

DRAFT

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

**Wednesday, September 26, 2018  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY CHAIR MATTHEWS AT 7:05 P.M.**

Present: Commissioner Sahana Matthews (Chair)  
Commissioner George Perezvelez (Vice Chair)  
Commissioner Kitty Calavita  
Commissioner Andrea Prichett  
Commissioner Ismail Ramsey  
Commissioner Terry Roberts  
Commissioner Michael Sherman

Absent: Commissioner Gwen Allamby, Commissioner Ari Yampolsky

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Lt. Randy Files, Sgt. Cesar Melero

**2. APPROVAL OF AGENDA**

The agenda, with the postponement of Item #10.c. to the next meeting, was approved by general consent.

**3. PUBLIC COMMENT**

There were 5 speakers.

**4. APPROVAL OF MINUTES**

The Regular Meeting Minutes of September 12, 2018 were approved by general consent.

**5. CHAIR'S REPORT**

Very packed agenda and will try to keep moving forward; please keep in mind the time and motions you want the Commission to act upon.

## **6. PRC OFFICER'S REPORT**

- a. No new complaints filed since last meeting. Last week, Comms. Sherman, Roberts and Matthews served on a BOI.
  - Draft Annual Report handed out tonight so you have 2 weeks to review and make comments at the next meeting.
  - Distributed motion from last night's Council meeting on posting of arrestee photos.
  - Boalt Police Review Project, in which students representing complainants at BOIs, is kicking off for this semester. Name change to Berkeley Police Review Project.
  - Two items from Councilmember Worthington relevant to PRC are being placed on the October 2 Council agenda.
  - Presentation by Sgt. Fomby on BPD de-escalation training. Most Commissioners can attend on Oct. 17 so will schedule for then.
- b. Prioritizing new agenda items **(discussion & action)**  
Not discussed.

## **7. CHIEF OF POLICE'S REPORT**

Lt. Files reported on behalf of Chief Greenwood:

- Current staffing at 159; injuries, leaves, etc. bring that to 130 available.
- New timesheet began this week.
- Recruitment/retention team started. Interviewed 28 people this week.
- Barbershop Forum this past Monday; 12 BPD staff attended.
- Dept. issued pink BPD patches for Breast Cancer Awareness month.
- Healthy food/vending machines installed.
- Body worn camera policy to be released to PRC by Friday, and training will start Oct. 22.
- Sgt. Melero is newly-assigned to IA, replacing Sgt. Cardoza.

## **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. Homeless Encampment Subcommittee – PRC Officer reported that issuance of revised rules and regulations are on hold pending the recent 9<sup>th</sup> Cir. decision. At Comm. Prichett's request, will ask which policies are being enforced in the meantime.
- b. Prioritizing Safety for Sex Workers Subcommittee – Comm. Ramsey would like volunteers by the first meeting in Oct. Has contacted the chair on the Comm. on

the Status of Women about "joint" meetings. Got some info from Chief re prostitution arrests (very low).

## 9. OLD BUSINESS (discussion & action)

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

*Discussed; to be continued at the next meeting.*

- b. Review policy on use of body-worn cameras, including sufficiency of provisions on use of associated iPhone.

**Motion to request all information from the body-worn camera manufacturer regarding the interaction between iPhones and body-worn cameras; and all information about how recordings made by officers on personal or department-issued devices are made and accounted for.**

Moved/Seconded (Prichett/Sherman)

**Substitute Motion to ask the Berkeley Police Department to supply, along with the Body-Worn Camera [BWC] policy, the operational specifications about how the BWCs and the iPhones work together, as well as any operating manuals and/or training instructions that officers are being given regarding how to operate and handle the BWCs and the iPhone.**

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

Ayes: Calavita, Matthews, Perezvelez, Prichett, Ramsey, Roberts, Sherman

Noes: None

Abstain: None

Absent: Allamby, Yampolsky

- c. Issues surrounding the BPD Response to Protests on August 5, 2018:
  - i. Request After-Action report created after the August 5 protests.

**Motion to request copies of the inventory forms that were required on Aug. 5 before and after the action, including those completed by mutual aid forces.**

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

Ayes: Calavita, Matthews, Prichett, Sherman

Noes: Perezvelez, Ramsey, Roberts Abstain: None

Absent: Allamby, Yampolsky

- ii. Examination of issues, including: pre-emptive confiscation of sound truck near Ohlone Park, and other "de-escalation" strategies used.
  - iii. Review policies, including General Order P-29, Sec. 7, related to the release of mugshots and the decision to release this information.

*Some portions of this item 9.c. made moot by City Council action; other portions of this item discussed and to be continued to the next meeting.*

## 10. NEW BUSINESS (discussion & action)

- a. Lexipol Policies for review and approval:

I. Lexipol polices changed from General Order (G.O.)

Lexipol #	G.O.	Title
100	A-1	Law Enforcement Authority
103	P-18	Policy Manual
200	D-2, D-6, R-4, U-3	Organizational Structure and Responsibility
201	S-4	Special Orders
202	D-9	Emergency Management Plan
203	T-7	Training Policy
204	E-12	Electronic Mail
302	H-6, T&IB 247	Handcuffing
308	Council Res. 51,408-N.S.	Canines
310	D-5	Domestic Violence
311	S-6	Search and Seizure

*Discussed; to be continued at the next meeting.*

II. No change from General Order

Lexipol	G.O.	Title
206	R-37	Retiree Concealed Firearms
401	B-4	Racial or Bias-Based Profiling
414	A-18	Use of Narcan (Naloxone)
508	A-2	Crossing Guard
611	D-1	Licensed Liquor Establishments, Conduct of
706	V-11	Rescue Vehicle
802	P-65, P- 66, P-67	Property and Evidence
810	P-33	Computer Voice Stress Examinations
811	P-10	Burial Permits – Emergency
903	T-2	Transportation of Prisoners
1002	P-15	Special and Temporary Duty Assignments, Application and Selection Procedures
1037	C-46	Attendance - Conferences and Meetings

**Motion to approve the recommendation of the Lexipol Policies Subcommittee regarding the “Group II” polices and forward them to the BPD.**

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

Ayes: Calavita, Matthews, Perezvelez, Ramsey, Roberts, Sherman.

Noes: None

Abstain: Prichett

Absent: Allamby, Yampolsky

III. "New" – no corresponding General Order

Lexipol #	Title
101	Chief Executive Officer
102	Oath of Office
205	Administrative Communications
309	Officer Response to Calls
334	Anti-Reproductive Rights Crimes Reporting
336	Mandatory School Employee Reporting
345	Native American Graves Protection and Repatriation
416	Emergency Utility Service
417	Aircraft Accidents
419	Obtaining Air Support
1009	Smoking and Tobacco Use
1011	Seat Belts
1017	Meal Periods and Breaks
1018	Lactation Break Policy
1019	Payroll Record Procedures
1023	Personal Appearance Standards
1027	Department Badges

**Motion to approve the recommendation of the Lexipol Policies Subcommittee regarding the "Group III" policies and forward them to the BPD.**

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

Ayes: Calavita, Matthews, Perezvelez, Ramsey, Roberts, Sherman

Noes: None

Abstain: Prichett

Absent: Allamby, Yampolsky

- b. The need for PRC to do outreach and what outreach efforts that the PRC might undertake.  
*(Item postponed to the next meeting.)*
- c. Amendment to Standing Rules to require that a commissioner must be present to be eligible to run for Chairperson or Vice-chairperson  
*(Item postponed to the next meeting.)*
- d. Understanding what laws and policies govern audio recording of traffic stops by BPD Officers.  
*(Item postponed to the next meeting.)*
- e. Consider commendation of Officer Stephanie Cole for her actions during a traffic stop involving a Berkeley Councilmember on July 19, 2018.

**Commissioner Sherman withdrew this item.**

f. Issues surrounding Commissioners' communications using personal devices and accounts being subject to Public Records Act requests, including whether Commissioners may be assigned City email addresses for Commission business.

*(Item postponed to the next meeting.)*

g. Review requirements surrounding the preparation of After-Action Reports and whether release (or withholding) of such reports or parts thereof are compliant with the Public Records Act.

*(Item postponed to the next meeting.)*

h. Responsiveness of BPD management to PRC requests.

*(Item postponed to the next meeting.)*

## **11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached

## **12. PUBLIC COMMENT**

There were 3 speakers.

### ***Closed Session***

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

## **13. REVIEW OF ADMINISTRATIVE LAW JUDGE'S DECISION IN CALOCA APPEAL OF COMPLAINT #2434**

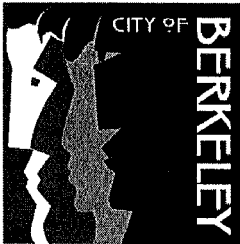
### ***End of Closed Session***

## **14. ANNOUNCEMENT OF CLOSED SESSION ACTION**

No action was taken.

## **15. ADJOURNMENT**

**By general consent, the meeting was adjourned at 9:55 p.m.**



Police Review Commission (PRC)

October 10, 2018

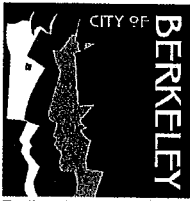
To: Police Review Commission  
From: Katherine J. Lee, PRC Officer  
Re: History of Development of a Body-Worn Camera Policy

This will provide some background on the development of a body-worn camera (BWC) policy for the Berkeley Police Department, to inform newer Commissioners and serve as a refresher for longer-serving Commissioners.

- Feb. 12, 2015 City Council referral to the PRC develop a plan to implement the use of dash cameras and body-worn cameras for the BPD.
- Aug. 25, 2015 City Manager memo to Council explaining reasons for delay (PRC spending most of 2015 investigating BPD response to the December 2014 protests).
- Jan. 7, 2016 First meeting of PRC's Body-Worn & Dash Cameras Subcommittee: Comms. Lippman (Chair), Javier, Roberts, Yampolsky. Sgt. Okies present for BPD.
- Jan. – May 11, 2016 BWC Subcommittee meets about twice monthly, with Sgt. Okies usually in attendance.
- May 25, and June 8, 2016 BWC Subcommittee presents recommended policy to PRC for approval. Draft policy, as modified, approved for transmittal to Council.
- July 19, 2016 Council Work Session on Body-Worn and Dash Cameras. PRC and BPD each submit a report attaching their desired policies. Comms. Perezvelez and Roberts, and PRC Officer present on behalf of PRC; Chief Meehan, Sgt. Okies, and Sgt. Fomby on behalf of BPD. BPD also presents its suggested plan for a pilot project with 20 cameras.
- July 27, 2016 PRC empowers a subset of the Commission to meet with BPD to discuss: 1) recording of interrogations; 2) use of personal recording devices; 3) release to PRC of video related to investigations; and 4) officer review of video before writing reports involving use of force.
- Sept. 14, 2016 Comms. Perezvelez & Roberts and PRC Officer meet with Chief Meehan, Lt. Montgomery, Lt. D. Reece, and Sgt. Okies.


- Dec. 6, 2016 Comm. Yampolsky & Roberts and PRC Officer meet with Chief Greenwood, Lt. D. Reece, and Sgt. Okies.
- Dec. 13, 2016 Memo from Comms. Roberts & Yampolsky to the PRC reporting on the Sept. 14 and Dec. 6 meetings.
- Jan. 25, 2017 Oral report on the meetings with BPD (after postponement from prior two meetings). PRC adopted proposed language on recordings of interrogations; when officers may review video, and mandatory v. discretionary activation of cameras; and directed PRC Officer work with Chief to work out compromise language on use of personal recording devices and release of recordings to PRC, to be brought back for Commission consideration.
- April 12, 2017 PRC approves, with revisions, proposed compromise language. PRC Officer to get clarification about BPD versions of its policy.
- April 25, 2017 Council adopts referral to the budget process funding for up to 200 BWCs, subject to concurrent implementation of BPD BWC policy and Surveillance Ordinance.
- April 26, 2017 PRC approves full draft policy for transmittal to City Council.
- June 27, 2017 Council approves contract for purchase of BWC equipment, software and services from Axon NTE \$1,250,000 over 5 years, subject to concurrent implementation of BWC policy and Surveillance Ordinance.
- Oct. 11, 2017 Chief reported that hardware (cradles and mounts; Ethernet cables) being installed. M&C not yet scheduled. Axon will train the trainers for 4 days starting Nov. 28.
- December 13, 2017 Chief and Lt. Okies provide demonstration of Axon BWCs and iPhone at PRC meeting. Chief said training had been occurring over past couple of weeks.
- Feb. 12, 2018 Chief sends memo to PRC addressing questions raised re use of iPhone applications in conjunction with the BWCs.
- Sept. 2018 Meet-and-confer with BPA concludes.
- Sept. 28, 2018 Lexipol Policy 424, Body Worn Cameras, issued.
- Oct. 22, 2018 Training to begin, and deployment thereafter.





Police Review Commission (PRC)

October 9, 2018

To: Chief Andrew Greenwood  
From: Katherine J. Lee,  Police Review Commission Officer  
Re: Request for munitions inventory forms related to August 5, 2018 protests

This is a follow-up to the After-Action Report prepared by the BPD regarding the "Say No to Marxism" and "Stop the Hate" events on August 5, 2018. You delivered the report to the PRC at its September 12, 2018, meeting.

The Commission is interested in obtaining source documents used in compiling the pre- and post-event inventory of chemical munitions that appears on the After-Action Report. Therefore, at its September 26, 2018 meeting, the Commission voted to request copies of the inventory forms that were required to be submitted for the August 5 event, both before and after the protests. This request pertains to chemical munitions inventoried by all responding mutual aid forces as well.

The motion and vote were as follows: M/S/C (Prichett/Sherman) – Ayes: Calavita, Matthews, Prichett, Sherman; Noes: Perezvelez, Ramsey, Roberts; Abstain: None; Absent: Allamby, Yampolsky.

Thank you for your consideration of this request.

cc: Paul Buddenhagen, Interim Deputy City Manager  
PRC Commissioners



**Lee, Katherine**

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**From:** Lee, Katherine  
**Sent:** Monday, October 08, 2018 2:32 PM  
**To:** Lee, Katherine  
**Cc:** Martinez, Maritza  
**Subject:** Minutes of Sept. 26 PRC meeting; spit hoods  
**Attachments:** 2018-09-26 Minutes (unapproved).pdf; Spit Hood.pptx

Dear Commissioners,

1. Attached for approval at this Wednesday's meeting are the minutes of your Sept. 26 meeting.

2. Also attached are photos of spit hoods in use by BPD, from Comm. Prichett. These related to Lexipol Policy 302 on your agenda. She asked that the photos and the questions below be shared with you:

> Questions about Spit Hoods:

>

> 1. What diseases are police worried about? Hep C and HIV are not transmitted via saliva.

>

> 2. People can die because fabric can cling to the face and impede respiration.

>

> 3. Caregivers cannot monitor vitals if they cant see the lips and

> mouth area

>

> 4. It is degrading, traumatizing and unnecessary.

>

> 5. Police officers can wear masks if they are concerned about contamination.

>

-Kathy

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



**PENAL CODE - PEN**

**PART 1. OF CRIMES AND PUNISHMENTS [25 - 680] ( Part 1 enacted 1872. )**

**TITLE 15. MISCELLANEOUS CRIMES [626 - 653.75] ( Title 15 enacted 1872. )**

**CHAPTER 1.5. Invasion of Privacy [630 - 638.55] ( Chapter 1.5 added by Stats. 1967, Ch. 1509. )**

**630.** The Legislature hereby declares that advances in science and technology have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications and that the invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise of personal liberties and cannot be tolerated in a free and civilized society.

The Legislature by this chapter intends to protect the right of privacy of the people of this state.

The Legislature recognizes that law enforcement agencies have a legitimate need to employ modern listening devices and techniques in the investigation of criminal conduct and the apprehension of lawbreakers. Therefore, it is not the intent of the Legislature to place greater restraints on the use of listening devices and techniques by law enforcement agencies than existed prior to the effective date of this chapter.

*(Added by Stats. 1967, Ch. 1509.)*

**631.** (a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both a fine and imprisonment in the county jail or pursuant to subdivision (h) of Section 1170. If the person has previously been convicted of a violation of this section or Section 632, 632.5, 632.6, 632.7, or 636, he or she is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both that fine and imprisonment.

(b) This section shall not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) Except as proof in an action or prosecution for violation of this section, no evidence obtained in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.

(d) This section shall become operative on January 1, 1994.

*(Amended by Stats. 2011, Ch. 15, Sec. 428. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**632.** (a) A person who, intentionally and without the consent of all parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500) per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000) per violation, by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) For the purposes of this section, "person" means an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication.

(c) For the purposes of this section, "confidential communication" means any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive, or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

(d) Except as proof in an action or prosecution for violation of this section, evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section is not admissible in any judicial, administrative, legislative, or other proceeding.

(e) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, if the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility, (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(f) This section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear.

*(Amended by Stats. 2016, Ch. 855, Sec. 1. (AB 1671) Effective January 1, 2017.)*

**632.01.** (a) (1) A person who violates subdivision (a) of Section 632 shall be punished pursuant to subdivision (b) if the person intentionally discloses or distributes, in any manner, in any forum, including, but not limited to, Internet Web sites and social media, or for any purpose, the contents of a confidential communication with a health care provider that is obtained by that person in violation of subdivision (a) of Section 632. For purposes of this subdivision, "social media" means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

(2) Notwithstanding any other provision of law, to aid and abet a violation of paragraph (1), for the purposes of Section 31, the person shall either violate, or aid and abet in a violation of, both Section 632 and paragraph (1).

(b) A violation of subdivision (a) shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500) per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000) per violation, by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(c) For purposes of this section, "health care provider" means any of the following:

- (1) A person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.
- (2) A person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act.
- (3) A person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.
- (4) A clinic, health dispensary, or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.
- (5) An employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).
- (6) An employee, volunteer, independent contractor, or professional student of a clinic, health dispensary, or health care facility or health care provider described in this subdivision.
- (7) A professional organization that represents any of the other health care providers described in this subdivision.

(d) (1) Subdivision (a) does not apply to the disclosure or distribution of a confidential communication pursuant to any of the following:

- (A) Any party as described in Section 633 acting within the scope of his or her authority overhearing or recording a confidential communication that he or she may lawfully overhear or record pursuant to that section.
- (B) Any party as described in Section 633.02 overhearing or recording a confidential communication related to sexual assault or other sexual offense that he or she may lawfully overhear or record pursuant to that section, or using or operating a body-worn camera as authorized pursuant to that section.
- (C) A city attorney as described in Section 633.05 overhearing or recording any communication that he or she may lawfully overhear or record pursuant to that section.
- (D) An airport law enforcement officer recording a communication received on an incoming telephone line pursuant to Section 633.1.
- (E) A party to a confidential communication recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of a crime as specified in Section 633.5.
- (F) A victim of domestic violence recording a prohibited communication made to him or her by the perpetrator pursuant to Section 633.6.
- (G) A peace officer using electronic amplifying or recording devices to eavesdrop on and record the otherwise confidential oral communications of individuals within a location when responding to an emergency situation that involves the taking of a hostage or the barricading of a location pursuant to Section 633.8.

(2) This section does not affect the admissibility of any evidence that would otherwise be admissible pursuant to the authority of any section specified in paragraph (1).

*(Added by Stats. 2016, Ch. 855, Sec. 2. (AB 1671) Effective January 1, 2017.)*

**632.5.** (a) Every person who, maliciously and without the consent of all parties to the communication, intercepts, receives, or assists in intercepting or receiving a communication transmitted between cellular radio telephones or between any cellular radio telephone and a landline telephone shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment. If the person has been previously convicted of a violation of this section or Section 631, 632, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine

and imprisonment.

(b) In the following instances, this section shall not apply:

(1) To any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) To the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) To any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section and Section 635, "cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

*(Amended by Stats. 1992, Ch. 298, Sec. 4. Effective January 1, 1993.)*

**632.6.** (a) Every person who, maliciously and without the consent of all parties to the communication, intercepts, receives, or assists in intercepting or receiving a communication transmitted between cordless telephones as defined in subdivision (c), between any cordless telephone and a landline telephone, or between a cordless telephone and a cellular telephone shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has been convicted previously of a violation of Section 631, 632, 632.5, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) This section shall not apply in any of the following instances:

(1) To any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) To the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) To any telephonic communications system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section and in Section 635, "cordless telephone" means a two-way low power communication system consisting of two parts—a "base" unit which connects to the public switched telephone network and a handset or "remote" unit—which are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones.

*(Amended by Stats. 1992, Ch. 298, Sec. 5. Effective January 1, 1993.)*

**632.7.** (a) Every person who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless telephone and a cellular radio telephone, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has been convicted previously of a violation of this section or of Section 631, 632, 632.5, 632.6, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.



(b) This section shall not apply to any of the following:

(1) Any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) Any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section, each of the following terms have the following meaning:

(1) "Cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

(2) "Cordless telephone" means a two-way, low power communication system consisting of two parts, a "base" unit which connects to the public switched telephone network and a handset or "remote" unit, that are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones.

(3) "Communication" includes, but is not limited to, communications transmitted by voice, data, or image, including facsimile.

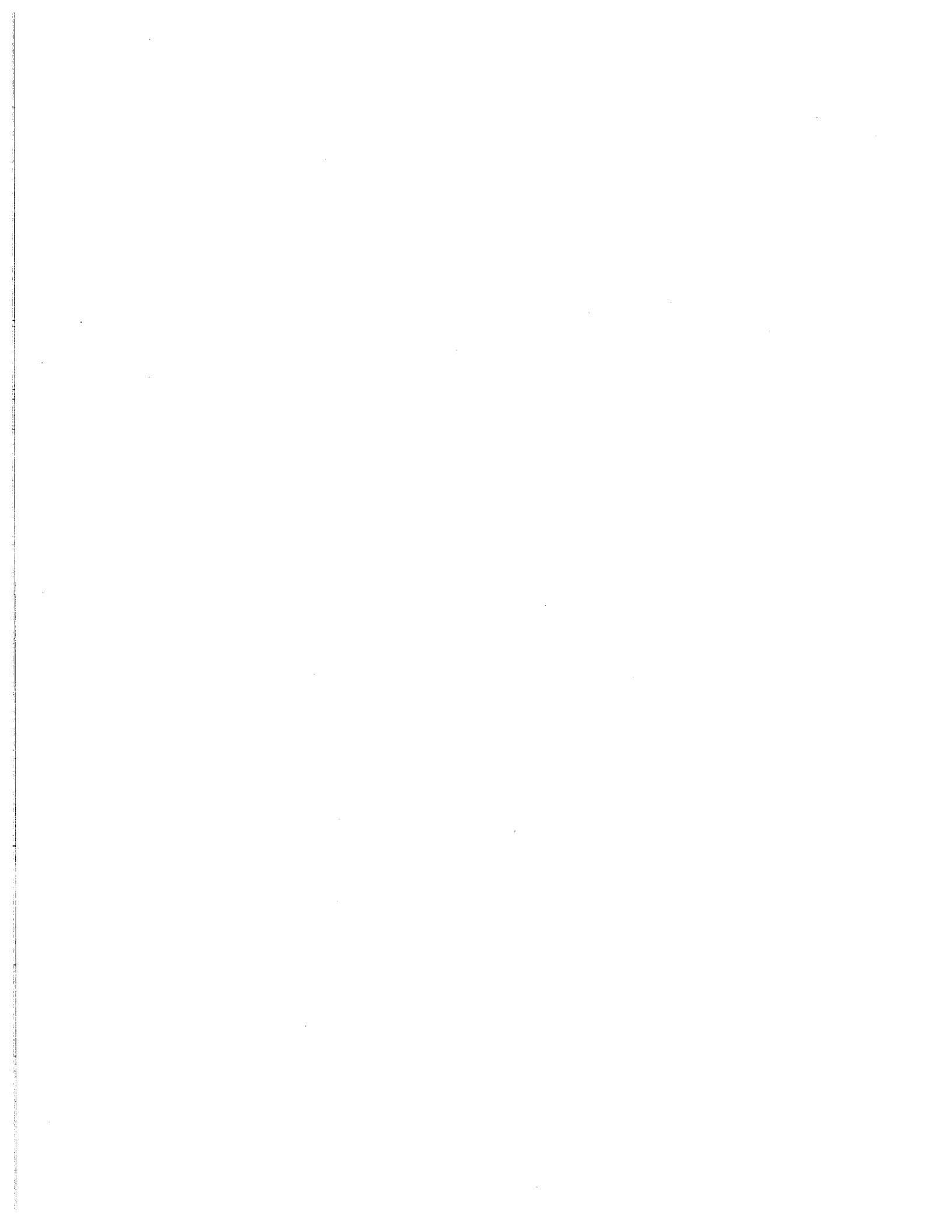
*(Amended by Stats. 1993, Ch. 536, Sec. 1. Effective September 27, 1993.)*

633. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, police officer of the County of Los Angeles, or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter.

Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders inadmissible any evidence obtained by the above-named persons by means of overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter.

*(Amended by Stats. 2003, Ch. 468, Sec. 9. Effective January 1, 2004.)*

Sections 633.02 to 638.52 inclusive not presented here.



San Francisco Police Department  
**GENERAL ORDER**

10.11  
Eff. 06/01/16

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## BODY WORN CAMERAS

### **B. Notification and Consent.**

When feasible, members should inform individuals that they are being recorded.

However, state law allows members to record communications that he or she could lawfully hear or record. Penal Code § 633 *see also People v. Lucero* 190 Cal. App. 3d 1065, 1069. Members are not required to obtain consent from members of the public prior to recording when the member is lawfully in the area where the recording takes place.

Members are not required to activate or deactivate a BWC upon the request of a citizen. In addition, members are not required to play back BWC recordings to allow members of the public to review the video footage.

**Volume 3 - MANAGEMENT RULES AND PROCEDURES**

- \* Supplying recording tapes as requested by Recording Tape Coordinators.
- \* Maintaining a file of duplicate copies of the Recording Tape Inventory, Form 12.40.
- \* Reviewing monthly audits conducted by Recording Tape Coordinators.
- \* Retaining recorded tapes in compliance with the Los Angeles City Administrative Code, Section 12.3.

**570. TAPE RECORDING OF COMMUNITY CONTACTS.** An officer in an uniformed assignment may use a personal tape recorder to record in-person community contacts at the officer's option. When an officer chooses to tape record community contacts, the procedures outlined in this section shall be followed.

**Note:** Tape recordings of suspects' statements and recordings made during criminal investigations shall be made in accordance with existing law and procedures for these types of recordings. Tape recordings involving proceedings shall be made in accordance with existing personnel practices and the Public Safety Officer's Procedural Bill of Rights.

**Officer's Responsibility.** Uniformed officers wishing to use personal tape recorders to record community contacts shall submit a Request to Use a Personal Tape Recorder, Form 12.45, to their commanding officer. Personal tape recorders shall not be used without the approval of the concerned commanding officer. This approval shall remain in effect until the officer transfers to a non-uniformed assignment or the approval is revoked. If an officer desires to resume tape recording community contacts after transferring back into a uniformed assignment, a new Request to Use a Personal Tape Recorder shall be submitted.

Officers who obtain approval to use a personal tape recorder to tape community contacts and subsequently elect to discontinue the practice shall notify their commanding officer of this decision via an Employee's Report, Form 15.7.

Officers who use personal tape recorders to record community contacts are responsible for maintaining the recorders in proper working order, providing their own tapes, storing tapes, and maintaining personal records to ensure tapes of incidents are retrievable if needed. Whenever tape recording a contact, officers shall:

- \* Use only new, blank tapes.

**Note:** New tapes may be used until they are full. Once full, tapes may not be erased and reused.

- \* On tape, either during or following the contact, identify themselves, the date and time, and the name of the person or persons being recorded.
- \* Activate the tape recorder as soon as possible, consistent with officer safety and prudent field tactics. Once activated, the

tape recorder shall remain on for the remainder of the contact.

**Note:** If the contact is interrupted (i.e., officer returns to the unit to write a citation or do a warrant check and there will be no contact with the person involved for several minutes), the tape may be stopped and restarted upon continuing the conversation.

- \* Record each contact during which a recording is made on the Daily Field Activities Report, Form 15.52, and place a "T" in a circle at the end of the recorded person's name on the Activities Report.
- \* Make tapes available in a timely manner for audit and administrative review at the request of a Department supervisor.

Authorization to use personal recorders to tape community contacts may be revoked by the commanding officer if an officer fails to comply with the provisions of this section.

Officers shall not tape record telephone conversations except in accordance with existing law and Department electronic surveillance guidelines (Manual Section 3/568).

**Retention of Tapes.** All tape recordings shall be retained and maintained by the officer making the recording for a minimum of two years.

**Recordings of Contacts Resulting in Arrest or Crime Reports, Personnel Complaints, and Civil Lawsuits.** Whenever an incident is tape recorded and:

- \* An Arrest Report, Form 5.2, is completed;
- \* A Release from Custody Continuation Report, Form 5.2.8, is completed;
- \* A crime report is completed;
- \* The recording involves a personnel complaint; or
- \* The recording involves a civil suit against the City, the Department, or the officer.

The fact that a tape recording was made shall be documented in the related reports, discovery questionnaires, or Employee's Report, Form 15.7 (civil suits).

Officers shall provide tapes containing discoverable material or information relevant to personnel investigations, criminal investigations, and civil suits to prosecutors, defense attorneys, and personnel complaint/civil suit/criminal investigators upon request under existing Department discovery, criminal, and complaint investigation procedures.

**Note:** Officers shall, upon their request, be provided with a copy of surrendered tapes. The concerned investigator shall have surrendered tapes copied at Scientific Investigation Division and provide the requested copy to the officer.

**Supervisor's Responsibility.** Supervisors shall conduct random audits of tape records and

recordings made by officers to ensure compliance with these procedures.

**Commanding Officer's Responsibility.** Commanding officers shall review and evaluate each Request to Use a Personal Tape Recorder on a case-by-case basis. If a request is denied, the commanding officer shall document the reason for the denial and ensure that the officer is notified.

Upon being notified that an officer desires to discontinue tape recording community contacts, commanding officers shall ensure that the approved Request to Use a Personal Tape Recorder is removed from the officer's divisional personnel package and filed in division files for storage in accordance with records retention guidelines for original documents.

When an officer is transferred to another command, the officer's Requests to Use a Personal Tape Recorder, which are maintained in division files, shall be transferred to the new assignment with the officer. The forms shall be maintained in the division files at the new command.

**Scientific Investigation Division's Responsibility.** Scientific Investigation Division shall produce copies of tape recordings in response to requests related to discovery, administrative or criminal investigations, and duty-related civil suits, except as previously noted in this section.

**572. ARMAMENT.** Department armament includes, but is not limited to, firearms, ammunition, chemical agents, bulletproof vests and face masks, and accessories.

**572.20 CONTROL OF ARMAMENT.** Department-owned armament shall be transferred only by the Department Armorer. Division commanding officers may make temporary loans between divisions to meet emergencies.

**572.40 INSPECTION AND INVENTORY OF ARMAMENT.** A division commanding officer shall cause an inspection and an inventory to be made of the Department armament assigned to the division at least semi-annually.

**Armament Report.** Division commanding officers, shall submit a Semi Annual Equipment Report, Form 15.61, on January 1 and July 1.

**572.60 REPLACEMENT OF ARMAMENT.** Following the expenditure of Department armament, a requisition for its replacement shall be made without delay. Reference shall be made to the DR numbers connected with the expenditure.

**579. LOSS, THEFT, DAMAGE OR DESTRUCTION OF ELECTRONIC COMMUNICATION EQUIPMENT**