

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, July 25, 2018
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)

- 4. APPROVAL OF MINUTES**

Regular Meeting of July 11, 2018

- 5. CHAIR'S REPORT**

- 6. PRC OFFICER'S REPORT**

- a. Status of complaints; other items.
- b. Prioritizing new agenda items (**discussion & action**)

- 7. CHIEF OF POLICE'S REPORT**

Crime, budget, staffing, training updates, and other items.

- 8. SUBCOMMITTEE REPORTS (discussion & action)**

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. General Orders C-64, etc. Subcommittee
- b. Homeless Encampment Subcommittee – appoint additional members

c. Lexipol Policies Subcommittee

9. OLD BUSINESS (discussion & action)

- a. How the PRC can request information from other City departments in the most efficient manner; review of City Attorney's opinion on whether a standing item, "Requests for information," is sufficient under the Brown Act.
From: Commissioner Prichett
- b. Follow-up to request for After-Action reports and other information from the BPD regarding dismantling of homeless encampments that have occurred in the past six months.
From: Commissioner Ramsey

10. NEW BUSINESS (discussion & action)

- a. Review policy on use of body-worn cameras, including sufficiency of provisions on use of associated iPhone.
From: Commissioner Prichett
- b. Follow-up to PRC's request of January 31, 2018, to the Chief of Police and City Manager for response to PRC's draft findings on the police response at and following the City Council meeting of June 20, 2017.
- c. Response to July 23, 2018 Council action on MOU compendium and participation in Urban Shield exercises.
- d. Response to July 24, 2018 Council action on proposed Charter amendment to restructure police oversight and directive to City Manager to meet and confer with affected bargaining units.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

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

13. ADJOURNMENT

Communications Disclaimer

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

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

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

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

PRC REGULAR MEETING ATTACHMENTS

July 25, 2018

MINUTES

July 11, 2018 Regular Meeting Minutes

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AGENDA-RELATED

Item 10.c. – July 23, 2018 Action Calendar -- Public Hearing: Item 1 -- Agreements with Other Law Enforcement Agencies, Police Departments or Private Security Organizations; Approval of MOU Compendium; from City Manager. (part) Page 13

Item 10.c. – July 23, 2018 Action Calendar: Item 2a – Ad-Hoc Subcommittee on NCRIC and Urban Shield Findings and Recommendations; from Mayor Arreguin and Councilmembers Davila and Harrison. (part) Page 43

Item 10.c. – July 23, 2018 Action Calendar: Item 2b – Urban Shield; from Councilmember Wengraf. (part) Page 55

Item 10.d. – Annotated Agenda from July 10, 2018 Council meeting – Action Calendar Item 32a. Referral Response: Proposed Charter Amendment to Restructure the Police Oversight Body, and Item 32b. Direct the City Manager to analyze the Mayor's proposed Police Commission Charter Amendment, and Initiate meet-and-confer where required. Page 61

Item 10.d. – Action Calendar Item dated 7-24-18: Placing a Charter Amendment relating to the Police Review Commission on the November 6, 2018 Ballot. Page 63

COMMUNICATION(S)

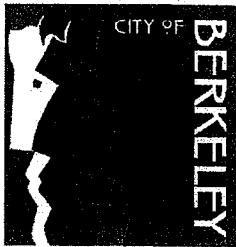
Letter to the Chief of Police dated 7-18-18, from the PRC Officer: Commendations of BPD employees August through December 2017. Page 67

Letter to the Chief of Police dated 7-18-18, from the PRC Officer: Commendation of Officer Megan Jones. Page 69

Email from Steve Martinot dated 7-16-18: A Critique of Racial Profiling in the Berkeley Police. Page 71

Article from www.nytimes.com dated 7-15-18: Confronting Implicit Bias in the New York Police Department. Page 73

KL:mgm



Police Review Commission (PRC)

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

**Wednesday, July 11, 2018
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR PEREZVELEZ AT 7:05 P.M.

Present: Commissioner George Perezvelez (Vice Chair)
Commissioner Gwen Allamby
Commissioner Andrea Prichett
Commissioner Ismail Ramsey
Commissioner Terry Roberts
Commissioner Ari Yampolsky (left 9:18 p.m.)
Commissioner Cooper Price (*temporary*)

Absent: Commissioners Kitty Calavita, Michael Sherman, Sahana Matthews
(Chair)

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood*, Lt. Angela Hawk, Lt. Mike Durbin*, Sgt.
Rashawn Cummings, Sgt. Samantha Speelman*, Ofc. Byron White
(*left 9:20 p.m.)

2. APPROVAL OF AGENDA

**Motion to approve the agenda as written, except to postpone Item 8.a.,
Guiding Principles, until Chairperson Matthews returns [September 2018].**

Moved/Seconded (Ramsey/Prichett) **Motion Carried**

Ayes: Allamby, Perezvelez, Prichett, Ramsey, Roberts, Yampolsky, Price.

Noes: None Abstain: None Absent: Calavita, Matthews, Sherman

3. PUBLIC COMMENT

There were 3 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of June 27, 2018

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

Ayes: Allamby, Perezvelez, Prichett, Ramsey, Roberts, Yampolsky, Price.

Noes: None Abstain: None Absent: Calavita, Matthews, Sherman

5. CHAIR'S REPORT

Thanks to the commissioners (Prichett, Roberts, Ramsey, in addition to Perezvelez) who attended the Council meeting last night [July 10], where Charter amendment was not taken up until 11:00 p.m.

6. PRC OFFICER'S REPORT

a. Status of complaints; other items.

-- At last night's meeting, Council voted to direct the City Manager to expeditiously commence meet-and-confer with the affected bargaining units on the version of the proposed Charter amendment found in Supplemental Packet 2.

-- Council is having a Special Meeting on July 23 at 4:00 p.m. in Council chambers on the MOU compendium from BPD and participation in Urban Shield exercises.

-- Deputy City Manager Jovan Grogan's last day is today; he will become the City Manager in San Bruno. The Interim DCM will be Paul Buddenhagen, Director of the Health, Housing & Community Services Dept.

-- PRC Officer attended a Personnel Board meeting on July 2 at the H.R. Director's request; introduced self and background, and answered questions about the Charter amendment.

-- No new complaints filed since the last PRC meeting.

-- Chief Greenwood's Feb. 12, 2018 memo on how the iPhones supporting body cameras will work is being re-distributed in hopes it will address commissioners' concerns on this topic at the last meeting.

b. Prioritizing new agenda items (**discussion & action**)

Not discussed.

7. CHIEF OF POLICE'S REPORT

Crime, budget, staffing, training updates, and other items.

-- Staffing still horrible. Currently 155 sworn, but 20 fewer available due to leave, injury, or training. Considering a proposal to increase the capacity to recruit and hire. Engagement and recruitment efforts continue, including staffing booths at S.F. Pride parade and Juneteenth.

-- Dispatch is working on major upgrade to its dispatch system, CAD Enterprise. Estimated done in late August.

-- Councilmember Worthington withdrew his item on establishing a voluntary security camera database because the BPD has already started this project.

-- Body-worn camera (BWC) policy is in final review; hope to complete meet-and-confer with BPA within a few days. When done, will send policy to PRC Officer for distribution. iPhones have been issued and IT Dept. is making sure the phones link properly to BWCs.

-- Use of Force policy revisions: will focus on them after BWC policy finalized.

-- June 20 report: City Attorney has concerns about what can be released due to ongoing litigation.

Chief Greenwood answered questions from Commissioners.

8. OLD BUSINESS (discussion & action)

- a. Proposed "Guiding Principles" for PRC adoption and other ideas related to addressing BPD staffing shortage.

(Item postponed until September 2018.)

9. NEW BUSINESS (discussion & action)

- a. Presentation by Chief Greenwood and other BPD staff regarding the BPD's development of Lexipol policies.

Chief Greenwood, Lt. Durbin, Sgt. Speelman, and Bill McAuliffe and Dan Fish of Lexipol described what services Lexipol provides generally and to the City of Berkeley specifically, the process BPD is using to convert its General Orders to Lexipol; and answered questions from the Commissioners.

- b. Whether to request information from the BPD regarding dismantling of homeless encampments that have occurred in the past six months.

Chief Greenwood agreed to see whether After-Action reports were generated following the removal of homeless encampments after February 2018 and, if they exist, whether they can be released to the PRC.

- c. How the PRC can request information from other City departments in the most efficient manner, and whether a standing item, "Requests for information," is sufficient under the Brown Act.

PRC Officer to request written opinion from City Attorney.

- d. Commendations of BPD personnel, August through December 2017; and of Ofc. Megan Jones.

By general consent, the Commission agreed to recognize the employees of the Berkeley Police Department whose names appear as Attachment A to these minutes, by including them in the minutes and by way of a letter to the Chief of Police from the PRC Officer.

Motion to send a letter of commendation to Chief Greenwood recognizing Ofc. Megan Jones for her outstanding work in making DUI arrests.

Moved/Seconded (Allamby/Prichett) Motion Carried

Ayes: Allamby, Perezvelez, Prichett, Ramsey, Roberts, Yampolsky, Price.
Noes: None Abstain: None Absent: Calavita, Matthews, Sherman

10. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. General Orders C-64, etc. Subcommittee – no report.
- b. Homeless Encampment Subcommittee – no report.
- c. Lexipol Policies Subcommittee – PRC Officer to schedule meeting and include representative from BPD.
- d. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting) – renew subcommittee.
No action taken.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

There was 1 speaker.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

13. PRESENTATION OF ADMINISTRATIVE CLOSURE IN COMPLAINT #2440

Motion to accept staff's recommendation to administratively close Complaint #2440.

Moved/Seconded (Allamby/Ramsey) **Motion Carried**

Ayes: Allamby, Perezvelez, Prichett, Ramsey, Roberts, Yampolsky, Price.

Noes: None Abstain: None Absent: Calavita, Matthews, Sherman

End of Closed Session

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

The vote to close Complaint #2440 was announced.

15. ADJOURNMENT

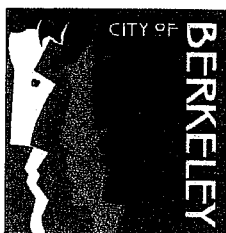
By general consent, the meeting was adjourned at 9:51 p.m.

Attachment A

BPD employees commended:

<u>Name</u>		<u>Badge #</u>	
Stephen	Burcham	138	
Anthony	Cerletti	144	
Spencer	Fomby	S-7	(twice)
Ed	Galvan	78	
Frank	Landrum	S-1	
Peter	Lee	24	
Jessee	Macapagal	25	
Matthew	McGee	S-8	
Anna Nia	Merte		
Semir	Muratovic	159	
Zachary	Nash	6	
Kathy	Navarrete	PEO	
Andrew	Rateaver	L-4	
Robert	Rittenhouse	S-9	
Rico	Rolleri	C-3	
Sean	Ross	S-25	
Eric	Ruff	45	
Christopher	Schulz	65	(twice)
Jennifer	Tate	S-14	
Brian	Waggonner	122	(twice)

Additionally, the Commission commends Brandon Smith (#3), Thomas Syto (#59), Emily Murphy (S-28), Randolph Files (L-8), and all other BPD officers who assisted residents of Sonoma County, including those on Gehricke Road, during the October 2017 fires.



Office of the City Manager

PUBLIC HEARING

July 23, 2018

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Andrew Greenwood, Chief of Police
 Subject: Agreements with Other Law Enforcement Agencies, Police Departments or Private Security Organizations; Approval of MOU Compendium

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt a Resolution approving agreements, understandings or policies existing or revised as of December 1, 2017 between the Berkeley Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations, as contained in the attached Memorandum of Understanding Compendium, in order to maintain the current level of police resources and emergency services. Review attached Suspicious Activity Report and Mutual Aid requests/responses provided annually per City Council request.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impact of not approving these inter-agency agreements and understandings is difficult to determine. Without inter-agency cooperation and assistance, major costs would be incurred in the event of critical incidents or disasters (e.g., major criminal investigations, riot situations, earthquakes, fires, terrorist attacks).

One example of a tangible fiscal impact includes the use of the Alameda County Sheriff's Office laboratory for analysis of seized illegal drugs and forensic examination of other evidence. The City does not have facilities capable of performing this service and, therefore, contracts with the County and private facilities for particular evidence analysis services. Notwithstanding other forensic analysis services, Alameda County's laboratory is the primary examiner of drug evidence for the Police Department. As analysis of seized drugs and other evidence is required for prosecution of offenders, the City's agreement with the Alameda County Sheriff's Office must be approved for the work to continue. Conveying all analytical and forensic services to a private laboratory would increase costs.

Approval of a given agreement will continue to support current law enforcement activity, funded in the existing budget. Non-approval may create a specific budget savings, but will increase related investigative costs. Costs associated with the adverse effect on involved victims and families, and public safety should offenders go unprosecuted, cannot be calculated.

The cost, or lack thereof, of each agreement or understanding is set forth in the summary of each in the attached MOU Compendium.

BACKGROUND

Berkeley Municipal Codes §§2.04.150 – 2.04.210 require that the Police Department must obtain City Council approval of agreements, understandings or policies regarding mutual aid, information sharing, and cooperation and assistance between the Berkeley Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations. These provisions came into effect under Ord. 4640 NS §1, 1973, requiring annual City Council approval.

The City Council last approved the MOU Compendium on March 14, 2017, for all contents except sections 3.12 (NCRIC) and 3.6 (UASI), which were approved on June 20, 2017. This report puts the Police Department in compliance with the Ordinance requirement. The Police Department conducts an annual review process, and presents agreements and understandings to Council each calendar year, in accordance with the above BMC provisions.

Agreements, understandings or policies associated with this report were shared with the Police Review Commission prior to preparation of this report, and were subject to their review from December 1, 2017 through the present. Department responses to subsequent PRC recommendations are included later in this report.

CURRENT SITUATION AND ITS EFFECTS

A majority of these agreements have been in effect for a number of years and are routinely reviewed and updated. As a result, daily law enforcement functions run smoothly. Difficulties that might arise are easily dealt with due to the mutual cooperation and understanding between agencies. Were it not for these agreements and general operational understandings, efficiency and effectiveness of service delivery would suffer.

Below is a list of the agreements which were updated or rescinded after August 4, 2016:

No change to the agreement, but the date and signature have been updated:

- 1.4 Alameda County District Attorney's Office - Victim/Witness
- 1.6 Alameda County Sheriff's Office Narcotics Task Force
- 2.15 Law Enforcement Consent Authorization
- 2.16 California Sex and Arson Registry
- 4.3 A Safe Place

Minor changes to the agreement:

- 1.13 Alameda County District Attorney's Office - HEAT (Human Exploitation and Trafficking). The agreement maintains its scope and meaning but more thoroughly describes BPD's participation in HEAT related meetings.
- 2.5 California Department of Corrections - Parole Division: The cover page has been updated to refer to policy I-16 "Mentally Disordered Persons" (instead of I-17 which was rescinded).

- 2.9 California Department of Justice (DOJ) - California Law Enforcement Teletype System (CLETS): There are minor grammatical changes, but the agreement maintains its scope and meaning, and the dates and signatures have been updated.
- 4.2 Critical Reach: The yearly price has been updated from \$780 to \$825.

City-or State-initiated changes to its own procedure:

- 2.13 California Emergency Management Agency / Law Enforcement Mutual Aid (LEMA) Plan: The State of California updated its mutual aid plan. This plan replaces the 2009 LEMA plan.
- 6.2 COB Disaster Management Plan: The City of Berkeley updated its Disaster Management Plan. This plan replaces the 2004 plan (the new plan was previously approved by City Council on 4/25/17 Resolution 67-901 N.S.).

Rescinded agreements:

- 1.18 Hayward PD - AVOID THE 21: The agreement expired on September 20, 2016 and will not be renewed.
- 4.4 National Insurance Crime Bureau: The agreement expired on June 20, 2013 and will not be renewed.

RATIONALE FOR RECOMMENDATION

The Berkeley Police Department provides law enforcement services to community members and visitors within the City of Berkeley. It does so under the guidance of federal, state and local statutes. Maximum operational and investigative resources must be available to ensure a just system of law enforcement. That cannot be accomplished without the cooperation of other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations.

It takes large numbers of personnel and significant logistical resources to effectively and successfully contain and manage major critical incidents or disasters. Only through a system of mutual aid established by the State and coordinated through the County can we hope to respond in a suitable manner. Furthermore, Federal law requires that National Incident Management System (NIMS) guidelines must be followed to be eligible for Federal Emergency Management Agency (FEMA) disaster funding and/or reimbursement.

In addition, many agencies or entities such as the University of California, Bay Area Rapid Transit, East Bay Regional Parks, California Highway Patrol and Union Pacific Railroad, have concurrent jurisdiction over areas, buildings or structures located within Berkeley's city limits. Agreements are needed to ensure smooth cooperation between all of these agencies. In some cases, written agreements are required to comply with State law.

ENVIRONMENTAL SUSTAINABILITY

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

BPD RESPONSE TO THE POLICE REVIEW COMMISSION'S RECOMMENDATIONS:

On December 13, 2017 the PRC voted to approve all of the agreements within this compendium with the exception of the four following Compendium sections. These four sections had not been updated or amended in 2017, and were all approved by the City Council on March 14, 2017 and June 20, 2017. In their March 14, 2018 letter to Council, the PRC made four recommendations regarding these four sections of the MOU Compendium, see attachment #5. We include their recommendations below, along with our responses:

1. MOU Compendium Item 3.6: Agreement with the City & County of San Francisco for the Distribution of UASI Grant Funds :

In the March 14, 2018 letter to Council, the PRC recommended:

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

BPD RESPONSE:

Participation in Urban Shield is not governed by the Fiscal Agent Agreement contained under section 3.6 of the MOU Compendium. As of December 1, 2017, the Fiscal Agent Agreement in section 3.6 provided for the receipt of grant funds to purchase an armored van. As of this report date, the van was purchased, and grant funds have since been received by the City. The Fiscal Agent Agreement—originally set to expire on February 28, 2018 and later extended to May 31, 2018—has expired.

2. MOU Compendium Item 3.12: Berkeley Police Department Relationship with Northern California Regional Intelligence Center (NCRIC) As Governed by General Order N-17:

In the March 14, 2018 letter to Council, the PRC recommended:

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

BPD RESPONSE REGARDING NCRIC:

Item 3.12 refers to BPD General Order N-17, which provides guidance on how and when BPD can obtain and share information with NCRIC. There is currently no written agreement or memorandum of understanding with NCRIC.

The Northern California Regional Intelligence Center partners with federal, state and local public safety agencies and coordinates the sharing of criminal intelligence. BPD may receive and share confidential, "law enforcement sensitive" and/or "for official use only" public-safety-oriented information with NCRIC to facilitate criminal investigations or to promote the safety of the community and/or law enforcement.

NCRIC / INFORMATION SHARING

Currently approximately 135 members of the police department receive NCRIC's Bulletins. These bulletins consist of general officer safety information, such as when a weapon is concealed in an unusual way, and descriptions of unusual occurrences across the state.

BPD officers are able to utilize NCRIC's Automated License Plate Recognition (ALPR) system. These queries are an investigative tool, used to develop leads on suspect vehicles, and to identify and locate offenders after an incident has occurred.

For 2017 there were 208 queries by 17 different police officers.

For 2018 as of 6/18/18, there have been 176 queries by 16 different police officers.

All officers are required to submit their reason for their access, (e.g. a case number), and that information is later audited by the IT department at NCRIC.

NCRIC / Suspicious Activity Reports (SARS)

BPD submits SARS to NCRIC. The criteria for a Suspicious Activity Report is outlined in General Order N-17. SARS submittal history:

- 2012-2013: 11 reports (submitted to City Council in the 10/15/13 Report)
- 2014: 5 reports (submitted to City Council in the 10/28/14 Report)
- 2015: 2 reports (submitted to City Council in the 12/1/15 Report)
- 2016: 1 report (submitted to City Council in the 3/14/17 Report)
- 2017: 4 reports (submitted to City Council / attached hereto as attachment #3)

Compendium Item 3.12 was revised in 2017 for clarity. The agreement cover page states that the relationship between the NCRIC and the Berkeley Police Department is described within Berkeley Police Department General Order N-17.

- N-17 outlines policy and procedures for participating with NCRIC, and provides detailed language for the Suspicious Activity Report (SAR) process.
- N-17 Section 5 states, "Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.
- N-17 Section 6 states, "SARs must not be submitted based on ideology, social or political opinion or advocacy of religious beliefs or association with a particular group."

Following work with the Council's AdHoc Subcommittee on NCRIC and Urban Shield, the Police Department will amend and expand General Order N-17 (and Item 3.12's cover page) in late 2018 with additional information, designed to improve transparency and understanding of the Department's interaction with NCRIC, including:

- A description of NCRIC;

- A discussion of the kinds of informational bulletins and alerts officers receive from NCRIC;
- Information on the Terrorism Liaison Officer program; and
- A description of how officers use NCRIC's License Plate Reader (LPR) data in supporting criminal investigations.

Additionally, the Department will seek to enter into a formal written memorandum of understanding with NCRIC; this MOU or agreement would be fully incorporated into this section of the MOU Compendium.

3. MOU Compendium Item 6.3: Mutual Aid and Agreements with Law Enforcement Agencies, Policy Document:

In the March 14, 2018 letter to Council, the PRC recommended:

"... direction to BPD to modify its General Order M-02, "Mutual Aid and Agreements with Law Enforcement Agencies" as follows:

Add a new paragraph in the Procedures section after Paragraph 6, to reflect the City Council's direction on supervision of mutual aid agencies, passed in 1992, that: "[T]he BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum amount allowable by law: ... prior to deployment in the field, BPD notify mutual aid units of significant BPD crowd management regulations and policies - especially those regarding use of force and reporting policies - and advise such units that they will be expected to comply with those regulations and policies; ... "

BPD RESPONSE:

We note this recommendation was not addressed through the PRC's Mutual Aid Pacts Subcommittee process, but rather brought to the full commission. Current policy as contained in the current Law Enforcement Mutual Aid provides for the host agency to be "in charge" of the responding agencies, to coordinate with agencies "an effective application of forces," while "The integrity of responding forces and the policies and procedures of their departments must be maintained." Current BPD policies and the contemporary Mutual Aid plans have proven effective in event management.

In its recommendation, the PRC references a 1992 City Council direction which added language to the 1992 and 1995 Event Management Manuals. However, the manuals contained the following contradictory statements:

1. Section 10.3.0 stated, "While operating within the City of Berkeley, mutual aid officers remain under the supervision, command and control of their own departments.
2. Section 10.4.0 stated. "Prior to deployment, mutual aid officers should be briefed regarding the situation and Berkeley Police Crowd Management regulations and policies, especially those regarding the use of force. The mutual aid officers will be advised that they are expected to comply with the Berkeley Police Department regulations and policies. Before any deployment, steps will be taken to resolve

differences between BPD practices and those of the out agency. If significant differences remain, the BPD Operations Commander may elect not to deploy the affected units."

3. Section 10.6.0 stated "[Berkeley] officers operating in other jurisdictions under mutual aid shall adhere to the Police Regulations, General Orders, and other policies and procedures of the Berkeley Police Department."

The Event Management Manual was replaced by General Order M-02 in 1995. Both the 1995 and 2012 versions of General Order M-02 state, "*Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid (LEMA) Plan as well as the written agreements made with other law enforcement agencies.*"

Over the years, the City Council has consistently approved MOU Compendium Section 2.13, which contains the LEMA plan.

The LEMA plan states, "*Unless otherwise expressly provided, or later agreed upon, the responsible local law enforcement official of the jurisdiction requesting mutual aid shall remain in charge. It is operationally essential that the local law enforcement official coordinate all actions with responding law enforcement agencies to ensure an effective application of forces (8618 GC). The integrity of responding forces and the policies and procedures of their departments must be maintained. Exceptions will require approval of the concerned department. Refer to the Law Enforcement Guide for Emergency Operations for further policy guidance.*"

The Law Enforcement Guide for Emergency Operations states,

1. (Page 59) "*Individual officers are bound by use of force policies of their employing agency. However, use of less-lethal devices (e.g., chemical agents, Tasers, ARWEN, Sting balls, or Stun bags) should be used decisively when the situation dictates. Firearms: Every officer assigned to a Mutual Aid Response Mobile Field Force shall carry a firearm in accordance with their employing agency's policies and procedures. Minimum departmental standards for qualification must be met.*"
2. (Page 62) "*Once given a mission, the OIC establishes the method to accomplish the mission. In developing the plan, the OIC must remain within the policies established by the Incident Commander's Incident Action Plan.*"
3. (Page 69) "*An "agency specific" Operations Plan is particularly valuable in Unified Command incidents, where multiple agencies are operating under a single Incident Action Plan. The Operations Plan can focus on policies and procedures specific to individual agencies responsible for a designated mission or objective(s).*"
4. (Page 72) "*Law enforcement agencies may desire to utilize operations plans that are more "specific" to internal policies and procedures. In these situations, it is important*

that operations plans are based on common action planning objectives, thus ensuring consistency and coordination between all agencies and disciplines involved in the response."

Thus, when agencies respond to Mutual Aid requests, they respond with the policies and procedures they have been trained with, all in support of the host agency's Operation Plan. **Just as our Department does not step away from its own policies, tools, and tactics when providing mutual aid in another jurisdiction, one would not expect outside agencies to set aside their own policies, procedures, tools and/or training.**

Whether seeking mutual aid assistance in a planned event or an emergency assistance context, *mandating* agencies to follow all BPD policies is neither practical nor possible in the context of modern mutual aid management and response.

It is important to understand that a fundamental element of managing large scale planned events in a Joint Command structure with mutual aid partners is that the host agency communicates its desired operational goals and outcomes through the Operations Plan, and ensures these are reviewed understood by mutual aid partners. These goals, and the underlying strategies and tactics are discussed. Through this process, concerns about force and reporting issues, among others, can be addressed and resolved. This process generally occurs well in advance of a planned event, thus allowing time for issues and concerns to be resolved.

BPD policies relating to managing large scale events, including General Order M-2 Mutual Aid and Agreements with Law Enforcement Agencies, C-64 First Amendment Assemblies, and U-2 Use of Force, have all proved effective in guiding Department operations through several large-scale planned events in 2017. Operating in a Joint Command structure, involved agency commanders work together to achieve the goals of the host agency's Operations Plan. Commanders coordinate the deployment of resources and consider potential uses of force in accordance and in alignment with the goals of the Operations Plan. General Order M-2 as currently written, considered in conjunction with other BPD policies and the LEMA plan, provides a strong and proven structure for the Department's work in Mutual Aid events. Given the above information, we believe amending GO M-2 is not necessary to ensure that the Department's event management operations are conducted in a manner reflecting our community's standards.

4. MOU Compendium Item 3.4: Federal; Department of Homeland Security, U.S. Immigrations and Customs Enforcement (USICE):

In the March 14, 2018 letter to Council, the PRC recommended to:

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

action in a written report to the Berkeley City Council and the Police Review Commission at the earliest opportunity.”

BPD RESPONSE:

Item 3.4 reflects a general understanding regarding interactions with Immigration and Customs Enforcement (ICE); there exists no MOU.

With the next MOU Compendium, Section 3.4 will incorporate a new Berkeley Police General Order which specifically governs all aspects of immigration enforcement, including policy set by Council, and recent state law. As of this writing, the new general order is in the final stages of legal review, and we expect issuance to occur by September 1. Accordingly, the Police Department will amend MOU Section 3.4's cover page to reflect the new General Order, which will:

- Incorporate Council's actions with regards to our community being a "Sanctuary City";
- Incorporate the provisions of SB54 The California Values Act are codified in BPD policy; and
- Incorporate provisions of AB2792 the Transparent Review of Unjust Transfers and Holds (TRUTH) Act.

CONTACT PERSON:

Andrew Greenwood, Chief of Police, 510-981-5900

Attachments:

1. Resolution
Exhibit A:
Attachment 1: MOU Compendium Preface
Attachment 2: MOU Compendium (Voluminous File)
2. Public Hearing Notice
3. SARS Report
4. Mutual Aid Report
5. The PRC's 3/14/18 Letter to Council

RESOLUTION NO. XX,XXX-N.S.

APPROVING AGREEMENTS, LETTERS AND MEMORANDA OF UNDERSTANDING OR POLICIES, REVISED AND UPDATED AS OF DECEMBER 1, 2017, WHICH EXPRESS TERMS AND CONDITIONS OF MUTUAL AID, INFORMATION SHARING, COOPERATION AND ASSISTANCE BETWEEN THE BERKELEY POLICE DEPARTMENT AND ALL OTHER LOCAL, STATE AND FEDERAL LAW ENFORCEMENT, MILITARY AND/OR INTELLIGENCE AGENCIES, POLICE DEPARTMENTS OR PRIVATE SECURITY ORGANIZATIONS

WHEREAS, the Berkeley Police Department has established written and verbal agreements, understandings and policies with other law enforcement agencies, police departments and other private security organizations; and

WHEREAS, such agreements, understandings and policies are needed to enhance investigative resources and emergency services provided to the citizens of Berkeley, creating a safer environment for all; and

WHEREAS, many of these agreements, understandings and policies have been in existence and approved by City Council since 1974.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the agreements, understandings and policies existing between the Berkeley Police Department and other law enforcement agencies as set forth in City Manager Report dated July 24, 2018, a copy of which is attached hereto, marked Exhibit A and made part hereof.

BE IT FURTHER RESOLVED that record copies of aforementioned documents to be on file in the Office of the City Clerk, and be available electronically via the City of Berkeley website.

Exhibit A:
Attachment 1: MOU Compendium Preface
Attachment 2: MOU Compendium



Berkeley Police Department



Exhibit "A"



Berkeley Police Department



Attachment #1

MOU Preface

PREFACE

LEGISLATIVE HISTORY

City Council accomplished public hearings, review and approval of submitted agreements and general understandings as required by BMC 2.04.170 on:

- March 12, 1974 (Resolution No. 46,409 N.S.)
- March 11, 1975 (Resolution Nos. 47,103 N.S.; 47, 104 N.S.; 47, 105 N.S.)
- March 30, 1976 (Resolution No. 47,873 N.S.)
- March 22, 1977 (Resolution No. 48,630 N.S.)
- July 27, 1982 (Resolution No. 51,445 N.S.)
- October 16, 1984 (Resolution No. 52,458 N.S.)
- April 29, 1986 (Resolution No. 53,207 N.S.)
- September 19, 2006 (Resolution No. 63,432 N.S.)
- April 20, 2010 (Resolution No. 64,847 N.S.)
- November 8, 2011 (Resolution No. 65,505 N.S.)
- September 18, 2012 (Resolution No. 65,901 N.S.)
- September 18, 2012 (Resolution No. 65,902 N.S.)
- October 15, 2013 (Resolution No. 66,344 N.S.)
- October 28, 2014 (Resolution No. 66,836 N.S.)
- December 15, 2015 (Resolution No. 67,327 N.S.)
- March 14, 2017 (Resolution No. 67,870 N.S.)
- June 20, 2017 (Resolution Nos. 68,050 N.S., 68-051 N.S., 68-052 N.S., 68-053 N.S.)

CONTENT SUMMARY

This compendium contains current general understandings, oral and written agreements, and relevant City Council legislative documents referenced in Berkeley Municipal Code §2.04.150, et seq. (hereafter, Ordinance), known to this Department as of the date indicated below. It is this Department's expectation that this compendium satisfies the requirements of the Ordinance, as written and intended, regarding public disclosure of professional relationships with other entities in the greater public safety community.

The compendium has been updated to more accurately conform with requirements set forth in the ordinance. Existing document subjects are retained and descriptions of new or previously not described agreements/understandings have been added; content is based on the current version, presented to and approved by Council on March 14 and June 20, 2017.

Regarding interaction, cooperation, and information sharing with law enforcement, military, intelligence, and private security entities not specified in this compendium, this Department shall engage those agencies as permitted by law and relevant policy, and in accordance with common professional courtesy, to facilitate lawful investigation and promote public safety.

DEPARTMENT HEAD AFFIRMATION AND APPROVAL

I affirm I have reviewed the contents of this binder and approve its presentation to City Council for public hearing, review and approval.


Andrew Greenwood, Chief of Police

June 15, 2018
Date



Berkeley Police Department



Attachment #2

MOU Compendium

Voluminous File

(Download)

**CITY OF BERKELEY
POLICE DEPARTMENT**

MOU COMPENDIUM

**AGREEMENTS, LETTERS, AND UNDERSTANDINGS RE
MUTUAL AID, INFORMATION SHARING AND COOPERATION
WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES,
AND PRIVATE SECURITY ORGANIZATIONS**

(Submitted in compliance with Berkeley Municipal Code §2.04)



**BERKELEY POLICE DEPARTMENT
 AGREEMENTS AND UNDERSTANDINGS WITH OTHER LAW ENFORCEMENT,
 MILITARY ENTITES, AND PRIVATE ORGANIZATIONS**

2018

**CITY COUNCIL REVIEW / APPROVAL BINDER
 REVISED / NEW ITEMS IN RED**

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Ch. Pg. Title

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- 1 2 Alameda County Chiefs and Sheriffs
- 1 3 Alameda County DA's Office, Threat Management/Stalking Vertical Prosecution Program
- 1 4 Alameda County District Attorney's Office, Victim/Witness Assistance Division
- 1 5 Alameda County District Attorney's Office, Victim/Elder Abuse
- 1 6 Alameda County Sheriff's Office
- 1 7 Bay Area Rapid Transit Police Department
- 1 8 Berkeley Unified School District
- 1 9 East Bay Regional Parks Department
- 1 10 Oakland Police Department
- 1 11 Union Pacific Railroad Police Department
- 1 12 University of California Berkeley Police Department
- 1 13 Alameda County District Attorney, Human Exploitation and Trafficking
- 1 14 Alameda County District Attorney, Domestic Violence Prosecution Program
- 1 15 San Jose Police Department, Silicon Valley, Internet Crimes Against Children Task Force
- 1 16 Los Angeles County Sheriff's Department
- 1 17 Alameda County DA's, Clearing and Preventing of the Backlog of SART Exam Kits
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- 2 4 California Department of Corporations
- 2 5 California Department of Corrections and Rehabilitation, Parole Division
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- 2 7 California Department of Justice, Cal-Photo
- 2 8 California Department of Justice, Law Enforcement Division
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- 2 11 California Highway Patrol and Emergency Notification and Tactical Alert Center (ENTAC)
- 2 12 California Horse Racing Board
- 2 13 California Emergency Services Agency, Law Enforcement Mutual Aid Plan
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- 2 15 Law Enforcement Consent Authorization (Penal Code 830.1)
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- 3 3 Department of Homeland Security, U.S. Customs and Border Protection
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- 3 6 Department of Homeland Security, Urban Area Security Initiative (UASI)
- 3 7 Department of Justice, Bureau of Alcohol, Tobacco, and Firearms
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- 6 6 Information Sharing with and Review of Police Reports by Outside Agencies
- 6 7 Jail Operations and Services to Outside Agencies
- 6 8 Use of Police Canines and Helicopters



Berkeley Police Department



Attachment #2

Public Hearing Notice

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

Police Department Agreements with Other Law Enforcement Agencies, Police Departments or Private Security Organizations

Notice is hereby given by the City Council of the City of Berkeley that on **July 23, 2018** the Police Department is requesting a public hearing, and at the conclusion of the hearing, adoption of a Resolution approving agreements, understandings or policies between the Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations, as required by Berkeley Municipal Code 2.04.150, et. seq. The hearing will be held at 4:00 p.m. in the City Council chambers, 2134 Martin Luther King, Jr. Way.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of July 19, 2018.

For further information, please contact **Sergeant Speelman** of the Berkeley Police Department's Professional Standards Division at 510-981-5974.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

Published: July 20, 2018 – The Berkeley Voice
Berkeley Municipal Code §2.04.170

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 19, 2018.

Mark Numainville, City Clerk





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Berkeley Police Department

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## Attachment #3

# Suspicious Activity Reports (SARS)





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Berkeley Police Department

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**SUSPICIOUS ACTIVITY REPORTS**

- 06/26/16 Berkeley Police Officers investigated threats against a Berkeley School District location and specific threats of violence against children there. The threats were related to an individual associated with the location.
- 12/02/16 A subject wearing a mask and dark clothing hid near a gate and surveilled a Berkeley Officer who was on a traffic stop. The subject was detained and various concealed weapons were recovered from his person.
- 04/15/17 During widely publicized national protests the Berkeley Police Department experienced an internet outage that appeared to be caused by a cyber-attack.
- 06/08/17 Berkeley Police investigated a report of a person digging a large hole near the railroad tracks and a high pressure gas pipeline in the western part of the city.



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Berkeley Police Department

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## Attachment #4

# Mutual Aid Requests




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## Berkeley Police Department

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### Law Enforcement Mutual Aid Requests Berkeley PD (8/2016 – 12/2017)

- 04/15/17 BPD request for LEMA to bring control to demonstration and counter protesters who were clashing in Civic Center Park using weapons against each other. Members from one or more groups were throwing explosive devices at each other as well as law enforcement. All BPD on-duty and 190 Oakland PD Officers responded to LEMA request.
- 04/27/17 UCPD request for LEMA for potential speech made by Ann Coulter on UCB campus expected to draw both supporters and protesters. Multiple agencies responded in addition to all BPD on-duty. No significant issues with demonstrations moving to Civic Center Park and use of BPD and some of the LEMA resources to manage the protesters and keep them separated.
- 06/15/17 OPD request for countywide LEMA to assist in facilitation and security for Golden State Warriors championship parade. 1 million people expected for the parade route. 24 BPD Officers responded and assisted with the event.
- 08/27/17 BPD request for LEMA from all Alameda County agencies as well as CHP for multiple demonstrations planned within the City, including Civic Center Park, Ohlone Park, and West Crescent at UCB campus. 747 LEMA resources from multiple agencies responded and managed the various events that included approximately 5,000 demonstrators.
- 09/09/17 OPD request for LEMA to assist in managing a large DACA protest downtown Oakland beginning at 14<sup>th</sup> & Broadway. BPD provided 22 officers to assist, however the BPD officers were not deployed and released after 3 hours.
- 09/24-27/17 UCPD request for regional LEMA to facilitate "Free Speech Week" organized by Milo Yiannopoulos on and near the UCB campus. All BPD placed on-duty along with 600 other LEMA resources from throughout the state for four days to assist with various speakers, and counter protesters.
- 10/09-23/17 Sonoma County Sheriff request for LEMA to assist with evacuations and general law enforcement duties throughout various areas in Sonoma County. BPD provided 24-hour coverage in 12-hour shifts for 14 straight days along with other agencies throughout the state. BPD provided 221, 12-hour shifts to assist Sonoma County.



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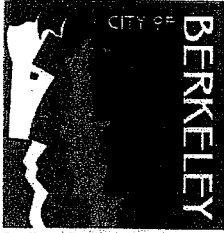
Berkeley Police Department

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## Attachment #5

# PRC Letter to City Council



Police Review Commission (PRC)

March 14, 2018

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

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

Dear Mayor and Members of the City Council,

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

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

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

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

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

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

Mayor and Members of the City Council  
PRC's recommendations to the City Council regarding the 2018 Agreements with Other Law  
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Moved/Seconded (Prichett/Sherman) – **Motion Carried.** Ayes: Lippman, Prichett, Sherman, and Halpern (temporary); Noes: Allamby, Roberts; Abstain: None; Absent: Ford, Matthews Perezvelez, Yampolsky.<sup>1</sup>

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

On January 10, 2018, the PRC voted to:

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

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

Law Enforcement Mutual Aid Plan (Item #2.13)

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

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

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

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

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

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

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



Mayor and Members of the City Council  
PRC's recommendations to the City Council regarding the 2018 Agreements with Other Law  
Enforcement Agencies, etc.  
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Berkeley's rule on supervision of mutual aid agencies is in accord with California Government Code § 8618 that "the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident, including the direction of personnel and equipment provided him [sic] through mutual aid."

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

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

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

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

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

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

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

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

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

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

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

Remaining Agreements and Understandings

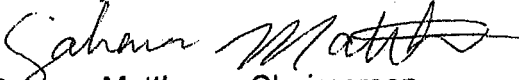
At its January 24, 2018 meeting, the PRC approved this recommendation:

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

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

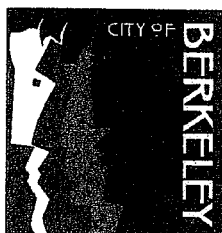
The Police Review Commission thanks you for considering its views as you review this year's compendium of BPD's agreements with other law enforcement, police departments, and private security organizations.

Sincerely,

  
Sahana Matthews, Chairperson  
Police Review Commission

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



Office of the Mayor

ACTION CALENDAR

July 23, 2018

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Davila and Harrison

Subject: Ad-Hoc Subcommittee on NCRIC and Urban Shield Findings and Recommendations

RECOMMENDATION

That the City Council adopts the following recommendations that were approved by the majority of the Ad-Hoc Subcommittee:

1. That the City of Berkeley continue its participation with the Northern California Regional Intelligence Center (NCRIC) conditional on the execution of a Memorandum of Understanding between the City of Berkeley and NCRIC using the outline as recommended (Attachment 5) and reflecting existing City of Berkeley policies.
2. Adopt the Disaster and Fire Safety Commission proposal "Recommendation for Fire and Health Departments to Participate in Urban Shield Exercises and UASI Grant Funded Trainings" striking the word "Police" from the recommendation.
3. Suspend Berkeley's participation in the vendor show and the Berkeley Police Department's participation in the tactical scenarios in 2018 pending timely reevaluation of the tactical-related offerings from the county in 2019. The suspension should not extend to the Yellow Command mass care and shelter and tabletop exercises, the CERT exercises (Green Command), the Community Preparedness Fair (Gray Command) or to public safety seminars at Urban Shield.
4. That the Berkeley City Council recommend to our members of Congress to expand Homeland Security Grants to fund disaster preparedness activities.
5. That the Berkeley City Council send a letter transmitting our recommendations (Attachment 4) to the Alameda County Board of Supervisors and Alameda County Sheriff, regarding the reconstitution of Urban Shield and providing tactical and emergency preparedness training for local law enforcement using the established principles and guidelines for Urban Shield and request an accountability mechanism for enforcing them.

### AD-HOC SUBCOMMITTEE BACKGROUND

A special meeting of the Berkeley City Council was held on June 20, 2017 to consider an agreement between the City of Berkeley and City & County of San Francisco for Department of Homeland Security (DHS) Urban Area Security Initiative (UASI) grant funds, and examine BPD's relationship with the Northern California Regional Intelligence Center (NCRIC).<sup>1</sup> The meeting was called pursuant to a 1973 ordinance adopted by the people of the City of Berkeley that stipulates Council must approve of all agreements, letters or memoranda of understanding of policies...between the City and/or the Berkeley Police Department and all other local, state and federal law enforcement, military and/or intelligence agencies, police departments or private security organizations.<sup>2</sup> Council approval of agreements is valid for one year.<sup>3</sup>

At the meeting, the Council adopted a motion on a 7-2 vote to allow Berkeley city staff, including Police, to participate in the 2017 Urban Shield event.<sup>4</sup> As a condition of approval, the Council created an Ad-Hoc Subcommittee to review the City's involvement in Urban Shield, determine whether the City should continue to participate in Urban Shield, and "present alternative programs that better reflect the values of Berkeley's citizens." In addition, the Council voted to refer to the Ad-Hoc Subcommittee to "[c]onsider whether Berkeley should end its relationship with NCRIC, continue, and/or create formal protocols to limit Berkeley's contribution and access to the database." A subcommittee of Mayor Jesse Arreguin and Councilmembers Susan Wengraf, Cheryl Davila and Kate Harrison was formed. The Berkeley Fire and Police Chiefs were non-voting members. The Subcommittee met frequently over the last year and meetings were open to the public.<sup>5</sup> The Mayor, some of the Councilmembers and their staff attended and observed Urban Shield 2017, which occurred September 7-11.

### BACKGROUND ON NCRIC AND AD-HOC SUBCOMMITTEE FINDINGS

The Ad-Hoc Subcommittee held five meetings to discuss the issue of Berkeley's participation in the Northern California Regional Intelligence Center (NCRIC).

<sup>1</sup> Berkeley City Council, *Annotated Agenda Special Meeting of the Berkeley City Council*, June 20, 2017, City Clerk, [http://www.ci.berkeley.ca.us/Clerk/City\\_Council/2017/06\\_June/Documents/06-20\\_Special\\_Annotated.aspx](http://www.ci.berkeley.ca.us/Clerk/City_Council/2017/06_June/Documents/06-20_Special_Annotated.aspx); See also Berkeley Police Department, *Revised Agenda Material, MOU Compendium Items: Item #3.6: Agreement with City & County of San Francisco for Distribution of UASI Grant Funds; Item #3.12: Berkeley Police Department Relationship with NCRIC as codified in BPD General Order N-17*, by Andrew Greenwood, June 20, 2017, accessed January 4, 2018, [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/06\\_June/Documents/2017-06-20\\_Item\\_1a\\_MOU\\_Compendium\\_Items.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-20_Item_1a_MOU_Compendium_Items.aspx), 9.

<sup>2</sup> Berkeley Municipal Code § 2.04.160 and § 2.04.170.

<sup>3</sup> Berkeley Municipal Code § 2.04.190.

<sup>4</sup> *Annotated Agenda*, 4.

<sup>5</sup> August 9, 2017, September 22, 2017, December 14, 2017, January 18, 2018, February 14, 2018, March 14, 2018, March 28, 2018, April 26, 2018, May 8, 2018, May 21, 2018, June 4, 2018.

During these meetings the Ad-Hoc Subcommittee heard from the community, NCRIC Director Michael Sena, the Berkeley Police Department, including a Terrorism Liaison Officer who manages BPD's relationship with NCRIC, and the Berkeley Fire Department. This item summarizes key findings on NCRIC and shares the Ad-Hoc Subcommittee's recommendations with the Council.

NCRIC is a part of a broader network of 78 other intelligence fusion centers across the country. Regional fusion centers were established after 9/11 when the federal government sought greater law enforcement intelligence sharing among federal, state and local entities. In 2007, the Executive Board of the Northern California High Intensity Drug Trafficking Area (NC HIDTA), a regional subdivision of the President's United States Office of National Drug Control Policy, facilitated the creation of NCRIC.<sup>6</sup> NCRIC's founding resulted in the merging of existing law enforcement personnel, intelligence and investigative and other resources already assigned to the "War on Drugs" and "War on Terror."<sup>7</sup>

NCRIC's area of responsibility spans from Monterey to the Oregon border, and includes 15 counties. NCRIC focuses on collecting, sharing and analyzing data on criminal activity and suspicious behaviors that are predictive of criminal acts. The primary areas of concern are counter-terrorism, human trafficking, and high-level narcotics. NCRIC is funded through the Office of National Drug Control Policy (ONDCP) and DHS grants through California Office of Emergency Services (Cal OES) and the Bay Area UASI (BAUASI).<sup>8</sup>

The City of Berkeley participates in NCRIC's intelligence fusion activities in three ways: submission of Suspicious Activity Reports (SAR) to NCRIC, receiving NCRIC advisories, bulletins and alerts, and querying the NCRIC Automatic License Plate Recognition (ALPR) databases.

### Reporting SARs to NCRIC

In response to the recommendations of the 9/11 Commission Report in 2007, the federal government established the SARs reporting framework, known as the Nationwide SAR Initiative (NSI), to enhance the preventative measures against terrorism. The NSI is a collaborative effort between the DHS, the Federal Bureau of Investigation (FBI), and state, local, tribal, and territorial law enforcement partners. The effort consists of "locally controlled distributed information systems wherein potential terrorism-related information could be contributed by the 18,000 state, local, tribal, and territorial (SLTT) law enforcement agencies for analysis to determine whether there are emerging patterns or trends." Fusion centers at the state and major urban area level, such as the NCRIC "serve as

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<sup>6</sup> "About NCRIC," Northern California Regional Intelligence Center, 2018, accessed July 12, 2018, <https://ncric.org/default.aspx?MenuItemID=122&MenuGroup=NCRIC+Public+Home>. The Office of National Drug Control Policy was created in 1990 under the Anti-Drug Abuse Act of 1988. See "Office of National Drug Control Policy," The White House, 2018, accessed July 12, 2018, <https://www.whitehouse.gov/ondcp/>.

<sup>7</sup> "About NCRIC," Northern California Regional Intelligence Center.

<sup>8</sup> *Id.*

primary focal points within the state and local environment for the receipt, analysis, [and] gathering” of SARs.<sup>9</sup>

For example, through the NSI, the federal government encourages local law enforcement agencies to submit SARs about individuals to their regional fusion center when they have “observed behavior reasonably indicative of pre-operational planning associated with terrorism or other criminal activity.” Once received, NCRIC staff conducts a vetting and analysis process and submits them to FBI-managed databases for further analysis and investigation by their FBI Joint Terrorism Task Force (FBI-JTTF). The NCRIC may also reach out and brief relevant law enforcement partners about potential information contained in SARs.<sup>10</sup>

The BPD maintains an internal guidance known as General Order N-17 for reporting SARs to NCRIC. The order maintains that the department follows all state and federal guidelines for reporting to NCRIC, including reporting only when reasonable suspicion exists, and that reporting is done in a way that respects civil liberties. The responsibility for submitting a SAR to NCRIC is held by the BPD officer designated as the Terrorism Liaison Officer (“TLO”). All SARs are forwarded to the City Manager and Chief of Police for review and are logged for the purpose of annual reporting to the City Council. SARs can also be submitted by the general public through NCRIC’s website.<sup>11</sup>

According to Director Sena, NCRIC staff evaluates each SAR report based on the action reported and not their subject’s beliefs, religion or ethnicity. However, Director Sena did reference past instances of NCRIC receiving reports from law enforcement agencies that violated this policy.

### NCRIC Advisories

The City of Berkeley also interacts with NCRIC through the receipt of NCRIC advisories, bulletins, alerts and other informal communications between NCRIC and City of Berkeley officials. Law enforcement and emergency personnel within the BPD and BFD are registered to receive these electronic updates from the NCRIC, containing information about potential threats, tactics, training events etc. Advisories resemble a newsletter on a possible threat, pattern of behavior, or an event that NCRIC identifies as important. In Berkeley, the Terrorism Liaison Officer within BPD’s Situational Awareness Group (SAG) considers each bulletin carefully. The Situational Awareness Group is the internal body of BPD responsible for filtering incoming information on threats and getting it to the appropriate subject matter expert or supervisor.

<sup>9</sup> “About the NSI,” Nationwide SAR Initiative, accessed July 12, 2018, [https://nsi.ncirc.gov/about\\_nsi.aspx](https://nsi.ncirc.gov/about_nsi.aspx).

<sup>10</sup> “About the NSI,” Nationwide SAR Initiative. See also, Berkeley Police Department, *General Order N-17: Suspicious Activity Reporting and Relationship with the Northern California Regional Intelligence Center*, 2016, accessed July 12, 2018, [https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/N-17%20Suspicious%20Activity%20and%20NCRIC%20Nov%202016.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/N-17%20Suspicious%20Activity%20and%20NCRIC%20Nov%202016.pdf).

<sup>11</sup> Berkeley Police Department, *General Order N-17*.

Director Sena explained that SARs and other intelligence products often inform Advisory Bulletins. Ad-Hoc Subcommittee members requested examples of NCRIC Advisory Bulletins but were informed that they are protected with the classification "For Official Use Only."

### Querying the NCRIC ALPR Database

NCRIC provides BPD with access to large databases consisting of aggregated license plate data, including location information. NCRIC maintains numerous memorandums of understanding with local, state, federal and other public entities to aggregate bulk photography and related metadata of vehicle license plates. For example, NCRIC collects and stores bulk license plate data from scanners attached to the Alameda County Sheriff's Office police vehicles as well as data emanating from other departments across region and the country.<sup>12</sup> Although BPD maintains an ALPR system through its Parking Enforcement Unit, the BPD Chief confirmed that Berkeley and its third party vendor follow a strict policy of not submitting license plate data to NCRIC and other law enforcement agencies except in specific instances of criminal activity warranting such dissemination.

While BPD does not send ALPR data to NCRIC, authorized and trained officers may query the NCRIC ALPR database during criminal investigations. In doing so, officers are not required to seek a warrant, but must have a criminal cause and are required to enter the case number into the database. This requirement allows NCRIC to audit database access for the purpose of ensuring that it is being accessed under a legal premise. Upon querying the NCRIC database for a specific license plate, BPD officials receive any available photographs of the plate along with other metadata including the location where the photograph was taken without limitation on the date of capture and the purpose for which the photograph was taken. BPD maintains that the ability to query NCRIC's database has been instrumental to the investigation of a number of criminal cases. For example, in the Department's June 20, 2017 presentation to the Berkeley City Council, BPD included an image taken from a license plate query, and the fields showing the types of information received when an officer queries the NCRIC ALPR database. Chief Greenwood described how accessing this database helped BPD solve three open criminal cases in early 2017: two armed robberies, including one involving an injury, and an auto burglary.

In the interest of safeguarding Berkeley's status as a sanctuary city, the Ad-Hoc Subcommittee specifically inquired about NCRIC's relationship with Immigration and Customs Enforcement (ICE). Director Sena said that ICE does not have open access to NCRIC's database. ICE can request information, but it must be

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<sup>12</sup> Northern California Regional Intelligence Center, *NCRIC ALPR FAQs*, accessed July 12, 2018, <https://ncric.org/html/ALPR-FAQ-Feb-2015.pdf>. See also, Northern California Regional Intelligence Center, *NCRIC Privacy Discussion with the City of Oakland's Privacy Advisory Commission*, [https://ncric.org/html/NCRIC%20Privacy%20Discussion%20Talking%20Points\\_City%20of%20Oakland's%20Privacy%20Advisory%20Commission%20Jan%204%202018.pdf](https://ncric.org/html/NCRIC%20Privacy%20Discussion%20Talking%20Points_City%20of%20Oakland's%20Privacy%20Advisory%20Commission%20Jan%204%202018.pdf).

related to a criminal action. NCRIC sends a copy of California Senate Bill 54 and requires ICE to provide a case number and explicit legal terms that they are requesting the information. If the data ICE is requesting belongs to a local agency, NCRIC goes back to that agency to ensure they are comfortable supporting a criminal investigation.

Some Ad-Hoc Subcommittee members raised considerable privacy-related concerns regarding how NCRIC collects data in bulk without warrants, and how the NCRIC disseminates ALPR data without warrants. The Ad-Hoc Subcommittee inquired with Director Sena as to whether it would be possible to sever the location data from the photos of vehicles when BPD queries the ALPR database. He responded that it is not possible to do so with NCRIC's current technology.

### AD-HOC SUBCOMMITTEE RECOMMENDATION ON NCRIC

May 8<sup>th</sup>, 2018

On May 8, 2018, the Ad-Hoc Subcommittee voted to adopt a draft outline of an MOU between the City and NCRIC, and to recommend that the Council adopt and execute a formal MOU between the parties with regard to the scope of their relationship and their mutual obligations.

**Action:** M/S/C (Arreguín/Wengraf) to recommend that City of Berkeley continue its participation with the Northern California Regional Intelligence Center (NCRIC) conditional on the execution of a Memorandum of Understanding between the City of Berkeley and NCRIC using the outline as recommended (Attachment 5), and reflecting existing City of Berkeley policies.

**Vote:** Ayes—Wengraf, Arreguín, Harrison; Noes—Davila; Abstain—None;

The Ad-Hoc Subcommittee recognizes that NCRIC provides important services to BPD investigators. No other database or agency provides the same kind of information to the Department. Therefore, the Ad-Hoc Subcommittee's recommendation is to continue the City's participation with NCRIC. The Ad-Hoc Subcommittee recommends an MOU with NCRIC in order to bring the City into compliance with BMC Sections 2.04.150-210 and to ensure that the City's policies and values are explicitly incorporated into the relationship. The Ad-Hoc Subcommittee expects that BPD will continue to collaborate with NCRIC in ways that respect civil liberties and privacy. The Chief reported that BPD destroys ALPR data that is not relevant to an active case. The attached outline for an MOU establishes the terms and purposes for accessing the NCRIC databases and pays particular attention to data retention, civil liberties protections and security requirements.

Prior to this vote, the Ad-Hoc Subcommittee requested a severed vote on a clause of the outline MOU requiring a valid warrant to obtain location data from the NCRIC database.



**Action:** M/S/F (Arreguín/Wengraf) to recommend replacing section 6.a.iii of the outline, "Additional Data received with valid warrant: location data. 1) Specification of the range of location data over time," with "Data that is not found to be material to a case will be not be retained in any form".

**Vote:** Ayes—Wengraf, Arreguín; Noes—None; Abstain: Harrison, Davila;

### BACKGROUND ON URBAN SHIELD

The Ad-Hoc Subcommittee also considered and discussed the implications of the City's continued participation in Urban Shield, a three-day law enforcement counter-terrorism focused exercise funded by UASI, organized by the Alameda County Sheriff's Office and approved by the Alameda County Board of Supervisors.<sup>13</sup> It is our understanding that under the City of Berkeley Charter, the City Council can consider whether to authorize City personnel to continue participating in Urban Shield.<sup>14</sup> In fact, the Council was asked to make a vote affirmatively to participate in Urban Shield in 2014 and 2017. There does not appear to be a formal agreement between Berkeley, UASI and Alameda County Sheriff's Office (ACSO) regarding the City's participation in the Urban Shield event.

In the interim, on March 27, 2018, the Alameda County Board of Supervisors voted to approve funding for Urban Shield 2018 with the condition that it be the last time funding be allocated for Urban Shield as "currently constituted." The Board also voted to create an ad-hoc committee of Board members' appointees to work with the ACSO to determine what programs to fund for 2019.<sup>15</sup> As a result, the Berkeley Ad-Hoc Subcommittee on Urban Shield also considered how Berkeley can provide useful input to the county as it deliberates on how to prepare the county and its residents for natural and manmade disasters.

For a detailed overview on Urban Shield, the findings of the Ad-Hoc Subcommittee majority, and a detailed explanation for the recommendations below please see the attached supplemental report (Attachment 6) and the appendices that accompany it (Attachment 7).

This report considers the City's involvement in Urban Shield (pages 10-14, 24-27), the benefits of participation (pages 24-27), the costs of participation (pages 28-38), the nature of Urban Shield exercises (pages 10-22), any possible elements that might be contrary to the City's values of community policing,

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<sup>13</sup> Alameda County Board of Supervisors, *Agenda - Board of Supervisors' Meeting*, January 10, 2017, Clerk of the Board, accessed January 4, 2018, [http://alamedacounty.granicus.com/AgendaViewer.php?view\\_id=2&event\\_id=2455](http://alamedacounty.granicus.com/AgendaViewer.php?view_id=2&event_id=2455), 10.

<sup>14</sup> City of Berkeley Charter, art. IX, s 49(5).

<sup>15</sup> Alameda County Board of Supervisors, *Summary Action Minutes of Regular Meeting*, March 27, 2018, Clerk of the Board, accessed April 31, 2018, [http://alamedacounty.granicus.com/MinutesViewer.php?view\\_id=2&clip\\_id=5100&doc\\_id=7e90b8e1-3e8f-11e8-8cc7-00505691de41](http://alamedacounty.granicus.com/MinutesViewer.php?view_id=2&clip_id=5100&doc_id=7e90b8e1-3e8f-11e8-8cc7-00505691de41), 15.

nondiscrimination, and respect for human and civil rights (pages 28-38), and whether Berkeley should continue to participate in 2018 (pages 28-41).

All meeting agenda packets and minutes can be found at:  
[https://www.cityofberkeley.info/Urban\\_Shield\\_Subcommittee.aspx](https://www.cityofberkeley.info/Urban_Shield_Subcommittee.aspx).

### AD-HOC SUBCOMMITTEE RECCOMENDATIONS ON URBAN SHIELD

June 4<sup>th</sup>, 2018

**Action:** M/S/C (Arreguín/Harrison) Adopt the Disaster and Fire Safety Commission proposal "Recommendation for Fire and Health Departments to Participate in Urban Shield Exercises and UASI Grant Funded Trainings" striking the word "Police" from the recommendation.

**Vote:** Ayes – Davila, Harrison, Arreguín; Noes – Wengraf; Abstain – None;

At the May 1<sup>st</sup>, 2018 Council meeting the City Council referred the Disaster and Fire Safety Commission's item (Attachment 2) to this Ad-Hoc Subcommittee, which was taken up at the June 4<sup>th</sup> Subcommittee meeting. The Ad-Hoc Subcommittee majority supported this item but removed the word "Police" in order to have a separate discussion and recommendation on BPD's participation in the Urban Shield vendor show and tactical scenarios in 2018.

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**Action:** M/S/C (Harrison/Arreguín) to suspend Berkeley's participation in the vendor show and BPD's participation in the tactical scenarios in 2018 pending timely reevaluation of the tactical-related offerings from the county in 2019. The suspension should not extend to the tabletop exercises (Yellow Command), the CERT exercises (Green Command), the Community Preparedness Fair (Gray Command) or to public safety seminars at Urban Shield.

**Vote:** Ayes – Davila, Harrison, Arreguín; Noes – Wengraf; Abstain – None.

According to the Alameda Board of Supervisors, the Urban Shield event, "as it is currently constituted," presumably including the exercise scenarios and vendor show, will be substantially altered in 2019. There is no clear indication as to how the event will be reconstituted.

The Ad-Hoc Subcommittee majority finds that benefits of Berkeley's participation in the event's tactical scenarios for an additional year are relatively small. BPD has participated in the event for ten years, and according to BPD, the beneficial aspects have been firmly integrated into BPD's institutional memory and practices. Additionally, Berkeley Police Department's Special Response Team

receives year-round training, and has offered specific trainings with community members to prepare for critical incidents like mass shootings.

On the other hand, the Ad-Hoc Subcommittee majority finds that an additional year of Urban Shield tactical exercises, given their current design, will likely have a significant negative impact on community-first responder relations, over-exercise counterterrorism competencies, and perpetuate concerns about the role of vendor marketing in public safety and the lack of local input and oversight.

The Ad-Hoc Subcommittee majority recommends suspending BPD participation in the vendor show and tactical scenarios as currently constituted in 2018, pending reevaluation of tactical-related offerings from the county in 2019. In addition, the Ad-Hoc Subcommittee recommends that on balance the public safety interest is served by the participation, at the discretion of BPD and BFD leadership, in the 2018 Yellow Command tabletop exercises, the CERT exercises (Green Command), the Orange Command, the Community Preparedness Fair (Gray Command) or public safety seminars.

June 18<sup>th</sup>, 2018

**Action:** M/S/C (Arreguín/Harrison) That the Berkeley City Council recommend to our members of Congress to expand Homeland Security Grants to fund disaster preparedness activities.

**Vote:** Ayes – Harrison, Arreguín, Davila, Wengraf; Noes – None; Abstain – None;

Current restrictions on the use of Homeland Security Grants do not easily allow for federal funding to be directed towards disaster preparedness. One of the key findings of the Ad-Hoc Subcommittee is that the requirement that UASI grants have a “nexus to terrorism” leads to Urban Shield’s over-emphasis on terrorism. Removing this requirement and expanding the possible uses of federal funding would allow for disaster preparedness training that supports critical public safety needs and aligns with Berkeley’s values.

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**Action:** M/S/C (Arreguín/Wengraf) That the Berkeley City Council send a letter transmitting our recommendations (Attachment 4) to the Alameda County Board of Supervisors and Alameda County Sheriff, regarding the reconstitution of Urban Shield and providing tactical and emergency preparedness training for local law enforcement using the established principles and guidelines for Urban Shield and request an accountability mechanism for enforcing them.

**Vote:** Ayes – Harrison, Arreguín, Wengraf; Noes– None; Abstain – Davila;

At the June 20<sup>th</sup> special Council meeting that directed the formation of this Ad-Hoc Subcommittee, Councilmember Worthington introduced a draft letter

directed to the Bay Area Urban Securities Initiative. The Ad-Hoc Subcommittee was directed to review this letter as a first order of business, however the circumstances around the Urban Shield program changed by the time the Ad-Hoc Subcommittee took this issue up. Therefore, the Ad-Hoc Subcommittee chose not to take action on the original letter. Instead, the Subcommittee used the suggestions from Councilmember Worthington as a starting point in developing an amended set of guidelines, which are included in a letter addressed to the Alameda County Board of Supervisors, and cc'ing BAUASI and the Alameda County Sheriff's Office. The principles in the attached letter are a combination of Councilmember Worthington's suggestions, the principles and guidelines adopted by the Alameda County Board of Supervisors, and additional suggestions made by members of the Ad-Hoc Subcommittee on the reconstitution of Urban Shield.

The amended guidelines advocate for an added emphasis on de-escalation, that scenarios be based on more local events, an expansion of the dual-use of UASI funds, expanded involvement of local officials in scenario design and planning, and strict adherence Berkeley's sanctuary city policy, among other things.

#### FINANCIAL IMPLICATIONS

Preparation of a Memorandum of Understanding with NCRIC will require staff time to draft the MOU and negotiate with NCRIC officials over final language. It would not alter BPD's current access to NCRIC advisories, use of the NCRIC ALPR database, or submission of SARs consistent with General Order N-17.

Training in preparation for the Urban Shield exercise includes at least two eight-hour days before the event. During the month of Urban Shield, training in anticipation for the event and the time spent at the event fulfills the 16-hour BPD training requirement for the team. BPD reported that overtime hours for monthly training in August 2017, the month before Urban Shield, was 132.5 hours and for October 2017, the month after Urban Shield, was 109.5 hours. These hours fluctuate from month to month due to vacations, other trainings, schedule conflicts and other factors.

Overtime cost to attend Urban Shield is not fixed because scheduling is dependent on staffing numbers and the participants' shifts. Participants typically flex their normal schedule to cover at least half of the event each year. For BPD's participation in the 2017 Urban Shield event, members accrued a total of 110 hours of overtime.

Suspending participation in 2018 would remove the need to concentrate the September training in anticipation for the event and therefore require less overtime for BPD.

#### ENVIRONMENTAL SUSTAINABILITY

None.

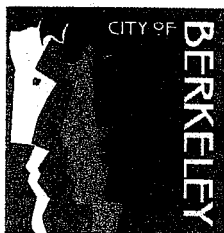
#### CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100  
Chair, Ad-Hoc Subcommittee on NCRIC and Urban Shield

Attachments:

1. Annotated Agenda Special Meeting of the Berkeley City Council, June 20, 2017
2. Amended Disaster and Fire Safety Commission Recommendation
3. March 14, 2018 Minutes from Ad-Hoc Subcommittee on Urban Shield and NCRIC
4. Letter to Bay Area Urban Area Securities Initiative, Alameda County Board of Supervisors, and the Alameda County Sheriff's Office.
5. Draft Outline of Memorandum of Understanding between NCRIC and the City of Berkeley
6. Majority Supplemental Report on Urban Shield
7. Majority Supplemental Report on Urban Shield Appendices





Susan Wengraf  
Councilmember District 6

ACTION CALENDAR  
July 23, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Susan Wengraf  
Subject: Urban Shield

RECOMMENDATION

Adopt a resolution to follow the leadership of the Alameda County Supervisors and support participation of City of Berkeley Police and Fire Departments and Staff in all elements of Urban Shield and continue to work with the Public Protection Sub-Committee of the Alameda County Board of Supervisors to re-constitute the focus and content of Urban Shield in 2019.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

On June 20, 2017, in response to criticism, concern and controversy surrounding Urban Shield and NCRIC, The Berkeley City Council voted to form a sub-committee to review and study the City's participation in Urban Shield and NCRIC, and requested that they report back to Council.

In a similar parallel process, The Alameda County Board of Supervisors voted to form an Urban Shield Task Force. Their 18 member panel met for many months evaluating Urban Shield, and on March 27, 2018 voted to approve funding and allow participation in Urban Shield in 2018, and to end Urban Shield as "currently constituted." The Sheriff agreed to the following guidelines and principles:

- *Expand community involvement and awareness*
- *Urban Shield will be free from racist stereotyping*
- *Work to expand training the medical profession for critical incidents*
- *Urban Shield will not include surveillance training*
- *Continue to examine new technology and equipment*
- *Urban Shield will not include crowd control training*
- *Continue to evaluate existing equipment*
- *Urban Shield will exclude any and all vendors who display derogatory racist messages in any form*
- *Urban Shield will exclude the sale or transfer of any assault weapons and firearms*

- *Will exclude vendors displaying non-law enforcement related tactical uniforms and equipment*
- *Urban Shield will strive to maintain the finest first responder training possible*
- *That no invitations to participate in Urban Shield be extended to teams from countries with documented human rights violations*

After meeting for a year, the City of Berkeley sub-committee adopted a comprehensive list of guidelines and principles on Urban Shield, building and elaborating on those already agreed to by Sheriff Ahearn.

**Action:** M/S/C (Arreguín/Wengraf) Recommend the Berkeley City Council send the following recommendations to the Alameda County Board of Supervisors and Alameda County Sheriff, regarding the reconstitution of Urban Shield and providing tactical and emergency preparedness training for local law enforcement using the established principles and guidelines for Urban Shield and request an accountability mechanism for enforcing them:

- *Urban Shield will exclude Immigrations and Customs Enforcement*
- *Urban Shield will include a sensitivity officer to ensure the programs alignment with community values and these guidelines*
- *Expand the involvement of the community, local departments, and the Board of Supervisors in the planning of the program*
- *Urban Shield will expand scenarios that integrate police, fire, EMT and public health officials*
- *Expand the 'dual-use' exception so that scenarios prepare first responders for impacts that stem from terrorism and other disasters.*
- *Urban Shield will have a greater focus on local threats*
- *Urban Shield will prioritize training exercises for civic natural disasters and health concerns that have a large impact on Berkeley and the Bay Area including environmental concerns caused by climate change, wildfires, gas pipeline explosions, landslides, and sea level rise*
- *Urban Shield will increase the amount of time spent on de-escalation tactics*
- *That no invitations to participate in the planning or competition of Urban Shield be extended to teams from countries with documented human rights violations*
- *That tactical training is based on real-life incidents without attributing offenders' motivations or beliefs to the scenario.*
- *Urban Shield vendors should primarily focus on local law enforcement rather than the military and prison industries.*
- *Urban Shield will not include surveillance technology or training.*
- *Require full transparency regarding what events Berkeley staff are to take part in, and require community observers to be present at all Urban Shield events and trainings.*
- *Expand capability of local jurisdictions to prepare for and respond to events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices.*

Vote: Yes – Arreguín, Harrison, Wengraf. No – none. Abstain - Davila



***UPDATE! Changes to Urban Shield in 2018***

On July 12, 2018, the Public Protection Committee of the Alameda County Board of Supervisors heard a presentation from Pace Stokes, Captain, ACSO on Urban Shield Planning Activities for 2018.

Of particular significance is the progress that has been made to create an Urban Shield that is more reflective of the needs and values of the Bay Area community, including the guidelines and principles agreed to by Sheriff Ahearn.

Captain Stokes reported that at Urban Shield 2018 there would be:

- *Implicit bias training for evaluators*
- *A compliance team will be formed to evaluate implementation of Urban Shield Task Force recommendations and to evaluate Board approved Principles and Guidelines*
- *The Emergency Management component (Yellow Command) will be expanded in 2018 to include more scenarios*
- *The Community Preparedness Fair will be expanded and held at a venue close to public transit for easier community access.*
- *No international evaluators will participate in 2018.*
- *Hong Kong and The Netherlands are the only international countries participating.*
- *Approximately 50% of the scenarios are non-terrorist related.*
- *ICE will not be participating or present in 2018*
- *ExecuShield was not invited and will not be participating in 2018*
- *No scenarios will involve or re-enact protests in 2018*
- *No vendors will host events in 2018*

Within a very short period of time, the direction and progress towards making Urban Shield responsive to Bay Area concerns and values is significant. The Alameda County Board of Supervisors deserves credit for helping to move Sheriff Ahearn in a positive direction towards re-shaping the content of the event, and addressing the criticism of the opponents of Urban Shield. The Public Protection Sub-Committee has been tasked with, and will be working towards, re-constituting Urban Shield in 2019.

Taking into consideration the reforms that will be instituted and the changes being made to reshape 2018 Urban Shield, I recommend that the City of Berkeley follow the leadership of the Alameda County Supervisors and support participation of the City of Berkeley Fire, Police, and staff in all elements of Urban Shield, and continue to work with the Public Protection Sub-Committee of the Alameda County Board of Supervisors to re-constitute the focus and content of Urban Shield in 2019.

**ENVIRONMENTAL SUSTAINABILITY**

No certain effect.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

- 1: Resolution
- 2: Berkeley SRT Members Testimony on Urban Shield Training
- 3: List of neighboring agencies that are participating in Urban Shield 2018
- 4: Letter from Marc Mestrovich, Berkeley Fire Department (retired)

RESOLUTION NO. ##,###-N.S.

In Support of Urban Shield Participation in 2018

WHEREAS, On June 20, 2017, in response to criticism, concern and controversy surrounding Urban Shield and NCRIC, The Berkeley City Council voted to form a sub-committee to review and study the City's participation in Urban Shield and NCRIC; and

WHEREAS, In a similar parallel process, The Alameda County Board of Supervisors voted to form an Urban Shield Task Force; and

WHEREAS, In a very short period of time, the direction and progress towards making Urban Shield responsive to Bay Area concerns and values is significant; and

WHEREAS, The Sheriff's office has declared changes made to reshape 2018 Urban Shield, including approximately 50% of the scenarios will be non-terrorist related; and

WHEREAS, there is no evidence that Berkeley Police or the Berkeley community have been negatively impacted by participating in Urban Shield; and

WHEREAS, Berkeley PD SRT has not been involved in an officer shooting since 2002; and

WHEREAS, In the last 11 years since BPD has participated in Urban Shield, they have reduced their use of force and increased their de-escalation training; and

WHEREAS, Urban Shield provides opportunity for BPD to test and evaluate the newest technology—essential for BPD to be a progressive and innovative law enforcement agency; and

WHEREAS, Urban Shield scenarios provide stress inoculation that teach SRT members how to respond to big events, as well as the smaller day to day events; and

WHEREAS, Members of the SRT agree that Urban Shield is the best police tactical training and that there is no comparable training exercise available.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley follow the lead of the Alameda County Board of Supervisors and support participation of the City of Berkeley Police and Fire Departments and Staff in all elements of Urban Shield in 2018.

BE IT FURTHER RESOLVED that the Berkeley City Council will work with the County Board of Supervisors to further reform and reconstitute Urban Shield for 2019.



# Action Calendar

**31. Placing a Measure on the November 6, 2018 Ballot Amending the Rent Ordinance—Berkeley Municipal Code Chapter 13.76**

**From:** Rent Stabilization Board

**Recommendation:**

1. Select a timeframe between 12 and 15 years as the rolling period of exemption for newly constructed rental units. (Section 13.76.130.I)
2. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 6, 2018 General Municipal Election.
3. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

Contact: Jay Kelekian, Rent Stabilization Board, 981-7368

**Action:** M/S/C (Arreguin/Maio) to hold over Items 31, 35, and 39 to July 24, 2018 (including any supplemental materials).

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Wengraf, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn, Worthington.

Councilmember Hahn absent 11:21 p.m. – 11:24 p.m.

Councilmember Worthington absent 11:22 p.m. – 11:24 p.m.

**32a. Referral Response: Proposed Charter Amendment to Restructure the Police Oversight Body** (Continued from June 12, 2018. Item contains supplemental material.)

**From:** Police Review Commission

**Recommendation:** Consider a Charter amendment proposed by the Police Review Commission (PRC) to restructure the police oversight body to broaden its authority and strengthen its powers, for placement on the November 2018 ballot, and direct the City Manager to initiate the meet-and-confer process with the Berkeley Police Association.

**Financial Implications:** See report

Contact: Katherine Lee, Commission Secretary, 981-4950

(over)

## Action Calendar

- 32b. Direct the City Manager to analyze the Mayor's proposed Police Commission Charter Amendment, and initiate meet-and-confer where required (Continued from June 12, 2018.)**

**From: Mayor Arreguin**

**Recommendation:** That the City Council direct the City Manager to initiate meet-and-confer, and review the combined PRC and Mayor's proposed Police Commission Charter Amendment to ensure legal compliance and to enable the Council to place a measure on the November 2018 ballot. The City Manager is directed to expeditiously schedule meetings with affected bargaining units with the goal of completing the meet-and-confer process in time for the August 10, 2018 deadline for placing measures on the November 2018 ballot.

**Financial Implications:** Staff time

Contact: Jesse Arreguin, Mayor, 981-7100

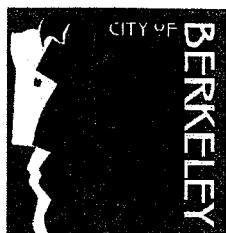
**Action:** 2 speakers. M/S/Failed (Wengraf/Maio) to request that the City Manager continue with the meet and confer process to resolve all issues that do not require a Charter amendment.

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

**Action:** 2 speakers. M/S/Carried (Harrison/Arreguin) to direct the City Manager to move expeditiously in the meet and confer process with affected bargaining units, using the text of the proposed Charter amendment provided by Mayor Arreguin and Councilmember Harrison in Supplemental Reports Packet #2, and request that the City Manager and City Attorney review the proposal for compliance with all applicable laws.

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

- 33. ~~\*\*\*Item Removed by City Manager\*\*\* Amending Berkeley Municipal Code Chapter 6.20 to Update Parking Restrictions at the Berkeley Waterfront~~**  
**From: City Manager**  
Contact: ~~Scott Ferris, Parks, Recreation and Waterfront, 981-6700~~



Office of the Mayor

ACTION CALENDAR

July 24, 2018

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin and Councilmember Cheryl Davila

Subject: Placing a Charter Amendment relating to the Police Review Commission on the November 6, 2018 Ballot

RECOMMENDATION

1. Adopt a Resolution submitting a measure on the November 6, 2018 general municipal ballot to amend the City Charter to add Article XVIII, relating to the Police Review Commission, to establish an Independent Police Auditor.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

BACKGROUND

Police reform efforts are being undertaken throughout the nation. In Berkeley, our Police Department has always been on the cutting edge of progressive policing policies since 1909 when Chief August Vollmer, as Berkeley's first Chief of Police, demanded a high level of honesty, efficiency, interest, and hard work from his officers. This expectation has continued to this day, serving as the foundation for BPD's reputation in the law enforcement field. Chief Vollmer's progressive thinking and use of new innovations in law enforcement provided a legacy as a department that can be called "First in Policing" in so many areas.

Berkeley prides itself in having one of the most forward thinking and recognized Police Departments in the country. Because of good leadership, policies, training, and staff, we have avoided the type of misconduct that has eroded trust between other law enforcement agencies and the communities they serve. At the same time, many Police Departments throughout the country have improved their oversight procedures, and President Barack Obama's 21st Century Policing Task Force advocated for strengthening civilian review of police. The Berkeley City Council is committed to providing our Police Department with the tools and fair compensation needed for their challenging work, as well as supporting the Chief and City Manager in all efforts to recruit new police officers. In keeping with the Berkeley Police Department's progressive history, and to further enhance oversight to improve public trust, improvements are needed to the current civilian review process.

In 1976 the *Brown v. City of Berkeley* decision invalidated critical elements of the voter-approved Police Review Commission initiative because those sections required changes to the City Charter. The proposed PRC Charter Amendment includes those elements. The revision to the PRC proposal, included herein, strengthens civilian review

of policing, while better fitting our City Manager form of government. It would create an Independent Police Auditor who will be appointed by the City Council and conduct thorough and impartial investigations into complaints filed regarding officers and employees of the Police Department. The findings and recommended action will be brought to the Police Commission and Chief of Police. This modification to the PRC legislation, entrusts investigations to a neutral third party. In the end the recommendation for discipline would be made by the Chief and/or City Manager, consistent with our system of government.

At the July 10, 2018 meeting of the Berkeley City Council, discussion was held to analyze the impacts on the City Government and to ensure compliance with all relevant legal statuses. As this is the last meeting of the City Council before the August 10<sup>th</sup> deadline to submit a measure to Alameda County for the November 2018 ballot, Council must take action tonight.

FINANCIAL IMPLICATIONS

Staff time plus salary/benefits for the new position of the Independent Police Auditor.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts.

CONTACT PERSON

Mayor Jesse Arreguin      510-981-7100

Attachments:

1: Resolution

Exhibit A: Text of Charter Amendment



RESOLUTION NO. ##,###-N.S.

SUBMITTING TO THE BERKELEY ELECTORATE THE ADDITION OF ARTICLE XVIII TO THE BERKELEY CITY CHARTER, RELATING TO THE POLICE REVIEW COMMISSION, ON THE NOVEMBER 6, 2018 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 6, 2018 General Municipal Election, a measure to add Article XVIII of the Berkeley Charter related to the Police Review Commission; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 6, 2018; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

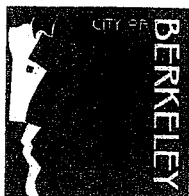
BE IT FURTHER RESOLVED that said proposed Charter Amendment measure shall appear and be printed upon the ballots to be used at said election as follows:

| <b>CITY OF BERKELEY CHARTER AMENDMENT</b>                                                                                                                                                                                                                                   |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Shall the measure amending the Berkeley City Charter to add Section XVIII, to modernize the Police Review Commission and establish an Independent Police Auditor to investigate all complaints filed against sworn employees of the Berkeley Police Department, be adopted? | YES |
|                                                                                                                                                                                                                                                                             | NO  |

BE IT FURTHER RESOLVED that the text of the Charter Amendment be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Charter Amendment



Police Review Commission (PRC)

July 18, 2018

Andrew Greenwood, Chief of Police  
City of Berkeley  
2100 Martin Luther King, Jr. Way  
Berkeley, CA 94704

Re: Commendations of BPD employees August through December 2017

Dear Chief Greenwood:

The members of the Police Review Commission reviewed the letters and emails of thanks and praise for your staff that your department received from August through December 2017, and forwarded to the PRC. At its July 11, 2018 meeting, the Commissioners selected from that group many Police Department employees that they felt merited special recognition for their work.

The Commissioners also noted that many of the people who wrote to the BPD praised department members for treating them or others with kindness and compassion during a time of anxiety or need. It is clear that the department embodies a culture of empathy and caring towards our community, and the PRC is grateful for this.

The PRC commends the following officers and other employees of your department:

| <u>Name</u> |             | <u>Badge #</u> |         |
|-------------|-------------|----------------|---------|
| Stephen     | Burcham     | 138            |         |
| Anthony     | Cerletti    | 144            |         |
| Spencer     | Fomby       | S-7            | (twice) |
| Ed          | Galvan      | 78             |         |
| Frank       | Landrum     | S-1            |         |
| Peter       | Lee         | 24             |         |
| Jessee      | Macapagal   | 25             |         |
| Matthew     | McGee       | S-8            |         |
| Anna Nia    | Merte       |                |         |
| Semir       | Muratovic   | 159            |         |
| Zachary     | Nash        | 6              |         |
| Kathy       | Navarrete   | PEO            |         |
| Andrew      | Rateaver    | L-4            |         |
| Robert      | Rittenhouse | S-9            |         |

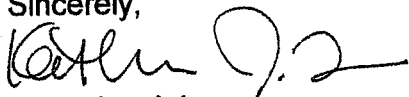
1947 Center Street, 1st Floor, Berkeley, CA 94704 • Tel: 510-981-4950 • TDD: 510-981-6903 • Fax: 510-981-4955  
Email: [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info) Website: [www.cityofberkeley.info/prc/](http://www.cityofberkeley.info/prc/)

Chief Andrew Greenwood  
Commendations of BPD employees August – December 2017  
July 18, 2018  
Page 2

|             |          |      |         |
|-------------|----------|------|---------|
| Rico        | Rolleri  | C-3  |         |
| Sean        | Ross     | S-25 |         |
| Eric        | Ruff     | 45   |         |
| Christopher | Schulz   | 65   | (twice) |
| Jennifer    | Tate     | S-14 |         |
| Brian       | Waggoner | 122  | (twice) |

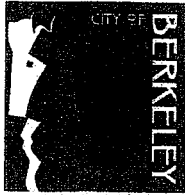
Additionally, the Commission commends Brandon Smith (#3), Thomas Syto (#59), Emily Murphy (S-28), Randolph Files (L-8), and all other BPD officers who assisted residents of Sonoma County, including those on Gehricke Road, during the October 2017 fires.

Sincerely,



Katherine J. Lee  
PRC Officer

cc: PRC Commissioners



Police Review Commission (PRC)

July 18, 2018

Andrew Greenwood, Chief of Police  
City of Berkeley  
2100 Martin Luther King, Jr. Way  
Berkeley, CA 94704

Re: Commendation of Officer Megan Jones

Dear Chief Greenwood:

The Police Review Commission wishes to commend Ofc. Megan Jones for her outstanding accomplishment of making 102 driving under the influence arrests in 2017. As you know, the PRC typically communicates to you its recognition of a group of officers and other department employees whom they believe are deserving of additional commendation. The Commission was so impressed by Ofc. Jones's achievement in making DUI arrests that it voted unanimously at its July 11, 2018 meeting to send this special letter of appreciation.

At the July 11 meeting, Lt. Angela Hawk informed us that Ofc. Jones was not a motorcycle officer, but was a patrol officer in 2017. Additionally, Lt. Hawk said that recipients of the Century Award, which Ofc. Jones received from the Northern California Central Valley Mothers Against Drunk Driving last month, are usually California Highway Patrol Officers. That Ofc. Jones's primary role was not traffic enforcement makes her DUI arrest rate in 2017 that much more impressive. And, setting a BPD record for number of DUI arrests is also noteworthy.

The PRC thanks and commends Ofc. Jones for her exceptional contribution to making Berkeley a safer place for everyone. The City is fortunate to have such a skilled and dedicated officer on its police force.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine J. Lee", is written over the typed name.

Katherine J. Lee  
PRC Officer

cc: Ofc. Megan Jones  
PRC Commissioners



**Lee, Katherine**

---

**From:** Lee, Katherine  
**Sent:** Monday, July 16, 2018 11:20 AM  
**To:** Lee, Katherine  
**Subject:** FW: A Critique of Racial Profiling in the Berkeley Police  
**Attachments:** Critique of the CPE report.doc

**From:** Steve Martinot [<mailto:martinot4@gmail.com>]  
**Sent:** Saturday, July 14, 2018 11:11 AM  
**To:** Steve Martinot <[martinot4@gmail.com](mailto:martinot4@gmail.com)>  
**Subject:** A Critique of Racial Profiling in the Berkeley Police

Hi,

I am sending out my critique and evaluation of a study and report on racial profiling in the Berkeley Police Dept. as an attached file.

The study was done by the Center for Policing Equity (CPE), and can be found here [<http://tinyurl.com/ycpgfe7a>] (just paste the URL in the address window of your browser).

My critique and evaluation of the CPE report is too long to put in an email (it is 12 pages), so I am attaching it. It is in three parts.

**Part 1** gives the background and historical context for the CPE report, and discusses a few of its characteristics and problems. One of its main problems is its failure to put the data it analyses in its historical context. That historical context involved the growing resistance throughout the nation to police violence and police brutality, resulting in a number of massive uprisings in different cities. Indeed, it was the demonstrations in Berkeley and Oakland in Dec. 2014 that led to the commissioning of this study, owing to the many charges of police brutality made in their wake. I point out a couple of places where the study's data itself cries out for some kind of greater contextualization.

**Part 2** regards the data, and the racial disparities in the way the BPD approaches people, which is clearly shown in the way the data presented. The BPD divides the population into 5 racial categories, and provides data on traffic stops, pedestrian stops, and "use of force." The CPE presents the data by category, by year, and as totals for the five year span of the study, which covers from 2012 to 2016. The essential point of this section is the problem raised by the inordinate tendency to stop African Americans, to an extent far beyond their presence in this city. It raises the question, given that Berkeley is a very diverse city in which people from different racial categories are easily misidentified (some black people who are very light, and some Latinos or Asians who are quite dark, for instance), how are the police able to recognize African Americans to the extent they do to produce the disparities in traffic stops that the data indicates? In conjunction with this question, there are indications that the police underwent certain policy shifts around issues that indicate a kind of "federalization" of local urban policing.

**Part 3** addresses some of the logical extensions of these issues. If we postulate a "recognition factor," it nevertheless has to be facilitated by a police "search function" to come up with the racial disparities in police operations that the study indicates. But "search" is an intention. It implies a "harassment attitude." And that concept implies a relation between police operations

and a broader structure of racialization in this country. Some sense of the basic inner workings of that structure of racialization, as indicated by police operations, is then discussed.

If the attachment does not come through, you can find the text of my critique of the CPE report at <https://tinyurl.com/y7pobe7r>

Just paste that in your browser address window.

Steve Martinot



# A Critique and Evaluation of the CPE Police Report

By Steve Martinot

(With special thanks to Jim McFadden for some important ideas)

This critique is divided into three sections. **Part 1** deals with some problems with the report in general. It mostly concerns information omitted, along with an ignoring of the historical context. **Part 2** deals with disparities in traffic stops, not only between black drivers and white, but between black drivers and others in the category of "people of color," which raises the issue of a police "recognition factor," and certain implicit "search functions" overlaid on racial profiling. **Part 3** relates these factors to the question of harassment as a political project. And that has ramifications for the concept of "race" itself. The suggestion is made that race is not inherent, but is more properly understood as a verb, something one group of people does to others.

## Part 1 – Some problems in the report

In 2015, the City of Berkeley commissioned the Center for Policing Equity (CPE) to do a study and report on racial profiling in the Berkeley Police Department (BPD). It was done in the wake of years of complaints about police comportment, which came to a head after special hearings on how the BPD had handled certain large demonstrations (about police brutality) that occurred in December, 2014. Those demonstrations were in solidarity with others across the country protesting the failure of Missouri and New York to charge the officers who had killed Michael Brown and Eric Garner. The Berkeley police assaulted these political demonstrations using tear gas, pepper spray, beanbag rounds, beatings with nightsticks, and the "kettling" of people for the purpose of mass arrest. A number of lawsuits resulted from BPD use of force. And hundreds of people came to City Council to testify about police behavior, putting the issues of police violence, militarization, and racial profiling on the table.

While these demonstrations were a recognition that police comportment had become a national issue, the subsequent hearings also forced the city to recognize that Berkeley had its own share of problems. Along with incidents such as the beating of black students in the middle of the night for allegedly jaywalking, the killing of Kayla Moore, and cases of racial harassment, there was testimony about how the police handled homeless people, or those in emotional crises, including descriptions of excessive violence and gratuitous hyper-restraints.

The CPE was contracted to do a study of police practices as an allegedly neutral third party, and was given partial access to police records. In Nov. 2017, it issued its report, which focused on racial disparities in police conduct. CPE researchers complimented the police for their openness and willingness to cooperate with the study. Though the report was to be fully independent of the police, as a neutral investigation, the police received the report first, and withheld release until May, 2018, in a revised form. For the police to have seized the report for "review" when it was first issued essentially nullified the supposed "neutrality" of the report.

[The final version of the report can be found here: <http://tinyurl.com/ycpgfe7a>]

In evaluating this report, a number of problems present themselves. For one, the report only discusses traffic stops and pedestrian stops as representative of police comportment toward

individual people. It does not go into modes of crime investigation or crowd-control situations. With respect to "use of force" procedures, it is content to simply tabulate various modes of. Use of force, with no discussion of actual incidents – such as, for instance, ten police cars arriving for the questioning or arrest of a single individual on the street.

Second, though the BPD complimented itself on its openness and willingness to aid the CPE in its study of police practices, certain important data categories were withheld. For instance, the report addresses the fact that traffic stops sometimes led to arrests, yet the BPD did not release any data on the causes nor nature of such arrests, or under what circumstances they occurred. For a traffic stop to result in an arrest should be an unusual occurrence. Traffic violations are simply infractions, for which tickets are issued. Why would any of them (even a small number) escalate to treating a driver as a criminal? At its public presentation of the report, the CPE mentioned that the officer's background check of the driver might discover outstanding warrants, or parole violations. But nothing was said about the more pressing problem at the national level, as a context for the local, of police violence toward drivers of color during traffic stops.

There have been hundreds of videos of black or brown drivers being dragged out of their cars and thrown to the ground, to be handcuffed and arrested. Such events have even made network evening news. One famous case was that of Sandra Bland who, in July, 2015, was dragged from her car and thrown to the ground. She died later that day in custody. Breiaon King, a black school teacher in Texas, was also pulled from her car arrested in June, 2015, after an exchange of words with the cop, and charged with "resisting arrest." Rose Campbell, a black 65 year old grandmother, was pulled from her car in Georgia in early May, 2018, after only words were exchanged with the officer. Rebecca Musarra was a black driver stopped by a cop for speeding, who refused to answer any of his questions. He pulled open her door and dragged her from her car and handcuffing her for remaining silent. As he arrested her, he read her her Miranda rights, among which are "you have the right to remain silent." (SFC, 8/25/17, pA5)

Were these the kinds of incidents in which a traffic stop in Berkeley resulted in arrest? Because they form an unignorable context for the CPE's investigative efforts, the specific violations for which drivers were arrested would be critical information. Why would the BPD withhold that information? Indeed, it should logically be recorded in the same reports as was the race of the driver, which data the CPE received.

Third, there is an important anomaly in the data on traffic and pedestrian stops at the beginning of 2015. The number and frequency of such stops dropped precipitously, and then resumes at its former rate, increasing linearly afterwards to a high point in 2016. This dip in police activity is passed over by the report's commentaries. Yet it has historical significance. This was the period following nationwide uprisings over police shootings and police racial profiling. What might have motivated the police to reduce normal practices during that period? Could it have been a decision to cut back on behavior and procedures that were targets of the national protests, perhaps out of shame for having engaged in them in the first place? Or was it in response to national (federal) advisories to pay greater attention to protest groups and activities, thus shifting attention from ordinary policing activity like traffic stops? The extent to which policing policy is linked to national considerations would be an important dimension of the issue.

Fourth, though the police divide the population of Berkeley into five racial groupings, namely, the category of white people and four categories of people of color, statistics on those of the latter four are discussed alone or in relation to whites, but not in relation to each other. Yet

there is significant variation in the way the police deal with each of the categories of people of color (POC). We shall address this in part 2 of this evaluation. It remains a critical issue with respect to the overall processes of racialization that produce disparities of conduct. The statistics themselves indicate that this omission renders some important questions unanswerable, as we will see.

To return to the national context, the report covers the years from 2012 to 2016, which were tumultuous all across the country with respect to conflicts between the people and the police. The uprisings of 2014 were only the most massive among movements protesting police racial profiling. The Ferguson, MO, events took place in August and September of 2014, and Baltimore rose up in November of the same year in response to the death of Freddie Gray in police custody. The "Black Lives Matter" movement emerged during this time, and even gained international standing as a movement.

These events had tremendous impact on people of color, and in particular on the social justice movements. It was a period with a steadily rising death rate at the hands of the police (in 2015 alone, over 1100 unarmed people of color were killed by police – an average of more than three a day). While no drivers were reported shot in Berkeley during this period, that kind of occurrence cannot be left out. It was part of the national context. Certain cases became well-known. Jessica Williams was shot to death in her car in SF (July 2016). Demouria Hogg was shot to death in his car in June 2015, having passed out on the off-ramp to Lakeshore Drive in Oakland, perhaps needing medical care but certainly not a death warrant. The list going back to the killings of Sean Bell or Tyisha Miller, shot to death in their cars, is long.

Indeed, a simple Google search of those shot during traffic stops produces endless entries. In May 2018, a man was shot by police at a traffic stop in Lawrence KS. A man was shot by police when fleeing a traffic stop in Memphis on May 8, 2018. Another was shot and killed in Winston-Salem during a traffic stop on April 1, 2018. A woman was shot by Aurora, CO, police during a traffic stop on May 6, 2018. A man was shot during a traffic stop in Greensboro, NC, on May 27, 2018. A man was shot by police during a traffic stop in Kensington, PA, on May 29, 2018. Etc. Etc. These are all from the Spring of 2018. There are videos of many of these events.

Rodney King was beaten because he fled a traffic stop. Traffic stops are not safe for people in the US, and especially not for people of color.

What occurs nationally cannot be discounted as an influence on what transpires in Berkeley. It is for that reason that the arrest records at traffic stops become critical data in understanding racial disparities in how the Berkeley police operate. To leave this out is to force one into the Manichean assumption that either the police always act ethically in their relations to the public, or that there is significant criminality that they are covering up. How is police racial bias to be evaluated if the ethics of police actions has to assumed, one way or the other, rather than researched? And how can an evaluation of police practices be considered objective if what is happening on the national level, which would have an impact on the thinking of drivers in Berkeley, and whether they feel safe or not, is omitted.

In other words, the main failing of the report, though not part of its original contractual project, is the absence of any attempt to historicize the issues addressed in the report, or to put them in their broader social context. It is in terms of police killings and harassment of black people (driving while black, for instance) that uprisings have occurred. And the broader social context would also include how racialization occurs in the US, and how police racial profiling would form a facet of it. Different groups get racialized in different ways. We have witnessed,

over the last few decades, how Latino immigrants, Arabs, Islamic fundamentalists, and even Serbians have been racialized – in most cases, to fulfill a specific political purpose, or to disguise an economic problem.

But let us look at the actual racial categories the BPD uses, and toward which it provides data on three police procedure – traffic stops, pedestrian stops, and use of force – for which its most extensive and detailed treatment is of traffic stops. The police divide people into five racial groups, and the report provides their population percentages as calculated from census data. They are whites (56%), blacks (8%), Latinos (11%), Asians (19%), and a category of "Other" that comes to 7%. "People of color" (POC) comprise 44% of the town. People of color who are not black (African American) comprise 36%. The data covers how many traffic stops are made of each racial category, what this represents per capita (stops per 1000 of the specific group's population), and how many result in citation, in arrest, in searches, etc. The data are then presented in graphs, with commentaries. Some graphs relate statistics by racial category per year (for 2012 to 2016). Others are graphs of totals per racial category for the five year period.

The report finds that there are certain clear racial disparities in the way the police relate to each of these different groups. We shall discuss this more in depth in Part 2 of this evaluation. It provides a number of recommendations concerning how the police could correct the inequities that the data reveal, and suggests that this would enable the police to live up to the "values" of the city in a better way. It makes suggestions concerning training and procedure, but says little of a concrete nature concerning policy.

Racial disparities in police practices have been well documented in City Council and Police Review Commission meetings. Yet studies like this are still relevant, and commissioned, because the issue of institutional racism doesn't seem to go away. It is raised again and again by social justice movements. Racial disparities in police practices have to be considered as institutional if they are apprehensible only in the aggregate. The report's task, then, could not have been to "discover" racial biases and disparities in practices, but to quantify them.

However, the report does not offer extensive interpretation of its data except to indicate there is a problem. This leaves undecided whether these disparities represent the persistence of historical discriminatory procedures and factors, or rather refer to a process aimed at reconstituting racist institutional policies and structures. The first possibility imposes the task of fully alleviating the effects of an iniquitous past. The second presents the possibility that we are facing some kind of Jim Crow resurgence. Though common wisdom might hope that we are constantly dispensing with what we inherit from the past as a steady democratization process, the fact that racial disparities in police operations was rising continually from 2012 to 2016 might suggest the latter. In other words, the form that institutional "racism" takes must be evaluated as an historical process, as well as how it is embedded in its cultural environment. As long as policy is protected by institutional insularity, the problem will remain out of reach.

The report warns against what it calls a "social dominance orientation" for the police, which is a weighted term that remains undefined. It appears to refer to the hierarchy of internal discipline. Yet one of the major sources of dispute between people and the police has been the issue of obedience between the police and civil society. In most states, legislation has been passed requiring absolute obedience to police commands, to the point where each officer can adopt the role of a military commanding officer, resistance to whom may result in immediate arrest.

Insofar as the data indicates strong racial biases, it infers both traditional dominance (the power to stop), racialized dominance (profiling), and institutional dominance (the militarization of public interaction) in ordinary police operations. The report recommends that officers pay attention to how their behavior appears, without addressing their militarization of the "scenes" in which it appears.

In that sense, the term "racism" becomes relevant as a term of appearance. Racialized traffic stops depend for the most part on the appearance of the driver for the officer. The term "racist" appears only once in the report, in one of the 13 recommendations, in which "scenario-based training" is suggested to "protect officers from the negative consequences of concerns that they will appear racist." It is a tricky inversion, since it addresses the appearance of an officer's comportment rather than the centrality of the driver's appearance with respect to racial disparities in traffic stops.

## **Part 2 - Racial categories and the police "recognition factor"**

### **A summary of some of the data**

Berkeley is a very diverse community, which means there are people of every appearance. One would think that racial disparities in traffic stops would depend on clear visual differentiations between people, because profiling drivers depends on categorizing appearance. Yet the racial categories used by the BPD are far from well-defined (if that is even possible).

Though five racial categories are deployed, there is one "racial" term that plays an interesting role in this categorization, and that is the term "Hispanic." It is one of the five categories. But it is also used to define the others, namely, non-Hispanic blacks and non-Hispanic Asians. It even uses this terminology with respect to whites (non-Hispanic whites), though the data for white people is used as a main base of comparison in the report's commentaries. The report actually admits: "Subjects in the Hispanic category could be of any race." Nevertheless, the report (and the BPD) not only use the term "Hispanic" to define the other racial categories, they use it as one of their "racial" categories.

In this evaluation, we will use the term Latino as more appropriate. "Hispanic" refers to language, and a driver's language does not appear in a driver's face (which is what an officer sees in making racially disparate traffic stops). "Hispanic" is also a generalization that eclipses the richness and differences in Latin American cultures (which include hundreds of indigenous languages). We should also not forget those who consider themselves "Chicano," namely the decedent residents of formerly Mexican territories absorbed into an expanding US during the 1840s.

The Asian-American population of Berkeley (listed as non-Hispanic Asian), for instance; is it a race, or simply a recognition of the vast and ungeneralizable linguistic variations among Asian peoples? How, then, are Philipinos to be considered, for many of whom Spanish is a primary language? These questions have been raised many times, and will continue to be as long as "race" is considered as an object to be defined. We'll try to get beyond that in Part 3 of this evaluation.

What all this oddly suggests is not the undefinability of Latinos, but a blurring of the boundaries of recognition between all these groups. And that then poses the problem, given the vastness of the racial differentials that occur in police practices, of what the police are using as a

means of recognizing people racially in order to produce those disparities. Indeed, it suggests that it is the police who are creating these groups by the overall manner in which they stop drivers, and it is their manner of recognizing that is what these racial categories represent.

Nevertheless, the racial breakdown of Berkeley is of whites (56%), blacks (8%), Latinos (11%), Asians (19%), and a category of "Other" that comes to 7%. The category of "Other" is a melange of indigenous, Alaskans, Pacific Islanders, and those listing multiple racial identifications on the census forms. And that simply exemplifies the vast diversity of the Berkeley population. There are Latinos, Asians, and African Americans who are as light as whites. And there are people from Latin America and Asia who are as dark as African Americans. If appearance is problematic, then how are these categories used, and what is their meaning for traffic stop disparities? Yet, the data concerning racial disparities in traffic stops depends somehow on appearances, and strong disparities along "racial" lines are reported in the data on how different racial groups were treated by the police.

As if to complicate things, the report warns that not all traffic stops are of Berkeley residents, meaning care must be taken in relating the traffic stop data to population size. But what we have just said is cause to ignore that. The issue of police racial bias in their decisions to stop motorists occurs before learning of the driver's residence. The officer can be assumed to be acting in terms of a consciousness of Berkeley's resident population ratios in making those stops to the extent they result from racial profiling.

But let's take a look at some of the data. In police tabulation, the Latino population of Berkeley is one fifth the size of the white population, but they are stopped twice as often as whites (on a per capita basis). [fig. 9, page 27] Assuming equal driving patterns, this indicates a recognition of Latinos as not white. The excess of Latino driver stops over those of white stops (per capita, that is, per 1000 of that group's population) represents the level of profiling of Latinos. But it has to be based on visual factors since the officer, in stopping a driver on a racially profiled basis, only sees the driver's face before making the stop. Black people are 8% of Berkeley's population, or one seventh the size of its white population. Yet black people are stopped on average 6.5 times more often than whites on a per capita basis. The excess of black stops over white stops represents the level of profiling of black people, which is an extraordinary level of excess. Asians are the only group whose per capita traffic stops are less than those of whites. And this variation in rates of stops indicates that the police are picking and choosing.

It gets worse if we look at the actual numbers. The graph (fig. 9) states that, in 2016, white stops occurred at a rate of 51 per 1000 of white population, while black stops occurred at a rate of 330 per 1000 of black population. Hence, the 6.5 rate at which black drivers are more likely to be stopped than white drivers. The "per 1000" figure signifies that white stops represent 5% of the white population, while black stops represent 33% of the black population. (Latino stops, at 100 per 1000, represent 10% of the Latino population.) This figure indicates the extent to which drivers from each group are singled out (with duplications, of course, but there is no data in the report on multiple stops of particular individuals, so the figure remains representational). For black people, this is not new. It is satirized as "driving while black." Despite the vast variety of appearances of black people, somehow the police find enough of them to represent fully a third of the black population.

Acting on racial bias is not a mechanical phenomenon. It is always intentional. That is, a decision is made on the basis of noticing and recognizing. Especially in the case of "implicit bias," for instance, it is that implicit bias that then drives the decision (to stop) made in the wake

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of observation. And the degree of disparity in these figures suggest a high degree of decision to stop black drivers, even to the point of seeking them out from the vast variety of appearances that drivers present. That implies that there is a "search" component responsible for this degree of excess. And that makes the degree to which black drivers are stopped a deliberate project of the department. The police not only notice the race of the driver; they have to have been looking for drivers of that particular racial group to stop at the rate differential that actually occurs.

Indeed, in Berkeley, with people of every appearance, the frequency of black stops is excessive not only with respect to the group's population size, but also with respect to their percentage of all stops of people of color. Black stops account for 50% (approximately) of all stops of people of color, while constituting 22% of the whole (POC). That additionally implies that, for the police, the appearance of racial difference is well-defined. Yet physically that cannot be the case.

To search out members of a group is no longer "profiling." To profile means to impose by attribution a characteristic or value (such as a propensity to be violent) on a person upon encountering them, simply by association with how they comport themselves or how they look. But "to search" means to have that attribution in mind prior to encounter with the person on whom it will be imposed. It is the fact of imposition that constitutes the generalizations inhabiting racialization. To search for black drivers to stop represents an overall process of racializing them as black.

To say that "this is not new" is not to make a glib observation. To not be "new" means there is a history at work here. It is a history that contextualizes the fact that Berkeley PD traffic stops represent 33% of the black population, or that every black driver has a 1 in 3 chance of being stopped. It recalls the fact, imminent in the mass incarceration of POC in the US, that black men between the ages of 20 and 40 have had a 1 in 3 chance of being thrown in prison at some point in their life. It is that campaign, politically known as the "war on drugs" (more appropriately identified as a "new Jim Crow" by Michelle Alexander) that has made the US prison system the largest in the world.

If traffic stop ratios result from searches rather than law enforcement encounters, then the police are not innocent in the results. The fact that the number increases from year to year takes on a different meaning. In 2012, black traffic stops represented 21% of the black population (213 stops per 1000 of population). It rose to 28% in 2013, and stood at 33.8% in 2014 (a little bit higher than for 2016). With respect to white drivers, whose traffic stop rate was 40 per 1000 in 2014 (or 4% of the population, up from 3.2% in 2012), black drivers had an 8.45 greater chance of being stopped than a white driver, still as only 8% of the Berkeley population. (For Latinos, the 2014 rate was 10%, up from 5.5% in 2012.)

That steady increase parallels a different historical factor, that of the US police kill rate. In 2012, the Malcolm X Grassroots Movement estimated that an unarmed black person was shot and killed in the US every 28 hours. That signifies the killing of 320 such people by the police that year. By 2014, that number was up over 800. And by 2015, it had climbed to more than 1100 unarmed black people killed by the police. That is more than 3 a day – a form of mass murder committed daily by the government. Berkeley police data are not innocent either.

There is an odd twist in the BPD data, however, as we move from 2014 to 2015, a "dip" in incidence (mentioned earlier in this evaluation). While the number of black traffic stops increased linearly from 2012 to 2014, reaching a ratio of 8.45 to white stops, it fell to 6.1 in its ratio to white traffic stops in 2015, a decline of 28%. The yearly rate (per 1000) of white traffic

stops continued to rise linearly from 2012 to 2016. There was, however, a dip in the rate of Latino traffic stops which dropped from 2.1 in 2014 to 1.75 in 2015, a decline of 19%.

This "dip" in traffic stops appears quite markedly in figure 5 (page 23). It begins at the end of the summer, 2014, hits bottom in January, and rises to former heights in March 2015.

Two questions (at least) emerge from this. Why did the ratio become so large in 2014, and what would explain the precipitous drop in January, 2015? After all, the driving capabilities of Berkeley residents had not changed from 2014 to 2015.

Throughout the second half of 2014, there were uprisings against police violence and militarism in many parts of the US, significantly in Ferguson and in Baltimore. These uprisings were not spur-of-the-moment events. Police violence had been increasing for years. What pushed some communities of color past their breaking point were the killings of Michael Brown in Ferguson, Freddie Gray in Baltimore, and Eric Garner in NY. And massive demonstrations erupted throughout the country in solidarity with and support for the many movements demanding justice for the victims of police killings, including Berkeley and Oakland.

Did those demonstrations have an effect? Should we hypothesize that the Berkeley PD, on its own, responded to national events by curtailing its excessive treatment of black and Latino people? Did the police undergo a change of heart, and back off from singling them out for excessive traffic stops? Or did that dip in black and Latino traffic stops represent something else?

Insofar as the increase in black traffic stops leading up to late 2014 paralleled a national trend of increasing violence, it would not be farfetched to assume that the dip in ordinary civilian policing was also in coordination with a national trend. And we know that policing in major cities, because of these uprisings, shifted to strategies focused on counteracting social unrest and strengthening crowd control logistics. That would imply, at least temporarily, a reduction in ordinary civilian patrolling. And the "dip" would suggest that Berkeley PD was put on similar alert – against social unrest.

In short, it would probably be a mistake to interpret this dip in traffic stops as a decrease in police activity itself. Rather, because of its historical context, namely, the surge of movement activity across the nation around the issues of police violence, one could more reasonably speculate that it marks a shift in strategy from ordinary responsiveness to one prioritizing crowd control readiness. And this would suggest a more conceptual connection between the Berkeley police and the national situation. In the wake of the Berkeley demonstrations of December, 2014, when many civilian complaints of police excessive violence emerged, the BPD issued a report in 2015, evaluating their actions and responses. Though they suggest that they were perhaps overly zealous, their argument parallels that of the police elsewhere in the country that they were placed on the defensive by the demonstrations or uprisings, and that their violence was essentially defensive violence. Video evidence, however, clearly shows that the BPD initiated violence against the demonstrators. And this was clearly the case as well in Ferguson.

In other words, rather than see the BPD acting autonomously, it would be more realistic to conclude that its strategies were linked to federal policy directives and coordination through US fusion centers – in Berkeley's case, NCRIC (Northern California Regional Intelligence Center) – which would communicate advisories concerning such policy shifts nationwide. That would in fact explain the adamance with which the BPD argued for renewal of contracts with NCRIC in 2015 and 2017. Indeed, it was an adamance wholly out of character with what the BPD claimed they would receive. In pressing its requests, the BPD misrepresented its needs and



misinformed the City Council about the benefits it sought (see the May 14 and June 20, 2017, hearings on the issue). In part, the police were untruthful in claiming they needed those connections for facilities that they already possessed, and for reasons that were for the most part irrelevant. In acceding to BPD's demands, the City Council ignored an enormous outpouring of popular sentiment against those contracts by the people of Berkeley.

What this represents is a process of federalization of urban police departments, beyond the militarization that has been debated over the last 25 years (involving such programs as Urban Shield, for instance). Federalization would amount to external influence on local police strategies in the name of coordination. Supporters claim it will be a way of attenuating racial bias in policing, while critics suggest it will erode local civilian control of the police.

### **The recognition factor**

Let us turn to the fact that the police stop so many black drivers that it represents what amounts to stopping 33% of the black population of Berkeley in one year. The fact that Latinos are stopped twice as often as whites, and black drivers stopped 6.5 times as often as whites reflects something more profound than simple racial bias. In light of the wide variety of people of color who drive in Berkeley, what are the police using as a "recognition factor"? How are the police able to notice and stop those who are actually African American to the extent that they do? Many Latinos are dark, and many African Americans are light. What enables the police to pick out members of the smallest racial group for the highest number of stops? What do they look for in their search for drivers to stop?

Indeed, the number of African Americans stopped is roughly equal to the number of all other POC stopped. In 2016, there were 13,469 white stops, 13,351 stops of non-black people of color, and 13,594 black stops (multiplying the "per 1000" rate for that year times the number of thousands in the group's population). They are all within a few tenths of a percentage point of each other. Yet black people are only 8% of the population, while non-black POC are 36%. How are the police able to find black people fully a third of the time in order to stop them? What are the police looking for when they stop a driver they identify as black so often that it equals the rate at which all other POC are stopped? Hanging out in black neighborhoods is obviously one way. Are the police operating on some kind of quota system? Or is their "occupation" of black communities part of their campaign to criminalize those communities? Is this too part of a policy handed down to them by federalization of urban policing?

However it is done, it can't be easy, given the diversity of the city. Only people who "love their work" would be able to do it. Whatever kind of search function the BPD are using, it would have to be powered by an intentionality, a consciousness driven by a desire, a desire to recognize African Americans. To postulate such a desire goes beyond racial profiling, and the inequity of racial discrimination. It suggests instead a kind of obsession, though we would have to understand that term in relation to institutionality. That is, it is a political project.

The fact that this high rate of searching out, recognizing, and stopping African Americans indicates that black people are not just another sector of POC, one among many. What this "recognition factor" indicates is that black people play a special role in this society, one which requires that they be subjected to special treatment. That will not be news to most black people. The important question is its importance for white people, and for the white institutions that do it. That goes beyond mere recognition,

Are we back to some form of what had been (a century ago) called "scientific racism," by which a special sense of presence was imposed on African Americans to immerse them in a prior dehumanization? Is this part of the ideology of the Berkeley police? Or is this an alternate form of objectification designed to deprive people of their sovereignty and autonomy as people?

In the third section of this critique of the CPE report, we will look a little more deeply into this "recognition factor."

### **Part 3 - On black people being singled out**

There is another statistic given in the report that suggests a different view of race itself, and in which this "recognition factor" lurks.

The CPE report has been successful in providing evidence that there is significant racial bias and inequity in police practices and behavior. The equality of stops across three populations of vastly different sizes (approximately 13,500 of each) testifies to a huge disparity in police practices. If, as the CPE researchers say, Berkeley PD has a much better record than most other cities they have studied, it implies that those other cities must have fallen on truly apartheid conditions. The problem that emerges in terms of this "equality" of three groups of traffic stops is how the police are able to pick out black people for traffic stops at a rate far beyond the black fraction of the population. We have concluded that there is a search involved, but it must also be associated with a focused recognition factor.

#### **Inside the recognition factor**

To begin with, let us make note of a graph in the report whose title is "Percentage of Stops Resulting in an Arrest, by Driver's Race, 2012-2016." (fig 7, p.25) This graph has already generated some questions here as to why an infraction might result in more than just a ticket?

For Asians, almost 3% of stops result in arrest. For black drivers, 1.9% result in an arrest. For Latino drivers, 2.1%. For whites, 1.2%. These are small numbers. But as a percentage of all the stops over a 5 year period for each racial group, the number is far from trivial. For whites, it amounts to 160 arrests over the 5 year period (from a population of around 65,000). For black people, the number is 260 (from a population of 9,500). For Latinos, it comes to 106 (pop. 13,000). Once again, black people are bearing the brunt. As figures, they don't particularly stand out from the others. Another graph shows the percentage of traffic stops that result in a search. For whites, that comes to 5.3%, for Black drivers, it is 20.2%, and for Latino drivers it is 15.1%. Again, these figures affirm what we have encountered, that black people are subjected to inordinate demands by the police, beyond what their population would warrant.

Since the arrest numbers over a five year period are small, it raises the question, why couldn't the nature of the arrests be specified in the data given the CPE? Could there have been something in that list that might have been incriminating, such as those video-ed acts of officers pulling drivers out of their cars and throwing them to the ground? Is that far-fetched?

But let us turn to the companion graph entitled "Percentages of stops resulting in a citation without an arrest by driver race, 2012-2016" (Fig 6, p. 24). And this one seems to break the pattern.

While 46% of white stops resulted in a citation, the number of black stops that resulted in a citation was only 24%. Presumably, if a traffic stop did not result in a citation (nor in an arrest), then the driver was simply told to travel on. For white drivers, this apparently happened 54% of

the time, while for black drivers, it happened 76% percent of the time. Given the total number of stops of drivers from each of these two groups (which are essential equal in total number of stops), white drivers appear to have been ticketed at twice the rate of black drivers.

But we are left with the fact that three quarters of the time, black drivers were stopped and then not cited for anything. Given the high degree of attention paid to black drivers by the BPD, what does this low citation rate mean? It does not relate to group population size, nor to the percentage of black stops. It simply states there was no good reason for the traffic stop. One can say the same for white stops. Half the time, when they are stopped, no reason is found for a citation.

Let us use this fact of white stops as a norm. Inventing a measure based on white experience as a norm for other races is clearly a mistake. But in this case, it will be useful as a way of measuring what happens to black drivers. What the white case provides, as a norm, is one in which roughly 50% of the stops result in no citation (or arrest). That is what happens to white drivers. Let us apply it to black drivers. If 24% of their stops result in citations, then it would be "normal" that 24% of the time no citation would be issued (in equivalence with white citation rates). But that leaves 52% of the black stops for which there was no reason at all, except the desire to stop a black driver. That implies that 52% of the black stops were purely gratuitous.

To stop a driver is to inconvenience them, and to subject them to an unexpected break in their daily routine or social plans (although in some cases maybe not so unexpected). It is to take an active stance toward (against) the person the officer has noticed (regardless of the reason). To act against a person for no reason is to harass. In its gratuitousness, it is similar to stalking or bullying. It is to do something to another person without the other having had any participation in bringing it about. To render another an object in that sense is to assume a lesser social status for them. And concomitantly, it is to assume an entitlement on the part of the stalker or harassing person. Or rather, to aggress actively out of a sense of entitlement is to produce that lesser social status. The call for equity by social justice movements is a call for undoing the inequity that such procedures (of harassment) produce.

We can define a "harassment quotient" for each racial group, namely, the degree to which gratuitous action is taken against them. The harassment quotient for black people in Berkeley (with respect to traffic stops) would be 52 (representing the 52% of gratuitous stops beyond the "norm"). Since Asians and Others were cited in 40% of their traffic stops, their harassment quotient is 20 (representing the excess over twice their citation rate). For Latinos, cited 33% of the time, the harassment quotient is 34. These are liberal estimates, because we are using police behavior toward white people as a standard. But they provide a kind of ball park figure by which to measure the harassment that people of color experience when driving.

This notion of a harassment quotient (HQ) is further affirmed in the graph on the percentage of stops resulting in searches (Fig 8). Black people are searched 4 times more often than white drivers when stopped. To harass signifies a deep-seated desire to harass. This is not just racial profiling. It is part of a structure of harassment, which is both intentional and desired by the police.

## Summary

Racial profiling is harassment, but only a single dimension of it. Though spoken in a sardonic tone, "driving while black" is essentially a euphemism for harassment. It represents a

procedure involving singling out certain people for harassment, which means to adopt an active stance toward (against) their existence, and for no other reason.

It is black existence that is the core of the "recognition factor" with respect to black people, that singles them out from an environment of other people of color. In effect, it is not just color to which the police are responding. We are not just dealing with prejudice here, though that is part of the driving force of harassment. Black people are being "recognized" for their existence as African Americans, at a different rate and for a different purpose than other people of color. And the degree to which this is the case, given the small size of the black population in Berkeley, implies that there is a policy dimension to police harassment practices. Unfortunately, the CPE researchers had to assume implicitly that this could not have been the case.

Harassment is not a goal in itself for the one who harasses. Harassment is a result of a desire to actively aggress. As an element of policy, it exists as both an individual desire and an institutional desire. As an institutional desire, it indicates pre-meditation, a pre-meditated desire to aggress, for which the harassment of its target is the result. As pre-meditated, each act of harassment by a police officer is a criminal act. And so is every act of racial profiling, as a dimension of harassment.

Fifty years after Jim Crow was torn down, and the type of behavior that made Jim Crow work had been declared illegal, we are still only doing studies. Studies may be necessary, but there is also an element of deferral inherent in their nature. It focuses on an unspecified future for what should have been resolved in the past.

When the police look for black drivers to stop, it is to act toward them in a way that, as an act of harassment, will reduce them to lesser social status. People have a lesser social status (are de-privileged) only to the extent they are actively subjected to a reduction in social status by others. It is not inborn. It is produced by those who have the power to produce it.

If race is one of the concepts under which entire groups of people are subjected to lesser social status, then "race" is produced by that process of reduction. That is, it is the result of a process of racialization. All racialization signifies the production of "lesser social status" because it generalizes, and thus reduces individuals to de-individualized state. This is true even when the generalization is intended to be complimentary. In the US, the real political conflict is not between racists and anti-racists; it is between the racializers and the racialized. Racialization is more than "racism." It is a deeper social process than that.

In harassing black drivers, and thus black people, as a gratuitous activity, the police are playing a role as racializers through their harassment. Police harassment of black people establishes the police as agents of that process of racialization. When white people act in a similar way toward black people, we have to recognize that they do it fundamentally as their way of being white. After the civil rights movements, it is primarily the police who have been able to do that because black people are unable by law to respond, to defend themselves, to equalize, or to object or refuse. To do so, it has been shown, can get one dragged out of one's car.

Let us sum this up. "Race" is something that one group of people does to others. White people are not born white; they are made white by white supremacist society. Black people are not born black; they are made black by white supremacist society. In other words, "race" is not a noun. It is not something inherent in people. It is verb. The verb is "to racialize." It is something that white people do to others, making "others" "non-white" in order to be "white" as not-them. Race is not only a verb, it is in all aspects relational.

One component of this process of reduction of "others" to lesser social or cultural status is to see them as threats in order to exercise gratuitous hostility and harassment against them – often covered up by patronizing and objectifying attitudes. One becomes white then by adopting a self-defensive posture.

If "race" is a verb, then in the US it is white people who occupy the subject position of that verb, thrusting those they racialize into the object position of the verb. It is through inhabiting that subject position that white people obtain their sense of entitlement over POC. And it is on this basis that true subjectivity and autonomy, when encountered in the behavior of a person of color, is punished in the US. We have seen the suppression of the Panthers, the bombing of the MOVE organization, and the continuance of racial profiling by the police, as elements of this rejection of the other's autonomy and subjectivity. When Breiaon King or Rebecca Musarra were dragged out of their cars for speaking or not speaking, they were being assaulted for their sense of autonomy and subjectivity.

We know the struggle against racial profiling is a political struggle. It means that we are up against an organized political interest and a political project. It is in those terms that the federalization of urban policing extends beyond the reach of mere reform.

There is a difference between accepting remnants of the old Jim Crow structure that continue to lurk in US institutions, and the idea that government agencies have decided to build a new one. It marks the difference between completing a process of rectification through reform and sensitivity training, and a future-oriented intentional sense of purpose whose goal will mock all such training and reform.

Racialization is not "racism." "Racism" as such may be the socio-pragmatic appearance that racialization takes, but it is a result of the racialization process, not a cause. It is not just that the police are racist. They are an active part of societal machinery that produces "race" through its processes of racialization. And in functioning as part of that societal machinery, the police (and white people to the extent they do) racialize themselves as white.



## ***Confronting Implicit Bias in the New York Police Department***

**By Al Baker**

July 15, 2018

An unarmed black man holding a cellphone, Stephon Clark, is fatally shot in his grandmother's backyard in Sacramento and residents ask whether the officers only saw race when pulling their triggers 20 times.

Saheed Vassell, a mentally ill black man waving a pistol-shaped metal car part at pedestrians, is gunned down by police officers on a street in Crown Heights, Brooklyn, and the outrage focuses on whether deep-seated prejudices fueled the quick use of deadly force.

Two black men are led in handcuffs from a Starbucks in Philadelphia and alarm bells go off: Had the officers unconsciously adopted the racial bias of the store employee who called the police?

While explicit bias remains part of the fabric of life in the United States, elected leaders and chiefs of police have increasingly focused on what is often called implicit bias, inherently unintentional yet more pervasive. In policing, the consequences of such bias can be dire. If officers rely on stereotypes instead of facts, routine encounters can escalate or turn deadly.

Since the killings of Eric Garner on Staten Island and Michael Brown in Ferguson, Mo., in 2014, and numerous other deadly encounters between law enforcement officers and civilians, the police — from Seattle to New Orleans to Hutchinson, Kan. — have strained to acknowledge and address the biases that roil, sometimes unconsciously, their interactions with the public.

This year, the New York Police Department began a training program focused on implicit bias that is one of the pillars of the de Blasio administration's ongoing police reform efforts. It will run through next year, and all members of the department will be trained as part of a \$4.5 million contract with Fair and Impartial Policing, a Florida company that has emerged as a leading provider of such training.

It is one of the biggest contracts awarded to the for-profit training company, and no one can be certain of its effectiveness. There are no standards for its curriculum and no track record for assessing whether officers or departments successfully channel the training into their work.

The effort to train officers to tackle implicit bias is one Mayor Bill de Blasio has pushed for since his 2016 State of the City address. Since the training began, the mayor has invoked it repeatedly in interviews and in appearances with the police commissioner, James P. O'Neill, as an important step in engendering trust.

But Patricia G. Devine, a professor of psychology at the University of Wisconsin who runs a research laboratory on prejudice, said she was troubled by the spread of such training in the absence of probing, objective research. She said more study of officers' unintentional biases is necessary to evaluate how training can impact their behaviors. Additional data is needed, she said, to determine if officers retain what they are taught and if civilians are benefiting from fairer policing.

"You could have the best of intentions and you could do something that you think intuitively makes sense, but it can and often does backfire; it makes things worse," said Dr. Devine, who refers to the training as "bias habit training" and who is studying its effect on officers in Michigan.

Sergeants, lieutenants and other supervisors, as well as rank-and-file officers, have been attending implicit bias classes at the Police Academy in Queens. The New York Police Department would not permit a reporter for The New York Times to observe the training.

But in interviews, officers from across the country — including some who are now training the New York City officers — described the instruction in detail.

Brenda L. Leffler, who retired in November 2016 as a lieutenant colonel in the Colorado State Patrol and who has been teaching New York's sergeants, spoke of a change in attitude among the officers. Many enter her classroom in a defensive, or hostile, posture, she said. They sit in silence, their arms crossed.

"You can see it on their faces," Ms. Leffler, 49, said. "They are waiting for us to call them racists."

But it fades, she said, as she explains "that implicit bias is a human issue, not a law-enforcement issue."

She said many officers wind up leaving her classes wanting to know more about how stereotypes can seep into the subconscious mind — through textbooks, the media, parents, teachers or peers — beginning in childhood.

To help officers understand bias, and to ease them into the program, trainers begin by offering examples of bias that are less charged than the racial biases that are driving so much of the education effort.



Daniel W. Slaughter, a police chief in Clearwater, Fla., underwent implicit bias classes that he said made him rethink his dealings with adolescents. He came to recognize that as a younger officer he had often zeroed in on juveniles, giving them extra scrutiny, more tickets and less leniency. The training, he said, shattered “my vision of what my own ethical standard was” for fair policing.

Noble L. Wray, who is part of Fair and Impartial Policing’s New York City training team, tells his students about how as an officer in Madison, Wis., he would hear comments that betrayed bias toward black officers like himself. Commanders, he said, would try to counter calls for hiring or promoting more minorities with a warning that such efforts would “compromise quality.”

To that, his own implicit biases told him “that the problem was only white males in the organization,” who were discriminating against black officers. But over time Mr. Wray, who rose to become chief of the Madison Police Department and had a role implementing the recommendations of President Barack Obama’s Task Force on 21st Century Policing, said he came to see that thinking as flawed. Equally problematic, he said, was his own tendency to stereotype young, black men — even though they shared his skin color — “through the window of that 5 percent that were committing the crimes or creating the problems in my community.”

He said his own experience has taught him that race remains the most powerful bias.

“When we’re doing the training, I will personally say, ‘Yeah, there’s other biases.’ But the 800-pound gorilla in the room is racial bias,” Mr. Wray said.

In Colorado, Ms. Leffler led a regional department after the Sept. 11 terror attacks. She said she was wary of being infected by the biases of residents who would call to report suspicions about people with Muslim headwear “getting gas at a gas station or looking at Christmas trees at a shopping mall” when nothing unlawful was occurring.

“Profiling by proxy, as we call it,” Ms. Leffler said.

Though trainers initially take an expansive view of bias, they said the training would fail if it did not specifically confront bias against blacks.

“The training, and the value of it, is distinctly about the racial relationship between the police and the African-American public,” Chief Slaughter said.

Lorie A. Fridell, a professor of criminology at the University of South Florida who runs Fair and Impartial Policing, said the training is not meant to cure

officers of biases, but to teach them to be aware of moments when an acquired bias surfaces, so that it can be managed.

“The key to this training is your behavior,” Dr. Fridell said. “We need to make sure your behavior is not biased.”

Dr. Fridell said she began thinking about the issue of biased policing while working as a research director at the Police Executive Research Forum, a Washington think tank, from 1999 to 2005, just as “racial profiling” and “driving while brown and driving while black,” seized the public consciousness. Her training concept got off the ground in 2009, supported by a federal grant to the University of South Florida from the Justice Department.

She launched the for-profit company in 2011. The program started as a way to train patrol officers and supervisors, but the curriculum has expanded to instruct an agency’s trainers who, in turn, can coach their own officers.

In New York, the implicit bias classes are limited to about 40 officers, with two trainers, according to the contract. Instructors often start classes by asking the officers if they have ever felt the sting of discrimination from civilians or fellow officers. Many admit they have, while off-duty or in plain clothes.

From there, the curriculum moves to a section on what implicit bias is, and how it manifests in policing: Why, for example, is a man dressed in a suit and driving a BMW believed at a crash scene more than one wearing dirty jeans and driving a dump truck? There are group discussions. Instructors show videos and encourage students to contemplate varied scenarios. In discussing the consequences of allowing bias to impact policing, a mantra is repeated: Those who fail to manage stereotypes will be less safe, less effective and less just.

Patrol officers are taught six ways to reduce and manage biases. As part of the curriculum, there is also a test that has officers ask themselves: “Would I be requesting consent to search, but for the fact that this person is black? That this is a teenager?” Dr. Fridell explained. “You picture the person with a different demographic, and would I still be asking this way?”

Another exercise encourages officers to recognize biased behavior in others — and to be on guard for profiling by proxy.

Dr. Fridell said the training is best applied to unhurried decisions where officers have time to think. Her trainers talk to police leaders about ways to erase bias from the split-second decisions officers make, too, and they advocate the use of video and role-playing in agencies’ use-of-force training. In both cases, slowing things down is a cardinal rule.

Many participants said that even in the absence of standards or metrics to measure the effectiveness of the training, it was an improvement on traditional racial-profiling and diversity classes of the past. Such classes presumed that for police officers to be biased, the prejudice had to be conscious and explicit.

That can undermine efforts to address bias because it can give officers a way out by denying they are overtly racist.

“If police believe that biased policing is produced only by individuals with explicit bias, such as racists, and if they reject that they themselves are racist and see few or none around them, they may well decide that their agency and profession are being unfairly criticized about this problem,” Dr. Fridell wrote in her book, “Producing Bias-Free Policing: A Science Based Approach.”

This transformation, many said, takes time.

“It has to be sustained,” Mr. Wray said. “It has to be important to the leadership.”

