authority to adopt necessary regulations, including use of "preponderance of the evidence" standard, and time limit for investigations and notice of discipline = one year.	Substantially same as PRC proposal.	

	Current PRC enabling Ordinance	PRC proposed charter amendment (Section #s in parens.)	Mayor's proposed charter amendment (Same sec. #s as PRC unless noted otherwise)	Mayor & Councilmember Harrison's latest
Review of complaints filed with BPD	None.	(18) BPD gives E.D. copies of all newly-filed complaints. a) Commission tells E.D. what complaints to investigate. b) E.D. may discuss with BPD all other complaints, and request Commission approval to investigate if E.D. feels warranted. c) BPD to inform Commission of planned disposition before closing complaint.	BPD gives IPA copies of all newly-filed complaints. a) IPA decides which complaints to investigate. b) IPA may discuss all other complaints with BPD. [And IPA asks Commission to approve investigation? Why, if IPA decides initially what to investigate?] c) BPD to inform IPA of planned disposition before closing complaint.	(18(a)) Specifies both external and internal complaints are covered. IPA presents to Commission, who decides which cases to investigate.
Review of complaints filed with other than PRC or BPD	Complaints filed with other City offices, boards, bureaus and depts., including BPD, shall be referred to Commission for investigation. (In practice BPD complaints not referred.)	None.	(17(c)) Same as enabling Ordinance, except referral to IPA, not Commission, for investigation.	
Role in discipline	None.	(19(a)) PRC complaint: BOI recommends discipline to Chief in sustained finding. (b) E.D. investigation of a BPD complaint: E.D. recommends discipline to Commission; Commission may affirm, modify or reject and send to Chief. (c) If Chief and Commission disagree on discipline, Comm. may appeal to City Manager, who makes final decision.	(a) Complaint filed with IPA: IPA submits findings and recommended discipline to Commission for review. Commission can accept, modify, or reject, and send to Chief. (b) IPA investigation of a BPD complaint: IPA recommends discipline to Commission; Commission may affirm, modify or reject, and send to Chief. (c) If Chief and Commission disagree on discipline, Comm. may appeal to City Manager, who makes final decision.	(19(b) & (c)) Complaint filed with IPA: Comm. may affirm, modify or reject IPA recommendations, including discipline to Chief; explanatory findings if vary from IPA. (a) IPA investigation of a BPD complaint: [no change] (d) [no change; just renumbered (former (c))]

	Current PRC enabling Ordinance	PRC proposed charter amendment (Section #s in parens.)	Mayor's proposed charter amendment (Same sec. #s as PRC unless noted otherwise)	Mayor & Councilmember Harrison's latest
Access to records and testimony	Not specified in Ordinance; in practice restricted due to Charter, statute, case law, and policy. Appearance of officers per order of City Manager.	(20) All BPD staff to cooperate with the Commission in staff in producing records and information requested, and attending or testifying, in furtherance of Commission duties.	Same as PRC proposal.	
Interference with IPA	Not applicable.	Not applicable.	(17(d)) No City employee, officer, official or Police Commissioner shall interfere with or undermine the work of the IPA or his/her employees.	
Relationship to BPA	None specified.	None specified.	(13(g)) IPA to meet periodically with and seek input from BPA re IPA's work.	(13(j)) Adds other stakeholders with whom IPA shall meet.
BPD budget	Advisory.	(21) Commission makes recommendations to Chief. Chief to submit budget proposal to Commission for review & recommendations 30 days prior to submittal to City Manager.	Commission makes recommendations to Council. Chief to submit budget proposal to Commission but without timeline as in PRC proposal.	
Commissioner eligibility	Berkeley resident; no officer or employee of City.	(4) Berkeley resident of voting age; no officer, employee or contractor of City; no current sworn officer of any agency; no representative of police officer association. Desirable: HR, law, police procedures, police oversight, civil rights or community group.	Same as PRC proposal AND -- fair minded, objective, commitment to community service; -- no one convicted of felony. -- subject to background check.	(4(c)) Felony may bar appointment, in Council's discretion.
Commissioner terms; term limits; removal	Two-year terms. No term limits. Automatic termination for 3 straight unexcused absences. No provisions for removal.	(6) Four-year terms, or expiration of nominator's term. Eight-year term limit. (8) Automatic termination for absences per BMC.	(6) Terms same as PRC proposal. (8) Automatic termination same as PRC proposal. (8(d)) Removal by 5 votes of Council (no Commission recommendation	(8(d)) Removal by 6 votes of Council.

	Current PRC enabling Ordinance	PRC proposed charter amendment (Section #s in parens.)	Mayor's proposed charter amendment (Same sec. #s as PRC unless noted otherwise)	Mayor & Councilmember Harrison's latest
Stipends	\$3/hour for time reviewing policies and attending meetings up to \$200/month.	(8(d)) Removal by Council if 7 Commissioners recommend such for cause. (10) \$100 per full commission meeting, \$20 per subcommittee meeting and BOI, up to \$500/month.	needed). [Note: language re replacement after term expiration unneeded; covered in prior section.] Same as PRC proposal except no BOIs and max \$300/month.	
Commissioner training	None specified.	(11) Shall be established with input from Chief and E.D.	Same as PRC proposal except substitute IPA for E.D.	
Quorum	Quorum = majority of appointed Commissioners, and majority of those present may take action.	(12(b)) Quorum = majority of appointed Commissioners, and 4 votes needed to take action.	Quorum = majority of appointed Commissioners, and majority of appointeds needed to take action.	
Petition right for civilians to call a meeting	50 persons or more may petition to have the PRC hold a special meeting on a specified topic of concern, to be held within 5 working days.	(12(e)) Same as current Ordinance, except meeting to be held within 10 business days.	None.	
Legal counsel	None specified; in practice rely on City Attorney's Office.	(14) Commission and E.D. may use City Atty but also seek outside counsel.	Same as PRC proposal (substitute IPA for E.D.).	
Regular reporting	Regular quarterly reports on the number, kind, and status of all complaints. (In practice, annual report on with complaint statistics and policy work.)	(15) Annual report re Commission's activities, including complaint statistics, policy work, and other info as Commission requests.	Same as PRC proposal.	
Chief attend meetings	Not specified.	(24) Chief to attend at least one meeting/month; min. 12 meetings/year; send command staff.	Same as PRC proposal.	
BPD written reports to Comm.	None.	(25) Chief to submit reports to Commission as requested, after consultation.	Same as PRC proposal.	

	Current PRC enabling Ordinance	PRC proposed charter amendment (Section #s in parens.)	Mayor's proposed charter amendment (Same sec. #s as PRC unless noted otherwise)	Mayor & Councilmember Harrison's latest
Contract negotiations	None.	(26) City Manager inform Commission of changes to be discussed in negotiations that affect Commission and provide time for response.	Same as PRC proposal.	
Commendation program	None. (Done in practice.)	(27) Commission shall establish regular means of recognizing BPD personnel.	Same as PRC proposal but limited to sworn officers.	
Transition	Not applicable.	(28) PRC staff serve as interim PC staff; all PRC files, records, etc. to be transferred to PC.	Same as PRC proposal.	
Self-evaluation	None.	(29) Commission shall conduct self-evaluation to determine efficacy.	Same as PRC proposal.	

BPD GO	Lex#	Lexipol Name	Expert Consulted	Notes
K	314	Discriminatory Harassment	Katie Smith	The COB's Policy is quoted
B-04	401	Racial or Bias-Based Profiling		We used the language from our GO / Did not use any Lexipol Language
V-11	706	Emergency Vehicle	San Leandro PD	We never had policy, neither did Lexipol, we based the policy off of San Leandro PD, it was approved by City Council in June 2018
C-04	800	Crime Analysis	Ryan Andersen	
N/A	1012	Body Armor	N/A	We never had a Body Armor policy, all content is Lexipol's

**Lex# Pg# Documents**

**Discriminatory Harassment**

- 314 5 Lexipol Policy Guide
- 6 Original Lexipol Document
- 12 Our Related Existing GO
- 18 Lexipol's Suggested Edits to our GO
- 24 Draft Policy

**Fair and Impartial Policing**

- 401 30 Lexipol Policy Guide
- 31 Original Lexipol Document
- 35 Our Related Existing GO
- 37 Lexipol's Suggested Edits to our GO
- 39 Draft Policy

**Emergency Response Vehicle**

- ~~Lexipol Policy Guide~~ N/A
- ~~Our Related Existing GO~~ N/A
- ~~Original Lexipol Document~~ N/A
- ~~Our Related Existing GO~~ N/A
- 41 Policy

**Crime Analysis**

- 800 45 Lexipol Policy Guide
- 46 Original Lexipol Document
- 48 Our Related Existing GO
- 53 Lexipol's Suggested Edits to our GO
- 59 Draft Policy

**Body Armor**

- 1012 61 Lexipol Policy Guide
- 62 Original Lexipol Document
- ~~Our Related Existing GO~~ N/A
- ~~Lexipol's Suggested Edits to our GO~~ N/A
- 64 Draft Policy

<b>Legend for Lexipol's suggested edits</b>
Yellow - Content could be merged with Lexipol
Gray - Content is replaced/rephrased by Lexipol
Blue - Content is procedure, not policy

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## Members of the Policy Working Group (PWG)

Name	Current Rank	Current Assignment	Years w/BPD	Previous Assignments
Reece	Captain	Operations Captain	22	Patrol Officer, Drug Task Force, Special Enforcement, Field Training Sgt., Patrol Sergeant, SRT Tactical Member/Command, Supp Services Lt., Prof Standards Lt.
Dave Lindenau	Lieutenant	Patrol Lt.	23	Patrol Officer, Drug Task Force Officer, Special Enforcement Detective, Special Enforcement Sergeant, Robbery Sergeant
Peter Hong	Lieutenant	Patrol Lt.	21	Patrol Officer, Drug Task Force Officer, Robbery Detective, Field Training Officer, SRT Negotiator, Homicide Sergeant,
Dan Montgomery	Lieutenant	Detective Bureau Lt.	18	Patrol Officer, Drug Task Force Officer, Crowd Management Team Member, Narcotics Admin Detective, Field Training Sgt., Professional Standards Sergeant, SRT Negotiator
Mike Durbin	Lieutenant	Personnel and Training	16	Patrol Officer, Drug Task Force Officer, SRT Negotiator, Crowd Management Member, Property Crimes Detective, Patrol Sergeant, P&T Sergeant, Police Sergeant, Patrol
Joe Okies	Lieutenant	Patrol Lt.	18	Patrol Officer, Drug Task Force Officer, SRT Tactical Member, Bicycle Patrol Officer Sgt., Audit & Inspections Sgt., SRT
Susan Lee	Detective	Property Crimes	11	Patrol Officer, Field Training Officer, Crisis Intervention Team Member, Bicycle Patrol Officer, Chemical Agents Instructor
Sam Speelman	Sergeant	Policy Sgt.	15	Patrol Officer, Field Training Officer, Youth Services Detective, Crisis Intervention Team Member, SRT Negotiator, BPA Board Member, CISM Team, Patrol Officer Sgt.
Emily Murphy	Sergeant	Traffic Bureau Sgt.	17	Patrol Officer, Drug Task Force Officer, Field Training Officer, Homicide Detective, Field Training Sgt., BPA Board Vice
Scott Castle	Sergeant	Patrol Sgt.	13	Patrol Officer, Drug Task Force Officer, Firearms Training Instructor, Field Training Officer, SRT Tactical Member, Property Crimes Detective, BPA Board Member
Jen Tate	Sergeant	Audit & Inspection Sgt.	17	Patrol Officer, Traffic Officer, Patrol Sergeant, Drug Task Force Sergeant, Audit + Inspection Sergeant, Defensive
Rashawn Cummings	Sergeant	Internal Affairs Sgt.	15	Patrol Officer, Drug Task Force Officer, Bicycle Patrol Officer, Field Training, Firearms Inst., Community Services Officer, SRT Tactical Member, Patrol Sergeant
Spencer Fomby	Sergeant	Patrol Sgt.	17	Patrol Officer, Drug Task Force Officer, SRT Tactical Member, Patrol + Drug Task Force Sergeant, Defensive Tactics + Firearms Instructor, Community Services Sergeant

(Members of the Group who reviewed each policy varied based on schedules and meeting times)

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# Lexipol LLC

## California Policy Guide

### CHAPTER 3 – GENERAL OPERATIONS

#### **Discriminatory Harassment**

This policy provides guidelines for preventing and responding to harassment of any member based on race, color, religion, sex, age, national origin or ancestry, genetic information, disability, military service, sexual orientation and other classifications protected by law.

#### **BACKGROUND NOTES**

- This policy broadly addresses federal discrimination laws including Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on protected classifications, and the Uniformed Services Employment and Reemployment Rights Act (USERRA), which prohibits discrimination based on military service. It also incorporates select recommendations of the Equal Employment Opportunity Commission (EEOC) regarding preferred employer practices to avoid discrimination and retaliation.
- Any form of harassment, sexual or otherwise, has one of the greatest potentials for exposing your agency to liability. This policy draws on Lexipol's extensive experience in the investigation and litigation of discrimination and harassment cases to outline the best way for your agency to address this problem.
- We have also experienced situations where members failed to report harassment in a timely manner, thus preventing the agency from dealing with what might have been a minor issue until it developed into a much more serious problem. For this reason, **RESPONSIBILITIES** places equal responsibility on victims, witnesses and supervisors to report discriminatory harassment in a timely manner and to deal with any perceived problem.
- You should review any related city/county policy pertaining to harassment to ensure that this policy does not conflict. In situations where there have been conflicts among more general city/county personnel policies, many personnel directors have updated their policy to conform to this one.

#### **CUSTOMIZATION GUIDELINES**

Please review the following sections carefully and customize accordingly to meet your agency's practice:

- **QUESTIONS OR CLARIFICATION** (List the individuals in your organization who are responsible for fielding questions about this topic.)
- **NOTIFICATION OF DISPOSITION** (Note that the document referred to in this section should state the remedy without disclosing any confidential personnel actions, such as discipline.)

## Discriminatory Harassment

### 314.1 PURPOSE AND SCOPE

**Federal**

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

### 314.2 POLICY

**Federal**

The Berkeley Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2 CCR 11023). The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect.

The nondiscrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline.

### 314.3 DEFINITIONS

**Federal**

Definitions related to this policy include:

#### 314.3.1 DISCRIMINATION

**Federal**

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on the actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status and other classifications protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment, can include making derogatory comments, crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters or material; making inappropriate physical contact; or using written material

# Berkeley Police Department

## Berkeley PD Policy Manual

### Discriminatory Harassment

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or department equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

#### 314.3.2 SEXUAL HARASSMENT

##### **Federal**

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

#### 314.3.3 ADDITIONAL CONSIDERATIONS

##### **Federal**

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Fair Employment and Housing Council guidelines.
- (b) *Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and member.*

#### 314.3.4 RETALIATION

##### **Federal**

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.

#### 314.4 RESPONSIBILITIES

##### **Best Practice**

This policy applies to all department personnel. All members shall follow the intent of these guidelines in a manner that reflects department policy, professional law enforcement standards and the best interest of the Department and its mission.

# Berkeley Police Department

Berkeley PD Policy Manual

## Discriminatory Harassment

Members are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be filed with the Chief of Police, the Professional Standards Division Captain or the City Manager.

Any member who believes, in good faith, that he/she has been discriminated against, harassed or subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

### 314.4.1 SUPERVISOR RESPONSIBILITIES

#### **Best Practice**

The responsibilities of each supervisor and manager shall include, but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- (c) Ensuring that his/her subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Making a timely determination regarding the substance of any allegation based upon all available facts.
- (f) Notifying the Chief of Police or Professional Standards Division Captain in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation no later than the next business day.

### 314.4.2 SUPERVISOR'S ROLE

#### **Best Practice**

Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing or retaliatory. Supervisors and managers shall be aware of the following considerations:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.
- (b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating

# Berkeley Police Department

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## *Discriminatory Harassment*

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or counseling members or issuing discipline, in a manner that is consistent with established procedures.

### 314.4.3 QUESTIONS OR CLARIFICATION

#### **Best Practice**

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Professional Standards Division Captain, the City Manager or the California Department of Fair Employment and Housing for further information, direction or clarification.

### 314.5 INVESTIGATION OF COMPLAINTS

#### **Best Practice**

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination, retaliation or harassment shall be fully documented and promptly and thoroughly investigated.

#### 314.5.1 SUPERVISORY RESOLUTION

##### **Best Practice**

Members who believe they are experiencing discrimination, harassment or retaliation should be encouraged to inform the individual that his/her behavior is unwelcome, offensive, unprofessional or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing his/her concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

#### 314.5.2 FORMAL INVESTIGATION

##### **Best Practice**

If the complaint cannot be satisfactorily resolved through the process described above, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include, but is not limited to, details of the specific incident, frequency and dates of occurrences and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed or retaliated against because of their protected status, are encouraged to follow the chain of command but may also

# Berkeley Police Department

Berkeley PD Policy Manual

## Discriminatory Harassment

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file a complaint directly with the Chief of Police, Professional Standards Division Captain or the City Manager.

### 314.5.3 ALTERNATIVE COMPLAINT PROCESS

#### **Best Practice**

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated or retaliated against are entitled to bring complaints of employment discrimination to federal, state and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

### 314.6 DOCUMENTATION OF COMPLAINTS

#### **Best Practice**

All complaints or allegations shall be thoroughly documented on forms and in a manner designated by the Chief of Police. The outcome of all reports shall be:

- Approved by the Chief of Police, the City Manager or the Professional Standards Division Captain, depending on the ranks of the involved parties.
- Maintained in accordance with the department's established records retention schedule.

#### 314.6.1 NOTIFICATION OF DISPOSITION

##### **Best Practice**

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

### 314.7 TRAINING

#### **Best Practice**

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of and understands its contents and agrees to abide by its provisions during his/her term with the Department.

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents and agree that they will continue to abide by its provisions.

#### 314.7.1 SUPERVISOR TRAINING

##### **State**

All supervisors shall receive specific training and education regarding sexual harassment, prevention of abusive conduct and harassment based on gender identity, gender expression and sexual orientation within six months of assuming a supervisory position. Refresher training shall be provided every two years thereafter (Government Code § 12950.1; 2 CCR 11024).



**Berkeley Police Department**  
Berkeley PD Policy Manual

*Discriminatory Harassment*

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**314.7.2 TRAINING RECORDS**

**State**

The Personnel and Training Sergeant shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11024).

**314.8 WORKING CONDITIONS**

**State**

The Support Services Division Commander or the authorized designee should be responsible for reviewing facility design and working conditions for discriminatory practices. This person should collaborate with other City employees who are similarly tasked (2 CCR 11034).

**314.9 REQUIRED POSTERS**

**State**

The Department shall display the required posters regarding discrimination, harassment and transgender rights in a prominent and accessible location for members (Government Code § 12950).

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 1, 2000

GENERAL ORDER H-7

SUBJECT: HARASSMENT PREVENTION POLICY - CITY OF BERKELEY

### PURPOSE

- 1 - The purpose of this General Order is to establish our commitment to providing a work environment for all employees which is fair, humane and respectful, where all personnel can work together in an atmosphere free from all harassment, including the more hidden or subtle forms of sexual harassment, by adhering to the City of Berkeley Harassment Prevention Policy as outlined below.

### DEPARTMENT POLICY

- 2 - The Berkeley Police Department will adhere to the City of Berkeley policy that is outlined below.
  - (a) The Police Regulations and General Orders are consistent with this City Policy.
  - (b) In addition to following the City policy, supervisors shall inform their superior officers of any violations of this policy so that appropriate actions can be taken by their Chain of Command.
  - (c) In addition to any actions taken by the City's Equal Employment Opportunity & Diversity (EEO) Officer in response to violations, the Department may initiate a complaint and investigation as outlined in General Order P-26.

### CITY POLICY

- 3 - It is the policy of the City of Berkeley that harassment on the basis of race, color, religion, ancestry, national origin, age, sexual orientation, marital status, political affiliation, family care leave status, physical or mental disability or medical condition, as well as sexual harassment based on gender will not be condoned or tolerated. All employees are guaranteed the right to a work place free of hostility and intimidation. The City will neither tolerate nor condone harassment of employees by managers, supervisors, coworkers, or non-employees with whom City employees have a business, service, or professional relationship. Retaliation against an employee who complains or reports any act of harassment in violation of this policy is prohibited. The City is committed to ensuring and providing a work place free of harassment. The City will take **disciplinary action**\*, up to and including termination, against an employee who violates this policy.

### LEGAL DEFINITION OF SEXUAL HARASSMENT

- 4 - Sexual harassment as defined by law is any unwanted sexual advances,

\* Highlighted text is new

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 1, 2000

GENERAL ORDER H-7

requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made a term or condition of employment; or
- (b) Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment because of the severe and pervasive nature of the conduct.

### CONDUCT PROHIBITED UNDER THE CITY'S POLICY

5 - In order to ensure that such offensive conduct does not rise to the level of conduct which is illegal, the City has a zero tolerance policy toward a single instance of any such conduct which either by itself or when repeated would constitute sexual harassment. Specifically, the City will not tolerate employees engaging in any of the conduct listed below:

- (a) Unwanted sexual advances.
- (b) Offering employment benefits in exchange for sexual favors
- (c) Making or threatening retaliation after a negative response to sexual advances.
- (d) Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- (e) Verbal conduct such as making or using derogatory comments, epithets, slurs, sexually explicit jokes, derogatory or suggestive comments about a person's body or dress.
- (f) Written communications of a sexual nature distributed in hard copy or via a computer network.
- (g) **Unwelcomed\*** verbal sexual advances or propositions.
- (h) Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- (i) Physical conduct such as touching, assault, impeding or blocking

\* Highlighted text is new

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movements.

- (j) Retaliation for making harassment reports or threatening to report harassment:

- 6 - An employee engaging in such prohibited conduct shall be subject' to **appropriate\*** disciplinary action, up to and including termination, regardless of whether the employee engages in the prohibited conduct only once. **In addition, any employee who engages in any inappropriate conduct based on or directed at a person's gender will be subject to appropriate disciplinary action, up to and including termination of employment.\***
- 7 - Sexual harassment can occur between employees of the same sex. The City's policy prohibits males from sexually harassing females or other males, and females from sexually harassing males or other females:

### FRIENDLY INTERACTION OR SEXUAL HARASSMENT

- 8 - There is a clear line in most cases between mutual attraction and a consensual exchange and unwelcome behavior or pressure for an intimate relationship. A friendly interaction between two persons who are receptive to one another is not considered unwelcome or harassment. Employees are free to form social relationships of their own choosing. However, when one worker is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intentions, the behavior is unwelcome sexual behavior. An employee confronted with these actions by a co-worker should inform the harasser that such behavior is offensive and tell the harasser to stop. You should assume that sexual comments are unwelcome unless you have clear unequivocal indications to the contrary. In order words, another person does not have to tell you to stop for your conduct to be harassment and unwelcome.
- 9 - Certainly if you are advised by a co-worker that your behavior is offensive, you must immediately stop the behavior, regardless of whether you agree with the person's perception of your intentions.

### OTHER TYPES OF HARASSMENT PROHIBITED BY THE MY'S POLICY

- 10 - The City's policy also prohibits harassment on the basis of race, color, national origin, sexual orientation, religion, physical or mental disability, age, veteran status, or any other characteristic protected by applicable law. The City will not tolerate an employee engaging in any of the conduct listed below:
  - (a) Verbal conduct such as threats, epithets, derogatory comments or slurs.

\* Highlighted text is new

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- (b) Visual conduct such as derogatory posters, photographs, cartoons, drawings or gestures.
  - (c) Written communications containing statements which may be offensive to individuals in a particular protected group, such as racial or ethnic stereotypes or caricatures.
  - (d) Physical conduct such as assault, unwanted touching or blocking normal movement.
  - (e) Retaliation for making or threatening to make harassment reports to the City, or for participating in an investigation into harassment allegations.
- 11 - An employee engaging in conduct prohibited by this policy shall be subject to **appropriate\*** disciplinary action, up to and including termination, regardless of whether the employee engages in the prohibited conduct only once and even if the employee's conduct does not rise to the legal definition of harassment on the basis of race, color, national origin, sexual orientation, disability, age, or other characteristics prohibited under federal and state anti-discrimination statutes.

### EMPLOYEES' RESPONSIBILITIES WHEN SUBJECTED TO HARASSMENT

- 12 - Any employee who believes he or she has been subjected to harassment prohibited by this policy should immediately tell the harasser to stop his/her unwanted behavior and immediately report that behavior to his or her supervisor or to the City's Equal Employment Opportunity & Diversity (EEO) Officer. An employee is not required to complain first to his or her supervisor if that supervisor is the individual engaging in the unwanted behavior. Employees may report any incidents directly to the EEO Officer, who is located in the City's Personnel Department and can be reached at (510) 665-7611,

### SUPERVISORS' RESPONSIBILITIES

- 13 - Supervisors are responsible for enforcing the City's harassment prevention policy. Supervisors must ensure that all employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members. Supervisors should be cognizant of employees' behavior and shall not permit any employee under his/her authority to be subject to or engage in any conduct prohibited by the City's policy. Supervisors who receive complaints or who observe conduct prohibited by this policy should tell the employee to cease the conduct immediately and should inform the EEO Officer. The EEO Officer is available to provide guidance, training and assistance as required. The City will take disciplinary action, up to and

\* Highlighted text is new

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including termination, against any supervisor who fails in his/her responsibility to take immediate action in response to an employee's complaint of harassment or to stop harassing conduct committed in his/her presence or to stop harassing conduct about which the supervisor has knowledge.

- (a) In addition to following the City policy, supervisors shall inform their superior officers of any violations of this policy so that appropriate actions can be taken by their Chain of Command.
- 14 - The City does not consider conduct in violation of this policy to be within the course and scope of employment and does not sanction such conduct on the part of any employee, including supervisory and management employees,

### ENFORCEMENT RESPONSIBILITIES

- 15 - The City's harassment policy will be enforced by the City Manager, all Department Heads, and the EEO Officer. The EEO Officer is responsible for investigating complaints. Each reported incident will be investigated promptly, impartially and in a confidential manner, accompanied by disciplinary action as appropriate. It is reiterated that the City will take severe disciplinary action, up to and including termination for any substantiated violations of this policy. Persons reporting false charges will be subject to appropriate disciplinary actions also.

### OUTSIDE AGENCIES

- 16 - In addition to notifying the City about harassment or retaliation complaints, affected employees may also direct their complaints to the following agencies:
- (a) California Department of Fair Employment and Housing  
**1515 Clay Street, Suite 701\***  
Oakland, CA 94612-2512  
(510) 286-4095
- (b) Equal Employment Opportunity Commission  
Oakland Local Office,  
Oakland Federal Building  
1301 Clay Street, Suite 1170, North Tower  
Oakland, CA 94612-5217  
(510) 637-3230
- 17 - There are time limits for filing complaints with the DFEH and EEOC. Employees are advised to contact the DFEH or EEOC directly to obtain information on the time limits for filing complaints with these agencies.

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18 - If you have any questions or need information regarding your protections under pertinent laws regarding harassment or your rights regarding complaint filing with the above compliance agencies, you may contact the City's EEO OFFICER for assistance at (510) 665-7611.

References: CALEA Standards  
General Order P-26  
Police Regulation 237, 238, 239, 240  
**Training and Information Bulletin #275\***

\* Highlighted text is new

BERKELEY POLICE DEPARTMENT

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SUBJECT: HARASSMENT PREVENTION POLICY - CITY OF BERKELEY

PURPOSE

- 1 - The purpose of this General Order is to establish our commitment to providing a work environment for all employees which is fair, humane and respectful, where all personnel can work together in an atmosphere free from all harassment, including the more hidden or subtle forms of sexual harassment, by adhering to the City of Berkeley Harassment Prevention Policy as outlined below.

Commented [JS1]: Replaced by 314.1

DEPARTMENT POLICY

- 2 - The Berkeley Police Department will adhere to the City of Berkeley policy that is outlined below:
  - (a) The Police Regulations and General Orders are consistent with this City Policy.
  - (b) In addition to following the City policy, supervisors shall inform their superior officers of any violations of this policy so that appropriate actions can be taken by their Chain of Command.
  - (c) In addition to any actions taken by the City's Equal Employment Opportunity & Diversity (EEO) Officer in response to violations, the Department may initiate a complaint and investigation as outlined in General Order P-26.

Commented [JS2]: Replaced by 314.2

CITY POLICY

- 3 - It is the policy of the City of Berkeley that harassment on the basis of race, color, religion, ancestry, national origin, age, sexual orientation, marital status, political affiliation, family care leave status, physical or mental disability or medical condition, as well as sexual harassment based on gender will not be condoned or tolerated. All employees are guaranteed the right to a work place free of hostility and intimidation. The City will neither tolerate nor condone harassment of employees by managers, supervisors, coworkers, or non-employees with whom City employees have a business, service, or professional relationship. Retaliation against an employee who complains or reports any act of harassment in violation of this policy is prohibited. The City is committed to ensuring and providing a work place free of harassment. The City will take disciplinary action, up to and including termination, against an employee who violates this policy.

Commented [JS3]: Merge with 314.3.1

Commented [JS4]: Replaced by 314.2

Commented [JS5]: Merge with 314.3.1

Commented [JS6]: Replaced by 314.3.4

LEGAL DEFINITION OF SEXUAL HARASSMENT

- 4 - Sexual harassment as defined by law is any unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

Commented [JS7]: Replaced by 314.3.2

\* Highlighted text is new



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- (a) Submission to such conduct is made a term or condition of employment; or
- (b) Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment because of the severe and pervasive nature of the conduct.

CONDUCT PROHIBITED UNDER THE CITY'S POLICY

5. In order to ensure that such offensive conduct does not rise to the level of conduct which is illegal, the City has a zero tolerance policy toward a single instance of any such conduct which either by itself or when repeated would constitute sexual harassment. Specifically, the City will not tolerate employees engaging in any of the conduct listed below:

Commented [JS8]: Justifying language

Commented [JS9]: Merge with 314.3.2

- (a) Unwanted sexual advances.
- (b) Offering employment benefits in exchange for sexual favors
- (c) Making or threatening retaliation after a negative response to sexual advances.
- (d) Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- (e) Verbal conduct such as making or using derogatory comments, epithets, slurs, sexually explicit jokes, derogatory or suggestive comments about a person's body or dress.
- (f) Written communications of a sexual nature distributed in hard copy or via a computer network.
- (g) Unwelcomed\* verbal sexual advances or propositions.
- (h) Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- (i) Physical conduct such as touching, assault, impeding or blocking movements.
- (j) Retaliation for making harassment reports or threatening to report harassment.

Commented [JS10]: Replaced by 314.3.2

Commented [JS11]: Replaced by 314.3.2 (a)

Commented [JS12]: Replaced by 314.3.4

Commented [JS13]: Merge with 314.3.2

Commented [JS14]: Replaced by 314.3.4

\* Highlighted text is new

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6 - An employee engaging in such prohibited conduct shall be subject to appropriate\* disciplinary action, up to and including termination, regardless of whether the employee engages in the prohibited conduct only once. In addition, any employee who engages in any inappropriate conduct based on or directed at a person's gender will be subject to appropriate disciplinary action, up to and including termination of employment.

Commented [JS15]: Merge with 314.3.2

7 - Sexual harassment can occur between employees of the same sex. The City's policy prohibits males from sexually harassing females or other males, and females from sexually harassing males or other females.

Commented [JS16]: Merge with 314.3.2

FRIENDLY INTERACTION OR SEXUAL HARASSMENT

8 - There is a clear line in most cases between mutual attraction and a consensual exchange and unwelcome behavior or pressure for an intimate relationship. A friendly interaction between two persons who are receptive to one another is not considered unwelcome or harassment. Employees are free to form social relationships of their own choosing. However, when one worker is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intentions, the behavior is unwelcome sexual behavior. An employee...

Commented [JS17]: Merge with 314.3.2

Commented [JS18]: Keep as training content regarding 314.3.3

9 - Generally, if you are contacted by another worker, and you do not wish to have a relationship, you must immediately stop the behavior, regardless of whether you have a relationship with the person who is contacting you.

OTHER TYPES OF HARASSMENT PROHIBITED BY THE MY'S POLICY

10 - The City's policy also prohibits harassment on the basis of race, color, national origin, sexual orientation, religion, physical or mental disability, age, veteran status, or any other characteristic protected by applicable law. The City will not tolerate an employee engaging in any of the conduct listed below:

Commented [JS19]: Replaced by 314.3.1

(a) Verbal conduct such as threats, epithets, derogatory comments or slurs.

(b) Visual conduct such as derogatory posters, photographs, cartoons, drawings or gestures.

(c) Written communications containing statements which may be offensive to individuals in a particular protected group, such as racial or ethnic stereotypes or caricatures.

(d) Physical conduct such as assault, unwanted touching or blocking normal movement.

Commented [JS20]: Merge with 314.3.1

\* Highlighted text is new

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(e) Retaliation for making or threatening to make harassment reports to the City, or for participating in an investigation into harassment allegations.

Commented [JS21]: Replaced by 314.3.4

11 - An employee engaging in conduct prohibited by this policy shall be subject to appropriate\* disciplinary action, up to and including termination, regardless of whether the employee engages in the prohibited conduct only once and even if the employee's conduct does not rise to the legal definition of harassment on the basis of race, color, national origin, sexual orientation, disability, age, or other characteristics prohibited under federal and state anti-discrimination statutes.

Commented [JS22]: Merge with 314.3.1

EMPLOYEES' RESPONSIBILITIES WHEN SUBJECTED TO HARASSMENT

12 - Any employee who believes he or she has been subjected to harassment prohibited by this policy should immediately tell the harasser to stop his/her unwanted behavior and immediately report that behavior to his or her supervisor or to the City's Equal Employment Opportunity & Diversity (EEO) Officer. An employee is not required to complain first to his or her supervisor if that supervisor is the individual engaging in the unwanted behavior. Employees may report a violation directly to the EEO Officer who is located in the City's Personnel Department and can be reached at (510) 865-7611.

Commented [JS23]: Merge with 314.4

Commented [JS24]: Keep as procedure relative to 314.4

SUPERVISORS' RESPONSIBILITIES

13 - Supervisors are responsible for enforcing the City's harassment prevention policy. Supervisors must ensure that all employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members. Supervisors should be cognizant of employees' behavior and shall not permit any employee under his/her authority to be subject to or engage in any conduct prohibited by the City's policy. Supervisors who receive complaints or who observe conduct prohibited by this policy should tell the employee to cease the conduct immediately and should inform the EEO Officer. The EEO Officer is available to provide guidance, training and assistance as needed. The City will take disciplinary action, up to and including termination, against any supervisor who fails in his/her responsibility to take immediate action in response to an employee's complaint of harassment or to stop harassing conduct committed in his/her presence or to stop harassing conduct about which the supervisor has knowledge.

Commented [JS25]: Replaced by 314.4.1

Commented [JS26]: Keep as training content relative to 314.4.1

Commented [JS27]: Merge with 314.4.2

(a) In addition to following the City policy, supervisors shall inform their superior officers of any violations of this policy so that appropriate actions can be taken by their Chain of Command.

Commented [JS28]: Replaced by 314.4.1 (f)

14 - [Redacted text]

Commented [JS29]: Add to 314.4 as subsection

\* Highlighted text is new

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ENFORCEMENT RESPONSIBILITIES

- 15 - The City's harassment policy will be enforced by the City Manager, all Department Heads, and the EEO Officer. The EEO Officer is responsible for investigating complaints. Each reported incident will be investigated promptly, impartially and in a confidential manner, accompanied by disciplinary action as appropriate. It is reiterated that the City will take severe disciplinary action, up to and including termination for any substantiated violations of this policy. Persons reporting false charges will be subject to appropriate disciplinary actions also.

Commented [JS30]: Merge with 314.5 or delete as it refers to city's policy, not department's policy.

OUTSIDE AGENCIES

Commented [JS31]: Keep as procedure in relation to 314.5.3

- 16 - The City will continue to inform the City about harassment or retaliation complaints. The City will also direct employees to report complaints to the following agencies:

- (a) Equal Employment Opportunity Commission
  - 200 California Street, Suite 700
  - Oakland, CA 94612-2502
  - (415) 423-2025

- (b) Equal Employment Opportunity Commission
  - 200 California Street
  - Oakland, CA 94612-2502
  - 200 California Street, Suite 1170, North Tower
  - Oakland, CA 94612-5217
  - (415) 327-3239

- 17 - The City will continue to inform all employees with the DEEH and EEOC Employees' Handbook of the contact information for EEOC of the City to obtain information on the handbook for all the contact info with these agencies.

- 18 - If you have any questions or need information regarding your protection under the state laws regarding harassment or your rights regarding complaints filed with the above mentioned agencies you may visit the City at EEOC or EEOC assistance at (415) 665-7611.

References: CALEA Standards  
 General Order P-26  
 Police Regulation 237, 238, 239, 240  
 Training and Information Bulletin #275\*

\* Highlighted text is new



## Discriminatory Harassment

### 314.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

### 314.2 POLICY

~~The Berkeley Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation. (Government Code § 12940(k); 2 CCR 11023). The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect.~~

~~The nondiscrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline and/or including termination.~~

~~[The City of Berkeley (City) it is the policy of the City of Berkeley that prohibits harassment on the basis of sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, religion, age, physical or mental disability or medical condition, sex, gender, gender identity, gender expression, sexual orientation, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military and veteran status, and any other classifications protected by state or federal law.~~

~~All employees (as well as applicants, unpaid interns or volunteers, and persons providing services pursuant to a contract) are guaranteed the right to a work place free of hostility and intimidation based on any of the above-referenced protected classifications.~~

~~The City will neither tolerate nor condone harassment of employees by managers, supervisors, co-workers, elected/appointed officials, or persons or non-employees with whom the City employees have a business, service, or professional relationship.~~

~~[The City prohibits retaliation defined below, against an individual who employee who complains or reports, files a complaint of, or otherwise opposes conduct he or she reasonably believes to be unlawful harassment, retaliation, or assists in the investigation of a complaint. Any act of harassment in violation of this policy is prohibited. The City is committed to ensuring and providing a work place free of harassment. The City will take disciplinary action, up to and including termination, against an employee who violates this policy.~~

~~For purposes of this policy, Retaliation refers to taking a materially adverse action against an employee on the above-listed grounds. A materially adverse action includes, but is not limited to,~~

Commented [SSM1]:  
This policy relates to our GO H-07

Mar 2017 - Reviewed/approved by Internal Affairs  
Sergeant, K. Smith

May 2017 - Reviewed/approved by PWG

May 2017 - Reviewed/approved by DReece

Aug 2017 - Minor Lexipol Update added

Aug 2017 - Reviewed/approved by DReece

Aug 2017 - Out for Command Review

Dec 2017 - Sent to PRC

Mar 2018 - City updated their own policy, which we had  
quoted in here verbatim. - edited/updated with new  
COB 2018 language.

Commented [SSM2]: I've updated this to the city  
2018 policy, from the 2017 policy we had original  
in here verbatim... you can see the changes...

Commented [SSM3]: New 2018 language

Commented [SSM4]: New 2018 language

Commented [SSM5]: All new 2018 language

Commented [SSM6]: All new 2018 language - whole  
paragraph

---

the denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge. Adverse actions may also include threats, reprisals and adverse treatment that in the circumstances could dissuade or intimidate a reasonable person from raising a concern about a workplace condition or activity.

### **314.3 DEFINITIONS**

Definitions related to this policy include:

#### **314.3.1 DISCRIMINATION**

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on the actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status and other classifications protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment, can include making derogatory comments, crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

#### **314.3.2 SEXUAL HARASSMENT**

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

#### **314.3.3 ADDITIONAL CONSIDERATIONS**

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

- 
- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Fair Employment and Housing Council guidelines.
  - (b) Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

#### 314.3.4 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.

#### 314.4 RESPONSIBILITIES

This policy applies to all department personnel. All members shall follow the intent of these guidelines in a manner that reflects department policy, professional law enforcement standards and the best interest of the Department and its mission.

Members are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher ranking supervisor or manager. Complaints may also be reported directly to the City's Equal Employment Opportunity & Diversity (EEO) Officer, the Chief of Police, the Professional Standards Division Captain or the City Manager.

Commented [SK7]: City policy allows for folks to go directly to EEO if they want

Any member who believes, in good faith, that he/she has been discriminated against, harassed or subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy. Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

#### 314.4.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of each supervisor and manager shall include, but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- (c) Ensuring that his/her subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.



(e) Making a timely determination regarding the substance of any allegation based upon all available facts.

(f) Notifying the Chief of Police ~~or Professional Standards Division Captain in~~ writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation no later than the next business day.

Commented [SSM8]: Per Internal Affairs Sergeant, K. Smith

#### 314.4.2 SUPERVISOR'S ROLE

~~Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing or retaliatory.~~ Supervisors and managers shall be aware of the following considerations:

Commented [SSM9]: KSmith and PWG believe this sentence isn't necessary

(a) Behavior of supervisors and managers should represent the values of the City, the Department and professional law enforcement standards.

(b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members or issuing discipline, in a manner that is consistent with established procedures.

#### 314.4.3 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Professional Standards Division Captain, the City Manager, the City's Equal Employment Opportunity & Diversity (EEO) Officer, or the California Department of Fair Employment and Housing for further information, direction or clarification.

#### 314.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination, retaliation or harassment shall be fully documented and promptly and thoroughly investigated.

##### 314.5.1 SUPERVISORY RESOLUTION

Members who believe they are experiencing discrimination, harassment or retaliation should be encouraged to inform the individual that his/her behavior is unwelcome, offensive, unprofessional or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing his/her concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

##### 314.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the process described above, a formal

investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include, but is not limited to, details of the specific incident, frequency and dates of occurrences and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with the City's Equal Employment Opportunity & Diversity (EEO) Officer, Chief of Police, Professional Standards Division Captain or the City Manager. See "Personnel Complaints" policy for further information.

#### 314.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department and the City. Members who believe that they have been harassed, discriminated or retaliated against are entitled to bring complaints of employment discrimination to federal, state and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

#### 314.6 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on forms, or memoranda, and in a manner designated by the Chief of Police. The outcome of all reports shall be:

Commented [SSM10]: Per K. Smith

- (a) Approved by the Chief of Police ~~and the City Manager or the Professional Standards Division Captain, depending on the ranks of the involved parties.~~
- (b) Maintained in accordance with the department's established records retention schedule.

#### 314.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation, ~~and the actions taken to remedy or address the circumstances giving rise to the complaint.~~

Commented [SK11]: This may be true in EEO complaints, but if IAB were to handle it, the victim/complainant would only receive disposition, as police employee records are confidential to even other police employees.

#### 314.7 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of and understands its contents and agrees to abide by its provisions during his/her term with the Department.

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents and agree

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that they will continue to abide by its provisions.

#### 314.7.1 SUPERVISOR TRAINING

All supervisors shall receive specific training and education regarding sexual harassment and prevention of abusive conduct and harassment based on gender identity, gender expression and sexual orientation -within six months of assuming a supervisory position. Refresher training shall be provided every two years thereafter (Government Code § 12950.1; 2 CCR 11024).

Commented [SSM12]: Jan 2018 Lexipol update  
update

#### 314.7.2 TRAINING RECORDS

The Personnel and Training Sergeant shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11024).

#### 314.7.3 WORKING CONDITIONS

The Support Services Division Captain or the authorized designee should be responsible for reviewing facility design and working conditions for discriminatory practices. This person should collaborate with other City employees who are similarly tasked (2 CCR 11034).

#### 314.8 CONTACTS

City of Berkeley Equal Employment Officer

2180 Milvia St., 1st Floor, Berkeley, CA 94704 - (510) 981-6811

In addition to contacting the EEO for the City, employees may also direct their complaints to the following agencies:

Commented [SSM13]: From City's Policy

California Department of Fair Employment and Housing

1515 Clay Street, Suite 701, Oakland, CA 94612 - (510) 286-4095 or (800) 884-1684

Equal Employment Opportunity Commission

Oakland Local Office, Oakland Federal Building, 1301 Clay Street, Suite 1170, North Tower

Oakland, CA 94612 - (510) 637-3230 or (800) 669-4000

There are time limits for filing complaints with the DFEH and EEOC. Employees are advised to contact the DFEH or EEOC directly to obtain information on the time limits for filing complaints with these agencies.

#### 314.8314.9 REQUIRED POSTERS

The Department shall display the required posters regarding discrimination, harassment and transgender rights in a prominent and accessible location for members (Government Code § 12950).

# Lexipol LLC

## California Policy Guide

### CHAPTER 4 – PATROL OPERATIONS

#### Racial or Bias-Based Profiling

This policy is provided for any agency that has an enforcement function. It defines and discusses the philosophy of racial or bias-based profiling and covers agency policy, training and documentation.

#### BACKGROUND NOTES

- Given the ongoing public attention to this issue, you are advised to include this policy in your manual as a proactive measure to any inquiry by the public, media or grand jury.
- Many agencies refer to this topic as bias-based policing, while others refer to it as racial profiling. We have combined the title to meet all agencies' needs.
- The definition of racial or bias-based profiling has been expanded to include other classifications that should not be used as factors in providing differential treatment of individuals when providing law enforcement services.
- **REPORTING OF CALIFORNIA DEPARTMENT OF JUSTICE** notes the requirement beginning Jan. 1, 2017, that law enforcement agencies must annually furnish to the Department of Justice a report of specific data of all instances involving complaints of racial bias against police officers. The annual report is available on the California State Department of Justice website ([www.oag.ca.gov/law](http://www.oag.ca.gov/law)).

#### CUSTOMIZATION GUIDELINES

Please review the following sections carefully and customize accordingly to meet your agency's practice:

- **ADMINISTRATION** (If you participate in a specific tracking system, add that here or create a new section.)

## Bias-Based Policing

### 401.1 PURPOSE AND SCOPE

#### Best Practice

This policy provides guidance to department members that affirms the Berkeley Police Department's commitment to policing that is fair and objective.

Nothing in this policy prohibits the use of specified characteristics in law enforcement activities designed to strengthen the department's relationship with its diverse communities (e.g., cultural and ethnicity awareness training, youth programs, community group outreach, partnerships).

#### 401.1.1 DEFINITIONS

##### Best Practice

Definitions related to this policy include:

**Bias-based policing** - An inappropriate reliance on characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement (Penal Code § 13519.4).

### 401.2 POLICY

#### Best Practice

The Berkeley Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.

### 401.3 BIAS-BASED POLICING PROHIBITED

#### Best Practice

Bias-based policing is strictly prohibited.

However, nothing in this policy is intended to prohibit an officer from considering protected characteristics in combination with credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes.

#### 401.3.1 CALIFORNIA RELIGIOUS FREEDOM ACT

##### State

Members shall not collect information from a person based on religious belief, practice, affiliation, national origin or ethnicity unless permitted under state or federal law (Government Code § 8310.3).

Members shall not assist federal government authorities (Government Code § 8310.3):

**Berkeley Police Department**  
Berkeley PD Policy Manual

*Bias-Based Policing*

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- (a) In compiling personal information about a person's religious belief, practice, affiliation, national origin or ethnicity.
- (b) By investigating, enforcing or assisting with the investigation or enforcement of any requirement that a person register with the federal government based on religious belief, practice, or affiliation, or national origin or ethnicity.

**401.4 MEMBER RESPONSIBILITIES**

**Best Practice**

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any suspected or known instances of bias-based policing to a supervisor. Members should, when reasonable to do so, intervene to prevent any biased-based actions by another member.

**401.4.1 REASON FOR CONTACT**

**Best Practice**

Officers contacting a person shall be prepared to articulate sufficient reason for the contact, independent of the protected characteristics of the individual.

To the extent that written documentation would otherwise be completed (e.g., arrest report, field interview (FI) card), the involved officer should include those facts giving rise to the contact, as applicable.

Except for required data-collection forms or methods, nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

**401.4.2 REPORTING OF STOPS**

**State**

Unless an exception applies under 11 CCR 999.227, an officer conducting a stop of a person shall collect the data elements required by 11 CCR 999.226 for every person stopped and prepare a stop data report. When multiple officers conduct a stop, the officer with the highest level of engagement with the person shall collect the data elements and prepare the report (11 CCR 999.227).

If multiple agencies are involved in a stop and the Berkeley Police Department is the primary agency, the Berkeley Police Department officer shall collect the data elements and prepare the stop data report (11 CCR 999.227).

The stop data report should be completed by the end of the officer's shift or as soon as practicable (11 CCR 999.227).

**401.5 SUPERVISOR RESPONSIBILITIES**

**Best Practice**

Supervisors should monitor those individuals under their command for compliance with this policy and shall handle any alleged or observed violations in accordance with the Personnel Complaints Policy.

# Berkeley Police Department

Berkeley PD Policy Manual

## Bias-Based Policing

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- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
  - 1. Supervisors should document these discussions, in the prescribed manner.
- (b) Supervisors should periodically review MAV recordings, portable audio/video recordings, Mobile Data Terminal (MDT) data and any other available resource used to document contact between officers and the public to ensure compliance with the policy.
  - 1. Supervisors should document these periodic reviews.
  - 2. Recordings or data that capture a potential instance of bias-based policing should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- (d) Supervisors should take prompt and reasonable steps to address any retaliatory action taken against any member of this department who discloses information concerning bias-based policing.

### **401.6 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

#### **State**

The Internal Affairs Bureau Manager shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and provided to the Records Supervisor for required reporting to the DOJ (Penal Code § 13012; Penal Code § 13020). See the Records Management Policy.

Supervisors should ensure that data stop reports are provided to the Records Supervisor for required annual reporting to the DOJ (Government Code § 12525.5) (See Records Bureau Policy).

### **401.7 ADMINISTRATION**

#### **Best Practice**

Each year, the Operations Division Commander should review the efforts of the Department to provide fair and objective policing and submit an annual report, including public concerns and complaints, to the Chief of Police.

The annual report should not contain any identifying information about any specific complaint, member of the public or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors should review the annual report and discuss the results with those they are assigned to supervise.

### **401.8 TRAINING**

#### **State**

Training on fair and objective policing and review of this policy should be conducted as directed by the Personnel and Training Bureau.

**Berkeley Police Department**  
Berkeley PD Policy Manual

*Bias-Based Policing*

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- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of bias-based policing.
- (b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this department who received initial bias-based policing training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity and cultural trends (Penal Code § 13519.4(i)).



## BERKELEY POLICE DEPARTMENT

DATE ISSUED: 12/31/2014

GENERAL ORDER B-4

SUBJECT: FAIR AND IMPARTIAL POLICING

### PURPOSE

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

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

### DEFINITION

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

### POLICY

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

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

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

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

### Responsibility to Report and Take Corrective/Investigative Action

4. Employees who become aware of another employee engaging in biased policing shall adhere to reporting procedures set forth in Police Regulation 200.

**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: 12/31/2014**

**GENERAL ORDER B-4**

**SUBJECT: FAIR AND IMPARTIAL POLICING**

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

Training

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

Demographic Data Procedures

9. All sworn officers shall provide demographic statistical data for:
  - a. All vehicle detentions.
  - b. All pedestrian detentions up to five persons.
  - c. Consensual contacts are not included under this directive.

Officers shall provide demographic statistical data when closing the related Computer Aided Dispatch (CAD) System event.

**References:**

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

**BERKELEY POLICE DEPARTMENT DATE ISSUED: 12/31/2014 GENERAL ORDER B-4**

**1 SUBJECT: FAIR AND IMPARTIAL POLICING**

**PURPOSE**

1 - This policy is intended to reaffirm the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way. California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This Department policy explicitly prohibits racial profiling and other biased policing. This policy describes the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in making law enforcement decisions.

Commented [JS1]: Replaced by Lexipol 401.1

**DEFINITION**

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

Commented [JS2]: Replaced by Lexipol 401.1.1

**POLICY**

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

Commented [JS3]: Replaced by Lexipol 401.2

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

(a) seeking specific person(s) who have been described in part by any of the above listed characteristics, or

(b) the person(s) are being sought for a specific law enforcement purpose.

Commented [JS4]: Replaced by Lexipol 401.2

Discrimination or harassment based on a trait or class described above is considered a "serious allegation" of misconduct (Police Regulations 200 and 201). **BERKELEY POLICE DEPARTMENT DATE ISSUED: 12/31/2014 GENERAL ORDER B-4**

Commented [JS5]: Replaced by Lexipol 401.3

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Responsibility to Report and Take Corrective/Investigative Action

4 - Employees who become aware of another employee engaging in biased policing shall adhere to reporting procedures set forth in Police Regulation 200.

Commented [JS6]: Replaced by Lexipol 401.4

5 - A supervisor or command officer who becomes aware of biased policing shall adhere to notification and administrative procedures set forth in Police Regulation 201 and General Order P-26.

6 - All reports of biased policing shall be investigated in accordance with General Order P-26.

Commented [JS7]: Replaced by Lexipol 401.5

Training

7 - All sworn officers will participate and successfully complete courses of instruction on the subject of "racial profiling" approved by the Commission on Peace Officer Standards and Training (POST).

8 - The Personnel and Training Bureau shall schedule training on the subject of "racial profiling" at an interval prescribed by POST for continuing education.

Commented [JS8]: Replaced by Lexipol 401.8

Demographic Data Procedures

9 - All sworn officers shall provide demographic statistical data for:

(a) All vehicle detentions;

(b) All pedestrian detentions up to five persons;

(c) Consensual contacts are not included under this directive.

10 - Officers shall provide demographic statistical data when closing the related Computer-Aided Dispatch (CAD) System event.

Commented [JS9]: Merge with Lexipol 401.4.1

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

## Fair and Impartial Policing

### 401.1 PURPOSE AND SCOPE

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

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

#### 401.1.1 DEFINITIONS

Definitions related to this policy include:

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

### 401.2 POLICY

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

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

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

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

### 401.3 RESPONSIBILITY TO REPORT AND TAKE CORRECTIVE ACTION

Employees who become aware of another employee engaging in biased policing shall adhere to reporting procedures set forth in Police Regulation 200.

A supervisor or command officer who becomes aware of biased policing shall adhere to notification and administrative procedures set forth in Police Regulation 201 and Policy 1010.

All reports of biased policing shall be investigated in accordance with Policy 1010.

### 401.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Chief of Police or the authorized designee shall ensure that all data required by the Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and reported annually to DOJ (Penal Code § 13012; Penal Code § 13020).

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#### 401.4.1 DEMOGRAPHIC DATA PROCEDURES

All sworn officers shall provide demographic statistical data for:

- (a) All vehicle detentions.
- (b) All pedestrian detentions up to five persons
- (c) Consensual contacts are not included under this directive.

Officers shall provide demographic statistical data when closing the related Computer Aided Dispatch (CAD) System event.

#### 401.5 ADMINISTRATION

Each year, the Operations Division Commander shall review the efforts of the Department to prevent racial- or bias-based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

This report should not contain any identifying information regarding any specific complaint, member of the public or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors shall review the annual report and discuss the results with those they are assigned to supervise.

#### 401.6 TRAINING

Training on racial- or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training Bureau.

- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial- or bias-based profiling.
- (b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this department who received initial racial- or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity and cultural trends (Penal Code § 13519.4(i)).

## Emergency Response Vehicle

Commented [SSM1]: Entire content is BPD's V-11, which was approved by City Council in June 2018.

### 706.1 PURPOSE AND SCOPE

The purpose of this policy is to provide direction for the usage, training, and storage of the Berkeley Police Department Emergency Response Vehicle.

### 706.2 USE OF EMERGENCY RESPONSE VEHICLE

The Emergency Response Vehicle shall be used as an armored vehicle resource, with the goal of safely resolving incidents where there exists an objective risk to the safety of civilians and/or officers from a person or persons who may be considered armed and dangerous.

The use of the Emergency Response Vehicle will be authorized by the Special Response Team (SRT) Commander or Team Leader unless exigent circumstances exist. If the Emergency Response Vehicle is needed during an in-progress emergency, use of the vehicle may be authorized by the Watch Commander, or, in their absence, a Patrol Sergeant. The Emergency Response Vehicle will only be utilized with supervisory approval, for purposes including, but not limited to, incidents involving potentially armed subjects, Special Response Team callouts, high-risk search warrants, officer or civilian rescues, or authorized training.

The Emergency Response Vehicle shall not be deployed during non-violent demonstrations, including for crowd control and crowd management, absent specific articulable objective facts demonstrating a risk of injury or death to police officers and/or the public. The Emergency Response Vehicle may be staged at pre-designated locations, away from protest sites, to allow for timely response. The vehicle may be used in cases of a declared unlawful assembly, and after a lawful dispersal order, where persons are engaged in criminal behavior that presents an objective risk of injury or death.

The Emergency Response Vehicle may be used for static displays at community events, for engagement and educational purposes.

The SRT Commander will maintain a vehicle usage log which may be provided to the City Council on an annual basis, or as requested.

### 706.3 EMERGENCY RESPONSE VEHICLE OPERATION TRAINING

Periodic briefings and training will be conducted on the operation and deployment of the Emergency Response Vehicle. All Special Response Team members will receive formal training prior to deployment of the Emergency Response Vehicle. A valid class "C" California driver's license is required to drive the Emergency Response Vehicle.

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Supervisors shall submit Training Time Credit Record forms to document that staff members have received training.

**706.4 EMERGENCY RESPONSE VEHICLE DEPLOYMENT CONSIDERATIONS**

Staff has the discretion to deploy the Emergency Response Vehicle in those circumstances where there is an objective risk of injury or death to civilians and/or officers, and use of the vehicle may reduce or mitigate said risks by facilitating safe police management of the critical situation and rescue of injured or endangered persons.

When considering deployment of the Emergency Response Vehicle, the authorizing Commander or Supervisor should:

- (a) Assess the situation and based on the objective facts, determine that the discretionary use of the Emergency Response Vehicle may contribute to the safe resolution of a critical incident where there is a risk of injury or death to civilians or officers.
- (b) Whenever practical, create an operational plan for deployment of the vehicle consistent with this policy, current law and the department's Use of Force Policy.
- (c) The vehicle may be used to locate and contain a threat by providing cover for officers, facilitating a rescue of an injured or endangered persons, or as a tactical resource to allow officers to take into custody a person who presents an objective risk of injury or death to civilians or officers.
- (d) When selecting a rescue team, the supervisor should consider experienced personnel, such as current or former Special Response Team Members, Hostage Negotiators and officers who have received Crisis Intervention Training (CIT). In addition, the rescue team should include a Medic or TEMS officer (Tactical Emergency Medical Support), rescue carriers, cover officers and officers equipped with less lethal force equipment. Fire and ambulance personnel should be ready to accept injured persons at the end point of the rescue.

**706.5 EMERGENCY AND NON-EMERGENCY REQUEST OF THE RESPONSE VEHICLE BY OUTSIDE AGENCIES**

In the event of an emergency request for the Emergency Response Vehicle, the Watch Commander, or in his/her absence, a patrol sergeant, may approve the request for the Emergency Response Vehicle to assist outside agencies for emergency purposes. If time allows, at least two on-duty Special Response Team officers shall deploy with the Emergency Response Vehicle to assist outside agency requests but one is acceptable. This may include additional officers who have received training in advanced first aid. The request for BPD response with the Emergency Response Vehicle by outside agencies, for purposes other than emergencies, shall be authorized by the Special Response Team Commander or Operations Division Captain.

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Rescue Vehicle| 2



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The Emergency Response Vehicle will be deployed in accordance with Berkeley Police Department policies. All Berkeley Police Department personnel will follow Berkeley Police Department policies when assisting outside agencies. The Emergency Response Vehicle will remain in the possession and control of Berkeley Police Department personnel and will not be loaned to other agencies.

**706.6 EMERGENCY RESPONSE VEHICLE STORAGE**

The Emergency Response Vehicle will be stored primarily at the Berkeley Police Department.

**706.7 EMERGENCY RESPONSE VEHICLE MAINTENANCE**

Maintenance of the Emergency Response Vehicle is the responsibility of the Department Fleet Manager. The Fleet Manager should coordinate with the Logistics Team Leader when scheduling vehicle maintenance or repairs.

Officers from the Special Response Team will routinely check the Emergency Response Vehicle and its equipment, including but not limited to, ensuring the battery is charged, the trickle charger is attached, the engine will turn over, and that the vehicle is in general working order. When reasonable, the vehicle should be fueled after each use. The City of Berkeley Corporation Yard will perform repairs on the vehicle and keep a preventative maintenance schedule.



# Lexipol LLC California Policy Guide

## CHAPTER 8 – SUPPORT SERVICES

### Crime Analysis

This policy is for agencies that have any form of crime analysis, regardless of whether it is a dedicated function or a collateral duty. It describes the goal of crime analysis and includes potential data sources, crime analysis factors and distribution of information.

### BACKGROUND NOTES

- If your agency has a dedicated crime analysis unit, you may choose to expand this policy to include its operation and responsibilities.
- Note the in the Organizational Structure and Responsibility Policy, crime analysis is included as part of the Investigation Division.
- Because this policy is more philosophical than operational, you will find that you can retain it even if you do not have a member assigned to this function.

### CUSTOMIZATION GUIDELINES

We recommend no customization to this policy.

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## Crime Analysis

### 800.1 PURPOSE AND SCOPE

**Best Practice**

Crime analysis should provide currently useful information to aid operational personnel in meeting their tactical crime control and prevention objectives by identifying and analyzing methods of operation of individual criminals, providing crime pattern recognition, and providing analysis of data from field interrogations and arrests. Crime analysis can be useful to the Department's long range planning efforts by providing estimates of future crime trends and assisting in the identification of enforcement priorities.

### 800.2 DATA SOURCES

**Best Practice**

Crime analysis data is extracted from many sources including, but not limited to:

- Crime reports
- Field Interview cards
- Parole and Probation records
- Computer Aided Dispatch data
- Statewide Integrated Traffic Reporting System (SWITRS)

### 800.3 CRIME ANALYSIS FACTORS

**Best Practice**

The following minimum criteria should be used in collecting data for Crime Analysis:

- Frequency by type of crime
- Geographic factors
- Temporal factors
- Victim and target descriptors
- Suspect descriptors
- Suspect vehicle descriptors
- Modus operandi factors
- Physical evidence information

### 800.4 CRIME ANALYSIS DISSEMINATION

**Best Practice**

For a crime analysis system to function effectively, information should be disseminated to the appropriate units or persons on a timely basis. Information that is relevant to the operational and

# Berkeley Police Department

Berkeley PD Policy Manual

## *Crime Analysis*

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tactical plans of specific line units should be sent directly to them. Information relevant to the development of the Department's strategic plans should be provided to the appropriate staff units. When information pertains to tactical and strategic plans, it should be provided to all affected units.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 1, 2000

GENERAL ORDER C-4

SUBJECT: CRIME ANALYSIS UNIT

### PURPOSE

- 1 - The purpose of this General Order is to provide for the establishment and continuing operation of a Departmental Crime Analysis Unit.

### POLICY

- 2 - The Department shall maintain a Crime Analyst on a permanent basis. A crime analysis system is needed to effectively provide data to support both managerial and operational functions and to enable the development of operational, tactical and strategic planning. The Crime Analyst reports directly to the Patrol Division Captain and shall be assigned, but not limited to, the following functions:
  - (a) The collection of crime data.
  - (b) The collation of crime data.
  - (c) The analysis of crime data.
  - (d) Dissemination of analyzed crime information.
  - (e) Feedback analysis and program evaluation.
  - (f) Coordination of auto burglaries and theft from auto series.

### PROCEDURES

- 3 - The Crime Analyst shall provide timely, useful information to aid Patrol, Detective, and Community Services Bureau personnel in meeting their tactical crime control and prevention objectives.
  - (a) Information available for each crime will be systematically and uniformly collected daily so that meaningful comparisons and analyses can be conducted. Crime data shall be collated and analyzed to:
    - (1) Identify individual criminals and their methods of operation;
    - (2) Facilitate the identification, apprehension, and prosecution of individuals meeting the Penal Code definition of "career criminal;"
    - (3) Determine evolving or existent crime patterns, and
    - (4) Furnish future trend data for long-range planning, targeting, budgeting, and resource allocation.

\* Highlighted text is new

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 1, 2000

GENERAL ORDER C-4

- (b) The means by which analyzed crime information is disseminated shall include, but not be limited to:
- (1) **Network Information Bulletin (Bullwinkle).** A computer inter-departmental bulletin that among other things, synopsis crimes by location, beat, date, time, premise type, MO, suspect, and vehicle information; crime patterns/trends; wanted subjects; and known offenders.
  - (2) **Crime View maps, graphs and charts.**
  - (3) **Reverse 911 System.**
  - (4) **Community Beat Information Mailboxes.**
  - (5) **CAD disposition code reports.**
  - (6) **Coordinated City Services Task Force reports.\***
  - (7) Special Bulletins - selective crime information provided by investigative, administrative personnel or outside agencies for distribution.
  - (8) Individual Requests - personalized analysis based upon factors specified by the requester.
  - (9) Briefing presentations at various Divisional meetings by the "Area Coordinators"
- (c) A feedback system for evaluation of individual information requests and new crime analysis products shall be established and maintained by the Crime Analyst. The value of all disseminated information to the achievement of identified Departmental goals shall be evaluated quarterly by the Patrol Division Captain.

### SPECIFICATION OF SOURCE DOCUMENTS

- 4 - All sources available to this Department that contain data essential to crime analysis shall be identified and accessible for use in the crime analysis process, including but not limited to crime reports, field interview cards, arrest reports, career criminal files, Detective **Bureau\*** and Patrol briefings. The Captain of the Patrol Division and the Crime Analyst shall be responsible for safeguarding the confidentiality of data obtained from these sources and for the security of such documents or copies thereof while in their possession and control.

### CRIME ANALYSIS BRIEFING SYSTEMS

\* Highlighted text is new

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- 5 - Management personnel shall be briefed on crime patterns or trends as determined by the crime analysis function. The purpose of this system shall be to provide early awareness of crime patterns and trends within the Police Department's jurisdiction. It will be the responsibility of the Patrol Division Captain to advise the Chief of Police on those areas which may seem appropriate.

### DISSEMINATION OF CRIME ANALYSIS INFORMATION

- 6 - It is recognized that the effective functioning of a crime analysis system requires that information be disseminated to the appropriate units or persons on a timely basis. Information that is relevant to the operational and tactical plans of specific line units should be made available to them; similarly, information relevant to strategic plans of the Department should be made available to the appropriate staff units, and information pertaining to tactical and strategic plans should be made available to all affected units.

Crime analysis information and reports will be disseminated to the following:

- (a) Chief of Police.
- (b) Division Commanders.
- (c) Patrol Division sworn personnel.
- (d) Detective Division sworn personnel.
- (e) Outside criminal justice agencies.

### FACTORS UTILIZED IN CRIME ANALYSIS FUNCTION

- 7 - In order that it be effectively utilized, it is recognized that scientific crime analysis should:
- (a) Identify similarities among different offenses and reveal commonalities and patterns in the characteristics of current crime problems;
  - (b) Assist in the establishment of suspect lists;
  - (c) Aid in the identification of specific crimes that may involve an offender already in custody.

To this end, the crime analysis function shall at a minimum include the following factors when identifying serial crimes:

- (1) Frequency - by type of crime.
- (2) Geographical factors.

\* Highlighted text is new



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- (3) Chronological factors.
- (4) Victim and target descriptors.
- (5) Suspect descriptors.
- (6) Suspect vehicle descriptors.
- (7) Modus operandi factors.
- (8) Physical evidence information.

### DOCUMENTATION OF CRIME DISTRIBUTION

- 8 - The Department shall document the temporal and geographic distribution of selected crimes using appropriate statistical, mapping, and graphic techniques. Such documentation may include the locations of crimes by type, times and day of week, and may also include modus operandi factors, suspect information, victim and target descriptions, and property loss information.

### DISTRIBUTION OF CRIME ANALYSIS INFORMATION TO THE PUBLIC

- 9 - When authorized by the Chief of Police and coordinated with a Command Officer, appropriate crime information may be disseminated to enhance public information and generate public support. Distribution may also include other components of the Criminal Justice System. Information concerning operational needs and procedures shall be carefully controlled within Departmental guidelines relating to security and confidentiality.

### INFORMATION FOR PLANNING

- 10 - Information obtained through crime analysis procedures shall be utilized in the development of tactics for Patrol and Detective Divisions; in the development of general crime suppression strategies, and in predicting personnel and resource needs for short-term and multi-year periods.
  - (a) Statistical analysis is utilized by the Crime Analyst to identify crime patterns or trends. This information can assist in determining the optimum strategy, tactics, and number of personnel needed in a given situation.
  - (b) Crime trend data may be considered for budget preparation and organizational structure changes.

### COOPERATION WITH OUTSIDE AGENCIES

- 11 - The Crime Analyst shall extend full cooperation to crime analysts from other

\* Highlighted text is new

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agencies who share related crime trend information.

**EVALUATION AND FEEDBACK**

12 - Evaluation shall be made on an ongoing basis of the effectiveness and utilization of crime analysis information by affected units of the Department.

- (a) The Crime Analyst will contact Patrol Division, Detective Division, Community Services Bureau, and the Warrant Bureau to solicit feedback on a weekly basis.
- (b) Feedback may be verbal or in written memorandum to the Crime Analyst or the Patrol Division Captain.
- (c) Feedback will be reviewed by the Patrol Division Captain to determine the following:
  - (1) Information is disseminated to the appropriate units on a timely basis.
  - (2) Disseminated information is relevant to assist directed patrol, to be used by staff for planning purposes, and to generate public support.

References: CALEA Standards  
Career Criminal Apprehension Program Grant

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SUBJECT: CRIME ANALYSIS UNIT

PURPOSE

- 1 - The purpose of this General Order is to provide for the establishment and continuing operation of a Departmental Crime Analysis Unit.

Commented [JS1]: Replaced by 800.1

POLICY

- 2 - The Department shall maintain a Crime Analyst on a permanent basis. A crime analysis system is needed to effectively provide data to support both managerial and operational functions and to enable the development of operational, tactical and strategic planning. [REDACTED]

Commented [JS2]: Replaced by 800.1

Commented [JS3]: Add as subsection to 800 "Crime Analyst"

[REDACTED]

PROCEDURES

- 3 - [REDACTED]

Commented [JS4]: Add as subsection to 800.4

(b) The means by which analyzed crime information is disseminated shall include, but not be limited to:

Commented [JS5]: Keep as procedure relative to 800.3

\* Highlighted text is new

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(1) Network Information Utility (NUI) (Wiki) / A computer file  
department available in that among other things, synopses  
crime by location, date, time, crime type, etc.  
support individual information, crime pattern trends,  
wanted, suspects, and known offenders.

(2) Crime View maps, maps and charts.

(3) Reverse 911 System

(4) Community Beat Information Mailboxes

(5) GAP deployment code report.

(6) Coordinate Key Services (CKS) Report

(7) Special Bulletin - selective crime information provided by  
investigative, administrative, personnel or outside department  
of jurisdiction.

(8) Individual requests personalized analysis based on factors  
specified by the requester.

(9) Briefing presentations available on divisional meetings by the "Area  
Coordinates"

(c) [Redacted]

Commented [JS6]: Add to subsection on Crime Analyst in 800.4

SPECIFICATION OF SOURCE DOCUMENTS

4 - All sources available to this Department that contain data essential to crime  
analysis shall be identified and accessible for use in the crime analysis process,  
including but not limited to crime reports, field interview cards, arrest reports,  
career criminal files, Detective Bureau and Patrol briefings.

Commented [JS7]: Merge with 800.2

Commented [JS8]: Add to 800.2 as subsection

[Redacted]

CR [Redacted]

Commented [JS9]: Add as subsection to 800.4

[Redacted]

\* Highlighted text is new

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[REDACTED]

DISSEMINATION OF CRIME ANALYSIS INFORMATION

6 - It is recognized that the effective functioning of a crime analysis system requires that information be disseminated to the appropriate units or persons on a timely basis. Information that is relevant to the operational and tactical plans of specific line units should be made available to them; similarly, information relevant to strategic plans of the Department should be made available to the appropriate staff units, and information pertaining to tactical and strategic plans should be made available to all affected units.

Commented [JS10]: Replaced by 800.4

Crime analysis information and reports will be disseminated to the following:

Commented [JS11]: Keep as procedure relative to 800.4

- (a) Chief of Police
- (b) Division Commanders
- (c) Patrol Division sworn personnel
- (d) Detective Division sworn personnel
- (e) Outside criminal justice agencies

FACTORS UTILIZED IN CRIME ANALYSIS FUNCTION

7 - In order that it be effectively utilized, it is recognized that scientific crime analysis should:

Commented [JS12]: Replaced by 800.1

- (a) Identify similarities among different offenses and reveal commonalities and patterns in the characteristics of current crime problems;
- (b) Assist in the establishment of suspect lists;
- (c) Aid in the identification of specific crimes that may involve an offender already in custody.

To this end, the crime analysis function shall at a minimum include the following factors when identifying serial crimes:

Commented [JS13]: Replaced by 800.3

- (1) Frequency - by type of crime;
- (2) Geographical factors;
- (3) Chronological factors;
- (4) Victim and target descriptors.

\* Highlighted text is new

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- (5) Suspect descriptors.
- (6) Suspect vehicle descriptors.
- (7) Modus operandi factors.
- (8) Physical evidence information.

**D** [REDACTED]

Commented [JS14]: Add as subsection to 800.3

[REDACTED]

**D** [REDACTED]

Commented [JS15]: Add as subsection to 800.4

[REDACTED]

**I** [REDACTED]

Commented [JS16]: Add as section to 800

[REDACTED]

**C** [REDACTED]

Commented [JS17]: Add to new section "Crime Analyst"

[REDACTED]

**EV** [REDACTED]

Commented [JS18]: Add as section to 800

[REDACTED]

\* Highlighted text is new

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DATE ISSUED: March 1, 2000

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(a) The Crime Analyst will contact Patrol Division, Detective Division, Community Services Bureau and the Warrant Bureau to solicit feedback on a weekly basis.

Commented [JS19]: Keep as procedure relative to new section on "Evaluation and Feedback"

(b) Feedback may be verbal or in written memorandum to the Crime Analyst or the Patrol Division Captain.

(c) Feedback will be reviewed by the Patrol Division Captain to determine the following:

(1) Information is disseminated to the appropriate units on a timely basis.

(2) Disseminated information is relevant to assist directed patrol to be used by staff for planning purposes and to generate public support.

References: CALEA Standards  
Career Criminal Apprehension Program Grant

\* Highlighted text is new

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## Crime Analysis

### 800.1 PURPOSE AND SCOPE

Crime analysis should provide currently useful information to aid operational personnel in meeting their tactical crime control and prevention objectives by identifying and analyzing methods of operation of individual criminals, providing crime pattern recognition, and providing analysis of data from field interrogations and arrests. Crime analysis can be useful to the Department's long range planning efforts by providing estimates of future crime trends and assisting in the identification of enforcement priorities.

### 800.2 DATA SOURCES

Crime analysis data is extracted from many sources including, but not limited to:

- Crime reports
- Field Interview cards
- Parole and Probation records
- Computer Aided Dispatch data
- Statewide Integrated Traffic Reporting System (SWITRS)

### 800.3 CRIME ANALYSIS FACTORS

The following minimum criteria should be used in collecting data for Crime Analysis:

- Frequency by type of crime
- Geographic factors
- Temporal factors
- Victim and target descriptors
- Suspect descriptors
- Suspect vehicle descriptors
- Modus operandi factors
- Physical evidence information

### 800.4 CRIME ANALYSIS DISSEMINATION

For a crime analysis system to function effectively, information should be disseminated to the appropriate units or persons on a timely basis. Information that is relevant to the operational and tactical plans of specific line units should be sent directly to them. Information relevant to the development of the Department's strategic plans should be provided to the appropriate staff units. When information pertains to tactical and strategic plans, it should be provided to all affected units.

Commented [SSM1]:  
C-4 Crime Analysis is the relating GO

Officer Andersen of the Crime Analysis Unit consulted as expert. He advised the policy was relevant and current and no procedural content from GO C-4 was needed.

Aug 2016 - Reviewed/approved by PWG

Aug 2016 - Reviewed/approved by DReece

Sep 2016 - Out for Command Review



# Lexipol LLC

## California Policy Guide

### CHAPTER 10 – PERSONNEL

#### **Body Armor**

This policy discusses your agency's philosophy on the use of body armor and outlines the situations in which the use of body armor may be required.

#### **BACKGROUND NOTES**

- This policy is mandatory for jurisdictions that, during the process of applying for the U.S. Department of Justice's Bulletproof Vest Partnership (BVP) grant funds, have certified that they have a written mandatory-wear policy in place for all uniformed officers.

#### **CUSTOMIZATION GUIDELINES**

Please review the following sections carefully and customize accordingly to meet your agency's practice:

- **POLICY** (If your agency does not supply vests to officers, modify this section.)
- **ISSUANCE OF BODY ARMOR** (If your agency does not supply vests to officers, modify this section.)
- **USE OF SOFT BODY ARMOR** (Although officers should wear body armor at all times, many agencies do not mandate use. If your agency does not require body armor use, modify this section accordingly.)

## Body Armor

### 1012.1 PURPOSE AND SCOPE

**Best Practice**

The purpose of this policy is to provide law enforcement officers with guidelines for the proper use of body armor.

### 1012.2 POLICY

**Best Practice**

It is the policy of the Berkeley Police Department to maximize officer safety through the use of body armor in combination with prescribed safety procedures. While body armor provides a significant level of protection, it is not a substitute for the observance of officer safety procedures.

### 1012.3 ISSUANCE OF BODY ARMOR

**Best Practice**

The Support Services supervisor shall ensure that body armor is issued to all officers when the officer begins service at the Berkeley Police Department and that, when issued, the body armor meets or exceeds the standards of the National Institute of Justice.

The Support Services supervisor shall establish a body armor replacement schedule and ensure that replacement body armor is issued pursuant to the schedule or whenever the body armor becomes worn or damaged to the point that its effectiveness or functionality has been compromised.

#### 1012.3.1 USE OF SOFT BODY ARMOR

**Best Practice**

Generally, the use of body armor is required subject to the following:

- (a) Officers shall only wear agency-approved body armor.
- (b) Officers shall wear body armor anytime they are in a situation where they could reasonably be expected to take enforcement action.
- (c) Officers may be excused from wearing body armor when they are functioning primarily in an administrative or support capacity and could not reasonably be expected to take enforcement action.
- (d) Body armor shall be worn when an officer is working in uniform or taking part in Department range training.
- (e) An officer may be excused from wearing body armor when he/she is involved in undercover or plainclothes work that his/her supervisor determines could be compromised by wearing body armor, or when a supervisor determines that other circumstances make it inappropriate to mandate wearing body armor.

# Berkeley Police Department

## Berkeley PD Policy Manual

### Body Armor

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#### 1012.3.2 INSPECTIONS OF BODY ARMOR

##### **Best Practice**

Supervisors should ensure that body armor is worn and maintained in accordance with this policy through routine observation and periodic documented inspections. Annual inspections of body armor should be conducted by an authorized designee for fit, cleanliness, and signs of damage, abuse and wear.

#### 1012.3.3 CARE AND MAINTENANCE OF SOFT BODY ARMOR

##### **Best Practice**

Soft body armor should never be stored for any period of time in an area where environmental conditions (e.g., temperature, light, humidity) are not reasonably controlled (e.g., normal ambient room temperature/humidity conditions), such as in automobiles or automobile trunks.

Soft body armor should be cared for and cleaned pursuant to the manufacturer's care instructions provided with the soft body armor. The instructions can be found on labels located on the external surface of each ballistic panel. The carrier should also have a label that contains care instructions. Failure to follow these instructions may damage the ballistic performance capabilities of the armor. If care instructions for the soft body armor cannot be located, contact the manufacturer to request care instructions.

Soft body armor should not be exposed to any cleaning agents or methods not specifically recommended by the manufacturer, as noted on the armor panel label.

Soft body armor should be replaced in accordance with the manufacturer's recommended replacement schedule.

#### 1012.4 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

##### **Best Practice**

The Personnel and Training Sergeant should:

- (a) Monitor technological advances in the body armor industry for any appropriate changes to Department approved body armor.
- (b) Assess weapons and ammunition currently in use and the suitability of approved body armor to protect against those threats.
- (c) Provide training that educates officers about the safety benefits of wearing body armor.

## Body Armor

Commented [SSM1]: Whole policy is Lexipol content and Best Practice

Feb 2017 - Reviewed/approved by PWG

Feb 2017 - Reviewed/approved by D.Reece

Feb 2017 - Out for Command Staff Review

### 1012.1 PURPOSE AND SCOPE

The purpose of this policy is to provide law enforcement officers with guidelines for the proper use of body armor.

### 1012.2 POLICY

It is the policy of the Berkeley Police Department to maximize officer safety through the use of body armor in combination with prescribed safety procedures. While body armor provides a significant level of protection, it is not a substitute for the observance of officer safety procedures.

### 1012.3 ISSUANCE OF BODY ARMOR

The Personnel and Training Sergeant ~~Support Services supervisor~~ shall ensure that body armor is issued to all officers when the officer begins service at the Berkeley Police Department and that, when issued, the body armor meets or exceeds the standards of the National Institute of Justice.

The Personnel and Training Sergeant ~~Support Services supervisor~~ shall establish a body armor replacement schedule and ensure that replacement body armor is issued pursuant to the schedule or whenever the body armor becomes worn or damaged to the point that its effectiveness or functionality has been compromised.

#### 1012.3.1 USE OF ~~SOFT~~-BODY ARMOR

Generally, the use of body armor is required subject to the following:

- (a) Officers shall only wear agency-approved body armor.
- (b) Officers shall wear body armor anytime they are in a situation where they could reasonably be expected to take enforcement action.
- (c) Officers may be excused from wearing body armor when they are functioning primarily in an administrative or support capacity and could not reasonably be expected to take enforcement action.
- (d) Body armor shall be worn when an officer is working in uniform or taking part in Department range training.
- (e) An officer may be excused from wearing body armor when he/she is involved in undercover or plainclothes work that his/her supervisor determines could be compromised by wearing body armor, or when a supervisor determines that other circumstances make it inappropriate to mandate wearing body armor.

#### 1012.3.2 INSPECTIONS OF BODY ARMOR

Supervisors should ensure that body armor is worn and maintained in accordance with this policy

~~through routine observation, and periodic documented inspections. Annual inspections of body armor should be conducted by an authorized designee for fit, cleanliness, and signs of damage, abuse and wear.~~

Commented [SSM2]: We don't do this

#### ~~1012.3.3 CARE AND MAINTENANCE OF SOFT BODY ARMOR~~

~~Soft body armor should never be stored for any period of time in an area where environmental conditions (e.g., temperature, light, humidity) are not reasonably controlled (e.g., normal ambient room temperature/humidity conditions), such as in automobiles or automobile trunks.~~

Commented [SSM3]: Unnecessary per PWG

~~Soft body armor should be cared for and cleaned pursuant to the manufacturer's care instructions provided with the soft body armor. The instructions can be found on labels located on the external surface of each ballistic panel. The carrier should also have a label that contains care instructions. Failure to follow these instructions may damage the ballistic performance capabilities of the armor. If care instructions for the soft body armor cannot be located, contact the manufacturer to request care instructions.~~

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#### 1012.4 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant should:

- (a) Monitor technological advances in the body armor industry for any appropriate changes to Department approved body armor.
- (b) Assess weapons and ammunition currently in use and the suitability of approved body armor to protect against those threats.
- (c) Provide training that educates officers about the safety benefits of wearing body armor.

