

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, November 14, 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**
 - a. Special Meeting of October 17, 2018
 - b. Regular Meeting of October 24, 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. Homeless Encampment Subcommittee

b. Prioritizing Safety for Sex Workers Subcommittee

9. OLD BUSINESS (discussion & action)

- a. Amendment to Standing Rules to require that a commissioner must be present to be eligible to run for Chairperson or Vice-chairperson.
From: Commissioner Allamby
- b. Continue review of Lexipol Policy 425 on use of body-worn cameras, including sufficiency of provisions on use of associated iPhone and outstanding concerns from April 2017.
From: Commissioner Prichett
(See materials on pp. 15 – 78 of Oct. 24, 2018 agenda packet, and handouts from that date.)
- c. Lexipol Policies for review and approval:
From: Lexipol Subcommittee

Lexipol #	G.O.	Title
312	I-15 (part), J-18 (part)	Temporary Custody of Juveniles
313	none	Adult Abuse
314	H-07	Discriminatory Harassment
315	C-08	Child Abuse

(See materials in "Lexipol" packet of Oct. 10, 2018)

- d. Examination of issues surrounding the BPD Response to Protests on August 5, 2018, including:
- i) Pre-emptive confiscation of sound truck near Ohlone Park, and other "de-escalation" strategies used.
From: Commissioner Prichett
- ii) Helping BPD better understand the changing role of Black Bloc to Antifa in making protests safer, for purposes of BPD's handling of future protests to ensure all participants are safe.
From: Commissioner Sherman
(See materials on pp. 75 – 110 of Oct. 10, 2018 agenda packet.)
- e. Whether any BPD policies or laws govern the BPD's audio recording of their interactions with civilians without their knowledge.
From: Commissioner Prichett
- 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.
From: Commissioner Ramsey
(See materials on pp. 33 – 37 of Oct. 10, 2018 agenda packet.)

- 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.
From: Commissioner Prichett
- h. October 2, 2018 referral from City Council regarding extending the time limit for investigations and notification of discipline from the current limit to one calendar year.
- i. Responsiveness of BPD management to PRC requests.
From: Commissioner Prichett
- j. The need for PRC to do outreach and what outreach efforts the PRC might undertake.
From: Commissioner Matthews

10. NEW BUSINESS (discussion & action)

- a. October 2, 2018 referral from City Council regarding the creation of training requirements for Police Review Commissioners.
- b. Amendment to Standing Rules, Section I, prohibiting a commissioner from nominating him or herself to run for Chair or Vice-Chair, due to conflict with Commissioners' Manual.
From: PRC Officer

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.)

Closed Session

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

13. PRESENTATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2441

End of Closed Session

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

15. 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

November 14, 2018

MINUTES

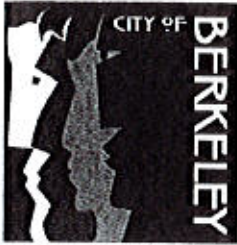
October 17, 2018 Special Meeting <i>Draft</i> Minutes	Page 7
October 24, 2018 Regular Meeting <i>Draft</i> Minutes	Page 9

AGENDA-RELATED

Item 6.b. – Prioritization of PRC Tasks.	Page 15
Item 7. – Oct. 30, 2018 City Council Action Calendar Item regarding 2018 Mid-Year Crime Report.	Page 19
Item 7. – Oct. 30, 2018 Supplemental Agenda Material regarding Info. Report about Absence of City Manager Report on Racial Disparities – 2018 Mid-Year Crime Report.	Page 27
Item 8. – PRC Subcommittees List.	Page 35
Item 9.h. – Nov. 2, 2018 referral from City Council regarding extending the time limit for investigations and notification of discipline.	Page 37
Item 10.a. – Oct. 2, 2018 referral from City Council regarding the creation of training requirements for Police Review Commissioners.	Page 67
Item 10.b. – Police Review Commission Standing Rules excerpt regarding Elections.	Page 73

COMMUNICATION(S)

Tactical De-escalation Power Point – Fall 2018, Berkeley Police Department.	Page 75
2018 Annual Commission Attendance Report.	Page 113



Police Review Commission (PRC)

DRAFT

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

**Wednesday, October 17, 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 Gwen Allamby
Commissioner Kitty Calavita
Commissioner George Perezvelez (arrived 7:35 p.m.)
Commissioner Andrea Prichett
Commissioner Ismail Ramsey

Absent: Commissioners Terry Roberts, Michael Sherman, Ari Yampolsky

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Sgt. Spencer Fomby, Sgt. Rashawn Cummings, Sgt. Cesar Melero,
Sgt. Sean Ross (BPA; arrived 7:50 p.m.)

2. PUBLIC COMMENT

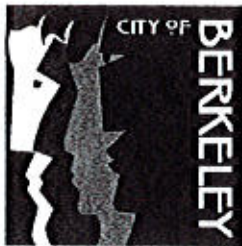
There were no speakers.

3. BERKELEY POLICE DEPARTMENT PRESENTATION OF DE-ESCALATION TRAINING PROGRAM FOR POLICE OFFICERS (discussion or action)

The presentation was delivered by Sgt. Spencer Fomby with questions from Commissioners and members of the public. (No action.)

4. ADJOURNMENT

By general consent, the meeting was adjourned at 10:08 p.m.



Police Review Commission (PRC)

DRAFT

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

**Wednesday, October 24, 2018
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

1. CALL TO ORDER BY VICE-CHAIR PEREZVELEZ AT 7:06 P.M.; ROLL CALL BY CHAIR MATTHEWS

Present: Commissioner Sahana Matthews (Chair),
Commissioner George Perezvelez (Vice Chair)
Commissioner Gwen Allamby
Commissioner Kitty Calavita
Commissioner Andrea Prichett
Commissioner Terry Roberts
Commissioner Michael Sherman
Commissioner Ari Yampolsky

Absent: Commissioner Ismail Ramsey

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood, Sgt. Cesar Melero

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were 3 speakers.

4. APPROVAL OF MINUTES

The minutes of the October 10, 2018 regular meeting were approved by general consent.

5. CHAIR'S REPORT

No report.

6. PRC OFFICER'S REPORT

a. Status of complaints; other items.

-- No new complaints filed since June 29. Investigation of a complaint had been suspended pending resolution of the criminal case; case now closed and staff contacting complainant to see if he wishes to proceed.

-- Follow-up to last week's De-escalation Training presentation by Sgt. Fomby: pdf of PowerPoint was emailed; hard copy in next packet; link to Ms. Schwartz's video of presentation was emailed. Consider whether PRC would like the SRT presentation Sgt. Fomby offered.

-- Next PRC meeting is Nov. 14, three weeks from tonight. PRC meets once in November and once in December.

-- PRC Officer on vacation week of Nov. 5.

-- PRC's Annual WorkPlan is on the Oct. 30 City Council agenda as an information item.

-- Of the two recent referrals from Council, one agendaized for tonight (extending 120-day limit) and the other will be placed on future agenda.

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

Not discussed.

7. CHIEF OF POLICE'S REPORT

Chief Greenwood reported:

-- Currently 161 officers; really 139 when accounting for officers in academy or on leave. New recruitment team fully in service.

-- Down 5 dispatchers; hiring 2 next week.

-- Swore in 3 officers last week -- 2 returning, 1 lateral hire.

-- Attended several conferences:

--NACOLE -- appreciated being invited to speak on a panel, conference was excellent, with interesting workshops.

-- Went to IACP with several officers and Comm. Ramsey. Massive conference with many workshops and classes.

-- Returned yesterday from Women Leaders in Law Enforcement conference sponsored by the Calif. Chief's Assoc. 900 attendees, mostly women. Good speakers and timely info.

-- Sent several people to conference last week on peer counseling, with emphasis on wellness and resilience. Issues of wellness/resilience in light of trauma experienced by officers and those they interact with is rising.

-- Training on body-worn cameras has begun; Chief to attend one. Acknowledge receipt of documents on the policy, incl. PRC Officer's Oct. 18 memo. In particular see how discretionary aspect of cessation of recording might need revising to better reflect intent: discretionary only in the circumstances listed.

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. Homeless Encampment Subcommittee

PRC Officer to follow up on inquiry to City Manager's Office about enforcement on homeless encampments.

b. Prioritizing Safety for Sex Workers Subcommittee

Chair Matthews appointed Kitty Calavita to this subcommittee.

9. OLD BUSINESS (discussion & action)

a. Review and approval of 2017 PRC Annual Report.

Motion to accept the 2017 PRC Annual Report, with the correction of typographical errors.

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

Ayes: Allamby, Calavita, Matthews, Perezvelez, Prichett, Roberts, Sherman, and Yampolsky.

Noes: None

Abstain: None

Absent: Ramsey

b. Review Lexipol Policy 424 on use of body-worn cameras, including sufficiency of provisions on use of associated iPhone and outstanding concerns from April 2017. [Note: Policy number has changed to 425.]

Motion to recommend revising Lexipol Policy Section 425.13, 3rd paragraph, 1st sentence to read, following "unless exigent circumstances exist to warrant," "their use, such as the failure of the body-worn camera, or lack of capacity,"

Moved/Seconded (Calavita/Yampolsky)

Friendly amendment: And, in the same sentence, following "may not use," replace "personal owned recorders" with "recording devices other than the body-worn camera."

Moved by Yampolsky, accepted by Calavita.

Motion, as amended, carried

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, and Yampolsky.

Noes: None

Abstain: Prichett, Roberts

Absent: Ramsey

[Note: Revised sentence reads: Members may not use recording devices other than the body-worn camera (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant their use, such as failure of the BWC or lack of capacity.]

Motion to recommend that Lexipol Policy Section 425.17.1 (a) be revised by adding, following “the BWC of the involved members(s),” “and any other recording device used to capture evidence of the incident”

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

Ayes: Allamby, Matthews, Prichett, and Roberts.

Noes: None Abstain: Calavita, Perezvelez, Yampolsky

Absent: Sherman, Ramsey

c. Lexipol Policies for review and approval:

Lexipol #	G.O.	Title
312	I-15 (part), J-18 (part)	Temporary Custody of Juveniles
313	none	Adult Abuse
314	H-07	Discriminatory Harassment
315	C-08	Child Abuse

(Item postponed to the next meeting.)

d. Examination of issues surrounding the BPD Response to Protests on August 5, 2018, including:

- i. Pre-emptive confiscation of sound truck near Ohlone Park, and other “de-escalation” strategies used.
- ii. Helping BPD better understand the changing role of Black Bloc to Antifa in making protests safer, for purposes of BPD’s handling of future protests to ensure all participants are safe.

(Item postponed to the next meeting.)

e. 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.)

f. Whether any BPD policies or laws govern the BPD’s audio recording of their interactions with civilians without their knowledge.

(Item postponed to the next meeting.)

g. 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.)

- h. 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.)

- i. Responsiveness of BPD management to PRC requests.

(Item postponed to the next meeting.)

- j. The need for PRC to do outreach and what outreach efforts the PRC might undertake.

(Item postponed to the next meeting.)

10. NEW BUSINESS (discussion & action)

- a. October 2, 2018 referral from City Council regarding extending the time limit for investigations and notification of discipline from the current limit to one calendar year.

(Item postponed to the next meeting.)

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached

12. PUBLIC COMMENT

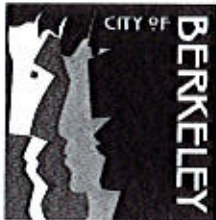
There were 3 speakers.

13. ADJOURNMENT

By general consent, the meeting was adjourned at 9:59 p.m.

Overall rank or priority	Tasks in order of rank (lower rank = higher priority)	Status 11.2.2018
1	-Body-Worn Camera Policy	Received 9.28; discussed 10.10, 10.24 and to be continued.
1a	--Request for operational specs re how BWCs and iPhones work together	Per 9.26 action, ltr to Chief 9.28.18.
4	-Fair & Impartial Policing - follow-up on recommendations	Awaiting formation of Task Force and 1-year report per Council.
5	-G.O. U-2, Use of Force revision	Awaiting policy from BPD
10	-Review Lexipol policies (Subcomm)	In progress: BPD presentation 7.11; Subcomm. is meeting; some policies to full Commission.
14	-Process for considering informal complaints	To be agendized
17	-Homeless Encampments (Subcomm)	In progress; awaiting policy revisions from Council and City Manager.
18	-Outreach - publicize existence of PRC and its services to community	Agendized 9.26, 10.10, 10.24
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
New tasks added since prioritization process and pending		
	--Formulation of Guiding Principles	First agendized 4.11; discussed, postponed, re-agendized.
	--Various issues surrounding BPD response to Aug. 5, 2018 protests/counterprotests.	Agendized 9.12, 10.10, 10.24.
	--Prioritizing Safety for Sex Workers (Subcomm.)	In progress. Subcomm. formed
	--Amend standing rules re presence of candidates for office	Agendized 9.26, 10.10, 10.24
	--Any policies governing surreptitious recording of police-civilian interactions?	Agendized 9.26, 10.10, 10.24
	--PRA applicability to commissioner communications re official business on their personal devices; possibility of City email addresses?	Agendized 9.26, 10.10, 10.24
	--Requirements of AA Report preparation and whether release/withholding of reports or parts thereof complies with PRA.	Agendized 9.26, 10.10, 10.24
	--Responsiveness of BPD management to PRC requests.	Agendized 9.26, 10.10, 10.24
	--Presentation on spit hoods by BPD and health or medical care provider. (Delays approval of Lexipol #302.)	Per 10.10 action. To be agendized.
	--Council referral 10.2: extend 120-day disciplinary time limit.	Agendized 10.24.
	--Council referral 10.2: explore mandatory Commissioner training.	To be agendized.

	--Presentation on SRT training.	BPD offered at 10.17 meeting.
Awaiting response or PRC action otherwise completed (prioritized and new) -- does not include prioritized tasks completed and previously appearing on this list as done.		
7	--General Orders C-64, U-2, M-2 re Crowd Control [Subcomm] - review Commander's Guide to Crowd Control	Subcomm. dissolved 9.12; Commander's Guide to be reviewed in connection with review of 8.5.18 events.
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	--PRC Regulations re Commissioner challenges	BPA requested meet-and-confer June 2017.
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)	(Task done before prioritization process.) Proposed policy to Chief 11.2.17.
20	--Regional radio interoperability for common encrypted channels	Done. PRC Officer has checked with Chief to confirm no further action practicable.
	--Request AA report re 2.8.18 homeless encampment	Done. Requested 7.6; per Chief no additional info to be released.
	--Request AA report re 6.4.18 encampment.	Done. 7.6 request withdrawn after Chief said no AA reports on encampments except for Feb.
	--Whether can est. standing item for info requests, under Brown Act	Done. City Atty advice discussed at 9.12 meeting.
	--Request source docs for munitions inventory of AA report.	Per 9.26 action, ltr to Chief sent 10.9.
	--Presentation on BPD de-escalation training.	Done. 10.17 Special Meeting presentation.
Recurring		
	BPD Commendations	semi-annual
	PRC 2018-2019 Work Plan	annual
	PRC 2017 Annual Report	annual
	Mutual Aid Pacts/MOU Compendium	annual (subcommittee)
	Policy complaints (open; discuss; close)	as needed
	Closed sessions for, e.g., administrative closure of complaints; review ALJ Caloca decisions	as needed



Office of the City Manager

29

ACTION CALENDAR

October 30, 2018

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Andrew Greenwood, Chief of Police
Subject: 2018 Mid-Year Crime Report

RECOMMENDATION

Review and discuss the semi-annual report on crime statistics in Berkeley for January through June of 2018. This report provides Council with accurate crime data with the intent of informing the discussion on current efforts to reduce crime and victimization in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

In the first six months of 2018, reported Part One crime in Berkeley decreased by 10% overall. Part One Property Crimes decreased by 9.5% (272 crimes) and Part One Violent Crime decreased by 18.9% (63 crimes).

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

Homicides

There were no homicides in Berkeley during the first six months of 2018.

Robberies

Robberies decreased 8.6%, from 185 in the first six months of 2017 to 169 in the first six months of this year. In 2017 we experienced a rapid increase in laptop computer thefts and robberies from local coffee shops. During a period of increased enforcement and community outreach, laptop theft incidents fell from 17 in January to three in June.

Aggravated Assaults

Aggravated Assaults decreased 31.7% in 2018, down 71 reports, compared to 104 in the first six months of 2017--which was due in large part to the 2017 civil unrest in Civic Center Park during March and April of 2017. In the first six months of 2018, there were ten confirmed shootings, as compared to five in the first six months of 2017. Arrests

have been made in seven of the ten confirmed shooting incidents this year, and investigations are continuing in several open cases.

Rape

Reported rapes decreased 30%, with 30 reports as compared to 43 in the first half of 2017. In April there were two connected stranger sexual assaults: In the first, a high school student was sexually assaulted at gunpoint on her way to school. Several days later a UC Berkeley student was attacked and managed to escape into her apartment building, in an attack captured on video. Investigators determined the same suspect was responsible for both attacks. The suspect was arrested and has been charged with both crimes.

Burglary, Larceny and Auto Theft

Burglaries increased by 6% as compared to 2017. There were 291 Residential burglaries and 130 Commercial burglaries. Larcenies decreased by 12.7% to 1892 cases as compared to 2168 in 2017. Auto Thefts decreased 10.8% from 295 cases in 2017 to 263 this year.

Arson

Reported arsons increased by 120% for a total of 22 versus 10 in 2017. 11 of the 22 cases this year occurred in January. A serial arsonist was arrested in late January and the number of monthly incidents immediately fell back into the low single digits. None of the arson cases were major incidents.

Data

Data on serious crime is collected annually by the Federal Bureau of Investigation (FBI) from over 17,000 law enforcement agencies representing over 90% of the U. S. population. The FBI's primary objective in the Uniform Crime Report (UCR) is to generate a reliable set of crime statistics for use in law enforcement administration, operation, and management in the United States. The UCR tracks the following crimes:

Violent Crimes

Murder
Rape
Robbery
Aggravated Assault

Property Crimes

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

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

The UCR data provides the Berkeley Police Department the ability to analyze national and local crime trends, determine the effectiveness of response to crime, and conduct future planning and potential resource allocation. The FBI UCR handbook discourages

using UCR statistics to compare crime rates of one jurisdiction to another because of the complex variables affecting crime and crime reporting practices.

BPD Strategies and Accomplishments

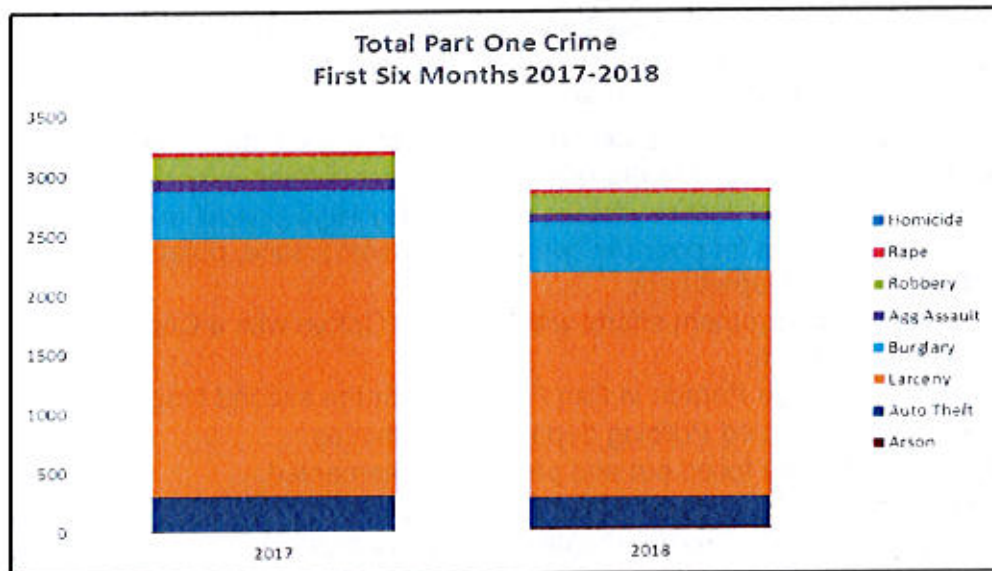
For 2018, the Berkeley Police Department's goal was to reduce the level of Part One Crime experienced in 2017 and previous years. The Department continued to implement strategies focused on reducing crime, increasing community engagement, and leveraging benefits from technology. Activity thus far in 2018 includes:

- Conducted investigations resulting in arrests numerous shooting incidents;
- Achieved reduction in laptop theft cases using various techniques;
- Continued efforts on bicycle theft cases;
- Re-allocated existing resources to focus on recruitment and hiring;
- BPD collaborated with the Berkeley Unified School District for the second year of the Law and Social Justice classes for Berkeley High School, with the goal of preparing students for possible careers in criminal justice, potentially with the Berkeley Police Department;
- Community Engagement efforts with monthly "Coffee with a Cop" events; Barbershop Forum;
- Attended the Pride Parade in San Francisco for the second time;
- Completed Principled Policing departmental training;
- NARCAN Training rolled out and program implemented;
- Major upgrade of Computer Aided Dispatch system;
- Body Worn Camera Program "go-live" slated for Oct. 22.

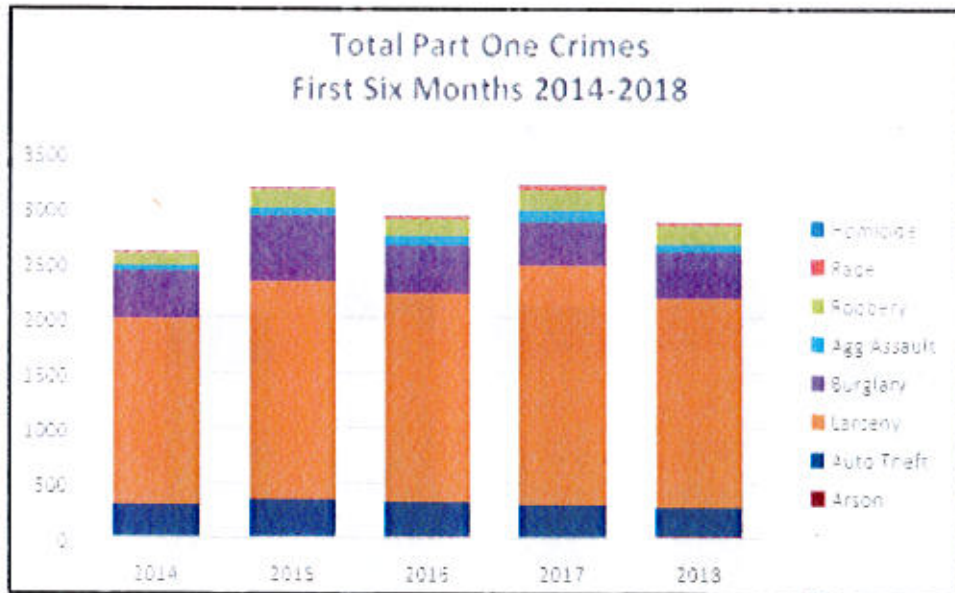
Below are the six month totals of UCR data for Part One Violent and Property Crimes for 2017 and 2018 in Berkeley, as well as five-year trends in Part One Violent Crimes and Part One Property Crimes.

Graphs below include:

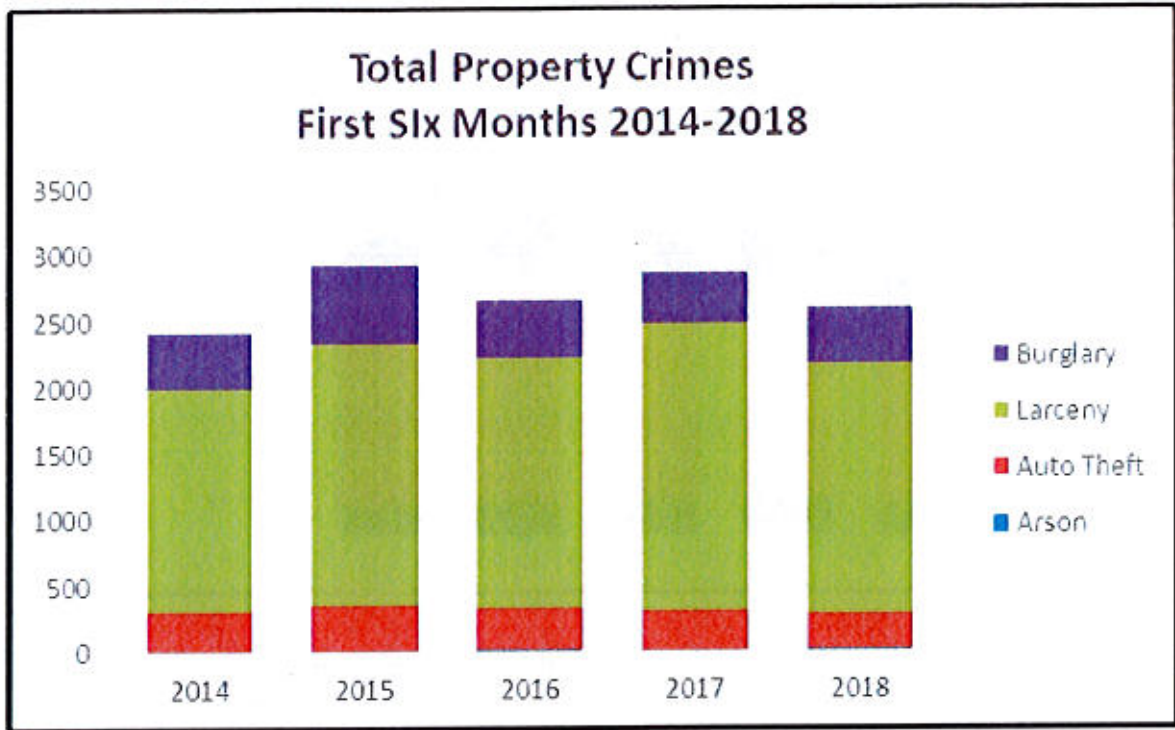
- UCR Part One Violent and Property Crime, two year trend
- UCR Part One Violent and Property Crime, five year trend
- UCR Part One Property Crime, five year trend
- UCR Part One Violent Crime, five year trend



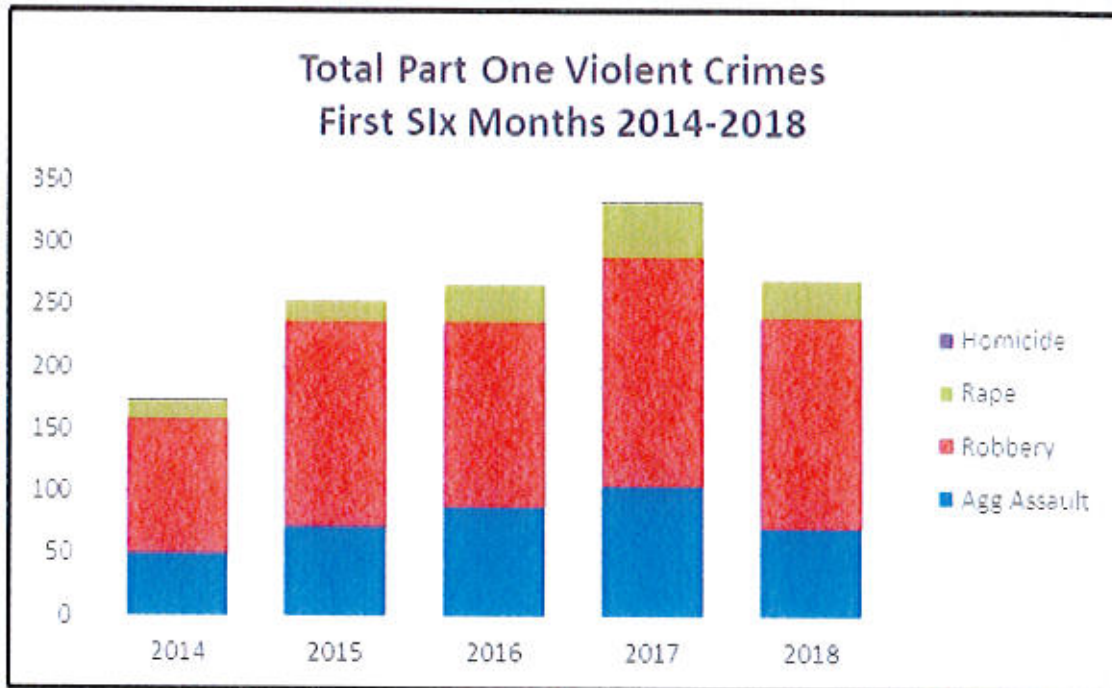
	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2017	0	43	185	104	397	2168	295	10
2018	0	30	169	71	421	1892	263	22



	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2014	1	14	108	50	432	1683	300	5
2015	0	17	165	72	598	1974	342	9
2016	0	30	149	88	438	1887	313	17
2017	1	43	185	104	397	2168	295	10
2018	0	30	169	71	421	1892	263	22



	Burglary	Larceny	Auto Theft	Arson
2014	432	1683	302	5
2015	598	1974	348	9
2016	438	1887	313	17
2017	397	2168	295	10
2018	421	1892	263	22



	Homicide	Rape	Robbery	Agg Assault
2014	1	14	108	50
2015	0	17	165	72
2016	0	30	149	88
2017	1	43	185	104
2018	0	30	169	71

BACKGROUND

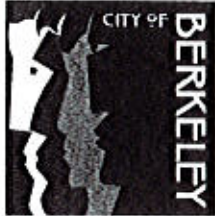
At the request of City Council, the City Manager provides semi-annual reports on crime statistics in Berkeley. This report provides information on reported Part One crime for January through June of 2018 and compares those statistics with mid-year crime data from 2014 through 2017. This report provides Council with accurate crime data with the intent of informing the discussion on current efforts to reduce crime and victimization in the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Captain Spiller, Berkeley Police Department Investigations Division, 510-981-5810



Kate Harrison
Councilmember, District 4

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

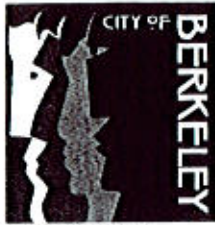
Meeting Date: October 30, 2018

Item Number: 29

Item Description: **Informational Report about Absence of City Manager Report on Racial Disparities Findings as Required by November 14, 2017 Council Motion - 2018 Mid-Year Crime Report**

Submitted by: Councilmember Harrison

Informational report highlighting the absence of a City Manager report on racial disparities findings that was required to be released in conjunction with the 2018 Mid-Year Crime Report, pursuant to a November 14, 2017 unanimously approved Council motion.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 30, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Informational Report about Absence of City Manager Report on Racial Disparities Findings as Required by November 14, 2017 Council Motion - 2018 Mid-Year Crime Report

INTRODUCTION

As of October 22, 2018, the Council-required annual City Manager report, containing data on and analysis of yield, stop, citation, search and arrest rates by race, as well as findings on training programs to address disparities, community engagement, policy and practice reforms and an analysis of the Center on Policing Equity ("CPE") report, has not been released. The Council directed that this analysis be provided in conjunction with the 2018 Mid-Year Crime Report.

BACKGROUND

In response to studies suggesting the existence of racial disparities in BPD stop data, on November 14, 2017, the Council voted unanimously to "[d]irect the City Manager to track yield, stop, citation, search and arrest rates by race, develop training programs to address any disparities found, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department ('BPD'), the Police Review Commission ('PRC') and the broader Berkeley community" and that the "City Manager will report findings in September 2018 and annually thereafter, using anonymized data."

Per the meeting transcript, the first installment of the annual City Manager report was to coincide with the release of the mid-year crime report. The deadline was agreed to by the Council and the City Manager. The suggested timing was the recommendation of the Berkeley Police Department ("BPD") Chief of Police as it provided sufficient time for the capturing and analysis of six months of police data and also overlapped logically with BPD's annual crime data report. Ultimately, the release of the mid-year crime report was delayed to October 2018; however, to date, the report containing the City Manager's findings on racial disparities has not been submitted to Council.

Like the mid-year crime report, the annual report on racial disparities represents an important reference for the City and the public. In passing the motion to require an annual City Manager report, the Council resolved that "[d]epartmental, personnel and training issues will be easier to address with accessible and granular empirical data" and that "data will focus BPD examination of the reasons for disparate racial treatment."

Fundamentally, the City has an obligation to ensure that its citizens are treated equally under the law and an interest in ensuring that citizens are comfortable interacting with the police, including reporting crime. Beginning the work to complete this report as soon as possible will engender trust and confidence in the City.

FINANCIAL IMPLICATIONS

Staff time is necessary to follow through with releasing the overdue report.

ENVIRONMENTAL SUSTAINABILITY

N/A

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENT

1. Item 24, excerpt from Annotated Agenda, Berkeley City Council Meeting, Tuesday, November 14, 2017.
2. Excerpt from meeting transcript, Berkeley City Council Meeting, Tuesday, November 14, 2017.

Action Calendar – New Business

24. **Refer to the Berkeley Police Department to Address Disparate Racial Treatment and Implement Policy and Practice Reforms** (*Continued from October 31, 2017. Item contains revised materials.*)

From: Councilmembers Worthington, Bartlett, and Harrison

Recommendation: Refer to the Berkeley Police Department to track yield rates, develop training programs to address disparities found through the yield rates, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department and broader Berkeley community.

Financial Implications: Staff time

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Recess 8:23 p.m. – 8:37 p.m.

Action: 24 speakers. M/S/C (Bartlett/Wengraf) to approve the following recommendation.

Direct the City Manager to track yield, stop, citation, search and arrest rates by race, develop training programs to address any disparities found, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department ("BPD"), the Police Review Commission ("PRC") and the broader Berkeley community. The City Manager will report findings in September 2018 and annually thereafter, using anonymized data.

- 1. Tracking yield rates (i.e., the percentage of citations or arrests per traffic or pedestrian stop and the ratio of contraband found by search conducted) by individual officer, by patrol and by the department as a whole disaggregated by the race of the individual(s) stopped. This will include analyzing whether police actions were officer- initiated or in response to calls for service or warrants. This data will focus BPD examination of the reasons for disparate racial treatment and to identify any outliers.*
- 2. Considering any other criteria which would contribute to a better understanding of stops, searches, citations and arrests and the reasons for such actions.*
- 3. Developing training programs to address the organizational causes of any disparate treatment and outcomes by race uncovered in #1 above and, in accordance with the City's body worn camera policy, through examination of footage on police body cameras (e.g., more scenario-based training on procedural justice and the roots of disparate treatment, expanded de-escalation training).*
- 4. Consulting and cooperating with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. Work closely with the PRC, providing the commission all legally available information that may be helpful to designing reforms.*
- 5. Once released, BPD should analyze the final Center for Policing Equity report and propose improvements as needed.*

Departmental, personnel and training issues will be easier to address with accessible and granular empirical data.

Vote: All Ayes.

This information provided by a Certified Realtime Reporter. The City of Berkeley cannot certify the following text since we did not create it.

>> Mayor Arreguin: IS IT OKAY, COUNCILMEMBER MAIO IF I GO TO THE CITY MANAGER FOR A SECOND?

>> L. Maio: SURE.

>> Mayor Arreguin: SHE HAD A QUESTION.
MADAM CITY MANAGER?

>> WHERE IT BEGINS CITY MANAGER WILL REPORT FINDINGS BIANNUALLY TO THE COUNCIL AND THEN EVERY YEAR AFTERWARD WHAT IS THE EXPECTATION OF THIS SENTENCE IN TERMS OF WHEN DOES THE FIRST YEAR START? ARE WE TALKING ABOUT FISCAL YEARS? ARE WE TALKING ABOUT AFTER ADOPTION OF THE ITEM.

WHAT IS THE EXPECTATION OF THE COUNCIL IN TERMS OF REPLYING TO THIS INFORMATION?

>> Mayor Arreguin: 2018.

>> S. Hahn: 2018.

>> STARTS IN 2018?

>> L. Maio: WE HAVE TO BE READY, DON'T WE?

>> S. Hahn: JUNE 30th.

>> Mayor Arreguin: YOU MEAN, WHAT DID YOU MEAN, COUNCILMEMBER WORTHINGTON OR HARRISON? DID YOU MEAN FISCAL YEAR OR CALENDAR YEAR? WHAT MAKES SENSE?

>> K. Harrison: WHAT MAKES SENSE, I DON'T KNOW ABOUT THE START DATE BUT IT WOULD BE EVERY SIX MONTHS YOU WOULD SAY WE LOOKED AT THESE PATTERNS, THIS IS WHAT IT LOOKS LIKE, WE ARE SEEING LESS DISPARITY OR MORE DISPARITY THAN LAST YEAR, THAT KIND OF THING, DOES THAT MAKE SENSE?

>> Mayor Arreguin: CHIEF GREENWOOD?

>> FROM AN ANALYSIS POINT OF VIEW, THAT WILL BE A LITTLE CHALLENGING, SIX MONTHS FOR REPORT-BACKS.

C.P.E. IS DOING THAT ANALYSIS FOR US.

AND I THINK THERE'S INFORMATION WE COULD REPORT BACK
BUT --

This information provided by a Certified Realtime Reporter. The City of Berkeley cannot certify the following text since we did not create it.

>> K. Harrison: OUR THOUGHT WAS THE FIRST REPORT WOULD BE JULY 1, 2018.

>> TALK ABOUT WHAT IT WOULD ACCOMPLISH IN TERMS OF TRAINING?

>> K. Harrison: YEAH, YOU TAKE THE ITEMIZED DATA AND SAY WHAT DOES IT LOOK LIKE, THE YIELD RATE, NOT JUST THE YIELD DATA, AND THE STOP DATA, ETC..

THEN YOU WOULD HAVE WHAT DO WE CONCLUDE FROM THAT? ARE THERE PATTERNS BY INDIVIDUAL OFFICERS, YOU AREN'T GOING TO TELL US WHO THEY ARE, IT'S ANONYMOUS, BY THE WHOLE CITY, HAS IT CHANGED FROM THE PRIOR YEAR.

OVER TIME TREND LINES ARE IMPORTANT.

AND WHAT ARE WE DOING IN TERMS OF TRAINING AND OTHER MANAGEMENT CHANGES?

>> THOSE WOULD BE JUST UPDATES.

>> Mayor Arreguin: I DON'T UNDERSTAND, WAS THERE ANY RESOLUTION TO THAT?

>> SOUNDS LIKE, WHAT I INTERPRETED FROM THE CONVERSATION WAS JULY 1, 2018, WE WOULD PRESENT DATA ANALYSIS.

AND ANY UPDATES ON ANY ADDITIONAL MEASURES OR TRAINING THAT THE CITY OR THE DEPARTMENT HAS ENGAGED IN.

VERSUS EVERY SIX MONTHS AFTER BECAUSE WE DON'T BELIEVE WE WILL HAVE SUFFICIENT DATA.

ANNUALLY THEREAFTER USING ITEMIZED DATA.

THAT YOU WILL RECEIVE ANALYSIS ON WILL BE COLLECTED JANUARY THROUGH JUNE AND WILL COME TO THE COUNCIL TO REPORT BACK.

THAT DATA HAS BEEN COLLECTED DURING THOSE SIX MONTHS.

>> WE GET THE DATA FOR THE FIRST SIX MONTHS OF CALENDAR YEAR, NEED TIME TO WORK ON THAT AND WITH THE TIME LINES THEN THE REPORT, SO I JUST DIDN'T WANT TO SET EXPECTATIONS ON

This information provided by a Certified Realtime Reporter. The City of Berkeley cannot certify the following text since we did not create it.

JULY 10th WE ARE TELLING YOU ABOUT THE FIRST SIX MONTHS, LIKELY TO BE LATER AND POTENTIALLY MAYBE IN CONJUNCTION WITH THE MID-YEAR CRIME REPORT ALWAYS IN SEPTEMBER.

BUT THAT'S MORE REASON --

>> Mayor Arreguin: IS THAT OKAY.

>> YEAH.

>> Mayor Arreguin: SO CITY MANAGER WILL REPORT ON FINDINGS BEGINNING JULY 1.

>> WHAT IF WE COINCIDE WITH THE CRIME REPORT?

>> MR. MAYOR, I THINK WE COULD LEAVE IT WITH THE CITY MANAGER WILL REPORT FINDINGS ANNUALLY TO THE COUNCIL IN THE FIRST YEAR AND ANNUALLY -- WELL.

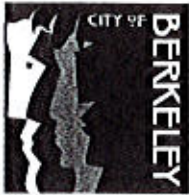
THEREAFTER USING DATA.

IT'S JUST ANNUAL REPORTING IS WHAT WE ARE ASKING FOR AT THIS MOMENT AND WE WILL COME TO COUNCIL WITH THE CRIME REPORT AS WE WOULD NORMALLY DO IN SEPTEMBER, THAT WOULD BE YOUR FIRST TIME HEARING FROM US, SEPTEMBER 2018.

>> Mayor Arreguin: SO REPORT ANNUALLY TO THE COUNCIL.

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 10-25-18**

Subcommittee	Commissioners	Chair	BPD Reps / Others
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 Capt. Rico Rolleri
Prioritizing Safety for Sex Workers Formed 9-12-18	Matthews Ramsey Calavita		Julie Leftwich (civilian)



Police Review Commission (PRC)

Agenda Item # 9.4
on PRC's Nov. 14, 2018 agenda

November 2, 2018

To: Police Review Commissioners
From: Katherine J. Lee, ^{KJL} Police Review Commission Officer
Re: City Council referral on extending the time limit for investigations and notice of discipline

This is to clarify and provide additional information regarding the City Council's referral to the PRC, made at the Council's October 2, 2018 meeting. The action, passed on the consent calendar, was:

Recommend that the Council refer to the Police Review Commission to extend the time limit for Police Review Commission investigations and notification of discipline from the current limit to one calendar year.

Councilmember Worthington correctly notes in his item that it is possible to extend the time limit for PRC investigations and notification of discipline on BPD officers without amending the City Charter, as long as meet-and-confer occurs in good faith between the City and any affected bargaining units.

The Councilmember's reference to "Berkeley's current time limit of 120 days for the investigatory and disciplinary process . . ." might be confusing, however. Time limits for investigations are different from those for discipline.

Investigations by the PRC must be completed within **one year**, unless a Government Code Sec. 3304(d) exception applies. (PRC Regulations for Handling Complaints Against Members of the Police Department, Sec. III.C.2.c.) The Government Code section cited is part of the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"; Govt. Code secs. 3300-3313). Under Gov't Code sec. 3304(d)(1), the agency must complete its investigation and notify the officer of proposed discipline within one year of the agency's discovery by a person authorized to initiate an investigation of the alleged misconduct, with specified exceptions.

The time limit for imposing **discipline** in Berkeley is governed by the Memorandum of Understanding between the City and the Berkeley Police Association ("MOU"). Disciplinary action consisting of a loss or reduction of pay, or discharge, must be imposed within **120 days** of the date the City has knowledge of the incident giving rise to the disciplinary action. (MOU Sec. 37.4.)

Thus, for the Chief of Police to take into account a PRC sustained finding in a BOI in his decision to discipline, the PRC Regulations acknowledge the 120-day disciplinary time limit in the MOU, and state, "it shall be the priority of staff in those cases where a BOI is convened, that the BOI findings be issued within 105 days of the filing of the complaint." (PRC Regs., Sec. III.A.) To help ensure that PRC staff meets that deadline, the Regulations obligate PRC staff to "make every effort to complete the Report of Investigation within 80 days of filing" (PRC Regs., Sec. III.C.2.a.) and to "make an oral report to the full Commission in a closed session at its next regularly scheduled meeting", if it is not. (PRC Regs., Sec. III.C.2.b.)

As the City Attorney opined earlier this year, extending the current 120-day limit on the imposition of discipline requires a change to the language of the MOU. (See City Attorney's March 26, 2018 Memo to the City Manager re: Legal analysis of City Council's November 14, 2017 Proposals related to the Police Review Commission, p. 6.¹) The PRC had asked the City Manager in a March 5, 2018 memo to include a change in the 120-day disciplinary time limit in the contract negotiations then underway, but, according to the City Attorney's opinion, it would needed to have been shared with the BPA in May 2017.

Accordingly, to now effect an extension of the 120-day time limit for imposing discipline involving a loss or reduction of pay, or discharge, the MOU must be reopened and the meet-and-confer process with the BPA initiated on this subject.

Attachments:

1. City Council Annotated Agenda for Oct. 2, 2018, Item #7.
2. Consent Calendar Item #7 from City Council Oct. 2, 2018 agenda, attaching:
 - City Attorney's Aug. 9, 2018 memo re meet-and-confer over proposed Charter amendment (to which City Attorney's March 26, 2018 memo is attached).
 - Comparison of investigatory and disciplinary time limits in neighboring oversight agencies.
3. Excerpt from current City – BPA MOU, including Sec. 37.4.
4. PRC's March 5, 2018 memo to City Manager requesting topics to include during negotiations with the BPA, attaching:
 - PRC's June 14, 2016 memo to the Mayor and Council re suggestions for amending the PRC enabling ordinance.

¹ Section 37.4 of the MOU ratified by the City Council on July 24, 2018, is identical to Section 37.4 of the MOU previously in effect.

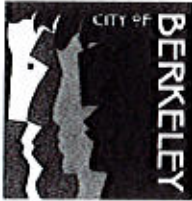
Council Consent Items

7. **Refer the Police Review Commission to extend time period to impose discipline on Berkeley Police Department officers pursuant to Police Review Commission findings**
From: Councilmember Worthington
Recommendation: Recommend that the Council refer to the Police Review Commission to extend the time limit for Police Review Commission investigations and notification of discipline from the current limit to one calendar year.
Financial Implications: Unknown
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Councilmembers Davila and Harrison and Mayor Arreguin added as co-sponsors. Approved recommendation.
8. **Refer the Police Review Commission to create training requirements for Police Review Commissioners**
From: Councilmember Worthington
Recommendation: Request that the Police Review Commission establishes mandatory training requirements for Police Review Commissioners, with input from the Police Review Commission Officer and Chief of Police.
Financial Implications: Unknown
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Councilmembers Davila and Harrison and Mayor Arreguin added as co-sponsors. Approved recommendation amended to request that the commission consult with the City Manager regarding the training.

Attachment 1

ATTACHMENTS:

1. City Attorney's Memo regarding meet-and-confer over proposed Charter Amendment
2. Comparison of time limits on Investigation/Discipline for neighboring Police Commissions



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

Memo to Acting City Manager
August 9, 2018
Page 2 Re: Meet and Confer on Charter Amendments

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.

Memo to Acting City Manager
August 9, 2018
Page 3 Re: Meet and Confer on Charter Amendments

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.”

Memo to Acting City Manager
August 9, 2018
Page 4 Re: Meet and Confer on Charter Amendments

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

Memo to Acting City Manager
August 9, 2018
Page 5 Re: Meet and Confer on Charter Amendments

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

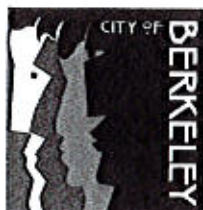
Page 6 Re: Meet and Confer on Charter Amendments

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.*

Memo to City Manager
March 26, 2018
Page 2 Re: Council Referral on PRC Reforms

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.

Memo to City Manager
March 26, 2018
Page 3 Re: Council Referral on PRC Reforms

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:*

Memo to City Manager

March 26, 2018

Page 4 Re: Council Referral on PRC Reforms

... (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."

Memo to City Manager
March 26, 2018
Page 5 Re: Council Referral on PRC Reforms

(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

Memo to City Manager
March 26, 2018
Page 6 Re: Council Referral on PRC Reforms

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

Memo to City Manager
March 26, 2018
Page 7 Re: Council Referral on PRC Reforms

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.)

Memo to City Manager
March 26, 2018
Page 8 Re: Council Referral on PRC Reforms

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

P.18 blank
P.19 mis-print

Oakland

"The [Police Review] Agency shall make every reasonable effort to complete its investigations within one hundred and eighty (180) days of the filing of the complaint with the Agency. Within thirty (30) days of completion of the investigation, the Director of the Agency shall issue written findings and proposed discipline regarding the allegations stated in the complaint to the Commission and the Chief of Police. The City Administrator shall not have the authority to reject or modify the Agency's findings and proposed discipline."

San Francisco

(Charter Amendment- Department of Police Accountability:

<https://sfgov.org/elections/sites/default/files/Documents/candidates/Department%20of%20Police%20Accountability%20Legal%20Text.pdf>)

"DPA shall promptly, fairly, and impartially investigate all complaints regarding police use of force, misconduct or allegations that a member of the Police Department has not properly performed a duty, except those complaints which on their face clearly indicate that the acts complained of were proper and those complaints lodged by other members of the Police Department. **DPA shall use its best efforts to conclude investigations of such complaints and, if sustained transmit the sustained complaint to the Police Department within nine months of receipt thereof by DPA.** If DPA is unable to conclude its investigation within such nine-month period, the Director, within such nine-month period, shall inform the Chief of Police of the reasons therefor and transmit information and evidence from the investigation as shall facilitate the Chiefs timely consideration of the matter."

BART

(BART Oversight Model:

https://www.bart.gov/sites/default/files/2019/BART%20Oversight%20Model%20-%20Amended%2011-13-15_0.pdf)

"Chapter 1-11 TIMELINESS

Nothing in this section is intended to delay or interfere with the timely investigation and disposition of internal affairs investigations of alleged police misconduct. **The Auditor and BART Police Citizen Review Board shall jointly develop a timeline for completion of the disciplinary process that will be concluded within 365 days.**"

36.2 Notice Requirements

Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion, and a copy of said notice shall be filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

36.3 Permanent Status

An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.

36.4 Demotion to Vacant Position

Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 57.

SECTION 37: SUSPENSION AND DISCHARGE**37.1 30 Calendar Day Maximum Suspension**

The City Manager may suspend an employee from his or her position at any time for just cause. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any one-year period.

37.2 Suspensions of 3 Days or Less

For just cause, the Chief of Police may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager. At any step in the process of reviewing recommended disciplinary actions, the City Manager may elect to impose more severe discipline.

37.3 Discharge

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed, then such discharge must be for a cause. Any employee who has been discharged shall be entitled to receive a written statement of the reasons for such action.

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.

37.5 Suspension of FLSA Exempt Employees

Notwithstanding any of the above, FLSA exempt employees in the rank of Captain and above shall not be suspended except as permitted by the Fair Labor Standards Act.

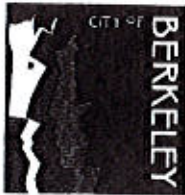
37.6 All references in Sections 37.1 and 37.2 to "days" shall be calculated in terms of eight (8) hour equivalencies, unless otherwise provided.

SECTION 38: RESIGNATION

An employee wishing to leave the competitive service in good standing shall file with the Chief of Police, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Chief of Police as to the resigned employee's service, performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Chief of Police immediately. Resignations shall take effect on the last day of the pay period in which an employee works unless the City Manager determines that it is in the City's best interest to accept the resignation immediately.

SECTION 39: REINSTATEMENT

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within two (2) years.



Police Review Commission (PRC)

March 5, 2018

To: Dee Williams-Ridley, City Manager
From: Sahana Matthews, Chairperson, Police Review Commission *Sahana Matthews*
Re: Request to include topics during negotiations with the Berkeley Police Association

As you know, the City Council has asked the Police Review Commission to review various options for strengthening the authority of the PRC to consider and act on citizen complaints. The PRC has commenced its consideration of various options, including a revisiting of the suggestions it made to the Council when it was contemplating changes to the PRC's enabling ordinance in 2016. (See attached letter of June 14, 2016, from the PRC to the Council.)

While the PRC has not completed its current discussion of possible ways to enhance its authority, the Commission wishes to make two recommendations now, due to their significance and time-sensitive nature. Specifically, the Commission would like to extend the current the 120-day time limit on discipline to one year, and to change the standard of proof used in Board of Inquiry hearings to the "preponderance of the evidence."

Regarding the 120-day time limit, it is the Commission's understanding that this time frame is quite short for the amount of investigative work that a typical complaint to the PRC requires. Moreover, the 120 days is an anomaly among the civilian oversight agencies in the Bay Area, which use the one year limit, consistent with the maximum set forth in the Public Safety Officers Bill of Rights Act.

Similarly, the "clear and convincing" standard currently used for making findings in a PRC Board of Inquiry is far less common than "preponderance of the evidence" used by other civilian oversight agencies.

The PRC is aware that these two changes do not require an amendment to the enabling ordinance or to the City Charter, but are subject to meet-and-confer with the Berkeley Police Association. As you are currently in contract negotiations with union, the PRC asks that the 120-day limitation and the standard of proof be included in your discussions.

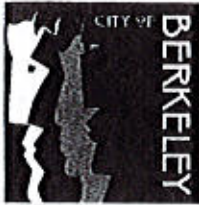
Thank you for your consideration of this request.

Attachment 4

Dee Williams-Ridley, City Manager
Request to include topics during negotiations with the BPA
March 5, 2018
P. 2 of 2

Attachment

cc: Mayor and City Councilmembers
Andrew Greenwood, Chief of Police
Christian Stines, President, Berkeley Police Association
Jovan Grogan, Deputy City Manager



Police Review Commission (PRC)

June 14, 2016

To: Honorable Mayor and Members of the City Council
From: George Perezvelez, Chair, Police Review Commission *GP/CP*
Re: Suggestions for Ballot Measure to Amend Current Enabling Ordinance
Establishing the Police Review Commission (Response to Item #52 on
the Council's June 14, 2016 agenda.)

The Berkeley Police Review Commission (PRC) was created with the general purpose of providing 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. section 3.32.010.)

In the interest of creating a more robust and effective avenue for citizen oversight of the Berkeley Police Department (BPD), the members of the PRC suggest the following changes to the PRC ordinance, to be either approved by the City Council or submitted to the voters in November. We believe these proposed changes will greatly enhance the effectiveness of the PRC, and assure that we are able to fully able to provide meaningful oversight to BPD.

- 1) The PRC shall use the "preponderance of the evidence" as the standard of proof for all decisions.
- 2) The current 120-day limit on the imposition of discipline shall be extended to one year, consistent with existing California law.
- 3) The PRC shall have full discretion to review complaints as to alleged officer misconduct from any person with personal knowledge of the alleged misconduct. Additionally, the PRC shall have the discretion to accept complaints from anonymous sources professing first-hand knowledge of alleged police misconduct, so long as the complainant requests anonymity based upon a credible belief that the complainant will face prosecution or harassment. The determination of whether the request for anonymity is based upon a credible belief shall be made by the a 2/3 vote of the full commission, acting in closed session.
- 4) The Commission shall have the same access to all BPD files and records, in addition to all files and records of other City departments and agencies, as the BPD's Internal Affairs Division. The BPD and other City departments and

1947 Center Street, 1st Floor, Berkeley, CA 94704 Tel: 510-981-4950 TDD: 510-981-6903 Fax: 510-981-4955
e-mail: prc@cityofberkeley.info website: www.cityofberkeley.info/prc/

agencies shall make every reasonable effort to respond to the Commissioner's requests for files and records within ten (10) days.

5) Upon a sustained finding of misconduct, the Board of Inquiry shall have the authority to suggest appropriate discipline to the Chief and/or City manager.

6) In addition to the training required of all Berkeley City Commissioners, all members of the PRC shall be required to complete training in the following areas: use of force; criminal procedure; Fourth Amendment; BPD general orders and standard operating procedures. This training shall include law, policy and best practices. The training shall be organized annually by the PRC Officer, in consultation with the City Attorney's office, the BPD, the BPA, and other community organizations.

7) Expand the jurisdiction of the PRC to include non-sworn employees of the BPD.

8) Review the Mayor's proposed budget to determine whether budgetary allocations for the Department are aligned with the Commission's approved policies, procedures, customs, and General Orders. The Commission shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the City Council any recommendations for change.

The members of the PRC voted at its June 8, 2016 meeting to send this communication to you by the following vote: Ayes – Bernstein, Lippman, Murphy (temporary appointment), Perezvelez, Roberts, Sherman, Smith, and Yampolsky; Noes – None; Abstain – None; Absent – Javier, Waldman.

cc: Dee Williams-Ridley, City Manager
Michael Meehan, Chief of Police
Zach Cowan, City Manager
Christian Stines, BPA
PRC Commissioners

Council Consent Items

- 7. Refer the Police Review Commission to extend time period to impose discipline on Berkeley Police Department officers pursuant to Police Review Commission findings**
From: Councilmember Worthington
Recommendation: Recommend that the Council refer to the Police Review Commission to extend the time limit for Police Review Commission investigations and notification of discipline from the current limit to one calendar year.
Financial Implications: Unknown
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Councilmembers Davila and Harrison and Mayor Arreguin added as co-sponsors. Approved recommendation.
- 8. Refer the Police Review Commission to create training requirements for Police Review Commissioners**
From: Councilmember Worthington
Recommendation: Request that the Police Review Commission establishes mandatory training requirements for Police Review Commissioners, with input from the Police Review Commission Officer and Chief of Police.
Financial Implications: Unknown
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Councilmembers Davila and Harrison and Mayor Arreguin added as co-sponsors. Approved recommendation amended to request that the commission consult with the City Manager regarding the training.



Kriss Worthington

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

CONSENT CALENDAR

October 2, 2018

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

Subject: Refer the Police Review Commission to create training requirements for Police Review Commissioners

RECOMMENDATION:

Request that the Police Review Commission establishes mandatory training requirements for Police Review Commissioners, with input from the Police Review Commission Officer and Chief of Police.

BACKGROUND:

Currently, there are no mandatory training requirements for Berkeley Police Review Commissioners. This is a significant loophole in City law, considering that the Police Review Commission (PRC) provides a quasi-judicial function in reviewing police personnel and policy complaints. To effectively carry out a responsibility of such magnitude, the PRC ought to be provided substantial training on efficiently performing these tasks, with appropriate input from experts such as the PRC Officer and Police Chief.

According to the Citizen Oversight Model established by the BART Police Citizen Review Board (BPCRB), the staff of BPCRB maintains and upholds the "Provision of training including a curriculum designed for newly-appointed BPCRB members," as well as the "Provision and maintenance of an ongoing in-service training program" for these new members.¹ The enabling legislation for Berkeley's PRC does not, but should, contain this kind of specific training provision for its Commissioners.

Under the recently proposed Charter amendment to reform the PRC, mandatory training requirements would have been imposed on all Police Review Commissioners. However, since the August 10th, 2018 deadline for submitting ballot measures has passed, the Council should take action through this proposal to prevent the abandonment of simple, common sense reform that is necessary for Commissioners to efficiently perform their quasi-judicial functions.

¹ https://www.bart.gov/sites/default/files/docs/BART%20Citizen%20Oversight%20Model%20-%20Amended%2007.12.18%20%282%29_0.pdf (pp. 11-12)

FINANCIAL IMPLICATIONS:

Unknown

ENVIRONMENTAL IMPLICATIONS:

No Negative Impact.

CONTACT PERSONS:

Councilmember Kriss Worthington 510-981-7170

ATTACHMENTS:

1. 2018 Commission Training Tracker for Oakland Police Commissioners
2. Sections of BART Citizen Oversight Model which pertain to Commissioner training

Mandatory training is highlighted. The other items listed are recommended training as determined by the Commission and/or community.

	Deadline (per enabling ordinance)	Expected Length of Training	Provider	Scheduled dates
OIG - Overview of Responsibilities		30 minutes	OPD	2/10/2018
Negotiated Settlement Agreement	within 3 months of appt.	1 hour	J. Chanin/K. Bliss	4/26/2018
Procedural Justice		1 hour	OPD	2/10/2018
Body Worn Camera Policy		30 minutes	OPD	2/28/2018 meeting
CPRA Orientation		2 hours	Juanito Rus	1/22, 1/27, 1/30/2018
Measure LL Orientation	within 3 months of appt.	2 hours	Alison Dibley	1/31/2018 (two times)
Ride Alongs	within 12 months of appt.	6-8 hours	Jenny Cam/OPD	self-scheduled
CA Brown Act and Oakland Sunshine Act	within 3 months of appt.			5/10/2018
Calif Public Records Act	within 3 months of appt.	90 minutes	City Attorney's office/TBD	7/26/2018
legal requirements for confidentiality of personnel and other records				
constitutional civil rights guaranteed to all citizens as affected by law enforcement	within 3 months of appt.	1 hour	City Attorney's office/TBD	
National Standards of Constitutional Policing	within 3 months of appt.		John Burris	6/14/2018
Best Practices for Conducting Investigations				
OPD Internal Investigations & Police Discipline		Part of a 4 hour training	OPD (2/10/2018)	2/10/2018; TBD
Dept Use of Force Policy & Pursuit Policy/Force Science		4 hours		
Police Officers Bill of Rights		1 hour		
Implicit Bias and Racial Profiling	within 12 months of appt.	1 hour	Neighbors for Racial Justice	6/28/2018

OPOA					
Risk Management (incl. conflict resolution) & Stop Data Collection		30-60 minutes			
Law of Arrest/Search & Seizure (POST Learning Domains 15 and 16)	within 12 months of appt.	2 hours			
MILO (Shoot/Don't Shoot)		2 hours			
Community Policing			Jose Dorado		
Crisis Interventional Training	within 12 months of appt.			OPD	

https://www.bart.gov/sites/default/files/docs/BART%20Citizen%20Oversight%20Model%20-%20Amended%2007.12.18%20%282%29_0.pdf

(p. 11)

"F. Community Outreach. The BPCRB shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public in the BART service area. The BPCRB community outreach program shall seek to educate the public about the responsibilities and services of OIPA and functions of the BPCRB.

i) The DSO will provide staff support to and facilitate training for the BPCRB.

ii) The BPCRB should endeavor to conduct meetings in varying locales, where feasible to increase exposure of its work to a wider array of community members."

(p. 12)

"K. Staff Support for the BPCRB. The DSO will provide staff support to the BPCRB including but not limited to the following:

i) Facilitation of training for the BPCRB.

ii) Preparation and maintenance of records of meetings of the BPCRB.

iii) Distribution of reports by the BPCRB to the Board and the public. iv) Facilitation of the application process for appointment to the BPCRB and coordination of the selection and ratification processes with the Board.

v) Provision of training including a curriculum designed for newly-appointed BPCRB members.

vi) Provision and maintenance of an ongoing in-service training program"

meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at the South Berkeley Senior Center and other locations as may be determined by the commission.

I. ELECTIONS

1. Annual elections for PRC Chair and Vice-Chair will be agendized for the first regular meeting in January and, whenever possible, this item will be agendized as the final item under New Business.
2. The election of the Chair will precede the election of the Vice-Chair, and the following nomination and election process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A commissioner nominates another commissioner (no commissioner may nominate him/herself).
 - c) The nomination is seconded (the nomination fails if there is no second)
 - d) The presiding Chair declares the nomination process closed, when there are no further nominations.
 - e) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - f) Commissioners pose questions to each candidate.
 - g) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
 - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.
 - iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The PRC Secretary will assign "heads" and "tails."
3. The PRC Secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the PRC Ordinance, the Chair may appoint members of the public to subcommittees in which they have expressed an interest, subject to approval of the commission. Members of the public seeking to serve on a



Tactical De-escalation

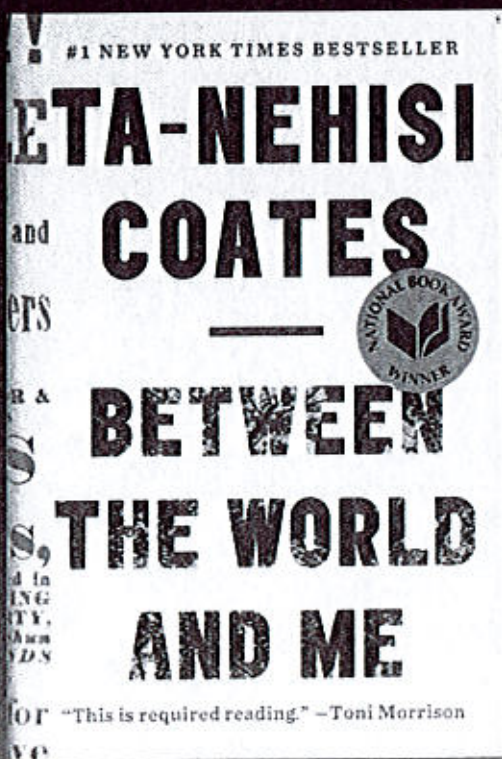
Berkeley Police Department
Fall 2018

Sgt. Spencer Fomby

- BA in Administration of Justice from Howard University, 1997
- BPD since 2000 with assignments in patrol, narcotics, community involved policing
- 14 years of experience on Special Response Team
- Use of force instructor since 2007
- Instructor- Weaponless defense, Impact weapons, Ground fighting, Firearms, Active shooter, SWAT, Tactical de-escalation, Civil disturbance, Chemical agents, Less lethal weapons

Sgt. Spencer Fomby

- Involved in 4 OIS (once as shooter)
- Instructor/Consultant for National Tactical Officers Association
- Instructor/Consultant for Bureau of Justice Assistance VALOR Initiative
- SME for NIJ Special Technical Committee on Civil Disturbance Units
- Visiting Fellow in Police Science, University of Derby (UK)



The Atlantic Popular Latest Sections Magazine

CULTURE

The problem of police brutality

TA-NEHISI COATES JUL 2, 2008



MENU  WJLA WASHINGTON, D.C. 62°

Man pleads guilty to 2017 Bowie restaurant triple murder

by ABC7



Korliet Noye (ABC7 file photo)

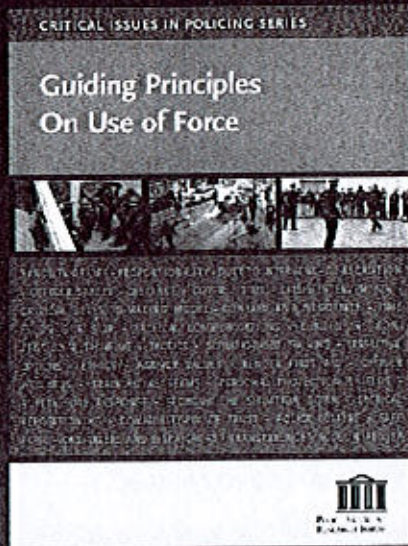
AA f t e

UPPER MARLBORO, Md. (ABC7) –
The man accused of [shooting and killing](#)
three people inside a Bowie restaurant in

Current Situation

- Since the Michael Brown shooting there has been increased scrutiny of law enforcement. The primary concern is how Police deal with unarmed non-compliant suspects, or suspects armed with a weapon other than a firearm.

Police Executive Review Forum



8 hr CA POST Approved Tactical De-escalation Course

- Use of CIT, Negotiators, Berkeley Mobile Crisis
- Verbal de-escalation
- Suicide by cop awareness
- Use of less lethal options
- Use of sound tactics (slow down, keep distance, use cover, one officer talks, stage medical, work as a team)
- Scenario based training

Outreach

- Trained officers from 7 outside agencies
- Presentation for University of Derby (UK)
- 3 days at BHS Law and Social Justice Class
- 2018 National Alliance of Mental Illness (NAMI)
- 2018 National Asian Peace Officers Association
- Shared curriculum with PERF, LAPD, Oakland PD, Raleigh PD (NC), Roanoke PD (VA)

Tactical Principles

- Contact/ Cover
- Use of cover, position of tactical advantage
- Don't backpedal, use lateral movement
- Identify escape routes
- Clear communication, 1 officer talks
- Sometimes less is more, too many officers can make situation harder to manage

Support Roles

- Less Lethal
- Traffic/ Crowd Control
- Support/ Arrest



De-escalation Defined

- De-escalation more broadly refers to the strategic slowing down of an incident in a manner that allows officers more time, distance, space and tactical flexibility during dynamic situations on the street.

The trigger for application of de-escalation tactics occurs when police action is not immediately necessary to protect the officer or others from harm. If force or police action is not immediately required, then officers should apply de-escalation tactics at the earliest opportunity.

To apply trained de-escalation tactics, it is essential that officers understand and are able to recognize the signs of escalating behavior.

Officers should attempt to use de-escalation tactics unless doing so violates the "Priorities of Life" or compromises officer safety.

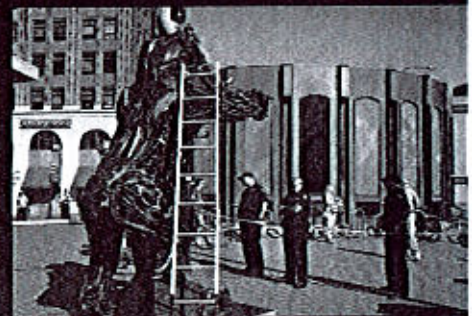
These tactics can reduce use of force against

- People in mental health crisis
- People under the influence of drugs/alcohol
- Armed/unarmed non-compliant suspects



Berkeley

- 10 square miles
- 120,000 residents
- Approximately 1000 chronically homeless



Berkeley PD

- Authorized 181 sworn officers
- 3.25 W&I 5150 transports per day
- Mobile Crisis Team
- Crisis Intervention Team



BPD Use of Force

- BPD SWAT (SRT) hasn't been involved in a shooting since 2002
- Department hasn't been involved in a shooting since 2012
- No Tasers
- Less lethal options- 40mm, FN 303, OC and Baton



Mental health calls #1 drain on Berkeley police resources



By Frances Dinkelspiel, April 16, 2015, 12:15 p.m.



Thirty-five percent of calls to the Berkeley Police Department are for people who are having a mental health



Have you been in a situation where you would have been legally justified in using deadly force but chose not to?

Sanctity of Life

Agency mission statements, policies and training curricula should emphasize the sanctity of all human life — the general public, police officers and criminal suspects — and the importance of treating all persons with dignity and respect.

Priorities of Life

- Hostages/Victims
- Innocent bystanders
- Law enforcement
- Suspect



Public Perception

Maybe 1 shot to the leg or something could be understood but 15 shots?

They lined up and shot a puny little guy with a knife. Chickens. Me and my little sister could have taken him in.

Why can't they use the bean bag rounds on his knife wielding arm to get him to drop the knife?

Washington Post Study

- Washington Post study found 990 people were shot and killed by Police in 2015
- 75% of suspects were attacking an officer or another person prior to being shot. (28% were shooting at officers or someone else, 16% were attacking with other weapons or physical force, 31% were pointing a gun)
- 25% of suspects were experiencing a mental health or emotional crisis

Washington Post Study

Weapons

- 50% of suspects had guns
- 16% of suspects had knives
- 5% tried to hit officers with vehicles
- 3% had replica firearms
- 9% of shootings involved an unarmed suspect

Law and Policy

Graham V. Connor (1989)

Reasonable Officer Standard

Would another officer with the same/similar training and experience

Facing the same/similar circumstances

Act the same way or use similar judgment?

Not necessarily the best decision, only a reasonable decision

Law and Policy

Judged through the perspective of a reasonable officer

Based on the totality of the facts known to the officer at the time the force was applied rather than with the 20/20 vision of hindsight

Based on the facts known to the officer without regard to the underlying intent or motivation

Law and Policy

Tennessee V. Garner (1985)

When a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

Law and Policy

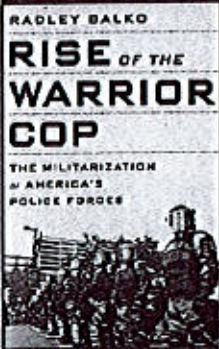
PC 835a. Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

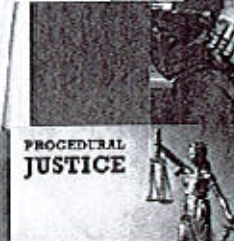
Deadly Force Policy U-2

- Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:
 - (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given
 - (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Warrior Vs. Guardian



Training



Van Nuys California

WARNING

THE FOLLOWING VIDEO CONTAINS GRAPHIC CONTENT
THAT MAY BE DISTURBING TO SOME VIEWERS
DISCRETION IS ADVISED

Is Time Always on Our Side?

Good Uses of Time

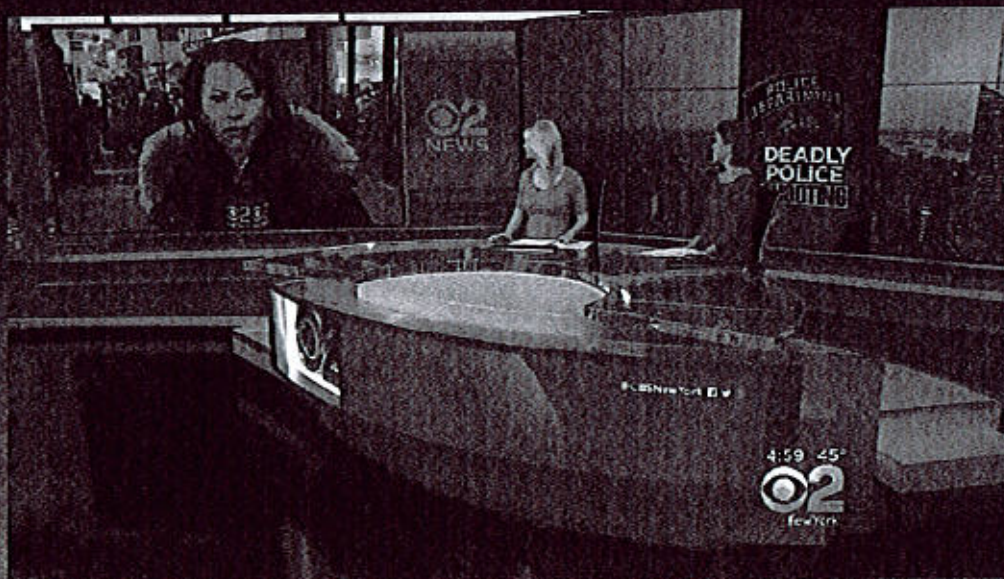
- Waiting for additional resources
- Negotiation
- Staging medical
- Less lethal
- Developing a deliberate plan



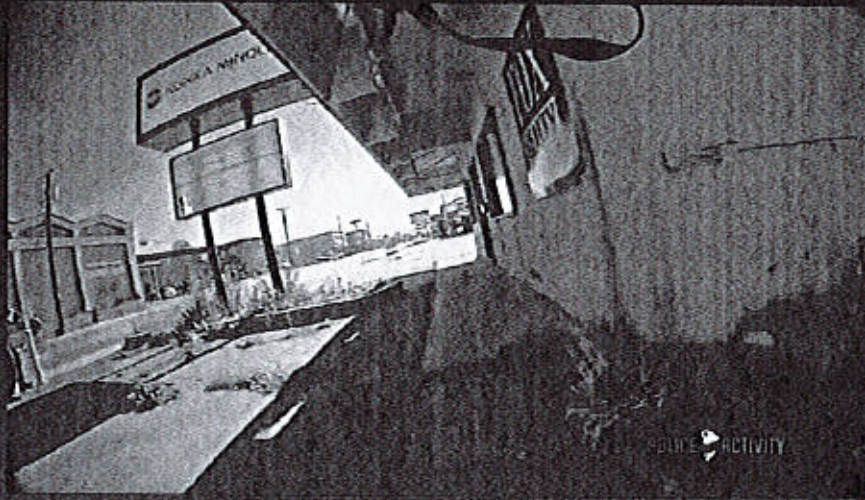
Time to De-escalate?



Time to De-escalate?



Fairbanks Alaska



Kingman Arizona



Verbal De-escalation

Phrases to Avoid:

- You want to go to jail?
- Calm down.
- What's your problem?
- You people...
- Come over here.
- I'm not going to tell you again.

Verbal De-escalation

Phrases to Consider Using:

- Excuse me, sir, may I talk to you?
- What can I do to help?
- For your safety and mine
- Could I ask you...?
- Would you assist me?
- You look like a reasonable person.
- What's the matter?

Verbal De-escalation

- People don't like being told what to do.
- Lower your voice
- Take the time to actively listen. Let the subject vent
- Show empathy
- Ask open ended questions
- Reflect back or paraphrase what the subject tells you
- Offer acceptable options
- Look for voluntary behavioral change

Officer Safety



Officer Safety



UK Approach



UK Approach



UK VS. US

- UK tactics do not automatically transfer
- US has over 300 million privately owned guns
- Suicide by cop
- Access to weapons in patrol vehicle

Suicide By Cop

California Peace Officer Standards and Training (POST, 2) identifies a SBC when a subject “engages in behavior which poses an apparent risk of serious injury or death, with the intent to precipitate the use of deadly force by law enforcement personnel towards that individual.”

Suicide By Cop (SBC)

- Spontaneous or planned

SBC Profile

- 96% of the perpetrators were male
- Ages ranged from 18-54
- Weapons ranged from firearms (46%), stabbing instruments (46%) and firearm replicas (8%)
- 58% asked to be killed by police
- 58% had a psychiatric history
- 38% had previously attempted suicide
- 50% were intoxicated
- 42% had a history of domestic violence
- 38% had a criminal history .

Perrou, Barry, Psy.D., "Crisis Intervention, Suicide in Progress - A Working Document", Public Safety Research Institute, 1999

SBC Warning Signs

The subject is barricaded and refuses to negotiate.

The subject has just killed someone, particularly a close relative, his mother, wife or child.

The subject says that he has a life-threatening illness.

The subject's demands of police do not include negotiations for escape or freedom.

The subject has undergone one or more traumatic life changes (death of a loved one, divorce, financial devastation, etc.)

Prior to the encounter, the subject has given away all of his money or possessions.

The subject has a record of assaults.

SBC Warning Signs Cont.

Subject says he will only surrender to the person in charge.

Subject indicates that he has thought about planning his death.

Has expressed an interest in wanting to die in a "macho" way.

Has expressed interest in "going out in a big way."

Subject expresses feelings of hopelessness or helplessness.

Subject dictates his will to negotiators.

Subject demands to be killed.

Subject sets a deadline to be killed.

Can We Walk Away?

- Barricaded subject
- Suicidal
- Does not have access to potential victims

Michael Blair (Fort Bend TX)



Berkeleyside
Berkeley, CA's independent news site

NOZBI PRODUCTS EVENTS DF-EE ALL THE NEWS EDITORIAL ABOUT ADVERTISE SUPPORT

Crime

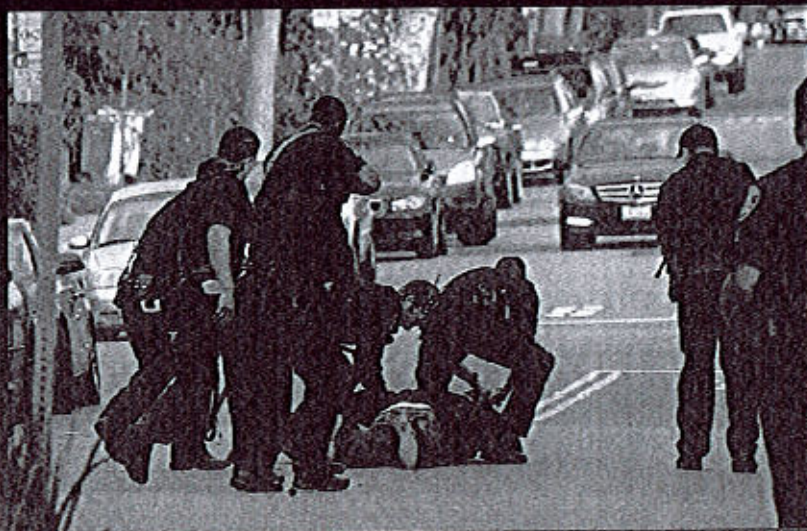
Man pointed gun, struck vehicles before arrest in Berkeley after car chase

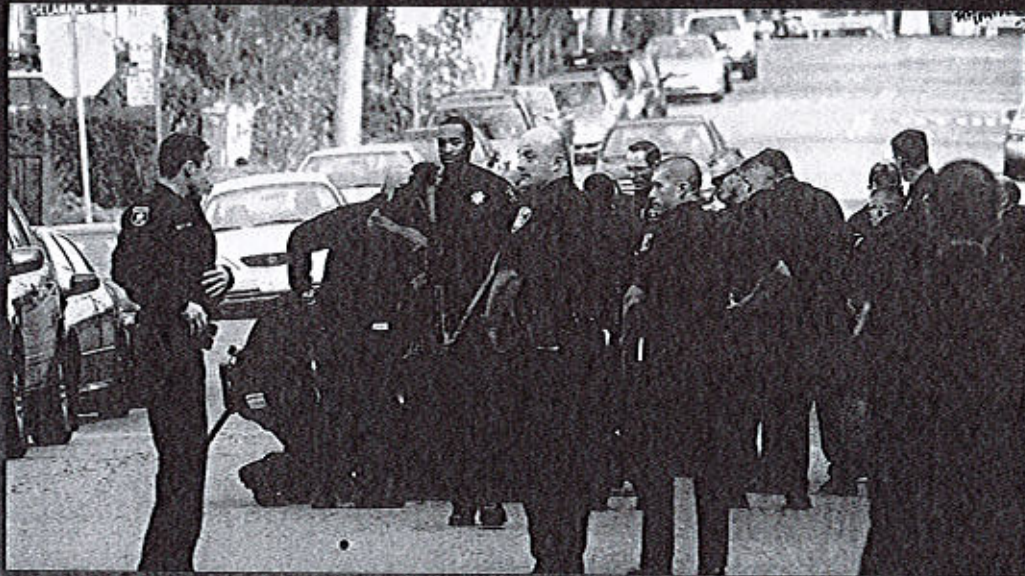
February 10, 2015 10:16 am by Molly Mayor



Update, Feb. 12: Berkeley Police have confirmed that the man arrested Wednesday after a car chase was Darryl Clarence Bookman, 37, of Berkeley.

Original story, Feb. 11, 10:16 a.m. After a car chase through Oakland and Berkeley on Wednesday morning, authorities arrested an armed man near Orione Park, according to authorities.





SBC Attempt (Belen N.M.)



187 suspect got dropped

BREAKING NEWS
80 SHUT DOWN IN EMERYVILLE
DUE TO POLICE ACTIVITY

Knife Related Incidents

Standoff vs. Attack

Knife attack (Cincinnati, Oh)



Knife Attack (Seattle PD)



The WRAP



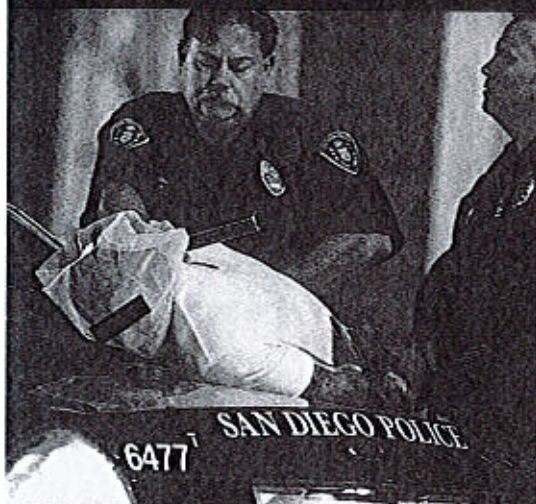
**The
Ultimate
Safe
Restraint
System**

***You Can't Beat
The WRAP***

The WRAP



Spit Hood

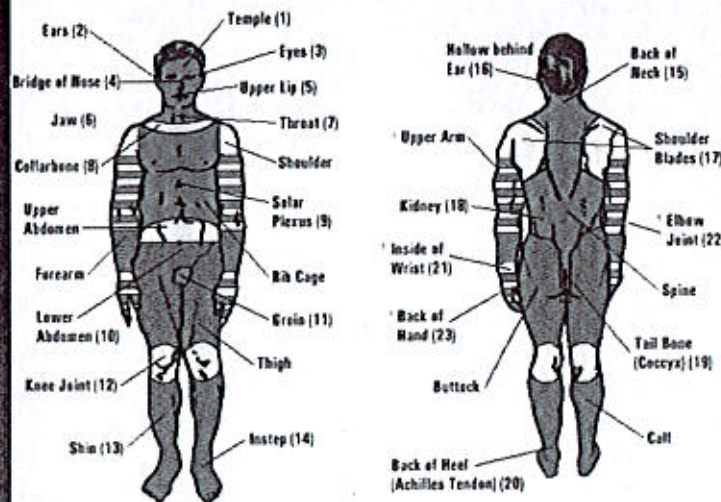


Less Lethal Options



Less Lethal Target Areas

ESCALATION OF TRAUMA BY VITAL AND VULNERABLE AREAS



PRIMARY TARGET AREAS

REASONING: Minimal level of resultant trauma. Injury tends to be temporary rather than permanent, however exceptions can occur.

* In application of a restraint technique.

SECONDARY TARGET AREAS

REASONING: Moderate level of resultant trauma. Injury tends to be more permanent, but may also be temporary.

** In application of a striking technique.

FINAL TARGET AREAS

REASONING: Highest level of resultant trauma. Injury tends to be permanent rather than temporary and may include unconsciousness, serious bodily injury, shock or death.

Marshfield Wisconsin



Less Lethal Options



Less Lethal Options



Future

- Standardization of tactics; continue to develop best practices.
- CIT will be mandatory training for officers.
- More access to less lethal options for officers in the field.
- More realistic tactical training for patrol officers.
- Continue to educate the public on the human dynamics of use of force incidents.

Sgt. Spencer Fomby S-7

sfomby@cityofberkeley.info

