

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, September 12, 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 25, 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

- 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
- c. Consider proposed "Guiding Principles" for PRC adoption and other ideas related to addressing BPD staffing shortage.
From: Commissioner Matthews
- d. Review policy on use of body-worn cameras, including sufficiency of provisions on use of associated iPhone.
(To be delivered.)
From: Commissioner Prichett

10. NEW BUSINESS (discussion & action)

- a. Select Commissioner to attend International Association of Chiefs of Police (IACP) Conference in Orlando, FL, Oct. 6 – 9, 2018.
From: PRC Officer
- b. Issues surrounding the BPD Response to Protests on August 5, 2018:
 - i. Request After-Action report created after the August 5 protests.
 - ii. Request inventory of munitions **before and after** the protests.
 - iii. Examination of issues, including: pre-emptive confiscation of sound truck near Ohlone Park, and other "de-escalation" strategies used.
 - iv. Review policies, including General Order P-29, Sec. 7, related to the release of mugshots and the decision to release this information.From: Commissioner Prichett
- c. Draft Commission Work Plan for 2018-2019 for review, revision, and approval.
From: PRC Officer
- d. Staff's proposed closure of Policy Complaint # 2433.
From: PRC Officer
- e. Consider recommending a policy to prioritize safety for sex workers.
From: Commissioner Ramsey

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

September 12, 2018

MINUTES

July 25, 2018 Regular Meeting Minutes Draft Page 7

AGENDA-RELATED

Item 6.b. – Prioritization of PRC Tasks. Page 11

Item 8. – PRC Subcommittee List updated 8-3-18. Page 12

Item 9.a. – Email from the PRC Officer to the Commission, dated 7-23-18: Brown Act Question re agenda language. Page 13

Item 9.c. – Proposed “Guiding Principles.” Page 17

Item 9.d. – Policy Complaint #2433. Page 19

Item 10.b. – Email from PRC Investigator, dated 8-7-18: Communications re August 5 March & Protest. Page 21

Item 10b. – BPD General Order P-29, Public / Media Relations, issued 8-17-09. Page 25

Item 10.c. –Draft Police Review Commission 2018-2019 Work Plan. Page 35

Item 10.e. – Background materials re Safety for Sex Workers: recently-enacted State legislation and SFPD policies. Page 39

COMMUNICATION(S)

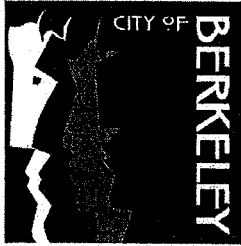
Letter to the Acting City Manager, from the City Attorney, dated 8-9-18, re Meet and Confer Requirements Related to Police Commission Ballot Measure. Page 55

Article from Berkeleyside, dated 8-10-18: Berkeley City Council won't put police oversight measure on 2018 ballot. Page 71

Annotated Agenda, Special Meeting of the Berkeley City Council, dated 7-23-18 – Agreements with other Law Enforcement Agencies; Ad-Hoc Subcommittee on NCRIC and Urban Shield. Page 73

BPD General Order P-64, re Computers and Digital Evidence, issued 8-2-18. Page 77

Email from the Chief of Police to the PRC Officer, dated 8-16-18, re BPD Narcan Program, and G.O. A-18, Use of Naloxone (Narcan), issued 8-15-18.	Page 83
Article from The Daily Californian, dated 8-16-18, re Berkeley Police Department announces security camera registration program to assist in investigations.	Page 89
Announcement from BPD, dated 8-15-18, re BPD's New Voluntary Security Camera Registry.	Page 91
Information Calendar, dated 1-27-15, to the Mayor and Council Members, from the PRC, re Security Camera Database.	Page 93
Email from former Commissioner Alison Bernstein, to the Commission, dated 3-3-17, re Public records ruling by Calif. Supreme Court.	Page 95
Article from LaTimes.com, dated 3-2-17, re Public officials can't shield government business by using personal email, state Supreme Court rules.	Page 97
Article from LaTimes.com, dated 9-1-18, re California Legislature passes major police transparency measures on internal investigations and body cameras. (SB 1421 and AB 748)	Page 99
Article from sacbee.com , dated 8-29-18, re Stephon Clark-inspired bill to limit police killings in California shelved for the year. (AB 931)	Page 103



Police Review Commission (PRC)

DRAFT

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

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

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY VICE CHAIR PEREZVELEZ AT 7:09 P.M.

Present: Commissioner George Perezvelez (Vice Chair)
Commissioner Gwen Allamby
Commissioner Kitty Calavita
Commissioner Terry Roberts
Commissioner Ari Yampolsky
Commissioner Cooper Price (*temporary*)

Absent: Commissioners Sahana Matthews (Chair), Andrea Prichett, Ismail Ramsey, Michael Sherman

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood, Lt. Angela Hawk, Sgt. Rashawn Cummings

2. APPROVAL OF AGENDA

Motion to approve the agenda.

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

Ayes: Allamby, Calavita, Perezvelez, Roberts, Yampolsky, and Price.

Noes: None Abstain: None Absent: Matthews, Prichett, Ramsey, Sherman

3. PUBLIC COMMENT

There were 3 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of July 11, 2018

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

Ayes: Allamby, Calavita, Perezvelez, Roberts, Yampolsky, and Price.

Noes: None Abstain: None Absent: Matthews, Prichett, Ramsey, Sherman

5. CHAIR'S REPORT

-- Acting Chair reported that he and PRC Officer were at the July 23 City Council meeting re discussion of MOUs/mutual aid pacts, including NCRIC, ICE, and Urban Shield, and answered Councilmembers' questions about the PRC's concerns.

-- Commissioner Price reported on the proposed Charter amendment; the item on the Council's agenda is the version proposed by Mayor Arreguin and Councilmember Harrison; at the July 24 Council meeting, because meet and confer was still ongoing, the item was continued to July 31. If no action taken then, and as August 10 is deadline for submitting ballot items to the County, a special meeting might be called.

-- Acting Chair thanked Commissioners Ritchie and Price for serving as temporary commissioners this summer.

6. PRC OFFICER'S REPORT

a. Status of complaints; other items.

-- Included in today's packet are excerpts of agenda items from Monday's Council meeting [July 23] re approval of MOUs, NCRIC, Urban Shield; they have since been revised and can be accessed online.

-- Complaints: Caloca hearing held this morning. After the decision is issued, it will be sent to Commissioners and then discussed in a closed session. No new complaints filed for a couple weeks. One case pending agreement to mediation from one of two subject officers. Policy complaint – haven't been able to get a hold of complainant.

-- Byron Norris participated in an interview panel for Chief Investigator position at the Oakland Community Police Review Agency.

-- Reminder that a link to the updated Commissioners' Manual was sent. For hard copy let staff know.

-- Next regular meeting Weds. Sept. 12; PRC Officer on vacation week of Aug. 6.

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

Not discussed.

7. CHIEF OF POLICE'S REPORT

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

Chief Greenwood reported:

-- Have 159 sworn officers but 30 or more are in FTO (4), academy (9), or injury or other leave, so actual number working is about 127-128. Mandatory OT in effect.

-- Sept. timesheet – ideally 77 – 78 on patrol; will struggle to get 74. Reduction in staffing for special assignments.

- Looking at proposal to create a hiring team, perhaps comprised of one person from each division.
 - Couple weeks ago, the Dept. observed 1st anniversary of suicide of Ofc. Roberds at briefings and with peer counselors.
 - As mentioned, participated in Juneteenth Festival, SF Pride. Upcoming: Kite Festival and Solano Stroll.
 - Contract with BPA should be ratified soon. Been negotiating 18 months; out of contract a year. Hope will stabilize Dept. by helping retention and recruitment.
 - Reminder to Commissioners do a ride-along and meet with Chief for tour of the Dept.
 - Been invited to speak with 1 or 2 other chiefs at "Big Data and Community Policing" conference in Dallas, sponsored by Measure Austin, a new group addressing how to harness data and data collection for meaningful policing. Want to be exposed to more conversations about community policing
 - Will attend NACOLE and IACP conferences this fall.
- Chief Greenwood answered questions from Commissioners.

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 – Meeting to be scheduled.
- b. Homeless Encampment Subcommittee – Meeting to be scheduled.
- c. Lexipol Policies Subcommittee – Next meeting tentatively scheduled for Aug. 8.

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.
(Item postponed until the next meeting.)
- 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.
(Item postponed until the next meeting.)

10. NEW BUSINESS (discussion & action)

- a. Review policy on use of body-worn cameras, including sufficiency of provisions on use of associated iPhone.
(Item postponed until the next meeting.)

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.
(Item postponed until litigation against City is concluded.)

c. Response to July 23, 2018 Council action on MOU compendium and participation in Urban Shield exercises.

Discussed; no action taken.

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.

No action taken.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

There were 3 speakers.

13. ADJOURNMENT

By general consent, the meeting was adjourned at 8:27 p.m.

Prioritization of PRC Tasks

Overall rank or priority	Tasks in order of rank (lower rank = higher priority)	Status 9.5.2018
1	-Body-Worn Camera Policy	Awaiting policy from BPD
4	-Fair & Impartial Policing - follow-up on recommendations	Council Task Force TBD
5	-G.O. U-2, Use of Force revision	Awaiting policy from BPD
7	-General Orders C-64, U-2, M-2 re Crowd Control [Subcomm] - review Commander's Guide to Crowd Control	In progress
10	-Review Lexipol policies [Subcomm]	In progress
14	-Process for considering informal complaints	To be agendized
14	-PRC Regulations re Commissioner challenges	Meet-and-confer requested
17	-Homeless Encampments [Subcomm]	In progress
18	-Outreach - publicize existence of PRC and its services to community	To be agendized Sept. 26
19	-Review of DUI checkpoints	To be agendized
20	-Media Credentialing	To be agendized (or to be reviewed as part of Lexipol review?)
22	-BPD's policy for shelter-in-place directive to schools	To be agendized
Awaiting response or PRC action otherwise completed.		
7	-Review BPD budget	Done via request for Financial and Performance Audit of BPD; sent to Council 3.8; awaiting response.
11	-BPD Accountability Plan for Training/Professional Development	Done. Ltr to CM 2.21; awaiting response
11	-June 20, 2017 (Review of BPD Response at Council meeting)	Draft to BPD 1.31. Per Chief 7.25, no response until litigation concluded.
14	-Armored Van Policy	Done. Ltr to Council 2.16. On 6.12 Council approved G.O. V-11, Emergency Response Vehicle, issued 6.13.
3	-Police Accountability Reforms (Increase PRC power)	Charter Amendment to Council; alternative by Mayor and Councilmbr Harrison to meet-and-confer 7.24. M&C not done in time for Nov. 2018 ballot but ongoing.
	-Right to Watch (G.O. W-1)	Proposed policy to Chief 11.2.17.
20	-Regional radio interoperability for common encrypted channels	PRC Officer has checked with Chief to confirm no further action practicable.

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 8-3-18**

Subcommittee	Commissioners	Chair	BPD Reps / Others
General Orders on Crowd Control C-64, U-2, M-2 Formed 1-13-16 Renewed 3-22-17 Renewed 3-14-18	Prichett Calavita		Lt. Michael Durbin
Homeless Encampments Formed 2-1-17 Renewed 1-24-18	Prichett Sherman	Prichett	
Lexipol Policies Formed 5-23-18	Perezvelez Ramsey Yampolsky	Perezvelez	Sgt. Samantha Speelman

Lee, Katherine

From: Lee, Katherine
Sent: Monday, July 23, 2018 12:06 PM
To: Lee, Katherine
Subject: FW: Brown Act question (Related to Item #9.a. on PRC agenda for 7/25)
Attachments: Comm Manual pp 49-50 Agenda Titles.pdf

Dear Commissioners,

On your agenda for this Wednesday is an item (9.a.) from Comm. Prichett about how the PRC can request info from other City departments in the most efficient manner.

Related to that, she asked me to ask the City Attorney whether agendizing "Requests for information" without specifying the nature of the information to be sought, or from whom, is sufficient under the Brown Act. After an email and a phone conversation with Kristy van Herick in the City Attorney's office, I relayed Ms. van Herick's opinion (does not meet Brown Act requirements) to Comm. Prichett. You may recall that Ms. Prichett asked for something in writing at the last meeting. Ms. van Herick's reply is below.

To the same end is the discussion of agenda titles in the updated Commissioners' Manual, attached. (It is substantially similar to the discussion in the prior Manual.)

In any event, as I have just received notice that Comm. Prichett has received an excused absence for the July 25 meeting, I assume that she would like this agenda item to be postponed to the Sept. 12 meeting.

-Kathy

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

From: van Herick, Kristy
Sent: Friday, July 20, 2018 5:49 PM
To: Lee, Katherine <KLee@cityofberkeley.info>
Cc: Brown, Farimah F. <FBrown@cityofberkeley.info>
Subject: RE: Brown Act question

Hi Kathy,

As noted, I was suggesting that the agenda contain slightly more detail because, as written, this item does not appear to comply with the specificity required by the Brown Act. As such, a challenge could be made to the action, requiring it to be cured through a new action, causing delay for the Commission.

Government Code section 54954.2(a) (1), states: "at least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing **a brief general description of each item of business to be transacted** or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. "

You noted that a Commissioner wishes to have the agenda state: "Discuss whether to request information."

The Brown Act requires more specificity, particularly if the Commission is being asked to take a distinct action. This is not the same as "roll call" or "ceremonial items" of a generic nature that are not seeking to take action or engage in discussion. A member of the public would have no idea on *what* topic information is sought and *from whom* the information is being requested. If you add in the topic and recipient of the request for information, that should be sufficient.

Please note that I will be out the office July 22-27, returning July 30th. If any urgent PRC matters come up next week, please contact Farimah. Thanks.

Kristy van Herick
Assistant City Attorney
City Attorney's Office
City of Berkeley
2180 Milvia Street, 4th Fl
Berkeley, CA 94704
(510) 981-6998
kvanherick@CityofBerkeley.info

accommodation may be considered. For example, if braille or large print isn't available on short notice, staff may read the document to the vision-impaired person as an alternative.

Commissioners with disabilities will receive accommodation through the Disability Compliance Program upon request. Review Appendix I for more information.

E. AGENDA AND NOTICE REQUIREMENTS

The agenda for all regular, special, and subcommittee meetings shall specify the time and location of the meeting, the business to be transacted, and shall be posted in the following locations:

1. On the bulletin board at Old City Hall at 2134 Martin Luther King Jr. Way.
2. At the location the meeting will be held.
3. On the City of Berkeley website.

Commission Secretaries must also ensure that commission meetings are posted to the online Community Calendar.

No business, other than that included on the agenda, can be considered by the commission at any type of meeting.

1) Regular Meetings

At least 72 hours before a regular meeting, the commission secretary shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.



2) Special Meetings

Special meetings may be called by the chair or a majority of commissioners. The notices and agendas must be posted no less than 24 hours prior the meeting.

3) Subcommittee Meetings

Subcommittee meetings fall under this special meeting rule and their agendas must be posted at least 24 hours prior to their meetings.

4) Media List for Meetings

In order to give proper notice of a meeting, it is important to ensure that the commission secretary maintain a current list of media. The City Clerk has developed a list of media that is used to give notice of City Council meetings. This list may be used along with any other media outlet that may have requested notice of a particular commission's meetings.



5) Agenda Titles/Purpose

The purpose of the agenda is to inform the public regarding the issues to be discussed. Government Code Section 54954.2 of the Brown Act requires that agenda item titles fully describe the issue or action to be discussed

and/or taken. This requirement, therefore, precludes such agenda titles as "University Avenue Improvements" or listing a topic on every meeting agenda to cover the "possibility" of discussion.

In preparing the agenda, consider the position of a member of the public and determine if a reasonable person could determine from the agenda title what the commission is discussing and what action is being proposed.

For example: "University Avenue Improvements" listed on an agenda by itself does not provide enough information. An appropriate title might be:

"Adopt a Recommendation to the City Council to Proceed with the Proposed \$5 million University Avenue Landscaping Improvements"

Another example: "Earth Day" listed on an agenda by itself is too vague. An appropriate title might be:

"Discussion of Recommendation to Council to Sponsor Earth Day Parade"

The agenda must be clear on what action, if any, may be taken on an item. The agenda should list the recommendation or action proposed using the 20-word guideline. By using a full explanation in the item title (never use acronyms), members of the public who may be in favor of or opposed to such an issue will know to be present at the commission meeting to discuss their views.

6) **Agenda Format/Headings**



Prior to each meeting of the commission, the secretary prepares and distributes an agenda, which usually includes but is not limited to the following: Roll Call, Public Comment, Approval of Minutes, Public Hearings, Old Business, New Business (with appropriate description of the item under the headings of Public Hearings, Old Business, and New Business), Information Items, Communications, and Adjournment. The agenda must be approved by the chair prior to distribution.

Commission agendas may vary to suit commission needs, but the Council agendas provide a good guideline.

Every regular and special meeting agenda, including subcommittee meetings, must include the following.

- Name of the commission
- Type of Meeting (regular or special)
- Day, date, time, and location of the meeting
- A brief, general description of each item of business, including the recommended action
- Public comment period
- Communication access information (A.R. 1.12) and ADA disclaimer:

“Guiding Principles”

The Berkeley Police Review Commission (PRC) was established in order to strengthen trust between the BPD and Berkeley community. The PRC would like to emphasize our role in collaboration with the Department the reach this shared goal of trust.

Due to the current Berkeley Police Department (BPD) staffing crisis, the PRC adopts these guiding principles as a way of ending the lack of support that the Department receives from the PRC.

In order to strengthen the relationship between the BPD and PRC, the commissioners will:

- Make every effort to ask for Department input during discussions on items that affect Department policies and practices.
- Attend community and Department events that the Chief invites the commissioners to.
- Participate in ride-alongs and Department tours (to the extent the commissioners feel comfortable).
- Support the Department is staffing by reaching out to our community networks (to the extent applicable).

It is the Commission’s hope that these principles will be followed in a way that promotes a better relationship between the PRC and Department and increases trust between the BPD and broader community.



POLICY COMPLAINT FORM

Police Review Commission (PRC)

1947 Center Street, 1st Floor, Berkeley, CA 94704

Website: www.ci.berkeley.ca.us/prc/

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

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

Received by PRG

Date Received:
NOV 27 2017

PRC CASE # 2433

1 Name of Complainant: Guevara Glavin
Last First Middle

Mailing Address: 2337 Harrison Street #2, Oakland, CA 94612
Street City State Zip

Primary Phone: (510) 839-2004 message Alt Phone: ()

E-mail address: _____

Occupation: _____ Gender: Female Age: _____

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic Other

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

Berkeley passes strict law for sidewalk homeless, vagrancy laws. Conjure up a distance past when police can punish people without a home or permanent residence. "Berkeley targeting homeless on sidewalks siting or sleeping near a building for some reason. The proposed ordinance recalls measure F, a Berkeley ballot measure in 2012 that proposed a ban on lying or sitting on Berkeley CA side walks.

3 Location of Incident (if applicable) Berkeley, California

Date & Time of Incident (if applicable) Jan 2017 date is at question?

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

John Wesley Johnson was homeless at the time and on Social Security disability. City of Alameda Housing Authority has information when John Wesley Johnson had a low income housing in the City of Alameda a few years ago, after he lost his home in the City of Alameda, CA John Wesley Johnson became homeless.

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

Police officers seeing a homeless person lying or sitting on a Berkeley side walk or near any building. A police officer should speak to the homeless person and ask who they are and ask the person or persons to move out of the area at the time. Police officers should always carry a homeless shelter list to give to a homeless person or person's before arresting a person or person's. Please ask the police officers to be more kinder to the homeless in Berkeley, California

5 Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Commission in evaluating your complaint.)

See attachments next pages. John Wesley Johnson was sleeping near a building and homeless in Berkeley, California, at the time he was waiting to get his social security check at a check cashing place. Mr. Johnson at the time did not know about the Berkeley city ordinance lying and sleeping on a Berkeley side walk near a building. A Berkeley police officer targeted Mr. Johnson and used his past rap record against him. Instead the Berkeley police officer created a false police report and never read him his Miranda Rights, when he was arrested at the time of the arrest.

Mr. Johnson stated he was not told what he was arrested for by a cop in Berkeley at the time of arrest. See attachments 3 pages

6 CERTIFICATION

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.
Character witness

Glenn Chen
Signature of Complainant

NOV 23 2017
Date

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

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

cc: John Wesley Johnson
cc: Mr. John W. Peace Father of Mr. Johnson Revised 4-22-16

Norris, Byron

From: Norris, Byron
Sent: Tuesday, August 07, 2018 4:08 PM
To: Norris, Byron
Cc: Lee, Katherine
Subject: PRC Communications Re: August 5 March & Protest.....(1 of 2)

Dear Commissioners,

FYI: As of this writing, our office has received two communications from members of the public regarding the August 5 march and protest. The first one is copied below, and I will soon forward the other one. We will include these items as communications in your next meeting agenda packet.

Byron Norris
Investigator
Police Review Commission
City of Berkeley, California

From: K. Hardy [mailto:khardy@sonic.net]
Sent: Monday, August 06, 2018 3:08 PM
To: Maio, Linda <LMaio@cityofberkeley.info>
Cc: PRC (Police Review Commission) <prcmailbox@cityofberkeley.info>
Subject: Berkeley Police actions with respect to the right wing rally

Hi Linda and PRC,

I'm a constituent and I am quite disturbed about Berkeley Police activity regarding the Antifa march on Sunday. I saw pictures of right wing rallyers with items that could be characterized as weapons under the expansive list published by the city, and yet it was the ant-fascists that the Berkeley Police went after. I am most particularly disturbed that the PD published pictures of arrestees on Twitter. I looked back through their twitter feed and saw nothing like that for anyone else who had been arrested (not charged, nothing ... just arrested). Now they're soliciting photos and video so they can arrest more people.

<https://twitter.com/berkeleypolice/status/1026216388279468032>

Under the current regime, police departments across the country have been exposed as right-wing, ultra-violent organizations. I am sorry to see that the Berkeley PD appears to have some similar characteristics.

Please tally this as one comment opposed to Berkeley PD publishing pictures of people who have not been charged with or convicted of a crime and pursuing nonviolent protesters even after the event in question.

Katherine Hardy
1718 7th St.
Berkeley CA 94720

Norris, Byron

From: Andrea Prichett <prichett@locrian.com>
Sent: Tuesday, August 07, 2018 4:31 PM
To: Norris, Byron
Cc: Lee, Katherine
Subject: Re: PRC Communication Re August 5 March & Protest.....(2 of 2)

Thanks for sending that. I was contacted by someone who is very concerned about this conduct. I looked for the related policy and this is what I came up with:

DATE ISSUED: August 17, 2009 GENERAL ORDER P-29
SUBJECT: PUBLIC / MEDIA RELATIONS

Section 7- Persons In-Custody, Intentional Exposure to Media:

Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being photographed or televised.

It seems to me that this policy was intended to respect the privacy of those who have not been convicted of a crime. I am not asking that we conceal the identities of those who have been taken by the state, but this policy suggests that there is a history of concern for the right of the accused. In this era of doxing by violent right wing extremists, I do not understand why BPD is sharing mugshots proactively. This conduct appears to violate the spirit of this policy. (Seems like sharing on twitter could be counted as "deliberate exposure" of these suspects' pictures.

Please add it to the agenda.

Thanks,

Andrea

On 8/7/18 4:10 PM, Norris, Byron wrote:

FYI

From: Casey Losh [<mailto:closh@ewingandclark.com>]
Sent: Tuesday, August 07, 2018 2:18 PM
To: PRC (Police Review Commission) <prcmailbox@cityofberkeley.info>
Subject: I support the police

I support the police in general and in their recent decision to release mugshots of protestors that were arrested. It seems to me, that if they believe in their cause, then there is no reason to hide their identity. Nevertheless, it is the protestors' decision/right to do so, UNLESS they are arrested and then their identity should be public knowledge. I would say this not matter what side the protestors are on.

Thank you.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 17, 2009

GENERAL ORDER P-29

SUBJECT: PUBLIC / MEDIA RELATIONS

PURPOSE

- 1 - The purpose of this General Order is to establish policies and procedures regarding contacts and relations with media organizations and their representatives, and responsibilities for the release of information by the Public Information Officer (PIO) and other authorized department representatives.

POLICY

- 2 - It is the policy of this department to provide accurate and timely information about crime, public safety and departmental activities to the news media and public.
 - (a) Within the confines of practicality and in accordance with law, it is the Department's intention to keep the community informed of and engaged in public safety issues relevant to their lives.
 - (b) In accordance with information release policy set forth in General Order R-23, consideration shall be given to the confidentiality, integrity and security of investigations (e.g., reference to/discussion of suspect statements), compliance with applicable law, and the privacy rights of victims, witnesses and suspects prior to release of any information.
- 3 - As used in this Order, "Media" shall mean entities, their employees and official agents, whose primary service and professional purpose is the communication of news and information to the general public via print, radio, television or digital/electronic means.

PROCEDURES

Categories of Information

- 4 - Categories of information that may be released to the media are:
 - (a) Routine: These are reports of incidents of human interest which would not affect normal police operations, and information about available police services.
 - (b) Major: These are reports of incidents that impact normal police operations and create a large volume of media interest, information about which is disseminated via the department's PIO, in conjunction with involved investigators.
 - (c) Policy News Release: These are reports about the internal operations of the Police Department, which originate from the Office of the Chief.

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- (d) Publicity Releases: These are reports about incidents and programs designed to arouse public interest, understanding, or involvement, dissemination of which are coordinated by the PIO upon the approval of the Chief of Police.
- (e) Newsworthy Events: These are reports of major crimes, arrests, disasters, unusual occurrences, or traffic accidents which would be of interest to the media, including, but not limited to:
 - (1) Any information necessary to obtain public assistance in the investigation of a crime or apprehension of a criminal suspect.
 - (2) Any information warning the public of danger, or of the nature and frequency of crime in the community.

General

- 4 - Cooperation: As authorized by Police Regulation 226, and within the parameters of relevant General Orders, employees shall cooperate with members of the media.
 - (a) A media inquiry that cannot be answered or is inappropriate for response by an employee shall be referred to the PIO or a superior officer.
- 5 - Information Release: Employees shall follow policy set forth in General Order R-23 regarding release of police reports, official department documents, and information contained therein.
- 6 - Opinion: Employees representing this department shall refrain from offering any opinion as to an arrestee's guilt or innocence, the merits of a particular case, or the existence, nature or value of evidence unless expressly authorized by the Chief of Police to issue such official comment.
- 7 - Persons In-Custody, Intentional Exposure to Media: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being photographed or televised.
- 8 - Persons In-Custody, Media Interviews: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being interviewed by such representatives, except if all of the following conditions exist:
 - (a) The prisoner requests or consents to an interview after being informed adequately of the right to consult with counsel and of the right to refuse to grant an interview.
 - (1) A prisoner's consent to a media interview shall be obtained in writing.

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- (b) If the prisoner has legal counsel, the attorney affirms his/her client's request or consent to a media interview, and authorizes said activity.
 - (1) Whenever practical, the attorney's affirmation and authorization should be obtained in writing.
 - (2) When represented by legal counsel, any request by the media to interview or photograph a person in-custody shall be referred to the prisoner's attorney.
 - (c) Unless unavoidable, department employees shall not appear in authorized and facilitated photographs or filming of prisoners.
- 9 - Media Conferences: Media conferences shall only be called by the City Manager, Assistant City Manager, Chief of Police or individuals serving in those capacities (ref. City of Berkeley Administrative Regulation (AR) 1.14.)
- (a) The department's PIO will act as a liaison between the media and the department in arranging for, or coordinating media conferences.
- 10 - During non-business hours, the on-duty Patrol Division Watch Commander, or in his/her absence the senior on-duty Patrol Division supervisor, shall be responsible for media relations and related notifications.
- 11 - Unless dissemination is authorized by policy and appropriate given the circumstances of the inquiry, media requests for information concerning any incident under investigation shall be referred to the PIO.
- (a) When an employee of this Department provides information to the media, that employee shall, as soon as practical, inform the PIO of the scope of media's inquiry and of the information provided.
- 12 - When the Communications Center receives a media inquiry for routine matters including, but not limited to, traffic conditions in Berkeley, Communications Center personnel shall furnish the information requested.
- (a) Specific or general media requests for information on newsworthy cases, (e.g., rape, major burglaries or robberies, felony assaults/batteries, cases involving death, etc.) received by the Communication Center shall be referred to the PIO (normal business hours) or Patrol Division Watch Commander (non-business hours.)
- 13 - Media inquiries regarding department policy, personnel, or administrative investigations should be handled in accordance with General Order R-23 and, as appropriate, forwarded to the Office of the Chief of Police.

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- 14 - "Media Releases" or other official media-directed documents shall be disseminated by the PIO, Patrol Division Watch Commander, or the Office of the Chief of Police in accordance with department information release policy.
 - (a) A press release of high media and public interest should be forwarded by the PIO to the City Manager's Office, when feasible, for review prior to public dissemination.
 - (b) Publications intended for the media which require significant Department time and effort (e.g., in-depth articles, feature stories, etc.) should be prepared by the PIO.
- 15 - Documents intended for distribution to media representatives may be left at the Front Counter of the Public Safety Building.
- 16 - Employees are encouraged to collaborate with the PIO to develop media releases regarding outstanding service performed by members of this department, significant events, community participation, and proactive projects that enhance the quality of life in Berkeley.
- 17 - A request for information received from a private person concerning police operations, procedures, authority, or concerning interpretation of the law shall be referred to the on-duty Patrol Division Watch Commander, or, if necessary, the Office of the Chief of Police.

Public Information Officer

- 18 - The PIO shall be a department employee appointed by the Chief of Police to serve as the primary liaison with representatives of the media.
 - (a) The PIO is responsible for providing relevant, timely, and accurate information to the media at disasters, major crime scenes, catastrophes, special events, and unusual occurrences.
- 19 - During normal business hours when the PIO is absent, or on-duty but unavailable, the PIO's supervisor shall either serve as Acting PIO or designate a trained subordinate to temporarily serve in that capacity.
- 20 - The PIO shall coordinate the preparation and release of factual information regarding all major Departmental incidents, major crimes, or other newsworthy events.
- 21 - The PIO shall be notified as soon as practical of the following offenses/situations:
 - (a) Arson (e.g., major events, series, offense with injuries).
 - (b) Bombing and explosions.

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- (c) Escapes.
 - (d) Kidnapping.
 - (e) Homicide.
 - (f) Deployment of the Barricaded Subject Hostage Negotiation Team.
 - (g) In all other offenses/situations, when a Patrol Division command officer determines circumstances warrant PIO notification.
- 22 - Subsequent to notification of an event described in paragraph 21 of this Order, the PIO shall determine the proper actions to be taken in accordance with department policy to insure that good media relationships are maintained.
- 23 - When the PIO receives a media request for information, he/she shall:
- (a) Obtain and review a copy of the police report(s).
 - (b) Review the facts of the case with the investigating officer or Detail prior to release of information concerning an ongoing criminal investigation.
 - (1) Unless precluded by law, policy or direction of a command rank officer, employees shall provide information requested by the PIO without delay.
 - (c) Provide the requesting media representative relevant information permitted by law and department policy.
- 24 - When known or advised, the PIO should regularly report contacts with representatives of the media to his/her chain of command.
- (a) The PIO will be responsible for notification of the City Manager's Office regarding non-routine contacts with media representatives as required by AR 1.14.

Involved Party's Request for "No Release"

- 25 - "No Release" shall be requested sparingly, and only when it is necessary for the successful investigation or prosecution of a case or the security of principals, witnesses, or the premises involved, when disclosure of event information would subject the victim to serious embarrassment of mental distress, or when required by law (e.g., PC §293).
- (a) Any officer requesting "No Release" shall include at the end of his/her report full justification for the request.

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- (b) In the event a request for "No Release" is, or appears to be, for purely personal reasons, and does not fall within the provisions of paragraph 25, the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.
- (1) In situations noted in paragraph 25(b), the officer may include at the top of his/her report, " Request No Release."

In-Field Media Management

- 26 - Whenever the media is present at a police scene, a Patrol Division Watch Commander, supervisor, or a designated liaison officer may release appropriate factual information about an incident and/or police activity in accordance with the information release policies described in this Order and General Order R-23.
 - (a) Whenever necessary or appropriate, the PIO may be called to an incident scene by the Patrol Division Watch Commander to perform in-field media liaison duties.
- 27 - In the event of a major disturbance, disaster, or state of emergency, a second PIO may be designated to assist the primary PIO with media relations and public dissemination of information.
- 28 - In the event the National Incident Management System (NIMS) is employed, the PIO will report to the Incident Commander (Command Section) and perform media liaison activities in support of the PIO Branch.
 - (a) If a Joint Information Center (JIC) is activated, the department PIO, or his/her designee, will report to that location to coordinate information management with other involved agency PIOs.

Media Relations at Multi-Agency Incidents

- 29 - For incidents involving the mutual efforts of the Berkeley Police Department and any other department or agency, the ranking department employee present at the scene shall confer with the ranking personnel from all other involved agencies to determine which agency shall be responsible for the release of information to the media.
 - (a) Unless upon mutual agreement or when necessary, the agency having primary jurisdiction over an incident shall be responsible for the dissemination of information to the media.

Media Access to Disaster or Accident Scenes

- 30 - Employees involved in the management of a disaster, accident, or riotous civil disturbance shall not prohibit duly authorized media representatives from entering and remaining in any area closed to the public pursuant to Penal Code

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§409.5.

- (a) Authorized media representatives are those persons possessing valid press passes issued by any bona fide law enforcement agency, or other suitable identification establishing regular news media affiliation or employment.
 - (1) While the Berkeley Police Department does not issue "Press Passes", official press documents issued by other law enforcement agencies shall be honored.
 - (2) Reporters or photographers who are not affiliated with or employed by established media entities (i.e., "Freelance") will not be considered authorized media representatives for the purpose of this policy.
 - (b) Authorized media representatives shall be permitted free movement in police-controlled or otherwise publicly restricted areas as long as they do not hamper, deter, or interfere with law enforcement or public safety functions.
 - (c) Employees allowing the entry of an authorized media representative shall advise that person of any known danger existing within the restricted area.
 - (d) Employees should not provide general escort services to media representatives into, through, or out of dangerous areas.
 - (e) Employees shall not refuse to to rescue media personnel who are in danger, providing such assistance can be provided with reasonable effort and without unnecessary hazard to rescuers.
- 31 - Employees shall not take action which would prohibit media aircraft from flying over disaster scenes.
- (a) Notwithstanding the exemption afforded to media aircraft, law enforcement officers may employ Federal regulations to stop both commercial and civilian aircraft from flying over a disaster scene.
 - (1) To implement over-flight control at a disaster scene in Berkeley, the request shall be made to the Federal Aviation Administration (FAA) Office at Oakland Airport.

Media Access to Crime Scenes

- 32 - Employees involved in a criminal investigation may prohibit media access to a crime scene.

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- (a) Media representatives shall be kept sufficiently distant from a crime scene to ensure officer safety and preservation of evidence.
 - (b) A crime scene located in an area of public access may be opened for media inspection after the area is secure and any search for, preservation, and processing of evidence has been completed.
- 33 - Employees shall, upon request of a private property owner or agent thereof, prohibit media access to private property wherein a crime scene is located.
- (a) Regarding access to crime scenes located on private property, media representatives have no right of access greater than the general public and, therefore, are subject to any access restrictions established by the owner or person in charge of the property.
- 34 - The immediate area (i.e., inner perimeter) of an in-progress critical incident, including, but not limited to, a hostage situation or barricaded subject, is deemed a "crime scene" and shall be subject to the media access restrictions set forth in this Order.
- (a) Authorized media representatives may be permitted access to areas within the outer perimeter of a critical incident, subject to any restrictions established by the Incident Commander.
- 35 - Department employees shall not jeopardize public or officer safety in order to accommodate media access or inquiry, but reasonable effort shall be made to keep the media informed of the progress of police activity.

Suggested Changes to Media Relations Policy

- 36 - Any suggestion for significant change in department policy and/or procedure concerning media relations received from a media representative shall be forwarded in writing to the Chief of Police via the recipient employee's chain of command.
- (a) The Chief of Police shall be responsible for evaluating the suggested change and, if appropriate, directing its implementation.
 - (b) The PIO shall be responsible for advising the involved media representative of any changes and/or actions taken by the Department in response to their suggestion.

CONDUCT OF MEDIA REPRESENTATIVES

- 37 - An employee having a complaint regarding the conduct of any media representative should submit the complaint in writing to the Community Service Bureau Lieutenant.

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- 38 - The CSB Lieutenant shall investigate the allegation and, if appropriate, forward the results and action recommendation to the Chief of Police via the chain of command.
- 39 - Any official action that may effect the involved media representative, including, but not limited to, communication of the complaint to the person's media organization, shall be taken only at the direction of the Chief of Police.

References: *South Coast Newspapers, Inc. vs. City of Oceanside* (160 Cal.App.3d 261 (1984))
T.N.G. vs. Superior Court, (4 CA, 3rd 767)
14 CFR §91.137 (Federal Aviation Administration Regulations)
Penal Code §§409.5 and 832.7
City of Berkeley Administrative Regulation 1.14
General Order R-23
Police Regulation 226
"ABA Standards for Criminal Justice: Fair Trial and Free Press" (3rd Ed., 1992), a publication of the American Bar Association

Police Review Commission 2018-2019 Work Plan

Commission mission statement

The general purpose of the Police Review Commission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

Goal #1: Review and set BPD policies, practices, and procedures.

a. Resources¹

PRC staff, BPD staff, meeting space.

b. Program activities

A policy review may be initiated by the Commission, by a City Council referral, the Police Department, or a member of the public. The initial review steps may be undertaken by the Commission, a commission subcommittee, or staff, depending on the nature and breadth of the policy, practice, or procedure in question. The review could include: holding meetings and hearings to receive input from community members; meeting with and asking questions of the BPD; studying current policies, practices, and procedures; gathering policies from other jurisdictions; and surveying the literature regarding best practices.

If a subcommittee or staff perform the initial work, it will be presented to the full Commission for review and approval.

c. Outputs

Based on the information gathered, the Commission will make a recommendation to the BPD, City Manager or City Council about a change in a policy, practice, or procedure.

¹ Unlike most other commissions, the Police Review Commission has a staff of three City employees dedicated to supporting the Commission's work.

d. Outcomes

The desired change is a new or improved policy, practice, or procedure. If new, it will provide guidance where it did not previously exist or was not well-documented. A revised policy, practice, or procedure will reflect a change to conform with new laws, to embrace best practices that have changed since the original policy was established, or to better align with community values.

e. Specific policies, practices, or procedures to be reviewed in the coming fiscal year may include:

- Implementation of a body-worn camera program
- New or revised policies and practices to address disparities in BPD pedestrian and traffic stop, citation, search, and arrest rates; and other efforts to ensure unbiased policing
- Conversion of all BPD General Orders into Lexipol policies
- BPD role in dismantling homeless encampments and storage of property
- Revised policy governing the Use of Force
- Memoranda of understanding and mutual aid pacts with other law enforcement agencies (an annual process)

Not all reviews of police policies, practices, or procedures can be anticipated in advance, as some are undertaken based on a request from the City Council or a civilian. Also, the PRC may undertake a review in response to particular police activity or incident.

Goal #2: Process complaints regarding individual police officer misconduct.

a. Resources

PRC staff are responsible for carrying out this goal, with critical participation by Commissioners. BPD staff are also involved.

b. Program activities

Staff will receive complaints of alleged misconduct by police officers, conduct an investigation, and, if warranted, prepare the case for a hearing before a Board of Inquiry. Rotating panels of three Commissioners serve as the BOI, except in death cases, where the Commission sits as a whole.

Cases may be closed without a hearing; the reasons for such closures include: the complainant opts for mediation; the complainant withdraws the complaint; or the complainant does not cooperate in the investigation.

c. Outputs

Following a BOI hearing, a Findings Report will be sent to the Chief of Police and City Manager, who may rely on the PRC's findings in determining whether to impose discipline.

Based on prior years, it is anticipated that roughly eight BOI hearings will be held in the coming fiscal year.

d. Outcomes

By providing a venue for investigation of complaints that is separate from the Police Department, civilians will view the process as more objective than investigations conducted by the Police Department internally. Police officers' awareness of the PRC's complaint process will influence their behavior in a positive way.

Goal #3: Continue to Revise PRC Regulations for Handling Complaints Against Police Officers.

a. Resources

PRC staff and BPD staff.

b. Program activities

The complaint process, from intake through the BOI hearing, is governed by regulations promulgated by the PRC. The need to revise the regulations may arise when, for example: a deficiency is discovered; a way to streamline the process is identified; or a change is desired.

Regulation changes may be initiated by the Commission or by staff. The Commission as a whole may consider a revision, or establish a subcommittee for this purpose.

Depending on the specific change, a meet-and-confer with the police union may be required.

c. Outputs

The result will be amended PRC Regulations.

d. Outcomes

Amended Regulations will result in a process for handling complaints that is clearer; more efficient; reflects the Commission's desires; conforms to current law.

Goal #4: Conduct outreach activities.

a. Resources

PRC staff, IT staff support, printing of materials

b. Program activities

The Commission, as a whole or through a subcommittee, will develop and implement activities and strategies to better inform the community about the PRC's mission and services, including its policy review function and intake of civilian complaints about officer misconduct as an agency independent of the Police Department.

c. Outputs

The results will include increased presence at community fairs and other events; speaking to community groups, churches, and the like; holding Commission meetings at various locations; updated literature describing the Commission's work; a revamped and expanded website.

d. Outcomes

The outcome will be larger numbers of community members who are aware of the PRC and informed about its services and activities.

Lee, Katherine

To: Lee, Katherine
Subject: FW: California Enacts Historic Measure To Prioritize Safety For Sex Workers Based On San Francisco's First-In-The-Country Policies – St. James Infirmary

From: Ismail Ramsey [mailto:izzy@ramsey-ehrllich.com]
Sent: Wednesday, August 08, 2018 10:08 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Cc: Ismail Ramsey <izzy@ramsey-ehrllich.com>
Subject: FW: California Enacts Historic Measure To Prioritize Safety For Sex Workers Based On San Francisco's First-In-The-Country Policies – St. James Infirmary

Katherine,

I'd like to add a topic to our next full Commission agenda in September -- "Prioritizing Safety for Sex Worker" policies. Below is an article about the recently enacted state law in this area and the SFPD's recently adopted policy. I think that the Berkeley Police Department should strongly considering adopting an equivalent policy. I will also forward a few other documents -- articles and laws -- that are relevant and might be helpful.

Thanks. Izzy Ramsey

From: Ismail Ramsey
Sent: Wednesday, August 8, 2018 7:25 AM
To: Ismail Ramsey
Subject: California Enacts Historic Measure To Prioritize Safety For Sex Workers Based On San Francisco's First-In-The-Country Policies – St. James Infirmary

<https://stjamesinfirmary.org/wordpress/?p=4425>

California Enacts Historic Measure To Prioritize Safety For Sex Workers Based On San Francisco's First-In-The-Country Policies

Posted on June 14, 2018 by Toni Newman

AB 2243, inspired by San Francisco's "Prioritizing Safety for Sex Worker" policies, amends the Evidence Code to protect a sex worker reporting a violent crime from prosecution.

Yesterday afternoon, Governor Brown has signed into law AB 2243, authored by Assembly Member Laura Friedman (43rd District), which would create historic protections for sex workers who report witnessing or experiencing violence. AB 2243 amends the Evidence Code to prevent evidence that a person engaged in prostitution be used against them in a prostitution case if they were a victim of or witness to a violent crime at the time. The legislation was inspired by policies established in San Francisco earlier this year by the San Francisco Police Department and District Attorney's Office. The policies were created in partnership with the Department on the Status of Women and local sex worker rights organizations, including members of the Sex Worker and Trafficking Policy Impact Committee of the Mayor's Task Force on Anti-Human Trafficking. Sex workers are vulnerable to violence because their criminalized status

makes them fearful to report to law enforcement when they have been attacked. A 2009 study from the University of California, San Francisco and St. James Infirmary, found that over 60% of sex workers face some form of assault while engaged in sex work. Laws like AB 2243 create a safe path for sex workers to report violence against them.

“This historic legislation creates a path in California for sex workers to come forward and say, ‘me, too,’” said **Minouche Kandel**, Women’s Policy Director at the San Francisco Department on the Status of Women.

“Every Californian deserves access to justice, regardless of their line of work,” said **Assemblymember Laura Friedman** (D-Glendale). “With the Governor’s signature on AB 2243, we’re empowering a vulnerable population to report crimes, which will in turn create safer communities for all of us.”

Law enforcement officials say this legislation sends a clear message to violent perpetrators that violence against sex workers will be treated seriously under the law. “We wouldn’t be able to do our job without courageous victims and witnesses of crime coming forward,” said **San Francisco District Attorney George Gascón**. “That is why this legislation is so important, it protects vulnerable victims and witnesses of violent crime and reassures them to come forward to testify against violent offenders. I am so incredibly proud of the work we all did together on this important issue and am elated to see Governor Brown sign this legislation into law.”

“I want to recognize the partnership with District Attorney George Gascón, Police Chief Bill Scott, the Human Rights Commission, and fearless community advocates that made the groundbreaking local policies possible, paving the way for this history state law,” said **Dr. Emily Murase, Director of the Department on the Status of Women**.

Rachel West, spokeswoman for the US PROStitutes Collective noted: “We welcome this law as important recognition that the safety of sex workers must be a priority. Knowing that evidence of prostitution can’t be used against us if we are victims or witnesses of violence, will encourage sex workers to report to the police. But we urge legislators to go further and introduce an amnesty from arrest along the lines of the recently introduced San Francisco Police Department policy”.

Contact: Minouche Kandel, Women’s Policy Director, Department on the Status of Women, [\(415\) 252-3203](tel:(415)252-3203) (work); [\(415\) 572-6482](tel:(415)572-6482) (cell), minouche.kandel@sfgov.org

View the legislation [here](#).

Izzy Ramsey
Ramsey & Ehrlich LLP
510-548-3600

CHAPTER 27

An act to add Section 1162 to the Evidence Code, relating to evidence.

[Approved by Governor June 13, 2018. Filed with Secretary of State June 13, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2243, Friedman. Evidence: admissibility.

Existing law provides that except as otherwise provided by statute, all relevant evidence is admissible.

This bill would prohibit the admissibility of evidence that a victim of, or a witness to, extortion, stalking, or a violent felony, each as defined, has engaged in an act of prostitution at or around the time he or she was the victim of or witness to the crime in order to prove the victim's or witness's criminal liability in a separate prosecution for the act of prostitution.

The California Constitution provides for the Right to Truth-In-Evidence, which requires a $\frac{2}{3}$ vote of the Legislature to exclude any relevant evidence from any criminal proceeding, as specified.

Because this bill may exclude from a criminal action information about a person's liability for an act of prostitution that would otherwise be admissible, it requires a $\frac{2}{3}$ vote of the Legislature.

DIGEST KEY

Vote: 2/3 Appropriation: NO Fiscal Committee: NO Local Program: NO

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 1162 is added to the Evidence Code, to read:

1162.

Evidence that a victim of, or a witness to, extortion as defined in Section 519 of the Penal Code, stalking as defined in Section 646.9 of the Penal Code, or a violent felony as defined in Section 667.5 of the Penal Code, has engaged in an act of prostitution at or around the time he or she was the victim of or witness to the crime is inadmissible in a separate prosecution of that victim or witness to prove his or her criminal liability for the act of prostitution.

Justice in the shadows

By Laura Friedman
APR 12, 2018 | 3:15 PM

While California has established itself as a leader in the nation when it comes to protecting our most vulnerable residents, there is one particularly vulnerable population whose rights and safety have been largely ignored.

It is in all of our best interest to ensure that every victim or witness feels safe and comfortable enough to report a crime. Unfortunately, there is an entire population within our state that experiences violent crime on a daily basis, but are too afraid to report these crimes because of who they are — sex workers.

Assembly Bill 2243 seeks to provide a safe path for these individuals to report violent crime by prohibiting evidence of a sex worker's, or their client's, criminal liability when they are the victim or witness of that crime. To put it simply, a sex worker who reports a violent crime cannot be charged with prostitution when they come forward.

In 2009, the University of California, San Francisco and St. James Infirmary conducted a study of San Francisco sex workers to determine at what rates sex workers experience crime. The study found that over 60% of sex workers face some form of assault while engaging in sex work — 32% reported a physical assault, while 29% reported a sexual assault.

The hard truth is, sex workers are often targeted repeatedly by violent predators because they know their victims are much less likely to report the crime. Failure to report these violent crimes leads to a decline in our community's public safety, and allows violent criminals to remain on our streets. We should be encouraging every victim of violent crime to come forward to help law enforcement prioritize arresting those who commit more serious crimes.

AB 2243 was inspired by a San Francisco policy that has already seen positive results. The policy prioritizes apprehending those who target and attack sex workers. Earlier this year, a sex worker who was brutally assaulted and stabbed by a client, refused to allow a bystander to call 911. Unable to ignore the woman's injuries, the bystander called an ambulance. Once at the hospital, the sex worker continued to refuse to cooperate with law enforcement officers until they were able to show her a written copy of the city's new policy. After she saw the policy she felt safe enough to speak with the officers, and was able to provide the officers with enough information to arrest the perpetrator who attacked her.

It is important that we provide law enforcement and prosecutors with every tool available to remove violent individuals who prey on some of our most vulnerable and marginalized residents. Many law enforcement officers and prosecutors currently provide immunity to sex workers when they act as cooperating witnesses in an investigation. AB 2243 would essentially implement this policy statewide, and will lead to safer communities for all of us.

To date, AB 2243 has received unanimous bipartisan support and law enforcement and prosecutors have been on board. We can all agree that every victim deserves the opportunity to be heard and should be able to report violent crimes with the same confidence and safeguards as every other Californian — regardless of their line of work.

LAURA FRIEDMAN (D-Glendale) represents La Cañada Flintridge, La Crescenta, Montrose, Glendale, Burbank and neighboring communities in the the 43rd Assembly District.

<http://www.latimes.com/socal/glendale-news-press/opinion/tn-gnp-me-commentary-friedman-20180412-story.html#>

Lee, Katherine

To: Lee, Katherine
Subject: FW: New SF policies bar arrest of sex workers who come forward to report violence

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To: Lee, Katherine <KLee@cityofberkeley.info>
Cc: Ismail Ramsey <izzy@ramsey-ehrllich.com>
Subject: FW: New SF policies bar arrest of sex workers who come forward to report violence

https://www.sfgate-com.cdn.ampproject.org/v/s/www.sfgate.com/crime/amp/New-SF-policies-bar-arrest-of-sex-workers-who-12492173.php?amp_js_v=0.1&usqp=mq331AQGCAEoATgA#origin=https%3A%2F%2Fwww.google.com&prerenderSize=1&visibilityState=prerender&paddingTop=54&p2r=0&horizontalScrolling=0&csi=1&aoh=15337470195807&viewerUrl=https%3A%2F%2Fwww.google.com%2Famp%2Fs%2Fwww.sfgate.com%2Fcrime%2Famp%2FNew-SF-policies-bar-arrest-of-sex-workers-who-12492173.php&history=1&storage=1&cid=1&cap=swipe%2CnavigateTo%2Ccid%2Cfragment%2CreplaceUrl

New SF policies bar arrest of sex workers who come forward to report violence

Evan Sernoffsky | on January 11, 2018

San Francisco sex workers who come forward to say they've been assaulted, raped, robbed or extorted — or that they've witnessed such crimes — cannot then be arrested for prostitution or petty drug crimes under policies adopted by city police and prosecutors.

The new guidelines, finalized last month and announced Thursday, were described by advocates as the first of their kind in the nation. They seek to encourage sex workers and victims of human trafficking to cooperate with higher priority investigations without fear of ending up in jail.

Police Chief Bill Scott said in a department bulletin that the new rules “institutionalize” existing practices.

His bulletin states that officers “will not arrest persons for involvement in sex work or other forms of sex trade when they are victims or witnesses of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime.”

In a statement, Scott said, “We understand that many times sex workers are themselves victims of predators and human traffickers. Our policy is written in the spirit of encouraging sex workers to feel safe coming forward to law enforcement, with the knowledge that they will be treated with respect and their concerns will be taken seriously and investigated.”

District Attorney George Gascón made a similar commitment, saying in a policy statement that his office will not prosecute people involved in sex work for prostitution-related crimes and minor drug offenses.

“If we fail to prioritize this population’s health and safety they will not come forward and work with law enforcement as witnesses and victims of violence,” Gascón said. “Ultimately, unreported crimes and criminals pose a threat to everyone’s public safety.”

The policies were created in partnership with advocates for human-trafficking victims and sex workers, as well as the city Department on the Status of Women. According to research by nonprofit research institute RTI International, most sex workers in San Francisco don’t go to the police when they have been victimized.

“Our hope for this policy is to reduce the harm experienced by sex workers, in particular women of color and transgender women engaged in the sex trades, who have no protections when reporting violence, or experience mistreatment at the hands of law enforcement,” said Johanna Breyer, executive director of St. James Infirmary, a health clinic for sex workers in San Francisco’s Tenderloin.

Minouche Kandel, director of women’s policy at the Department on the Status of Women, called the new policies “a major step toward addressing violence against women wary of contacting law enforcement because of their criminalized status.”

Evan Sernoffsky is a San Francisco Chronicle staff writer. Email: esernoffsky@sfchronicle.com Twitter: [@EvanSernoffsky](https://twitter.com/EvanSernoffsky)

Izzy Ramsey
Ramsey & Ehrlich LLP
510-548-3600

Lee, Katherine

To: Lee, Katherine
Subject: FW: San Francisco Announces Prioritizing Safety for Sex Worker Policies | Department on the Status of Women

From: Ismail Ramsey [mailto:izzy@ramsey-ehrllich.com]
Sent: Wednesday, August 08, 2018 10:12 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Cc: Ismail Ramsey <izzy@ramsey-ehrllich.com>
Subject: FW: San Francisco Announces Prioritizing Safety for Sex Worker Policies | Department on the Status of Women

<https://sfgov.org/dosw/san-francisco-announces-prioritizing-safety-sex-worker-policies>

**San Francisco Announces Prioritizing Safety for Sex Worker Policies
FOR IMMEDIATE RELEASE:**

January 11, 2018

Contact: Minouche Kandel, (415) 572-6482, minouche.kandel@sfgov.org

*****PRESS RELEASE*****

**SAN FRANCISCO ANNOUNCES FIRST-IN-THE-COUNTRY POLICIES TO
SUPPORT SEX WORKERS WHO ARE VICTIMS OR WITNESSES TO
VIOLENCE IN REPORTING TO LAW ENFORCEMENT**

“Prioritizing Safety for Sex Worker” policies would protect a sex worker reporting a violent crime from arrest or prosecution for prostitution or minor drug offenses

San Francisco, CA – According to new policies released by the City’s two largest law enforcement agencies, the San Francisco Police Department and the District Attorney’s Office, sex workers will not be arrested or prosecuted for prostitution or minor drug offenses, they are reporting a violent crime. Created in partnership with the Department on the Status of Women and local sex worker rights organizations, including members of the Sex Worker and Trafficking Policy Impact Committee of the Mayor’s Task Force on Anti-Human Trafficking, the policies are designed to prioritize the safety of sex workers over the prosecution of misdemeanor prostitution and drug related offenses, and to reduce the likelihood that victims of violence will themselves end up arrested or incarcerated.

“Our hope for this policy is to reduce the harm experienced by sex workers, in particular, women of color and transgender women engaged in the sex trades, who have no protections when reporting violence, or experience mistreatment at the hands of law enforcement,” said **Johanna Breyer**, Executive Director of St. James Infirmary.

Minouche Kandel, Director of Women's Policy at the Department on the Status of Women, called the policy "a major step towards addressing violence against women wary of contacting law enforcement because of their criminalized status."

"Our research and direct service work in San Francisco have shown that most sex workers, and people experiencing exploitation in the sex industry, do not go to the police when they have been victimized. This policy is the first step towards creating a social and political environment where people can seek help when they are victims of violence," said **Alexandra Lutnick**, Senior Research Scientist at RTI International.

Law enforcement officials say these policies send a clear message to violent perpetrators that violence against sex workers will be treated seriously under the law. "If we fail to prioritize this population's health and safety they will not come forward and work with law enforcement as witnesses and victims of violence," said District Attorney **George Gascón**. "Ultimately, unreported crimes and criminals pose a threat to everyone's public safety."

"This policy underscores our commitment to providing services to all victims," said Police Chief **William Scott**. "We understand that many times sex workers are themselves victims of predators and human traffickers. Our policy is written in the spirit of encouraging sex workers to feel safe coming forward to law enforcement, with the knowledge that they will be treated with respect and their concerns will be taken seriously and investigated."

In many jurisdictions across the U.S., sex workers are arrested if they report violent crimes. "We hope these policies- the first of their kind in the nation- will serve as a model for other jurisdictions where criminalized sex workers face high rates of violence," said **Carol Leigh** of Bayswan.

View the Police Department Policy [here](#) and the District Attorney Policy [here](#).

###

Izzy Ramsey
Ramsey & Ehrlich LLP
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12/19/17

Prioritizing Safety for Sex Workers

This Department Bulletin serves to establish a guideline for officers who encounter a sex worker who is a victim or witness of a violent crime and/or who may be subject to arrest.

San Francisco prioritizes the investigation of violent crimes and this bulletin is adopted to help create a climate where all victims and witnesses, regardless of age (juvenile and adult), have equal access to reporting such crimes.

In light of recent events in the San Francisco Bay Area and abroad, officers are reminded that, pursuant to DGO 2.01 and 3.01, any officer misconduct against sex workers, including retaliation, coercion or coercive intimate acts, is subject to disciplinary and/or criminal action. Sex workers are vulnerable to violence and face barriers in reporting violent crimes to law enforcement in San Francisco. The criminalization of sex work is one of the primary barriers to reporting violence to law enforcement. Sex workers report fear of arrest as a barrier to reporting violent crimes.

This bulletin institutionalizes the Department's existing prioritization of violent crimes and aims to ensure equal access to safety for persons engaged in sex work and other forms of sex trade including trafficked persons. The Department seeks to promote the safety, dignity, and well-being of all San Franciscans, including sex workers; and to reduce violence, trafficking of persons, and abuse, including labor violations, within the sex industry. The Police Department and the District Attorney's Office have developed complementary policies for persons of any age engaged in sex work and other forms of sex trade who experience or witness violent crimes.

Prioritizing Violent Crimes

In an effort to reduce reporting barriers for victims or witnesses to violent crimes, members will not arrest persons for involvement in sex work or other forms of sex trade when they are **victims or witnesses** of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime.

When responding to juveniles involved in commercial sexual activity, members shall follow the procedures for juvenile victims of sexual assault, as described in Department General Order 6.16 (Sexual Assaults). For the purpose of this guideline, "sex work" is defined as a provision of sexual services for money, goods, or services.

Additionally, members will not arrest persons for offenses including California Penal Code sections 647(a), 647(b), 653.22, 372 and misdemeanor drug offenses, when they report being the **victim or witness** of a sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime. However, if a misdemeanor drug offense violation occurs, and the **violinor reports being a victim or witness** of a sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary,

or other violent crime, officers shall seize and book evidence as appropriate and document the circumstances of the contact in an incident report. This will facilitate a referral of the case to the District Attorney's Office for a warrant consideration.

Referrals to Victim Advocates

In addition to documenting information in a police report, officers shall refer sex workers reporting violent crimes to community resources and Victim Services in the District Attorney's Office (per SFPD Special Victims Unit Follow Up and Referral Card 142 Rev. 12/17). The Department will collaborate with community based organizations that serve sex workers to ensure existing referral cards are reviewed annually and appropriately updated.

Training

The Department will work collaboratively with the District Attorney's Office on a training program on sex work and crimes against sex workers to ensure that this bulletin is implemented in a manner that furthers the goals of the reporting of violent crimes and building trust and rapport with this community. The training shall be developed and implemented in collaboration with community based organizations that serve sex workers.


Notification

If a person identifies themselves as a victim of human trafficking or a sex worker reports being the victim or witness of a sexual assault, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime, the member shall notify Special Victims Unit during business hours (0900-1700) Monday - Friday.

Notifications for any of the above incidents shall be made to the SVU at (415) 553-9225.

After hours, weekend and holiday notifications for any of the above incidents shall be made to the Department Operations Center at (415) 553-1071.

If the person is a juvenile engaged in commercial, sexual activity, the responding officer shall contact Family and Children Services Child Abuse Hotline at (415) 558-2650.


WILLIAM SCOTT
Chief of Police

Per DB 17-080, both sworn and PSA members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS.

SERVICES FOR CHILDREN

Child Abuse Hotline 415-558-2650
Comprehensive Crisis Services 415-970-3800 or 415-970-4000
Child Trauma Program 415-206-5311
L.I.N.C. 415-885-7636
TALK Line Family Support Center / Parent referral
(24 hr) 415-441-KIDS (5437)
Safe Start 415-668-0494

SERVICES FOR YOUTH

Huckleberry House 415-621-2929
Larkin Street Youth Service 415-673-0911
National runaway safe line 1-800-RUNAWAY 800-786-2929
or text: 66008

SEXUAL ASSAULT

S.F. Trauma Recovery Center 415-821-3222
SF Women Against Rape (Crisis Line-24 hr) 415-647-7273

TTY FOR HEARING IMPAIRED

Suicide Prevention Mainline 415-781-0500
Suicide Prevention Crisis Line TTY 415- 227-0245

FOR OFFENDERS

Men's Program -- Marin Hotline/Crisis Line 415-924-1070
POCOVI (Spanish speaking) 415-552-1361

A.D.A. (Americans with Disabilities Act)

If an alternative format is needed contact the 415-837-7221
A.D.A. Coordinator at: TTY 415-575-5827

HUMAN TRAFFICKING

National Human Trafficking Hotline 888-373-7888
or
Victim can text to BeFree (233733)

Human Trafficking Tip Line (24hr) 415-643-6233

API Legal Outreach 415-567-6255
Asian Women's Shelter 877-751-0880
Freedom House 650-488-0831

VINE (Victim Information and Notification Everyday)

Need to know an inmate's custody status? Despite official restraint of the person alleged to have committed domestic violence/sexual assault, the restrained person may be released at any time. For further information on an inmate's custody status, call the San Francisco Sheriff's Department at 1-877-411-5588.

**Special Victims Unit
FOLLOW UP & REFERRAL CARD**

Incident Report or

CAD number _____

Date _____

Time _____

Reporting Officer _____

Star _____

Special Victims Unit

850 Bryant St Room 500 (Mon - Fri, 9am - 5pm)
Contact Number: 415-553-9225

THE SPECIAL VICTIMS UNIT INVESTIGATES THE FOLLOWING CRIMES

- Child Abuse/Juvenile
- Domestic Violence
- Elder Abuse
- Financial Crimes
- Human Trafficking
- Internet Crimes Against Children
- Missing Person (handled by station)
- Sexual Assaults
- Stalking
- Sex Offender Unit (290 registration)

VICTIM CONFIDENTIALITY ADVISORY

Government Code 6254(f)(2) and Penal Code 293/293.5
Government Code 6254(f)(2) gives you the right to request that your name not become part of a public record, including release to the media, if you are the victim of one of the following crimes:
220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6

IF YOU NEED FURTHER LEGAL PROTECTION:

You should seek a **Restraining Order from the Superior Court**, 400 McAllister St., Rm. 103, San Francisco, CA 94102, which can:

- Remove the abuser from the household;
- Restrain the abuser from abusing you and your family members*;
- Order the abuser to stay away from you, your family, your pets*, residence, workplace and/or child's school;
- Prohibit the abuser from contacting you by phone, mail, or third party;
- Establish child custody, visitation rights, and order child support payments;
- Restrain the abuser from molesting or interfering with minor children in your custody;
- Direct the defendant to make specified payments coming due while the order is in effect;
- Direct that either or both parties participate in counseling.

* Petitioner must list all family member(s) or other persons as additional protected parties.

For help in getting a restraining order, contact the agencies listed under Restraining Orders and Legal Information.

YOU ARE NOT ALONE THROUGH THE CRIMINAL JUSTICE SYSTEM PROCESS. If you need assistance or support at any time, contact San Francisco District Attorney's **Victim Services Division** at 850 Bryant St., Rm. 320 (Mon.- Fri., 8am - 4pm) 415-553-9044. **California Victims' Compensation Program**, you may contact 1-800-777-9229.

The goal of VSD is to help victims mitigate the trauma of crime, navigate the criminal justice system and rebuild their lives: Crisis support services and counseling, information on rights as a crime victim, emergency assistance: relocation, transportation, safety planning, referral to local resources and services: employment, housing, medical/dental, mental health, education, childcare, restitution, funeral arrangement, witness protection.

You have the right to file a civil suit for financial losses resulting from the abuse, including medical expenses, loss of earnings, and other expenses from injuries sustained and damage to property, and any other related expenses incurred by you or any agency which shelters you.

Sexual Assault Victim's DNA Bill of Rights (See Penal Code 680 for full language) Victim has the right to be informed of the following upon request:

- *If DNA profile developed from rape kit or other crime scene evidence.
- *Whether or not profile uploaded into Department of Justice database.
- *If match made between DNA and assailant.
- *Victim may designate advocate or support person to receive information.

FOR INFORMATION ON SHELTERS & SERVICES CONTACT:

24-HOUR HOTLINES

- La Casa de las Madres (ADULTS) 877-503-1850 (TEENS) 877-923-0700
- W.O.M.A.N. Inc. 415-864-4722
- The National Domestic Violence Hotline 800-799-7233
- TALK Line 415-441-KIDS (5437)
- Family & Children's Services (FSC) Hotline 800-856-5553
- National Human Trafficking Hotline 888-373-7888
- Asian Women's Shelter Crisis Line 877-751-0880

COUNSELING AND SUPPORT SERVICES FOR VICTIMS

- Community United Against Violence (same sex DV)* 415-333-HELP (4357)
- La Casa de las Madres
 - Adult Crisis Line (toll free) 877-503-1850
 - Teen Crisis Line (toll free) 877-923-0700
- W.O.M.A.N. Inc. 415-864-4722
- Survivor Restoration Program of Sheriff's Department 415-734-2312

ELDER ABUSE

- Adult Protective Services 415-355-6700
- Legal Assistance to the Elderly Inc. 415-538-3333
- Anti-Fraud Hotline for Seniors 855-303-9470
- Institute on Aging 415-750-4111
- Legal Aid At Work (work protections) 888-864-8335

EMERGENCY HOUSING

- Asian Woman's Shelter 877-751-0880
- La Casa de las Madres 877-503-1850
- Riley Center 415-255-0165

RESTRAINING ORDERS AND LEGAL INFORMATION

- Asian Pacific Islander Legal Outreach 415-567-6255
- Bay Area Legal Aid 415-982-1300
- Community United Against Violence (LGBTQ DV)* 415-333-4357
- Cooperative Restraining Order Clinic 415-864-1790
- CROC Appointment for Restraining Orders 415-255-0165
- Justice and Diversity Center (Bar Association) 415-989-1616
- W.O.M.A.N. Inc. 415-864-4722

*Other agencies also serve victims in same sex relationships.



George Gascón
District Attorney

Prioritizing Safety for Sex Workers

The San Francisco District Attorney's Office is concerned about the safety and well being of all San Franciscans. As such, we are eager to enact appropriate policies that sustain our commitment to public safety for people engaged in sex work and other forms of sex trade who are victims of sexual assault, human trafficking and other violent crimes. In order to create an environment where individuals who are victims or witnesses of violent crime are able to come forth to report violence, we are committed to the following:

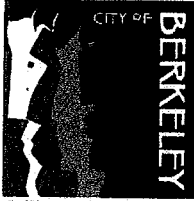
The District Attorney's Office will not prosecute persons for involvement in sex work or other forms of sex trade when they are victims or witnesses of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime. For purposes of this policy, persons will not be prosecuted for uncharged offenses including Penal code §§ 647(a), 647(b), 653.22, 372, and misdemeanor drug offenses, when reporting sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime.

Information gathered from a victim or witness of a violent crime who is engaged in sex work or other forms of sex trade including trafficked persons will not be used in any manner to investigate and prosecute that person, during the course of the investigation or in the future. So long as the person making the report does so truthfully, any statements they make shall not be used against them in the current investigation or in any future criminal action against them concerning this incident brought by this office for violation of Penal code §§ 647(a), 647(b), 653.22, 372.

Immigration status will not be used by the District Attorney against victims and witnesses of violent crime in any way. The Office of the District Attorney shall not report to any person or government agency the immigration status of any person making a report under this policy, with the exception of assisting with the application for immigration relief that would benefit the victim or witness.

The District Attorney's Office will work collaboratively with the San Francisco Police Department and Sheriff's Department on a training program on sex work and crimes against sex workers to ensure that this policy is implemented in a manner that furthers the goal of the reporting of violent crime by persons engaged in sex work and other forms of sex trade including trafficked persons. The training shall be developed and implemented in collaboration with community based organizations that serve sex workers.

Note: This agreement does not apply to a prosecutor's discovery obligations as required by law.



Office of the City Attorney

Date: August 9, 2018

To: Paul Buddenhagen, Acting City Manager

From: Farimah Brown, City Attorney
By: Kristy van Herick, Assistant City Attorney *KVH*

Re: Meet and Confer Requirements Related to Police Commission
Ballot Measure

Background

This office issued an opinion to City Manager Dee Williams-Ridley on March 26, 2018, providing initial legal analysis of City Council's November 14, 2017 proposals related to police oversight reforms. (Attached hereto.) The opinion included a basic discussion of the meet and confer requirements triggered by the key proposals.

On July 10, 2018, after considering multiple proposals, the City Council agreed to move forward with a proposed Police Commission Charter Amendment provided by Mayor Arreguin and Councilmember Harrison. The City Council specifically voted to direct the City Manager to move expeditiously in the meet and confer process with affected bargaining units. The deadline to submit measures to the Alameda County Registrar of Voters to be placed on the ballot for the November 2018 election is Friday, August 10, 2018.

On August 7, 2018, this office was asked to provide additional information on the meet and confer process as it relates to the Police Commission Charter Amendment. In line with Council's July 10th action, the City's Human Resources Director provided notice of the Council action to the Berkeley Police Association (BPA) on July 12, 2018. The parties worked expeditiously to schedule meet and confer. The City and BPA have already held an initial meet and confer session. BPA and City representatives have been engaged and participating in good faith in the process, and the parties have already scheduled the next meet and confer session.

However, the parties are still early in the process. As set forth below, the parties must meet and confer in good faith and either reach an agreement or exhaust impasse procedures. It is not possible to reach an agreement or exhaust impasse procedures

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.6998 TDD: 510.981.6903 Fax: 510.981.6960
E-mail: attorney@cityofberkeley.info

before the August 10th deadline to place the Police Oversight Ballot Measure on the November 2018 ballot. Following is a discussion of the various steps required in the meet and confer process before the Police Commission Charter Amendment can be placed before the voters.

Contract Amendment Required

There are certain Sections of the proposed Police Commission Charter Amendment that, if enacted, would modify the current discipline process. The Memorandum of Understanding (MOU) between the City and Berkeley Police Association, adopted by the City Council on July 31, 2018, includes Section 37.4, providing for a 120 Day Limit on Imposition of Discipline. This section is unchanged from the prior MOU. On the other hand, the proposed Police Commission Charter amendment, Section 17(5), seeks to implement a one year disciplinary process, which is inconsistent with the current MOU.

The MOU is a formal contract between the City and the Union, and is further covered by the Meyers-Milias-Brown Act (MMBA), as discussed in this office's March 2018 opinion. Any change to the MOU requires the mutual consent of the parties and ratification by the City Council, as stated in the MOU:

"This Understanding cannot be modified except in writing upon the mutual consent of the parties and ratification by the City Council." (MOU 9.1.)

The City cannot make unilateral changes to the MOU. "The rule in California is well settled: a city's unilateral change in a matter within the scope of representation is a **per se violation of the duty to meet and confer in good faith.**" (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 823.)

Meet and Confer Is Required

In addition to Section 17(5) referenced above, there are a number of other sections of the June 10, 2018 Police Commission Charter Amendment which are subject to meet and confer under the requirements of the MMBA as matters either directly altering, or having impacts on, the terms or conditions of employment for members of BPA¹. There are also a few provisions that may have impacts on members of other unions.

In *Seal Beach*, impacted employee associations sued the City of Seal Beach after voters passed a ballot initiative that amended the city's charter to require the immediate

¹ Public agency management and employee representatives have a mutual obligation to bargain in *good faith* to reach agreement on decisions related to wages, hours and **other terms and conditions** of employment ("decision bargaining"). Separately, meet and confer can be triggered when a "*management right*" has impacts or effects on represented employees' wages, hours or other terms and conditions of employment. This memo does not seek to identify which of the clauses in the Police Commission Charter Amendment may trigger "decision" bargaining as opposed to "impacts" bargaining.

firing of any city employee who participated in a strike. (*Seal Beach, supra*, 36 Cal.3d at p. 595.) The City of Seal Beach had not engaged in meet and confer with the impacted unions before placing the charter amendments before the voters. (*Ibid.*) The California Supreme Court found that a charter city must comply with the meet-and-confer requirements of the MMBA **before** placing an initiative measure on the ballot, holding:

“[T]he city council was required to meet and confer ...before it proposed charter amendments which affect matters within the scope of representation. The MMBA requires such action and the city council cannot avoid the requirement by use of its right to propose charter amendments.” (*Id.* at p. 602.)

Two separate sections of the MMBA are triggered by the July 10th Police Commission Charter Amendment. The first involves notice, and the second involves the requirement to meet and confer. The Council’s action triggers Government Code Section 3504.5, subdivision (a), which “is primarily concerned with requiring notice to employee organizations in one particular circumstance: when a governing body proposes a measure affecting matters within the scope of representation.” (See *Building Material & Construction Teamsters’ Union v. Farrell* (1986) 41 Cal.3d 651, 657.) Second, the California Supreme Court recently reaffirmed that “the duty to meet and confer under section 3505² applies **in addition to** the requirements of section 3504.5.” (*Boling v. Public Employment Relations Board* (Cal., Aug. 2, 2018, No. S242034) 2018 WL 3654148 (*emphasis in original*)). “We have consistently located the source of the actual duty to meet and confer in section 3505, where the term “meet and confer” appears and is defined.” (*Ibid.*)

Under the terms of section 3505, a charter city is required to meet and confer with the unions “prior to arriving at a determination of policy or course of action” on matters affecting the “terms and conditions of employment.” (*Ibid.*) “The duty to meet and confer in good faith has been construed as a duty to bargain with the objective of reaching binding agreements between agencies and employee organizations The duty to bargain requires the public agency to refrain from making unilateral changes in

² Government Code Section 3505. “The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action. “Meet and confer in good faith” means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.”

employees' wages and working conditions until the employer and employee association **have bargained to impasse**" (*Boling, supra*, 2018 WL 3654148, citing *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 537.) Good faith bargaining under section 3505 "requires a genuine desire to reach agreement." (*Boling supra*, 2018 WL 3654148, citing *Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623, 630; *International Assn. of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Bd.* (2011) 51 Cal.4th 259, 271.)

As noted, the meet and confer process involves back and forth and a genuine desire to reach an agreement, even if the parties are ultimately unable to do so. Such a process takes time and effort, typically over a period of months and multiple meetings.

Impasse Is Required (including Factfinding)

The City Manager is the representative of the City of Berkeley in employer-employee relations as provided in Resolution No. 43,397-N.S., adopted by the City Council on October 14, 1969. The City Manager must oversee the Section 3505 meet and confer process through post-impasse procedures as discussed below.

Under the MMBA, when the parties are unable to reach agreement in meet and confer, the public agency must next go through impasse procedures, which can take a minimum of two to four months. The process includes optional mediation, mandated factfinding process as noted below, and a public hearing on impasse. PERB treats bargaining over ballot measures similarly to bargaining over union contracts, and therefore requires bargaining to impasse, declaration of impasse and exhaustion of applicable impasse procedures, including factfinding if requested. (*County of Santa Clara* (2010) PERB Decision Nos. 2114-M & 2120-M; *City of Palo Alto* (2014) PERB Decision No. 2388-M.)

Since 2012, the MMBA has required factfinding. If a local public employer and its employee organization are unable to reach agreement in negotiations, the employee organization (but not the employer) "may request that the parties' differences be submitted to a factfinding panel." Per the MMBA factfinding provisions:

"The employee organization may request that the parties' differences be submitted to a factfinding panel **not sooner than 30 days, but not more than 45 days**, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within

five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.” (Govt Code §3505.4 (a).)

Once factfinding is completed and findings are issued, the City must hold a public hearing regarding the impasse, and only then may the City take action to implement its last, best and final offer. This would involve a final version of the Police Commission Charter Amendment for approval by Council for placement on the ballot. The MMBA states:

“[a]fter any applicable mediation and factfinding procedures have been exhausted, **but no earlier than 10 days after the factfinders’ written findings** of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, **after holding a public hearing regarding the impasse**, implement its last, best, and final offer, but shall not implement a memorandum of understanding.” (Govt Code Section § 3505.7.)

November 2018 Election is Neither Immutable Deadline Nor Operational Necessity

When there is a challenge to the adequacy of meet and confer due to timing of an election and the related pre-election deadlines, the Court (in the case of police associations) or the PERB (for other unions) may look to whether that particular election was an **immutable deadline**, in other words, the specific election was **the only one** at which the Charter Amendment could be considered. (See *City of Palo Alto* (2017) PERB Decision 2388a-M [Board found that “[n]o evidence suggests that if the City were unable to act in time for the November election ... that it could not again defer action to the next election cycle”]; See also *County of Santa Clara* (2010) PERB Decision Nos. 2114-M, *15; PERB Decision Nos. 2120-M, *16 [PERB held that County was not “faced with an imminent need to act prior to the statutory deadline for submitting the measure for the ballot” and thus was not privileged to place a Prevailing Wage Measure on the ballot prior to the completion of bargaining].)

Here, while there is certainly Council interest in moving this ballot measure forward in 2018, the Police Review Commission Ordinance and process have been in place for more than 40 years, and there are no facts that makes the November 2018 election an immutable deadline to excuse compliance with state law (i.e. this November is not the only election at which police reform items can be considered.)

At times, a compelling operational necessity can justify an employer acting unilaterally before completing its bargaining obligation. However, the employer must demonstrate “an actual **financial emergency** which leaves no real alternative to the action take and allows no time for meaningful negotiations before taking action.” (*County of Santa Clara* (2010) PERB Decision Nos. 2114-M, *16, citing *Oakland Unified School District* (1994) PERB Decision No. 1045.)

Memo to Acting City Manager

August 9, 2018

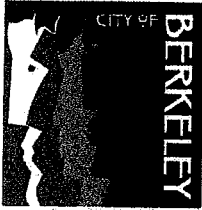
Page 6 Re: Meet and Confer on Charter Amendments

PERB has rejected efforts to use election deadlines to cut short meet and confer based on desirability as opposed to financial urgency. "[I]t does not appear that the County was faced with an imminent need to act prior to the statutory deadline for submitting the Prevailing Wage Measure for the ballot. The mere fact that the County thought inclusion of the measure on the November 2004 ballot was desirable does not constitute a compelling operational necessity sufficient to set aside its bargaining obligation." (*County of Santa Clara* (2010) PERB Decision Nos. 2114-M, *16.) The Police Commission Charter Amendment does not address a financial matter, much less a financial emergency that must be addressed in November of 2018.

For the reasons set forth above, it is premature to place the Police Commission Charter Amendment on the ballot for 2018.

Attachment

cc: Mark Numainville, City Clerk



Office of the City Attorney

Date: March 26, 2018

To: Dee Williams-Ridley, City Manager

From: Farimah Brown, City Attorney
By: Kristy van Herick, Assistant City Attorney *KVH*

Re: **Legal analysis of City Council's November 14, 2017 Proposals related to the Police Review Commission**

Background

At its November 14, 2017 meeting, City Council voted to refer to the Police Review Commission (PRC) and to the City Manager a ballot measure proposal to present to Berkeley voters seeking to reform the PRC structure. The item included a referral for the PRC:

"to review the existing enabling legislation, rules, and regulations for the PRC, and to consider all options, including charter amendments, ballot measures, and any other amendments to strengthen the authority of the PRC to consider and act on citizen complaints, and other possible structural, policy and procedural reforms."

The Council referral also sought to have "the City Manager, through the City Attorney, provide legal analysis regarding which proposals can be completed legislatively and which require amendments to the City Charter", and provided some initial recommendations for the PRC's and City Manager's consideration, as follows:

"Changes the City Manager and PRC should consider, but not be limited to, include the following:

- 1. Use the "preponderance of the evidence" as the standard of proof for all PRC decisions.*
- 2. Extend the current 120-day limit on the imposition of discipline up to one year, consistent with existing California law.*
- 3. Give the PRC full discretion and access to evidence to review complaints as to alleged officer misconduct.*

As part of the review of proposed improvements to the PRC process, the PRC should analyze police review policies and structures in other jurisdictions (e.g. San Francisco, BART, etc.), all PRC models and engage relevant stakeholders, including the Berkeley Police Association and community organizations, in developing proposals.

Full analysis by the PRC and City Manager must be reported to the City Council by May 2018."

The following is a legal review of the three initial proposals provided in the City Council's November 2017 referral. The PRC has not yet issued its response to the November 2017 referral, although this office is informed the PRC has created a subcommittee to work on the referral. Should the PRC provide additional proposals, this office will provide a supplemental response.

Issues/Conclusions

Issue: As to each of the three proposed PRC reforms listed below, what legal steps are required in order to implement the reform? Which proposals can be completed legislatively and which require amendments to the City Charter?

Proposal #1: Use the "preponderance of the evidence" as the standard of proof for all PRC decisions.

Conclusion: Changing the current standard of proof would require a simple majority vote of the PRC to amend the PRC Regulations. This proposed change also has impacts on Berkeley Police Association (BPA) members, therefore, it requires meet and confer with the Berkeley Police Association. No Charter Amendment is necessary to implement this change.

Proposal #2: Extend the current 120-day limit on the imposition of discipline up to one year, consistent with existing California law.

Conclusion: This proposal would require a change to the Memorandum of Understanding between the BPA and the City. Such a change can only be made through meet and confer and a formal amendment to the Memorandum of Understanding.

Proposal #3: Give the PRC full discretion and access to evidence to review complaints as to alleged officer misconduct.

Conclusion: Depending on the type of evidence the PRC is seeking, this proposal may require a Charter Amendment. A governing-body-sponsored ballot measure as proposed by the referral would trigger meet and confer, which must be completed **before** the ballot measure goes to the voters.

Discussion/Analysis

General legal background on the PRC

Berkeley voters adopted Ordinance 4644-N.S creating the Police Review Commission on April 17, 1973. (See Berkeley Municipal Code (B.M.C.), Chapter 3.32.) The purpose of the PRC was to, "provide for community participation in setting and reviewing Police Department policies, practices and procedures and to provide a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department." (B.M.C. § 3.32.010.)

A "Board of Inquiry" is the confidential hearing process used by the PRC to review specific complaints against officers. Three Commissioners are impaneled to hear and render findings on a complaint, and Commissioners are required to sign a confidentiality and nondisclosure agreement. (PRC Regulations, I.A and I.B.4 [eff. March 28, 2016].) After the hearing, a summary of the PRC's findings are provided to the City Manager and the Chief of Police. (PRC Regulations, I.B.10.)

A case decided shortly after the PRC's creation invalidated certain provisions of Ordinance 4644-N.S. that would have "(1) given the PRC the power to recommend specific disciplinary actions against individual police officers, (2) prohibited the Berkeley Police Department from conducting its own internal investigations and disciplinary proceedings, and (3) given the PRC the right to demand and receive information from the police department or other city departments." (*Berkeley Police Ass'n v. City of Berkeley* (2008) 167 Cal.App.4th 385, 390, citing *Brown v. City of Berkeley* (1976) 57 Cal.App.3d 223, 233–235 (*Brown*).)

In *Brown*, the Court found that the invalidated provisions in the Ordinance were in conflict with "the charter grant of powers to the city manager." (*Brown v. City of Berkeley, supra*, 57 Cal.App.3d at p. 233.) It is long established that, to be valid, an ordinance must harmonize with the charter. (See *South Pasadena v. Terminal Ry. Co.* (1895) 109 Cal. 315, 321.) "An ordinance can no more change or limit the effect of the charter than a statute can modify or supersede a provision of the state Constitution." (*Brown v. City of Berkeley, supra*, 57 Cal.App.3d at p. 231.) Therefore, the powers specified in the Charter take precedence over the language in City ordinances, even those passed by voter initiative.

Article VII, section 27, of the Charter reads: "The Council shall appoint an officer, who shall be known as the City Manager, who shall be the administrative head of the Municipal Government and who shall be responsible for the efficient administration of all departments." Further, Article VII, Section 28, states, in relevant part:

"...The City Manager shall have the following powers and duties:

... (b) *Except as otherwise provided in this Charter, to appoint, discipline or remove all officers and employees of the City, subject to the Civil Service provisions of this Charter. ... Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.*

(c) *To exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof...*

(f) *To make investigations into the affairs of the City, or any department or division thereof, or any contract, or the proper performance of any obligation running to the City.*

(g) *To prepare and submit to the Council for its consideration the proposed annual budget."*

Under the City Charter, Article VII, sections 28(b), (c) and (f), the City Manager has the authority to oversee all performance issues of City staff, to oversee the administration of the police department, and to direct the activity of the Chief of Police and his staff. Any shift in these key roles from the City Manager to an appointed or elected police commission would therefore require a Charter amendment.

Referral No. 1: Use the "preponderance of the evidence" as the standard of proof for all PRC decisions.

The first proposal referenced in the Council resolution involves changing the standard of proof used for all PRC Board of Inquiry decisions from "clear and convincing evidence" to "preponderance of the evidence". As discussed below, this proposed change would not require a Charter Amendment or ballot measure. However, this proposal requires two steps: (1) amending the PRC Regulations for Handling Complaints Against Members of the Police Department, which can be accomplished through a simple Commission action, and (2) completion of a meet and confer process with the BPA prior to implementation.

The PRC's enabling ordinance specifically empowers the PRC to "adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary." (B.M.C. § 3.32.090.E.) The PRC Regulations currently specify a "clear and convincing" evidence standard:

"Standard of Proof. No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of evidence, but less than beyond a reasonable doubt."

(PRC Regulations, VIII.C.)

As background, under California law, " 'Burden of proof' means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evid. Code § 115.)

The PRC has utilized the "clear and convincing evidence" standard in its BOI hearings for more than 30 years. The PRC in 2014 proposed changing the standard of proof as part of a package of regulation amendments. After engaging in meet and confer as required under the Meyers-Milias-Brown Act (MMBA) (Govt. Code § 3500, et seq.) concluded, this proposed amendment was not implemented.

The MMBA "has two stated purposes: (1) to promote full communication between public employers and employees; and (2) to improve personnel management and employer-employee relations within the various public agencies." (*Seal Beach Police Officers Assoc. v. City of Seal Beach* (Seal Beach) (1984) 36 Cal.3d 591, 597; see Govt. Code § 3500; *DiQuisto v. Co. of Santa Clara* (2010) 181 Cal.App.4th 236, 254.) To achieve these purposes, "the MMBA requires governing bodies of local agencies to 'meet and confer [with employee representatives] in good faith regarding wages, hours, and other terms and conditions of employment' and to 'consider fully' such presentations made by the employee organizations." (*Seal Beach, supra*, 36 Cal.3d at p. 596 (quoting Govt. Code § 3505).) Section 3505 of the Government Code defines "meet and confer in good faith" as both parties having "the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation...."

As to the PRC's Regulations, the City is obligated, consistent with MMBA, to meet and confer with representatives of the Berkeley Police Association and endeavor to reach agreement on the practical consequences "**of any changes** in wages, hours and **other terms and conditions** of employees represented by the Association." Meet and confer continues until management and labor either reach an agreement or reach impasse. "Impasse" means that the City and the BPA have a dispute over matters within the scope of representation and have reached a point in meeting and negotiating over the dispute at which their differences in positions are **so substantial or prolonged** that future meetings would be futile.

Impasse is only reached after multiple meetings and extensive effort on both sides to reach an agreement. Before imposing a regulation, the parties typically would be required to participate in fact finding before a neutral party. After this process is completed, if the union does not agree to implement the change, the City Council can

unilaterally impose the change. However, such imposition can result in legal action, particularly if there is any question as to whether the parties were truly at impasse and whether the parties were participating in good faith.

Referral No. 2: Extend the current 120-day limit on the imposition of discipline up to one year, consistent with existing California law.

To be effective, this referral would involve a change to language in the current Memorandum of Understanding ("MOU" or "Understanding") between the City and the Berkeley Police Association. The current MOU states in relevant part:

37.4 120 Day Limit on Imposition of Discipline

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within one hundred twenty (120) calendar days after the date of the incident giving rise to the disciplinary action or within one hundred twenty (120) calendar days of the date the City has knowledge of the incident giving rise to the disciplinary action.

If a letter of advice or written reprimand is issued by the Department, neither the document nor any testimony offered by the Department or the City in an appeal process shall reference any time restrictions set forth in this section, nor reference any other discipline that may have been considered, recommended or imposed, but for the time restrictions set forth herein.

Any change to the MOU requires the mutual consent of the parties and ratification by the City Council.

"This Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein [...] This Understanding cannot be modified except in writing upon the mutual consent of the parties and ratification by the City Council."

(BPA –COB MOU Section 9.1.)

For a modification to the MOU to be discussed in the *current* negotiation process, it would have needed to be shared with the BPA in May of 2017. Therefore, to make this change without violating state law, any change to the 120 calendar day provision must be done through a separate meet and confer process reaching mutual consent and ratification by Council.

Any attempt to implement a change to the MOU without mutual agreement is considered a "unilateral change". A unilateral change in violation of the MMBA occurs when an employer takes any action to change the status quo on a matter within the scope of representation without having given the employee organization proper notice

and an opportunity to bargain. "The rule in California is well settled: a city's unilateral change in a matter within the scope of representation is a per se violation of the duty to meet and confer in good faith." (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 823.)

Referral No. 3: Give the PRC full discretion and access to evidence to review complaints as to alleged officer misconduct.

For the reasons set forth below, this third proposal would require a Charter Amendment. The *Brown* case, referenced above, examined and invalidated a number of provisions in the original 1973 voter initiative creating the PRC as conflicting with the City Charter. One of the invalidated provisions is substantially similar to the Council's third referred proposal.

Specifically, Section 10(c) of the original voter adopted ordinance had provided the PRC with the power:

"to request and receive promptly such written and unwritten information, documents and materials and assistance as it may deem necessary in carrying out any of its responsibilities under this ordinance from any office or officer or department of the city government, including but not limited to the Police Department, the City Manager, the Finance Department, the Public Works Department, and the City Attorney, each and all of which are hereby directed as part of their duties to cooperate with and assist the Commission in the carrying out of its responsibilities; ..."

This section was found to violate the charter mandate that everything pertaining to administrative services go solely through the City Manager. (*Brown, supra*, 57 Cal.App.3d at p. 233–235.) In order for the PRC to have "full discretion and access to evidence" under the current proposal, the City Charter would need to be amended to shift some of the City Manager's authority to the PRC.

Depending on the level of discretion and access envisioned, state laws protecting the confidentiality of peace officer personnel records could also be implicated. Any language to change the Charter or PRC Ordinance also needs to be consistent with Penal Code sections 832.5 and 832.7¹ as well as Evidence Code 1043 to 1046, which specifies that *peace officer personnel records are confidential pursuant to the California Penal Code*.

¹ Penal Code section 832.7(a), provides, in part, that "[p]eace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code." The Evidence Code provides that in order for personnel records of a peace officer to be disclosed for possible use in a civil proceeding, the agency must pursue a discovery motion (commonly referred to as a *Pitchess* motion.)

In addition to requiring amendment to the City Charter, the proposal triggers a requirement to meet and confer with the BPA and possibly with other City unions to the extent the changes impact other represented employees. Meet and confer must be conducted with all impacted unions **before** the City Council puts such an amendment before the voters.

According to the MMBA,

*"[e]xcept in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by the governing body of a public agency, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation **proposed to be adopted** by the governing body or the designated boards and commissions and shall give the recognized employee organization the opportunity to meet with the governing body or the boards and commissions."*

(Govt Code § 3504.5 [*emphasis added*].)

The language "proposed to be adopted" indicates that the meet and confer needs to happen before the ordinance or other legal change can take effect.

In *Seal Beach*, impacted employee associations sued the City of Seal Beach after voters passed a ballot initiative that amended the city's charter to require the immediate firing of any city employee who participated in a strike. (*Seal Beach, supra*, 36 Cal.3d at p. 595.) The City of Seal Beach had not engaged in meet and confer with the impacted unions before placing the charter amendments before the voters. (*Ibid.*) The California Supreme Court found that a charter city must comply with the meet-and-confer requirements of the MMBA **before** placing an initiative measure on the ballot, holding: "[T]he city council was required to meet and confer ...before it proposed charter amendments which affect matters within the scope of representation. The MMBA requires such action and the city council cannot avoid the requirement by use of its right to propose charter amendments." (*Id.* at p. 602.)

It is less clear whether there the City must meet and confer on a citizen-sponsored initiative which does not *directly* involve a proposal by the governing body. Last year, a California Court of Appeal decision annulled a decision of the Public Employment Relations Board (PERB) that the 'pre-ballot' meet-and-confer requirement for a governing-body-sponsored ballot proposal also applied to a citizen-sponsored initiative. (*Boling v. Public Employment Relations Board* (2017) 10 Cal.App.5th 853, *reh'g denied* (May 1, 2017), *rev. granted*, California Supreme Court (July 26, 2017).) In *Boling*, the voters of City of San Diego approved a citizen-sponsored initiative, the Citizens Pension Reform Initiative ("CPRI"), which adopted a charter amendment mandating changes in the pension plan for certain employees of City of San Diego. However, the mayor of San Diego (a City with a strong mayoral form of government) had provided support to

Memo to City Manager
March 26, 2018
Page 9 Re: Council Referral on PRC Reforms

the proponents of the citizen-sponsored initiative to develop and campaign for the CPRI. (*Boling, supra*, 10 Cal.App.5th at p. 856.) The underlying PERB Decision found that the initiative could not be deemed purely a citizen action because of the public official's support.

The California appellate court ruled that: "[b]ecause a governing body lacks authority to make any changes to a duly qualified citizen's initiative (Elec. Code, § 9032), and instead must simply place it on the ballot without change, imposing a meet-and-confer obligation on the governing body before it could place a duly qualified citizen's initiative on the ballot would require an idle act by the governing body." (*Boling, supra*, 10 Cal.App.5th at p. 875.) However, as noted, the California Supreme Court has taken this case up for review, to consider among other matters, whether under the circumstances the voter initiative addressing a matter that falls within the MMBA was subject to meet and confer before the matter went to the voters.

Regardless of what the Supreme Court decides in *Boling*, pursuant to the language of the MMBA and the *Seal Beach* case, it is well established that governing-body-sponsored ballot proposals must go through the meet and confer process before going to the voters.

cc: Mark Numainville, City Clerk
Opn. Index: I.E; II.G.3.c

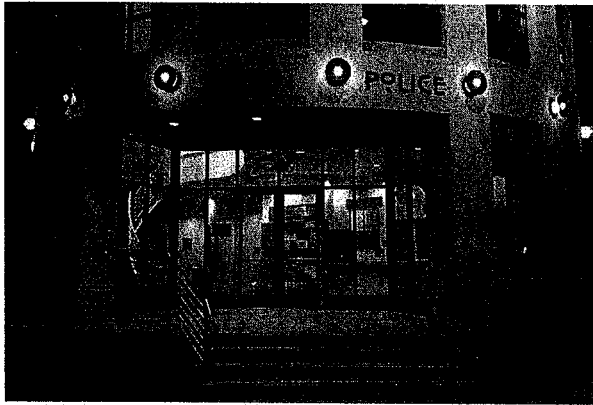
Berkeleyside

CITY

Berkeley City Council won't put police oversight measure on 2018 ballot

25

By Emilie Raguso, Aug. 10, 2018, 4:57 p.m.



Berkeley Police Department. Photo: Emilie Raguso

A Berkeley City Council proposal to put a police oversight charter amendment on the November ballot has run out of time to be considered this fall.

In a memo Thursday, staff said the “meet and confer” discussions between the city and police union are still underway and would not be done in time for ballot consideration. Friday was the deadline for the council to submit proposals for the ballot. Members of the public have until Sept. 8 to submit petitions.

There has been a flurry of proposals this year promoting various ideas for police oversight ballot measures. The effort began with two citizen proposals, one of which went on to receive significant discussion and work at the city's Police Review Commission. Mayor Jesse

Arreguín then came up with his own version of the PRC's work. The mayor's version, co-sponsored by Councilwoman Kate Harrison, is the one that's been used during the “meet and confer” process, even as the PRC continued to work on the mayor's plan.

In July, the Berkeley City Council voted to ask the city manager to begin discussions with police about that proposal. Council has asked the city to focus discussions on proposed changes that would lower the evidence standard the city now uses; extend the time limit to impose discipline; and give the PRC “full discretion and access to evidence to review complaints as to alleged officer misconduct.”

According to Thursday's memo, the city has had one meeting with the Berkeley Police Association and has scheduled another. But legal requirements mean that process cannot be rushed, the city wrote.

“The parties are still early in the process,” staff wrote. “As set forth below, the parties must meet and confer in good faith and either reach an agreement or exhaust impasse procedures.”

The proposal would modify the existing discipline process, which would require an amendment to the contract — which the city just adopted July 31 after lengthy negotiations.

Other parts of the mayor's oversight proposal would also require the "meet and confer" process "as matters either directly altering, or having impacts on, the terms or conditions of employment" for Berkeley police officers.

Staff wrote that the law requires the city to meet and confer in good faith. Then, if there's an impasse, further steps must be taken before the council could take action. Those steps include putting the matter before a "factfinding panel" within 45 days, and then holding a public hearing about the impasse. The city must then make "its last, best and final offer," which would "involve a final version of the Police Commission Charter Amendment" that council is considering.

The city says, in certain cases, arguments can be made to speed up the process, but only if there is an "immutable deadline, in other words, the specific election was the only one at which the Charter Amendment could be considered."



There is no evidence to suggest a future

Don't miss complete 2018 election coverage from Berkeleyside.

election won't suffice to put the matter before the voters, the city wrote.

"While there is certainly Council interest in moving this ballot measure forward in 2018, the Police Review Commission Ordinance and process have been in place for more than 40 years, and there are no facts that makes the November 2018 election an immutable deadline to excuse compliance with state law."

Stay tuned for further coverage.

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**ANNOTATED AGENDA
SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL**

Monday, July 23, 2018

4:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 4:07 p.m.

Present: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Arreguin

Absent: Worthington

Councilmember Worthington present at 4:17 p.m.

Action Calendar – Public Hearings

Action Calendar – Public Hearings

1. **Agreements with Other Law Enforcement Agencies, Police Departments or Private Security Organizations; Approval of MOU Compendium**

From: City Manager

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.

Financial Implications: See report

Contact: Andrew Greenwood, Police, 981-5900

Public Testimony: The Mayor opened the public hearing. 19 speakers. M/S/C (Droste/Maio) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to adopt Resolution No. 68,517–N.S. with the following amendments:

- Continue Compendium Item 3.4 (ICE) to September 13, 2018 to consider the item after the General Order is developed.
- Adopt agreement 3.12 (NCRIC) with the recommendation from the Ad Hoc Committee to define the terms of participation.
- Vehicle license and location data obtained through a NCRIC LPR database query will not be entered into the BPD Records Management System if it is not used in an investigation.

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

Recess 5:50 p.m. – 6:02 p.m.

Action Calendar

2a. Ad-Hoc Subcommittee on NCRIC and Urban Shield Findings and Recommendations

From: Mayor Arreguin, and Councilmembers Davila and Harrison

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.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, 981-7100

2b. Urban Shield

From: Councilmember Wengraf

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

Contact: Jesse Arreguin, Mayor, 981-7100

Action: M/S/C (Arreguin/Maio) to accept supplemental material from Councilmember Hahn on Items 2a and 2b.

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

Councilmember Hahn absent 6:02 p.m. – 6:05 p.m.

Councilmember Worthington absent 6:02 p.m. – 6:05 p.m.

Action Calendar

Action: M/S/Carried (Arreguin/Worthington) to adopt recommendations #4 and #5 from the Ad Hoc Committee item with a revised memo to Alameda County in Supplemental Communications Packet #2 and further revised in the 10th bullet point to read "...from foreign countries with documented..."

Vote: All Ayes.

Action: M/S/Failed (Wengraf/Droste) to approve the original recommendation from the Disaster and Fire Safety Commission.

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

Action: M/S/Carried (Harrison/Hahn) to take no action on the Disaster and Fire Safety Commission recommendation.

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

Action: 78 speakers. M/S/Failed (Harrison/Davila) that due to community concerns, concerns of the faith community and people of color, concerns about weapons present at the event, and the lack of local input and oversight, the City of Berkeley will suspend participation in the vendor show and tactical exercises by the Police Department, and allow participation in other elements of participation, and support the Berkeley Police Department in their efforts to reform Urban Shield.

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

Action: M/S/Carried (Wengraf/Maio) that the City of Berkeley acknowledges that important communities do not feel safe; that regardless of the reasons or origins for such feelings, the City of Berkeley commits to continuing and expanding efforts to build relationships and trust with all members of our community; that the City allows its Police, Fire, and other departments to participate in all Urban Shield exercises in 2018; and that the City will work with the Public Protection Committee of the Board of Supervisors to reshape Urban Shield for 2019, and appoint two members of the Council to attend the Public Protection Committee meetings.

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

Adjournment

Action: M/S/C (Hahn/Davila) to adjourn the meeting.

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

Councilmember Davila absent 9:44 p.m. – 9:45 p.m.

Adjourned at 9:45 p.m.

Communications

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 2, 2018

GENERAL ORDER P-64

SUBJECT: Computers and Digital Evidence

PURPOSE

1. This policy establishes procedures for the seizure and storage of computers, personal communications devices (PCDs) digital cameras, digital recorders and other electronic devices that are capable of storing digital information; and for the preservation and storage of digital evidence.

POLICY

2. All evidence seized and/or processed pursuant to this policy shall be done so in compliance with clearly established Fourth Amendment and search and seizure provisions.

SEIZING COMPUTERS AND RELATED EVIDENCE

3. Computer equipment requires specialized training and handling to preserve its value as evidence. Officers should be aware of the potential to destroy information through careless or improper handling, and utilize the most knowledgeable available resources. When seizing a computer and accessories the following steps should be taken:
 - (a) Photograph each item, front and back, specifically including cable connections to other items. Look for a phone line or cable to a modem for Internet access.
 - (b) Do not overlook the possibility of the presence of physical evidence on and around the hardware relevant to the particular investigation such as fingerprints, biological or trace evidence, and/or documents.
 - (c) If the computer is off, do not turn it on.
 - (d) If the computer is on, do not shut it down normally and do not click on anything or examine any files.
 1. Photograph the screen, if possible, and note any programs or windows that appear to be open and running.
 2. Disconnect the power cable from the back of the computer box or if a portable notebook style, disconnect any power cable from the case and remove the battery).
 - (e) Label each item with case number, evidence sheet number, and item number.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 2, 2018

GENERAL ORDER P-64

- (f) Handle and transport the computer and storage media (e.g., tape, discs, memory cards, flash memory, external drives) with care so that potential evidence is not lost.
- (g) Lodge all computer items in the Property Room. Do not store computers where normal room temperature and humidity is not maintained.
- (h) At minimum, officers should document the following in related reports:
 - 1. Where the computer was located and whether or not it was in operation.
 - 2. Who was using it at the time.
 - 3. Who claimed ownership.
 - 4. If it can be determined, how it was being used.
- (i) In most cases when a computer is involved in criminal acts and is in the possession of the suspect, the computer itself, the corresponding power/charging cords, and all storage devices (hard drives, tape drives, and disk drives) should be seized along with all media. Accessories (printers, monitors, mouse, scanner, keyboard, cables, software and manuals) should not be seized unless as a precursor to forfeiture.

BUSINESS OR NETWORKED COMPUTERS

- 4. If the computer belongs to a business or is part of a network, it may not be feasible to seize the entire computer. Cases involving networks require specialized handling. Officers should contact a certified forensic computer examiner for instructions or a response to the scene. It may be possible to perform an on-site inspection, or to image the hard drive only of the involved computer. This should only be done by someone specifically trained in processing computers for evidence.

FORENSIC EXAMINATION OF COMPUTERS

- 5. If an examination of the contents of the computer's hard drive, or floppy disks, compact discs, or any other storage media is required, forward the following items to a computer forensic examiner:
 - (a) Copy of report(s) involving the computer, including the Evidence/Property sheet.

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GENERAL ORDER P-64

- (b) Copy of a consent to search form signed by the computer owner or the person in possession of the computer, or a copy of a search warrant authorizing the search of the computer hard drive for evidence relating to investigation.
- (c) A listing of the items to search for (e.g., photographs, financial records, e-mail, documents).
- (d) When necessary, an exact duplicate of the hard drive or disk will be made using a forensic computer and a forensic software program by someone trained in the examination of computer storage devices for evidence.

SEIZING DIGITAL STORAGE MEDIA

- 6. Digital storage media including hard drives, floppy discs, CD's, DVD's, tapes, memory cards, or flash memory devices should be seized and stored in a manner that will protect them from damage.
 - (a) If the media has a write-protection tab or switch, it should be activated.
 - (b) In general, do not review, access or open digital files prior to submission. If the information is needed for immediate investigation request the Property Room to copy the contents to an appropriate form of storage media.
 - (c) Many kinds of storage media can be erased or damaged by magnetic fields. Keep all media away from magnetic devices, electric motors, radio transmitters or other sources of magnetic fields.
 - (d) Do not leave storage media where they would be subject to excessive heat such as in a parked vehicle on a hot day.
 - (e) Use plastic cases designed to protect the media, or other protective packaging, to prevent damage.

SEIZING PCDS

- 7. Personal communication devices such as cell phones, PDAs or other hand-held devices connected to any communication network must be handled with care to preserve evidence that may be on the device including messages, stored data and/or images.
 - (a) Officers should not attempt to access, review or search the contents of such devices prior to examination by a forensic expert. Unsent messages can be lost, data can be inadvertently deleted and incoming messages can override stored messages.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 2, 2018

GENERAL ORDER P-64

- (b) Do not turn the device on or off. The device should be placed in a faraday bag (or its equivalent if available), to prevent the device from sending or receiving information from its host network.
- (c) When seizing the devices, also seize the charging units and keep them plugged in to the chargers until they can be examined. If the batteries go dead all the data may be lost.

DIGITAL EVIDENCE RECORDED BY OFFICERS

- 8. Officers handling and submitting recorded and digitally stored evidence from digital cameras and audio or video recorders will comply with these procedures to ensure the integrity and admissibility of such evidence.

COLLECTION OF DIGITAL EVIDENCE

- 9. Once evidence is recorded it shall not be erased, deleted or altered in any way prior to submission. All photographs taken will be preserved regardless of quality, composition or relevance. Video and audio files will not be altered in any way.

SUBMISSION OF DIGITAL MEDIA

- 10. The following are required procedures for the submission of digital media used by cameras or other recorders:
 - (a) The recording media (smart card, compact flash card or any other media) shall be booked into the Property Room as soon as possible for submission into evidence or
 - (b) The media on the card shall be uploaded to the Department's Digital Evidence Database or an alternative storage media as soon as possible for submission into evidence.

DOWNLOADING OF DIGITAL FILES

- 11. Digital information such as video or audio files recorded on devices using internal memory must be either downloaded to storage media or uploaded to the Department's Digital Evidence database.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 2, 2018

GENERAL ORDER P-64

PRESERVATION OF DIGITAL EVIDENCE

12. Digital images that are enhanced to provide a better quality photograph for identification and investigative purposes must only be made from a copy of the original media. If any enhancement is done to the copy of the original, it shall be noted in the corresponding incident report.

Lee, Katherine

From: Greenwood, Andrew
Sent: Thursday, August 16, 2018 8:43 AM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: BPD Narcan Program
Attachments: A-18 Narcan 2018.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Kathy,

BPD is in the final steps of implementing this potentially life-saving program.

Please pass this GO and the below email along to the PRC for their information.

Thanks,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700

From: Greenwood, Andrew
Sent: Thursday, August 16, 2018 8:38 AM
To: All Police <dlPolice@cityofberkeley.info>
Subject: BPD Narcan Program

Greetings,

Due to the increase in opioid abuse and overdoses in the past several years, many US law enforcement agencies have created Naloxone (Narcan) programs. Officers equipped with Narcan have been able to provide the lifesaving drug, which has reduced the number of fatal overdoses significantly. This also allows officers to have the ability to quickly administer Narcan to *each other* in the event of an accidental exposure. This was most recently evident in Hayward when an Alameda County Sheriff's Office Deputy was exposed to Fentanyl while executing a search warrant. ACSO's Narcan program likely saved the Deputy's life.

Extensive work has been ongoing for quite some time to create and implement a Narcan program here at BPD. It has been a challenging process, in a complex arena mixing law enforcement with medical treatments, amidst constantly changing requirements and conditions... and we are now at the final steps towards implementation.

I have approved a new General Order covering the Berkeley Police Department program, which was just issued. We anticipate that the Alameda County EMS Director will be issuing a standing order (prescription) for BPD by Tuesday, August 21st. Once we have that, we will be ordering 125 Narcan kits and Pelican 1010 cases to house them. Each kit will contain (2) 4mg doses of Narcan. This will be adequate to provide a kit to every officer assigned to Operations. We will also assign kits to fixed locations in the PSB where drugs could be discovered, tested, or stored (bag and tag room, property

room, jail, briefing room, and the front counter). The surplus kits will be kept in the equipment room, and can be checked out as necessary.

In the upcoming weeks, Captain McPartland from BFD will be providing a train-the-trainer class for our First Aid Instructors. Once completed, our instructors will provide the training to all BPD employees, to include non-sworn and professional staff.

Employees who administer Narcan, are protected from civil and criminal liability if they "act with reasonable care" and "in good faith". This is accomplished by administering Naloxone according to the training protocol. Officers who deploy in the field with Narcan will retain the discretion to administer or not administer Narcan to people suspected of having an opioid-related overdose. There is no legal or departmental obligation to administer Narcan. It is being provided to you as a safety measure and potentially as a community caretaking act.

By September, we anticipate having a fully implemented Narcan program here at BPD. I would like to thank Sergeant Jen Tate for all of her hard work over the past year. She has navigated the complex issues and requirements in order to make this program a reality in order to add another layer of safety for all of our employees.

Should you have any questions about this program, please let Sgt. Tate know, as she continues moving the program forward.

With appreciation,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 15, 2018

GENERAL ORDER: A-18

SUBJECT: USE OF NALOXONE (NARCAN)

PURPOSE

- 1 - To establish guidelines and regulations governing the utilization of Naloxone by the Berkeley Police Department (BPD) with the objective to reduce the number of fatal opiate overdoses and increase the safety of BPD employees.

POLICY

- 2 - It is the policy of the Berkeley Police Department that employees are required to be trained in the use and appropriate application of Naloxone. The Alameda County Emergency Medical Services Agency (EMSA) Medical Director has authorized employees who have received training in the application of Naloxone, to possess and administer Naloxone.

DEFINITIONS

- 3 - **Naloxone Hydrochloride (Narcan):** Naloxone, also commonly known as Narcan, is a prescription medication used for the treatment of a possible opioid or suspected opioid overdose.

Intranasal: Naloxone is a narcotic antagonist which works by affecting opiate receptor sites within the brain. Naloxone is administered into the subject's nose via intranasal administration (spray). The nasal cavity is covered by a thin mucosa, which is extremely vascular and provides a direct route into the blood stream of the subject. This method of administration is noninvasive and quickly effective.

Opioid Overdose: An opioid overdose is an acute, life threatening, medical condition caused by excessive intake of opiates, such as heroin, morphine, fentanyl, tramadol and oxycodone. This serious medical condition causes the victim to suffer from an altered level of consciousness, pinpoint pupils, respiratory arrest, and can lead to death.

Employee: Any sworn or non-sworn Berkeley Police Department employee who through the course of their employment are likely to be in a location where narcotics are found, tested or stored.

PROCEDURE

- 4 - Naloxone kits will be issued by the Naloxone Coordinator or their designee.

(a) ISSUING NALOXONE KITS:

1. Only employees who have completed authorized training in the use and application of Naloxone will be assigned to carry and utilize Naloxone.

BERKELEY POLICE DEPARTMENT

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2. The standing order from the Alameda County EMSA Medical Director authorizes employees who have been trained by authorized Opioid Overdose Trainers to possess and administer nasal Naloxone to a person who is experiencing a possible opiate overdose.
3. The Watch Commander, or the designated sergeant, shall ensure there are an adequate number trained employees every shift to carry Naloxone in the field. The Naloxone coordinator will maintain a list of personnel authorized to carry Naloxone to aid the Watch Commander in this task.
4. Sworn personnel assigned to the Operations Division will be assigned long-term Naloxone kits. The kits shall be maintained in accordance with the provisions of this policy. Other sworn personnel assigned or opting to carry Naloxone, shall complete an Equipment Inventory Log, including the Naloxone kit number, date, and time the equipment is logged out and returned. The Naloxone kit and all related equipment must be returned to the designated secure storage area at the end of each shift, unless permission is granted to specific employees for long-term use.
5. Officers who are trained in accordance with the Alameda County EMSA mandated training guidelines shall deploy with Naloxone kits in the field. However, the officer will retain the discretion to administer or not administer Naloxone to persons experiencing or suspected of experiencing opioid-related overdoses. There is no legal or departmental obligation to administer Naloxone.
6. Officers who administer Naloxone, are protected from civil and criminal liability if they "act with reasonable care" and "in good faith." This is accomplished by administering Naloxone according to the established training protocol.
7. Naloxone must be stored in a climate controlled area and in a location where access to the medication can be secured and controlled.
8. Each assigned employee shall conduct a pre-service inspection of the Naloxone kit and confirm its condition. The employee will inspect the secured safety case to ensure it is clean and not damaged or expired.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 15, 2018

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9. Assigned employees will carry the Naloxone kit in a location that can be easily accessed and utilized when needed but out of direct sunlight.

(b) USING NALOXONE:

1. Employees trained in the use of Naloxone, are authorized to use it without prior approval in cases where an opiate overdose is suspected.
2. When using Naloxone employees should maintain universal precautions against blood borne pathogens.
3. Prior to administration of Naloxone, employees must assess the victim for lack of breathing, pulse, and unresponsiveness. Employees should conduct a brief visual survey for any obvious evidence of drug use or exposure.
4. If an employee determines a victim is suffering from opiate based over-dose, the employee will request Emergency Medical Services (EMS) immediately prior to the administration of Naloxone.
5. Naloxone shall be administered by employees utilizing **intranasal** method only as approved by the local Emergency Medical Services Director and in accordance with training guidelines.
6. Employees using Naloxone on anyone, including other members of this agency or other law enforcement agencies, shall notify the appropriate medical personnel so a more thorough assessment can be performed.

(c) TRAINING:

1. Prior to being issued and/or administering Naloxone, personnel must complete an Opioid Overdose Prevention Training conducted by a person authorized by the Department to serve as a trainer. The authorized trainer must be trained by Alameda County EMS to conduct Opioid Overdose Responder training. The training will only be offered to Berkeley Police Department employees and will be conducted every two years during departmental Continued Professional Training (CPT) sessions.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 15, 2018

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(d) MAINTENANCE AND REPLACEMENT:

1. The daily inspection of Naloxone kits will be the responsibility of the officers who are assigned the kit for field deployment. The maintenance and replacement of Naloxone kits will be the responsibility of the Naloxone coordinator or their designee. Used, lost, or damaged Naloxone kits will be reported to the immediate supervisor and returned to the Naloxone Coordinator for replacement.
2. Naloxone can only be obtained by prescription and will be ordered for the Berkeley Police Department on an as needed basis by either the Berkeley Police Department's Naloxone coordinator or their designee.

(e) DOCUMENTATION AND REPORTING:

1. Any employee administering opioid overdose medication will detail its use in an appropriate case report.
2. The approving supervisor will ensure that the case report contains enough information to meet applicable state reporting requirements. A copy of the report should be routed to the EMSA. This report is imperative for EMSA to conduct an audit of Naloxone administration within Alameda County.

Attachments:

1. Berkeley Police Department – Naloxone Kit Log
2. Alameda County EMSA Medical Director Standing Orders

CITY

THURSDAY, AUGUST 16, 2018

Berkeley Police Department announces security camera registration program to assist in investigations

BY AARYA GUPTA | STAFF

LAST UPDATED AUGUST 17, 2018

Berkeley Police Department, or BPD, announced a new program Wednesday in which community members can voluntarily register their video cameras with the department in order to share footage during crime investigations.

In the past, BPD has had success using footage provided from community members' security systems to assist with investigations, according to its website. This program is intended to aid officers in more promptly identifying security footage that could potentially help officers follow leads, identify suspects and investigate crime, according to the BPD website.

"In general, (the camera registry) is a positive contribution to safety. The consideration of the program required weighing any harms to privacy of Berkeley residents. On balance, it is well-calibrated to advance safety," said Ari Yampolsky, a commissioner on the Police Review Commission, or PRC.

The goal of the camera registry system — a program that other cities such as Oakland, El Cerrito, Martinez, Tracy and San Jose have also implemented — is to reduce crime and promote safety through collaboration, aligning with the department's overarching goal of fostering "strong community-police relationships," according to the BPD website.

"The more names we have in the database, the better," said BPD spokesperson Officer Byron White. "(The security camera registration program) is something the city has been talking about for a number of years."

When the program was first introduced to Berkeley City Council in 2014, the PRC was concerned about the potential invasion of privacy due to police access to livestream footage as well as the retainment of footage that is not used as evidence, according to an agenda item.

The official City Council resolution approving the program in 2018, however, addressed these concerns by ensuring that the footage will only be reviewed while an investigation is taking place and by disregarding live camera feeds.

Russ Tilleman, a candidate for Berkeley City Council's District 8 seat whose platform includes plans to increase police accountability, said he is concerned about the BPD program potentially violating the privacy of Berkeley residents.

"I believe BPD should be required to get a warrant before viewing video from any camera that could possibly see inside any private structure," Tilleman said in an email. "They shouldn't be able to use a private individual as a way to get around Constitutional protections for Berkeley residents."

In terms of next steps or future additions to the program, White said that it is "too early to tell" but emphasized that he hopes people will register to the free and voluntary program.

"As more people sign up and as more input comes in from the community, we will have a better picture," White said.

Contact Arya Gupta at agupta@dailycal.org and follow her on Twitter at [@aaryagupta](https://twitter.com/aaryagupta).

Nixle



Berkeley Police Department

Wednesday August 15th, 2018 :: 12:00 p.m. PDT

BPD's New Voluntary Security Camera Registry

Use the Berkeley Police Department's Security Camera Registry to help us know you have a security camera and you're willing to voluntarily share footage if we're investigating a crime.

While private security video systems may deter crime, they also serve to capture valuable evidence of which can be used to identify and apprehend suspects who have been recorded in the commission of their crime. Many residents and business owners currently operate security systems which could aid in criminal investigations, and we have had great success from community members who have supported investigations by providing us with footage from their security systems.

By registering your camera with the Department, you would enable officers to quickly identify cameras that could potentially aid in the apprehension of the suspect(s) responsible for the crime under investigation. This saves officers valuable time which they would otherwise spend going door-to-door attempting to locate security footage that could help identify a suspect.

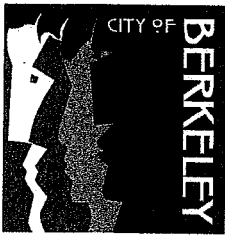
Registering your security camera information simply lets us know that you may be willing to share your camera's footage. Registering does not provide the Berkeley Police Department with direct access to your camera. Registration is completely voluntary and free of charge. Your personal information will be kept confidential by the Police Department and will only be accessed by law enforcement personnel who are conducting an investigation. Registration may be withdrawn at any time.

The process for registering your camera is simple and only takes a few minutes to complete. You will be asked to provide basic information on where your camera(s) are located. Once you have completed the registration process, a member of the Berkeley Police Department will follow up with you to confirm your registration.

The Berkeley Police Department is committed to fostering strong community-police relationships in order to prevent and reduce crime.

We invite our community to register your security camera as part of our effort to safeguard Berkeley.

<https://www.cityofberkeley.info/police/security-camera-registry/>



Police Review Commission

INFORMATION CALENDAR

January 27, 2015

To: Honorable Mayor and Members of the City Council
From: Police Review Commission
Submitted by: Michael Sherman, Chairperson, Police Review Commission
Subject: Security Camera Database

INTRODUCTION

At its June 3, 2014 meeting, the Council asked the City Manager to report on the possibility of setting up a database under the purview of the Berkeley Police Department to allow individuals to register their private surveillance cameras with the City, to serve as a resource for police to help them contact camera owners when a Part 1 crime has been committed nearby. This item was also referred to the Police Review Commission.

CURRENT SITUATION AND ITS EFFECTS

The PRC found the general concept of a voluntary registry to be appealing, in that it could save police officers time when seeking out privately owned surveillance cameras or trying to contact their owners. The PRC's primary concern was the potential for the invasion of privacy that could occur by monitoring the activities of individuals through access to live streaming of video. Another concern was the police keeping video footage that is turned over to them if the footage is not used as evidence. Accordingly, at its July 23, 2014 meeting, the PRC passed the following motion (M/S/C: Perezvelez/Allen):

"Inform the Council of the Commission's general support of the creation of a voluntary registry of existing video cameras to be maintained by the Police Department, provided that it is not contemplated that the Department maintain custody of videos or that the Department have access to live feeds."

Ayes – Allen, Bernstein, Lowhurst Perezvelez, Rogers, Zerrudo and Halpern (temporary appointment for Sherman); Noes -- None; Abstain – None; Absent -- Sherman, Cardoza.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The City Council could direct the Police Department to set up a voluntary registry so individuals in the City of Berkeley who choose to participate could inform the Police

Department that they have a security camera. Police personnel could then contact these individuals if their camera may have captured evidence of a crime.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Police Department staff time to set up and maintain registry.

CONTACT PERSON

Katherine J. Lee, PRC Officer, Police Review Commission, 510.981.4950

Lee, Katherine

From: Lee, Katherine
Sent: Tuesday, March 07, 2017 5:21 PM
To: Lee, Katherine
Subject: FW: Public records ruling by Calif. Supreme Court

Dear Commissioners,

I am forwarding from Commissioner Bernstein an article about a recent state Supreme Court decision, as well as the text of the decision. The gist: Texts and emails sent by public employees on their personal devices or accounts are a matter of public record if they deal with official business.

-Kathy

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

From: Alison Bernstein [mailto:alibernstein@gmail.com]
Sent: Friday, March 03, 2017 11:14 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Subject: Public records ruling by CSC

I think we all already knew this, but you may want to share out to the commission

<http://www.latimes.com/local/lanow/la-me-ln-public-officials-email-20170302-story.html>.

Here is the opinion:

<http://www.courts.ca.gov/opinions/documents/S218066.PDF>

AB

Public officials can't shield government business by using personal email, state Supreme Court rules

By Maura Dolan
MAR 02, 2017 | 2:25 PM

Public employees' work-related email and text messages sent on their personal devices through their private accounts are public records, the California Supreme Court decided Thursday. (Justin Sullivan / Getty Images)

Texts and emails sent by public employees on their personal devices or accounts are a matter of public record if they deal with official business, the California Supreme Court ruled Thursday in a unanimous decision hailed by open-government advocates.

But the court provided only general guidance on where the line would be drawn, posing a challenge for cities and counties forced to balance employees' privacy against the public's right to know.

The court said that communications sent on personal cell phones and computers must be disclosed to the public if they "relate in some substantive way to the conduct of the public's business."

"A city employee's communications related to the conduct of public business do not cease to be public records just because they were sent or received using a personal account," Justice Carol A. Corrigan wrote for the court.

Karl Olson, who represented the news media, including The Times, called the decision "a resounding victory for the public."

He said the ruling sent "a strong message that public officials and employees should not try to evade public scrutiny by using personal accounts."

Local governments throughout the state have expressed concerns that broad requests for information would be costly and might invade the privacy rights of workers.

The court acknowledged those concerns, saying it would not always be clear whether a communication had to be disclosed.

An email to a spouse complaining that a co-worker was an "idiot" would likely not be a public record, the court said, but an email to a supervisor reporting a co-worker's mismanagement of a project probably would have to be disclosed.

Deciding whether something written in a personal account is public record will require an examination of the content, the purpose for which it was sent, the person to whom it was sent and whether the communication was prepared within the scope of the worker's job, the court said.

Though the standard set by the court broadly favored public disclosure, "it is not so elastic as to include every piece of information the public may find interesting," Corrigan wrote.

If the communication is primarily personal and contains only an incidental mention of an agency, it is not covered, she said.

The court ruled in a case brought by Ted Smith, a community activist who filed a public records request eight years ago for the communications of San Jose City Council members and staff about a proposed downtown development.

San Jose supplied some records in response to the request but said communications on private devices were not covered by the public records act. Smith sued, winning in a trial court but losing in a court of appeal.

Smith, 71, a former attorney who has been fighting for public access to government information for decades, called Thursday's decision "the most important victory so far."

He said it showed that California was a beacon for the rest of the country and expressed hope that the federal government and the Trump administration might take note.

Cities, counties and other local governments in California had urged the court to side with San Jose, arguing they lacked the funds to ensure communications on private devices were disclosed and feared liability if some information on personal devices was not found and produced.

Patrick Whitnell, general counsel for the League of California Cities, said the ruling was unclear about whether cities could be held responsible for employees who fail to make required disclosures.

"I would have liked the court to have provided more concrete guidance," he said.

He also expressed concern about how cities could ensure that text messages were preserved. Preserving voicemails, which the decision did not directly address, would even be more problematic, he said.

The ruling does not require government to search the private devices of employees, but only to make "reasonable efforts" to obtain the information.

The court cited a policy developed by the Washington state Supreme Court, which said employees could be required to write declarations explaining how they searched their accounts, what they found and why they decided certain communications were not public records.

Olson, the news media attorney, argued in the case that the intent of the California Public Records Act was to make government business public, even though the law was written before the advent of the Internet and cellphones.

He cited a host of cases involving public officials who used private email accounts for government business in Los Angeles, San Diego, San Francisco and Sacramento.

On the national level, Hillary Clinton used a personal email account for work while she was Secretary of State, and staff members of New Jersey Gov. Chris Christie used emails to stage a massive traffic jam to punish a Christie foe.

David Snyder, executive director of the First Amendment Coalition, said the decision closed what had become a loophole in the public records act.

"If employees are conducting written business about the people's business on email, that ought to be available to the public," said Snyder, whose group promotes free speech and government transparency. "It shouldn't matter if the email is privately owned or owned by the government."

maura.dolan@latimes.com

Twitter: @mauradolan

Maura Dolan

Maura Dolan is the California-based legal affairs writer for the Los Angeles Times. She covers the California Supreme Court and the U.S. 9th Circuit Court of Appeals. A California native, she graduated from UC Berkeley and has worked in Washington and Los Angeles for The Times. She is now based in San Francisco.

Los Angeles Times

California Legislature passes major police transparency measures on internal investigations and body cameras

By LIAM DILLON
SEP 01, 2018 | 3:25 PM
| SACRAMENTO

Endorsing a dramatic departure from decades of secrecy surrounding policing in the state, California lawmakers have moved to undo some of the nation's strictest rules keeping law enforcement records confidential, particularly involving officer killings of civilians.

Legislators approved two landmark measures late Friday, one that would give the public access to internal investigations of police shootings statewide, and another that would allow the release of body camera footage of those incidents.

Supporters of the legislation, which must be signed by the governor to become law, said it would boost confidence in law enforcement at a time when multiple disputed police incidents have led to protests in California and nationwide.

The bills "open up some transparency to help rebuild that trust between law enforcement and communities," said Sen. Nancy Skinner (D-Berkeley), author of the open-records bill. "Public safety requires the cooperation and trust of a community."

Skinner's measure, Senate Bill 1421, would begin to unwind a confidentiality law passed four decades ago by opening records from investigations of officer shootings and other major force incidents, along with confirmed cases of sexual assault and lying while on duty.

California's existing rules protecting the confidentiality of misconduct records not only prohibit the public from seeing them, but also deny prosecutors direct access — a standard that exists in no other state.

A recent Times investigation found that past misconduct by law enforcement officers who testify in court is routinely kept hidden by California's privacy laws.

Supporters of the SB 1421 hailed the decision as a move toward increased trust between law enforcement and the public. The backdrop of Black Lives Matter and other movements pushing for changes in the criminal justice system helped move the transparency measure forward, they said.

"For years, black, brown, indigenous, and poor communities have been subjected to systemic harassment, violence and brutality by police but left little recourse to pursue justice," Melina Abdullah, a professor of Pan-African Studies at Cal State L.A. and a member of the Black Lives Matter movement, said in a statement. "SB 1421 will finally shine a bright light on whether and how police departments are holding officers accountable for these abuses of power."

Before Friday's decision, police labor unions had blocked several prior attempts to weaken the confidentiality rules. Labor groups have long contended that the laws currently in place protect police officers from unwarranted intrusion into their lives, and say the changes could put them at risk.

Assemblyman Jim Cooper (D-Elk Grove), a former captain in the Sacramento County Sheriff's Department, said the bill could make it easier to identify internal department whistleblowers.

"Because sustained cases of misconduct are high-profile within an organization, the accused officer will know who was there and who wasn't," Cooper said. "At a time it has never been more important to safeguard the identities of whistleblowers, this bill falls very short."

A separate bill that would require police departments to make some body camera footage public also advanced on Friday, the final day for lawmakers to consider bills for the year. The body camera measure would require departments to release footage of most officer shootings and other serious uses of force within 45 days unless doing so would interfere with an ongoing investigation.

Supporters said the legislation, Assembly Bill 748, was modeled on the Los Angeles Police Department's recently implemented policy to release videos within a similar timeframe, adding that the increased public access also would better relations between law enforcement and communities.

"We have spent millions of dollars up and down the state in all our local jurisdictions to deploy body cameras and record the footage," said Assemblyman Phil Ting (D-San Francisco). "This would provide greater transparency."

Police groups argued that the plan would override the ability of departments to set their own rules for disclosure.

Lawmakers also worried that the measure didn't give enough weight to the privacy interests of officers and the public.

"We need to be more deliberative about this and get it right," Assemblyman Jay Obernolte (R-Big Bear Lake) said during debate on the Assembly floor.

The passage of the body camera bill breaks a deadlock over the issue in the Legislature in the last four years. Multiple attempts to pass measures to make the footage public or restrict access statewide had failed before Friday.

AB 748 makes a forceful move toward open access to body cameras, said Adam Marshall, an attorney tracking state legislation with Reporters Committee for Freedom of the Press.

"The bill represents one of the strongest commitments to transparency for body cameras among the legislation that's been passed in the country," Marshall said

The approval of SB 1421 also represents a dramatic departure from lawmakers' past decision-making on police transparency issues.

Multiple efforts in years past to roll back restrictions on access to records have met their demise amid fierce lobbying from police labor unions. Former state Sen. Gloria Romero

(D-Los Angeles), who authored police transparency legislation that failed a decade ago, said in a recent interview that taking on law enforcement labor groups left scars.

“It’s a pack. Like wolves coming at you,” Romero said. “Other [legislators] see it, and you’re basically like meat thrown to the lions.”

Police labor unions have been strongly opposed to SB 1421. The Peace Officers Research Assn. of California, the state’s largest public safety union, as well as the Los Angeles Police Protective League argued that the current disciplinary process is unfairly deferential to department management. Making records of those investigations public would further punish officers, they said.

Decisive votes for both bills occurred in the state Assembly, which has multiple Democrats with close ties to police. Initial tallies for the pair Friday left them a half-dozen short of passage, as numerous Democrats declined to weigh in. But they both advanced late in the evening.

On Thursday, the Los Angeles Police Protective League, which represents rank-and-file Los Angeles Police Department officers, gave \$4,400 a piece to a dozen Assembly Democrats seen as friendly to law enforcement interests — the maximum-allowable donation — as they were set to decide on the police records and body camera bills.

Tom Saggau, a spokesman for the union, said board members approved the campaign contributions last week, and that they had no connection to the two bills.

“We never tie a political or charitable contribution to any political or legislative action,” Saggau said. “We urge the people we support to vote their conscience.”

Unlike in previous attempts at changing the confidentiality rules, law enforcement wasn’t united against SB1421. Last week, the California Police Chiefs Assn. announced its support for the legislation, echoing arguments from civil rights advocates about its ability to help increase the public’s trust in police.

Gov. Jerry Brown has not taken a position on either measure. Brown signed the bill implementing the state’s strict police confidentiality rules in 1978, when he was in his first term.

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Stephon Clark-inspired bill to limit police killings in California shelved for the year

BY ALEXEI KOSEFF
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A controversial legislative proposal to limit when police can use deadly force in California will not move forward this session.

Senate President Pro Tem Toni Atkins and Assemblywoman Shirley Weber, a San Diego Democrat who carried the measure, jointly announced Wednesday night that they would hold Assembly Bill 931 and continue discussions in the fall.

“Make no mistake: we have a critical problem that remains unaddressed. We need to end preventable deaths and to do so without jeopardizing the safety of law enforcement officers,” Atkins said in a statement. “Unfortunately, the legislative calendar does not provide the necessary time to clearly resolve the concerns that need to be addressed for the bill to pass the two legislative houses and get to the Governor’s desk for his signature.”

AB 931 would have raised the state standard for using lethal force from “reasonable” — when a reasonable officer in similar circumstances would have acted the same way — to “necessary,” when there are no alternatives for police to consider in that situation.

It was an effort to address police shootings that disproportionately affect minority communities. The measure was introduced in the wake of the March shooting of Stephon Clark in south Sacramento, who was killed after being chased into his grandmother’s backyard. Police said they thought Clark had a gun but later determined he was holding a cellphone.

Law enforcement vigorously opposed AB 931, arguing that it would pose a threat to officers’ lives by causing them to second-guess their actions. Weber and her allies scaled back the bill last week, removing a provision that would have made it easier to prosecute police who kill civilians, in a bid to shore up political support.

Atkins promised to work with Weber during the recess to have new legislation ready to introduce when lawmakers return in January that would “make California a model for the rest of the country.”

“My commitment is to the families of those who have lost loved ones and to those communities most affected by the current use of force standard,” Weber said in a statement. “I want to thank them and all of those who have worked relentlessly to get this policy to this point. I will continue to need your energy, your assistance and your prayers as we continue this fight.”

