

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**Wednesday, January 10, 2018  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**  
*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)*
- 4. APPROVAL OF MINUTES**  
Regular Meeting of December 13, 2017.
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**  
Status of complaints; other items.
- 7. CHIEF OF POLICE'S REPORT**  
Crime, budget, staffing, training updates, and other items.
- 8. SUBCOMMITTEE REPORTS (discussion & action)**  
Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:
  - a. General Orders C-64, etc. Subcommittee
  - b. Homeless Encampment Subcommittee – next meeting Tuesday, Jan. 16, 2018, 7:00 p.m. at South Berkeley Senior Center
  - c. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting)

- d. Fair & Impartial Policing Subcommittee  
-- Dissolve Subcommittee
- e. Mutual Aid Pacts Subcommittee
  - i.) Discuss and approve remaining subcommittee recommendations:
    - A. NCRIC (Northern California Regional Intelligence Center)
    - B. All remaining BPD agreements and understandings
  - ii.) Discuss and approve recommendation from subcommittee member:  
Law Enforcement Mutual Aid Plan
  - ii) Dissolve subcommittee or consider renaming

**9. OLD BUSINESS (discussion & action)**

- a. Review and consider next steps regarding City Council's October 31, 2017 action revising the reporting requirements in General Order U-2, Use of Force.
- b. Proposal to create a new subcommittee to identify where more civilian authority and oversight over the police department is warranted, with the goal of recommending changes to or a restructuring of the Police Review Commission.  
From: Commissioner Ford
  - i.) Review and consider next steps regarding City Council's November 14 action on broader or longer-term changes to PRC structure and authority.
- c. Proposal for BPD Accountability Plan, including professional development/ training of BPD officers, department budget, etc.  
From: Commissioner Prichett
- d. Review specially equipped panel van use policy.  
From: Mayor Arreguin  
*(Materials revised from those in Dec. 13, 2017 packet.)*
- e. Consider whether to accept Policy Complaint #2433 and, if accepted, what steps to take.  
From: PRC Officer
- f. Decide how to address City Council referral regarding City's enrollment in the Department of Defense 1033 Program  
From: City Council

**10. NEW BUSINESS**

- a. Elections of PRC Chairperson and Vice-Chairperson

**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. PETITION FOR REHEARING IN COMPLAINT #2422
- 14. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2435
- 15. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2424

**End of Closed Session**

- 16. ANNOUNCEMENT OF CLOSED SESSION ACTIONS
- 17. 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](mailto:prc@cityofberkeley.info).



# PRC REGULAR MEETING ATTACHMENTS

## January 10, 2018

### MINUTES

December 13, 2017 Regular Meeting Minutes Page 7

### AGENDA-RELATED

**Item 8.** – PRC Subcommittees List updated 12-7-17. Page 13

**Item 8.e.i)** – Recommendations from Mutual Aid Pacts Subcommittee. Page 15

**Item 8.e.i)** – Item #3.12 Berkeley Police Department Relationship with Northern California Regional Intelligence Center (NCRIC) as Governed by General Order N-17. Page 17

**Item 8.e.ii)** – Law Enforcement Mutual Aid Plan (proposal from Comm. Lippman) and background materials. Page 25

**Item 9.a.** – From City Council Annotated Agenda for Oct. 31, 2017 – Item 26, BPD Use of Force Policy. Page 37

**Item 9.a.** – Letter from City Manager, dated Dec. 21, 2017, to City Council re Update: Use of Force Policy Development. Page 39

**Item 9.b.** – From City Council Annotated Agenda for Nov. 14, 2017 – Item 25, Referral to the Police Review Commission to Write a Charter Amendment Ballot Measure. Page 41

**Item 9.c.** – Proposal: Good Governance Police Accountability Plan. Page 43

**Item 9.d.** – Council Item for Consent Calendar: Specially Equipped Panel Van Use Policy. Page 45

**Item 9.e.** – PRC Policy Complaint #2433. Page 51

**Item 9.f.** – From City Council Annotated Agenda for Nov. 14, 2017 – Item 19: Require City Council Approval of Any Proposed Acquisition of Material from the Department of Defense 1033 Program and Request Report and Related Documentation of Material Transferred. Page 53

**Item 9.f.** – Letter from City Manager, dated Nov. 28, 2017, to City Council re 1033 Program Report. Page 55

**COMMUNICATION(S)**

City Council Annotated Agenda of Dec. 19, 2017 meeting re Proposed Repeal of Revised Pepper Spray Policy. Page 57

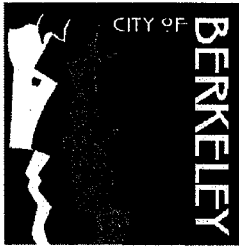
Memo from the City Clerk to City Council, dated Dec. 5, 2017 re Commissioner Affidavit of Residency Procedures. Page 61

Article from Berkeleyside, dated Dec. 15, 2017, re Chief: Berkeley police face 'a deepening staffing crisis.' Page 63

Email dated Dec. 21, 2017, from Blair Beekman. Page 67

PRC 2018 Meeting Schedule. Page 69

KJL:mgm



Police Review Commission (PRC)

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

**Wednesday, December 13, 2017  
7:00 P.M.**

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

**1. CALL TO ORDER & ROLL CALL BY CHAIR LIPPMAN AT 7:10 P.M.**

**Present:** Commissioner George Lippman (Chair)  
Commissioner Gwen Allamby (Vice-Chair)  
Commissioner Andrea Prichett  
Commissioner Terry Roberts  
Commissioner Michael Sherman  
Commissioner Elliot Halpern (temporary)

**Absent:** Commissioner Clarence Ford, Sahana Matthews, George Perezvelez, Ari Yampolsky

**PRC Staff:** Katherine J. Lee, PRC Officer; PRC Investigator Byron Norris (left 9:00 p.m.)

**BPD Staff:** Chief Andy Greenwood and Lt. Joe Okies (left 9:00 p.m.); Lt. Angela Hawk, Sgt. Rashawn Cummings, and Sgt. Sean Ross (BPA) (left 9:40 p.m.)

**2. APPROVAL OF AGENDA**

**With the following changes: to accept public comment on the Mutual Aid Pacts, Item #8.e., just before consideration of the item; move Item #9, Body-Worn Camera Presentation to after Item #7; and postpone Item #10.b. and #14; the agenda was approved by general consent.**

**3. PUBLIC COMMENT**

There were 10 speakers.

**4. APPROVAL OF MINUTES**

**Motion to approve Regular Meeting Minutes of November 15, 2017**

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

**5. CHAIR'S REPORT**

- Surveillance Ordinance will be before Council on Jan. 23, 2018; postponed from Dec. 5 as the City Manager asked for more time.
- PRC's Fair Impartial Policing Report will be on Council's Jan. 23, 2018 agenda as Information Item.
- We should make sure to get to Item #11.a., change to Standing Rules tonight.
- The PRC's recommendation on the Pepper Spray policy is on the Council's agenda for Dec. 19.

**6. PRC OFFICER'S REPORT**

- a. -- Complaint deadlines report was distributed and discussed.
- A fillable complaint form (PDF) is now on the PRC's website.
- List of pending agenda items was read, including Lexipol polices from BPD and Council referral on Dept. of Defense sec. 1033 program.
- b. Approve PRC Regular Meeting schedule for 2018.

**Motion to adopted the proposed PRC Regular Meeting schedule for 2018**

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

Ayes: Allamby, Lippman, Prichett, Roberts, Sherman, and Halpern  
Noes: None Abstain: None  
Absent: Ford, Matthews, Perezvelez, Yampolsky

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

Chief Greenwood reported:

- Staffing - now a critical shortage; currently 160 sworn officers. Will have to shut down some units such as bike patrol.
- Just came from Downtown Berkeley Association / Chamber holiday event where Jeremy Lathrop was honored as officer of the year.
- Toys for Tots drive this Saturday. Contributions accepted at [GoFundMe.com/BPA-holiday-toy-drive](http://GoFundMe.com/BPA-holiday-toy-drive)
- Attended meeting hosted by ACLU with police chiefs from Richmond and El Cerrito.
- Have done body-worn camera training over the past couple of weeks.

The Chief answered questions from Commissioners.

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

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

- a. General Orders C-64, etc. Subcommittee



- b. Homeless Encampment Subcommittee
- c. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting) – next meeting Monday, Dec. 18, 1:30 p.m., at 1947 Center St.
- d. Fair & Impartial Policing Subcommittee  
-- Dissolve Subcommittee

*(Items 8.a. through 8.d. postponed to the next meeting.)*

- e. Mutual Aid Pacts Subcommittee  
*(Heard following Item #9)*

- i.) Discuss and approve subcommittee recommendations

**Motion to accept proposed recommendation regarding ICE on lines 1-23 of p. 19 of the packet.**

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

Ayes: Lippman, Prichett, Sherman, and Halpern.

Noes: None                      Abstain: Allamby, Roberts

Absent: Ford, Matthews, Perezvelez, Yampolsky

**Motion to approve proposed recommendation on UASI/Urban Shield (p. 20, lines 45-52 of the packet).**

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

Ayes: Lippman, Prichett, Sherman, and Halpern

Noes: Allamby, Roberts              Abstain: None

Absent: Ford, Matthews Perezvelez, Yampolsky

*(Remainder of recommendations continued to the next meeting.)*

- ii) Discuss observations of PRC Commissioners who attended Urban Shield exercise Sept. 8 or 9.

*(Incorporated into discussion of 8.e.i.)*

- iii.) Dissolve subcommittee or consider renaming.

*(Item postponed to the next meeting.)*

## **9. SPECIAL PRESENTATION BY CHIEF OF POLICE**

*(Followed Item #7)*

Chief Greenwood and Lt. Okies presented a PowerPoint and passed around body-worn cameras to explain how the cameras will operate and how footage is stored.

## **10. OLD BUSINESS (discussion & action)**

- a Review and consider next steps regarding City Council's October 31, 2017 action revising the reporting requirements in General Order U-2, Use of Force.

*(Item postponed to the next meeting.)*

- b. Proposal to create a new subcommittee to identify where more civilian authority and oversight over the police department is warranted, with the goal of recommending changes to or a restructuring of the Police Review Commission.  
*(Item postponed to the next meeting.)*
- c. Proposal for BPD Accountability Plan, including professional development/ training of BPD officers, department budget, etc.  
*(Item postponed to the next meeting.)*

**11. NEW BUSINESS (discussion & action)**

- a. Suspension of Standing Rules regarding timing of election of chair and vice-chair.  
*(Heard following Item #8.a.)*

**Motion to suspend the Standing Rules and hold the 2018 election of the Chairperson on January 24<sup>th</sup>.**

Moved/Seconded (Lippman/Sherman)

*(The second was later withdrawn; discussion to be continued at the next meeting.)*

- b. Review specially equipped panel van use policy.  
*(Item postponed to the next meeting.)*
- c. Consider whether to accept Policy Complaint #2433 and, if accepted, what steps to take.  
*(Item postponed to the next meeting.)*

**12. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached.

**13. PUBLIC COMMENT**

There were 3 speakers.

<b><i>Closed Session</i></b>
------------------------------

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):

**14. PETITION FOR REHEARING IN COMPLAINT #2422**

*(Item postponed to the next meeting.)*

**15. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2431 FOR FAILURE TO STATE A PRIMA FACIE CASE**

**By general consent, the recommendation to administratively close Complaint #2431 was approved.**

**16. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2435  
BECAUSE IT IS FRIVOLOUS**

*(Discussed; to be continued to the next meeting.)*

***End of Closed Session***

**17. ANNOUNCEMENT OF CLOSED SESSION ACTIONS**

The vote on Item #15, to approve the recommendation for administrative closure in Complaint #2431, was announced.

**18. ADJOURNMENT**

By general consent, the meeting was adjourned at 10:05 p.m.



**POLICE REVIEW COMMISSION  
SUBCOMMITTEES LIST  
Updated 12-7-17**

<b>Subcommittee</b>	<b>Commissioners</b>	<b>Chair</b>	<b>BPD Reps / Others</b>
<b>General Orders on Crowd Control C-64, U-2, M-2</b> Formed 1-13-16 Renewed 3-22-17	Lippman Perezvelez Prichett	Perezvelez	Lt. Michael Durbin
<b>Fair &amp; Impartial Policing</b> Formed 1-13-16 Renewed 3-22-17	Allamby Ford Lippman Roberts  <i>Public members:</i> Christina Murphy Paul Kealoha-Blake Elliot Halpern	Lippman	Lt. Michael Durbin
<b>Homeless Encampments</b> Formed 2-1-17	Prichett Sherman Yampolsky	Prichett	
<b>June 20, 2017 (Review of BPD Response at City Council Meeting)</b> Formed 7-12-17	Matthews Prichett Roberts  <i>Public member:</i> Elliot Halpern	Roberts	Chief Andrew Greenwood Sgt. Sean Ross
<b>Mutual Aid Pacts</b> Formed 11-15-17	Matthews Lippman	Matthews	Capt. Dave Reece



8.e.i.) Recommendations from Mutual Aid Pacts Subcomm.

57 3. NCRIC

58

59 Proposed Recommendation: Set a one-year moratorium on BPD participation with  
60 NCRIC while PRC reviews CM/BPD-supplied information about how BPD-NCRIC  
61 relationship functions.

62 For example, review the bulletins that BPD receives from NCRIC.

63

64 m/s/c Matthews/Lippman Vote, 2-0

65

66 Alternative considered: REJECT renewal of Understanding, rescind General Order N-17,  
67 and cease BPD participation with the Northern California Regional Intelligence Center.

68

69

70

71

72 4. Law Enforcement Mutual Aid Plan: No action taken.

73

74 Consider at Police Review Commission meeting December 13

75

76

77

78 5. Approve all remaining agreements and understandings

79 m/s/c Matthews, Lippman Vote: 2-0.





# CITY COUNCIL REVIEW/APPROVAL BINDER

## BERKELEY POLICE DEPARTMENT AGREEMENTS, LETTERS AND UNDERSTANDINGS RE MUTUAL AID, INFORMATION SHARING AND COOPERATION WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES, AND PRIVATE SECURITY ORGANIZATIONS (Berkeley Municipal Code §2.04)

<b>Item #</b>	<b>3.12 (2017 Revision)</b>
<i>Title:</i>	<b>BERKELEY POLICE DEPARTMENT RELATIONSHIP WITH NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER (NCRIC) AS GOVERNED BY GENERAL ORDER N-17</b>
<i>Type:</i>	Written Policy: BPD General Order N-17
<i>Compendium Approvals:</i>	Initial: April 10, 2010 / Current: April 25, 2017
<i>Summary:</i>	<p>Berkeley Police Department General Order N-17 governs the relationship between the Berkeley Police Department and NCRIC.</p> <p>NCRIC facilitates the legal sharing of terrorism and criminal-oriented information. In this effort, NCRIC produces/disseminates intelligence, conducts training, and provides investigative and analytical case support to federal, state and local law enforcement agencies. NCRIC strives to ensure the protection of privacy and civil liberties of citizens in its assistance to local, state and federal agencies with their mission of protecting the communities they serve from the threats and dangers of terrorist, gang, narcotics and organized criminal activities. Local Terrorism Liaison Officers (TLOs) facilitate information sharing and investigative collaboration.</p> <p>The Police Department has a comprehensive policy regarding the provision of a Suspicious Activity Report to NCRIC, including several steps of review, and the reporting to City Council, in redacted form, of all SARs submitted to NCRIC.</p> <p>The Police Department may receive and share confidential or "law enforcement sensitive" public safety-oriented information with NCRIC to facilitate criminal investigation or to promote the safety of the community and/or law enforcement. The Police Department has designated sworn employees to act as TLO's in addition to their normal assigned duties, as described within General Order N-17)</p>
<i>Rationale:</i>	<p>Police Department interaction with NCRIC, governed by General Order N-17, promotes public safety and serves the law enforcement mission.</p> <p>Transparency of Suspicious Activity Reporting to NCRIC is accomplished through reporting redacted SARs with City Council.</p>
<i>Cost:</i>	<p><i>If Approved:</i> Cost will be neutral. Approval will continue to support current law enforcement activity, funded in existing budget.</p> <p><i>If Not Approved:</i> Effect on cost cannot be calculated. Absence of or reduced interaction would inhibit investigations and impact successful prosecution. Public and employee safety would be adversely affected. Increased local enforcement responsibility would increase local costs.</p>
<i>Recommendation:</i>	Continued Approval
<i>Implementation:</i>	The Police Department will continue to operate in accordance with all City Council and Department general orders and policies as applicable.



## BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

**SUBJECT: SUSPICIOUS ACTIVITY REPORTING AND RELATIONSHIP WITH THE  
NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER**

### PURPOSE

- 1 - The terrorist attacks of September 11, 2001, and subsequent attacks throughout the world have demonstrated the necessity of an organized and integrated information sharing system at all levels of law enforcement. In order to prevent, prepare for, respond to, and investigate potential acts of terrorism and other violent criminal threats, it is necessary to establish an efficient system of communication whereby critical information can be quickly disseminated within the Berkeley Police Department (BPD) and to various local, state and federal law enforcement agencies.
- 2 - National guidelines have been developed and implemented throughout the United States through the National Criminal Intelligence Sharing Plan, the Findings and Recommendations of the Suspicious Activity Report Support and Implementation Project and the Nationwide Suspicious Activity Reporting Initiative (NSI) to establish a means for the sharing of information, known as Suspicious Activity Reporting (SAR). The information sharing plan was developed by law enforcement agencies to establish an all-crimes approach to gathering, processing, reporting, analyzing, and sharing of suspicious activity related to potential terrorism and crime. By maximizing information from citizens, law enforcement, and public safety officials, criminal acts can be detected and disrupted and incidents that have occurred can be properly investigated.
- 3 - The Berkeley Police Department will continue to attempt to detect crime before it occurs, including terrorism, through various means such as Suspicious Activity Reporting (SAR). The SAR program will provide a format for the Department to accurately and appropriately gather record, analyze and share suspicious activity or, in cases of named or identified individuals or groups, information that gives rise to a reasonable suspicion of criminal activity, including those activities related to foreign or domestic terrorism.

### LIMITATIONS

- 4 - If the information gathered is developed into criminal intelligence, the Department will ensure that the information privacy and legal rights of all persons will be recorded and maintained in strict compliance with existing federal, state and Department guidelines regarding criminal intelligence systems as defined in (28 Code of Federal Regulations (CFR), Part 23 including subsections 23.20 (a) and 23.20(b)), the California Constitution and the California Attorney General's Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities and the California State Threat Assessment System Concept of Operations.

## BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

- (a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.
  - (b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.
- 5 - Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.
  - 6 - SARs must not be submitted based on ideology, social or political opinion or advocacy of religious beliefs or association with a particular group. Criminal activity that would not ordinarily result in a SAR does not become worthy of a SAR when the subject's speech or expression indicates a particular ideological viewpoint or association.

### POLICY

- 7 - Effective immediately, all sworn BPD personnel will document incidents with an actual or potential terrorism nexus or other suspected criminal activity and submit those proposed Suspicious Activity Reports as outlined in this policy. All Department members will adhere to the procedures and responsibilities described in this policy whenever potential terrorism related activity is encountered, observed or reported.

### DEFINITIONS

- 8 - Suspicious Activity: Behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, or criminal activity. Suspicious behavior must have a criminal predicate (defined below), and must rise to the level of reasonable suspicion (defined below) in order to be reportable as a SAR in circumstances involving a named or identified individual or group.
- 9 - Criminal Predicate: The standard by which the determination as to whether information may be used to create a SAR is made in circumstances involving a named or identified individual or group. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount

# BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

to a misdemeanor or felony.

- 10 - Reasonable Suspicion: Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization is involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.

## PROCEDURES

- 11 - Examples of behaviors that could be reported as a SAR are as follows (all of these behaviors have been verified as behaviors which have preceded and been linked to actual terrorist incidents as well as common criminal acts):

<b>DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY</b>	
<b>ISE-SAR CRITERIA GUIDANCE Category Description</b>	
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Theft/Loss/Diversion	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents {classified or unclassified}, which are proprietary to the facility).
Sabotage/Tampering/ Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Aviation Activity	Operation of an aircraft in a manner that reasonably may be interpreted as suspicious, or posing a threat to people or property. Such operation may or may not be a violation of Federal Aviation Regulations.

**BERKELEY POLICE DEPARTMENT**

**ISSUE DATE: November 9, 2016**

**GENERAL ORDER N-17**

<b>POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT INFORMATION DURING INVESTIGATION<sup>1</sup></b>	
Eliciting Information	Questioning individuals at a level beyond mere curiosity about particular facets of a facility's or building's purpose, operations, security procedures, etc., that would arouse suspicion in a reasonable person.
Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.

- 12 - **Examples of behavior which cannot be reported as a SAR unless:** 1) the activity rises to the level of criminal conduct, or 2) the person taking part in the activity is not identified, and therefore, not subject to possible investigation by state and federal investigative agencies:

Recruiting	Building of criminal operations teams and contacts, personnel data, banking data or travel data
Photography	Taking pictures or video of facilities, buildings, or infrastructure in a manner that would arouse suspicion in a reasonable person. Examples include taking pictures or video of infrequently used access points, personnel performing security functions (patrols, badge/vehicle checking), security-related equipment (perimeter fencing, security cameras), etc.

- 13 - **Employee's Responsibilities:** All personnel are reminded that Constitutional rights will be honored at all times and nothing in this policy diminishes Constitutional protections. Personnel are specifically reminded of Fourth Amendment protections and that persons cannot be arrested without probable cause, detained without reasonable suspicion, and that evidence cannot be seized except pursuant to a warrant or an existing recognized exception to the warrant requirement. Any BPD employee receiving any information regarding suspicious activity potentially related to terrorism shall:

- (a) Notify their direct supervisor.

<sup>1</sup> Note: These activities may be considered First Amendment-protected activities and should not be reported in a SAR or ISE-SAR absent articulable facts and circumstances that support the source agency's suspicion that the behavior observed is not innocent, but rather reasonably indicative of criminal activity associated with terrorism, including evidence of pre-operational planning related to terrorism. Race, ethnicity, national origin, or religious affiliation should not be considered as factors that create suspicion (although these factors may be used as specific suspect descriptions).

## BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

- (b) Notify a department Terrorism Liaison Officer (TLO)
  - (c) Document the incident as described in this policy.
- 14 - Responsibilities of Supervisors: Upon notification that personnel have received information regarding a potential SAR, the BPD Supervisor shall:
  - (a) Determine if any further law enforcement response is needed, will consult with a BPD (TLO) if available and determine if immediate notifications to the Chief of Police, and/or the City Manager or his/her designee is required.
  - (b) Provide the information in written form to the TLO for consideration of SAR submittal.
  - (c) Review the reports and ensure the proper reporting has been completed.
- 15 - Responsibilities of the TLO and TLO Coordinator (TLOC): Terrorism Liaison Officers (TLOs) have received training in the identification, handling and reporting of potential terrorism related incidents. TLOs will be available as a resource for SAR related incidents.
  - (a) TLOs will review proposed SARs from officers, and supervisors, and forward them to the TLO Coordinator (TLOC) for further review. If the report meets sufficient criteria for submission as a SAR, the TLOC will submit it to the Operations Division Commander or his designee for submission approval.
  - (b) The TLOC shall maintain a written log of all SARs submitted, and prepare an annual report to be provided to City Council.
- 16 - Responsibilities of the Operations Division Commander:
  - (a) Review of proposed SARs, and approval/rejection as appropriate.
  - (b) Forward all SARs to the City Manager and Chief for review
  - (c) Ensure that a written log is maintained and an annual report prepared by the TLOC.
- 17 - Responsibilities of the NCRIC: It is the policy of the NCRIC to make every effort to accurately and appropriately gather, record, analyze, and disseminate information that could indicate activity or intentions related to threats to homeland

## BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

security and submit such information to the Federal Bureau of Investigation – Joint Terrorism Task Force (FBI-JTTF) and the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) in the form of an NSI suspicious activity report. These efforts shall be carried out in a manner that protects the information and the privacy, civil rights, and civil liberties of individuals. Suspicious activity information shall be recorded and maintained in strict compliance with existing federal and state guidelines.

- 18 - The NSI has established a unified process for reporting, tracking, and assessing terrorism-related SARs throughout the nation. The NSI adheres to the guidelines established by the Intelligence Reform and Terrorism Prevention Act and the Information Sharing Environment Suspicious Activity Reporting (ISE-SAR) Functional Standard. These guidelines call for all terrorism-related suspicious activity reporting to be routed through designated fusion centers for appropriate vetting and review before the information can be shared within the nationwide system. The NCRIC as a component of California's State Threat Assessment System has been designated as the review agents for all terrorism-related suspicious activity reporting in the region.
- 19 - The NCRIC will then make the decision to share the SAR information with the NSI based on the standards established by the NSI. The NCRIC is also responsible for ensuring that all TLOs, line officers and other first responders in the region have received appropriate training in the collection and reporting of terrorism-related suspicious activities and the responsibilities related to protection of privacy, civil rights and civil liberties of individuals. The NCRIC also works closely with the NSI Program Management Office to ensure a statewide implementation of suspicious activity reporting.
- 20 - Reporting a SAR: All Suspicious Activity Reports (SARs) will be submitted through the [www.ncric.org](http://www.ncric.org) website. When the SAR involves a criminal act or attempted criminal act, a written BPD police report shall be submitted (and BPD case number created) identifying the suspected criminal behavior and referencing the systems and personnel notified of the SAR.



4. **Law Enforcement Mutual Aid Plan** (proposal from Comm. Lippman)

Proposed Recommendation: ADOPT with recommendation for BPD follow-up to modify General Order M-02 "MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES"

Add a new paragraph in the Procedures section after Paragraph 6, to reflect the City Council's direction that:

"The BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum amount allowable by law...advise such units that they will be expected to comply with [BPD] regulations and policies," and that if there are conflicts with other agencies over policies which cannot be resolved, "BPD reserves the right to elect not to deploy those units affected....where the City of Berkeley has adopted more stringent standards, those will take precedence over county-wide standards within Berkeley.""<sup>1</sup>

Berkeley's direction is supported by the Law Enforcement Mutual Aid (LEMA) Plan currently under consideration. The LEMA Plan states:

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

3. Advising responders what equipment they should bring."

In addition, California Govt. Code § 8618 provides that the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident including the direction of personnel and equipment provided him through mutual aid.<sup>2</sup>

Therefore, host agencies have not only the right, but also the responsibility to supervise the performance of invited agencies.

The mandate that the host agency supervises the performance of invited agencies explicitly extends to the direction of personnel and equipment. This state law provides the basis for the instruction in the California Law Enforcement Mutual Aid Plan that the jurisdiction requesting mutual aid is responsible for among other things "advising responders what equipment they should bring."<sup>3</sup>

<sup>1</sup> <http://www.berkeleyside.com/wp-content/uploads/2015/02/2003-09-09-Item-54-57.pdf> — excerpt attached

<sup>2</sup> <http://www.lawlink.com/research/Level2/50475>

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

<http://www.caoes.ca.gov/LawEnforcementSite/Documents/1Blue%20Book.pdf>



2. **BERKELEY POLICE DEPARTMENT CROWD MANAGEMENT POLICIES  
(CONTINUED FROM 4/7/92, ITEM G.(c)2)**

**From:** Police Review Commission

**Recommendation:** Adopt 12 specific recommendations regarding Berkeley Police Department crowd management policies as outlined in the report which includes a separate minority report regarding use of munitions for crowd control.

a. **City Manager Report**

**Recommendation:** Adopt proposed recommendations with necessary changes.

b. **Commission on Disability**

**Recommendation:** Reconsider support of the use of rubber, wooden, and putty bullets in crowd control situation because of the inordinate risks they pose to persons in wheelchairs and others.

c. **Communications**

**Action:** Adopted 12 recommendations as submitted by the Police Review Commission. See attachment A.

**Motion:**

Moved, seconded (Skinner/Shirek) to approve the Police Review Commission's recommendations Nos. 1 through 6 and No. 8, 9, 10, 11 and 12, and for Recommendation 7, approve the minority report's recommendation not to use any form of munition for crowd control.

Moved, seconded (Dean/Goldfarb) a substitute motion, to adopt all of the Police Review Commission's recommendations, including No. 7.

Councilmembers Skinner and Shirek requested severance of the vote on No. 7.

The vote on Recommendation 7 carried. (Ayes - Chandler, Collignon, Dean, Goldfarb, Wainwright, Woodworth, Hancock; Noes - Shirek, Skinner; Absent - None)

The balance of the recommendations were adopted by unanimous vote. (Absent - None)

**ATTACHMENT A**

**BERKELEY POLICE DEPARTMENT CROWD MANAGEMENT POLICIES**

**(Adopted April 28, 1992)**

**RECOMMENDATION #1:**

That the Berkeley Police Department develop a policy statement regarding First Amendment rights for inclusion in the BPD Events and Crowd Control Manuals and related training materials. That BPD submit such policy statement for PRC review before final implementation.

**RECOMMENDATION #2:**

That BPD improve procedures for declaring and ordering dispersal of unlawful assemblies by:

- a) Obtaining and utilizing better amplified sound devices to address crowds, monitoring the audibility of dispersal orders, and recording dispersal orders wherever possible for documentation;
- b) Providing the crowd clearer instruction as to what specific location or area is the unlawful assembly site and the route by which persons will be allowed to leave, and providing a reasonable opportunity to comply with the dispersal order;
- c) Using all (reasonable) means to forewarn citizens in the demonstration area of these dispersal order "rules of engagement."

**RECOMMENDATION #3:**

That BPD designate and train specific officers to serve as crowd liaisons at demonstrations, such officers to:

- a) Be knowledgeable of First Amendment issues, with a sole mandate to consciously look for means to balance security and public safety needs with legitimate and lawful expression of First Amendment Rights;
- b) Be readily identifiable to the crowd and have direct access to the Field Commander as needed;
- c) Serve as a conduit for information between the police and the crowd to improve communication during events wherever possible;
- d) Assist in resolving problems and help identify opportunities to de-escalate confrontational situations;

- c) Be selected based on outstanding inter personal communication abilities and trained in mediation and negotiation;
- f) Be available as a resource to help identify appropriate "liaisons" among demonstrators and to initiate contact wherever possible for pre-event planning and post-event briefing.

**RECOMMENDATION #4:**

That officers should not be authorized to advance in skirmish lines at "double" or "triple" time except to move rapidly to secure a designated position when no direct, intervening contact with a crowd is involved. This is not to exclude arrest teams of officers from moving quickly to arrest those whose criminal conduct poses an immediate threat to the public safety.

That at all times, the police should avoid bearing down on a crowd faster than the crowd is capable of moving.

**RECOMMENDATION #5:**

That BPD initiate plans to study and evaluate the use of shields, high intensity lights, and barriers for crowd management and report to the Commission for its review as soon as possible.

**RECOMMENDATION #6:**

That BPD adopt a crowd management policy to address nonviolent civil disobedience that a) explicitly distinguishes between several categories of nonviolent demonstrators, especially those who manifest an intent to engage in nonviolent civil disobedience including the willingness to accept arrest as a consequence; b) relates authorized use of force to those categories; and c) acknowledges that alternative police responses include arrest, physical removal, and containment of resisters:

A) Categories of nonviolent demonstrators:

Category #1: "Cooperative" - those who, after having accepted arrest rather than obey a lawful order to move, cooperate with the arresting officers (e.g. stand and walk to a transport vehicle when asked to do so by an officer).

Category #2: "Nonviolent/noncooperative" - Those who are passive and neither obstruct nor assist officers in the process of arresting or removing them (e.g. those who go limp, refuse to move when asked to do so, and require that they be carried).

Category #3: "Nonviolent/resistive" - Those who, after a verbal command, are either sitting or otherwise immobilized, and actively exert themselves (e.g. by refusing to unlink arms) to resist lawful police efforts to move them.

Category #4: "Nonviolent active" - Those who are not stationary, but who are nonviolent and not engaged in aggressive behavior directed at police or others (e.g. people standing in a crowd that has been told to disperse).

**B) Use of force authorization per above categories:**

**Category #1:** No use of force should be necessary.

**Category #2:** No use of pain compliance holds or impact weapons (i.e. batons).

**Category #3:** Minimum force necessary to overcome impediments to arrest or removal of individuals. This category does not allow any use of force for the purpose of inducing movement by subject from the site. No use of impact weapons.

**Category #4:** Minimum force necessary to move or arrest individuals. No use of the jab baton technique or other more forceful self defense measures.

**RECOMMENDATION #7:**

That the City of Berkeley adopt a policy that would restrict the use of non-lethal munitions for crowd control to situations where violent criminal acts are being committed by members of a crowd which pose a clear and present danger to officers or others, and for which no reasonable non-lethal force alternative is available; and that in such instances authorized munitions would be restricted to foam rubber multiple-baton rounds discharged from gas guns, and in any event, no non-lethal munitions discharged by shotguns would be permitted.

**RECOMMENDATION #8:**

That BPD adopt a policy that bars the use of lines of motorcycles in Berkeley to perform security sweeps in crowd control situations; specifically, use of motorcycles as a means of force is not permitted; permissible use of motorcycles in crowd control situations is limited to transportation, establishment of stationary positions as crowd barriers, or other routine traffic or patrol responsibilities.

**RECOMMENDATION #9:**

That the City of Berkeley adopt the following policies with respect to deployment of all officers provided by outside (non-Berkeley) agencies in response to a Berkeley mutual aid request:

a) That the BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum extent allowable by law:

b) That BPD not allow any mutual aid officer to be deployed in the field without proper identification as required under California Penal Code Section 830.10; and any BPD officer witnessing violations of this section of the Penal Code shall have an affirmative obligation to report such violations to their immediate supervisor immediately or as soon as practicable;

c) That prior to deployment in the field, BPD notify mutual aid units of significant BPD crowd management regulations and policies - especially those regarding use of force and reporting duties - and advise such units that they will be expected to comply with those

regulations and policies; and that BPD take appropriate steps to identify potential conflicts between the local regulations and policies of the outside agencies and those of the City of Berkeley, and that where possible, BPD make reasonable efforts to resolve those differences prior to deployment of those units in the field, and that where significant differences remain, BPD reserves the right to elect to not deploy those units affected.

**RECOMMENDATION #10:**

That the City of Berkeley urge:

a) Ongoing joint training in crowd management among all Alameda County jurisdictions;

b) Development of uniform county-wide standards regarding use of force in crowd control situations, especially regarding acceptable baton techniques. This action to be taken with the understanding that where the City of Berkeley has adopted more stringent standards, those will take precedence over county-wide standards within Berkeley.

**RECOMMENDATION # 11:**

That BPD adopt a policy that specifically proscribes the use of flashlights to harass or intimidate individuals in crowd control situations; such restrictions to not inhibit prudent use of flashlights for legitimate public or officer safety reasons.

**RECOMMENDATION #12:**

That BPD officers be issued helmets with larger numbers than currently used, so as to be more clearly visible in a crowd situation.





## BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

**SUBJECT: MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES**

### PURPOSE

- 1 - The purpose of this General Order is to describe Mutual Aid procedures and written agreements that the Berkeley Police Department has with other law enforcement agencies. **It is also to provide guidance to the Command Staff members regarding the philosophy of Mutual Aid application.**

### POLICY

- 2 - Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. **The Berkeley Police Department is also expected to take an event management approach to crowd control situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid.**

### MUTUAL AID

- 3 - California's Law Enforcement Mutual Aid Plan was formulated in the early 1950's and enacted into law as part of the Government Code in 1970. The authority of the State of California Law Enforcement Mutual Aid Plan is granted under California Government Code Sections 8550, 8569, 8616, and 8668. The Berkeley City Council grants authority to the Police Department for mutual aid participation in accordance with Berkeley Municipal Code Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS, 1973).
  - (a) The California Law Enforcement Mutual Aid Plan is contained in a **compendium** titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
    - (1) **Copies are publically available on line through the City of Berkeley website.**

### PROCEDURES

- 4 - All requests for mutual aid will be made via the Alameda County Sheriff, and all responses to mutual aid will result from mutual aid notification from the Alameda County Sheriff.
  - (a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of Departmental resources, it is the Chief of Police's responsibility to request mutual aid from the Alameda County

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

Sheriff. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.

I. The Chief or his/her designee will also attempt to determine if the only crimes being committed are civil disobedience offenses, and whether these offenses pose a threat to public safety.

II. If individuals are committing crimes that do not present a threat to public safety the Chief or his/her designee should seriously evaluate whether or not the Berkeley Police Department should request or participate in Mutual Aid. Crimes which do present a threat to public safety include property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.

- (b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).
  - (1) It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

5 - To request Mutual Aid from the Alameda County Sheriff, the Berkeley Police Department must:

- (a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.
- (b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, and verbally request mutual aid.
- (c) Send a\*written message to the Alameda County Sheriff's Department. (FAX is acceptable.)\*
- (d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:
  - (1) The dates and times that mutual aid personnel are required.
  - (2) The number of personnel needed to assist.
  - (3) The staging area for responding personnel to meet.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

- (4) Mass processing procedures for persons arrested.
  - (5) Transportation plans for persons arrested.
  - (6) Operation of temporary detention facilities, if needed.
  - (e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of officers requested at the time of each incident.
- 6 - Costs for mutual aid are the responsibility of each agency participating. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

### REQUESTING STATE MUTUAL AID ASSISTANCE

- 7 - The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341.
- (a) Five State agencies have specific responsibilities to support local law enforcement during emergency situations:
    - (1) The California Highway Patrol: Provide traffic control and maintenance of law and order.
    - (2) The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.
    - (3) The Department of Justice: Provide legal advice and intelligence.
    - (4) The Department of Corrections: Provide support for local law enforcement (with resources).
    - (5) Office of the California State Police: Provide personnel who remain

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

under the command of the State Police.

### REQUESTING FEDERAL MUTUAL AID ASSISTANCE

- 8 - Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.
- 9 - The Berkeley City Council reviews and approves agreements with other law enforcement agencies pursuant to California Government Code Section 8617, and in accordance with Berkeley Municipal Code (BMC) Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS 1973).
  - (a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.
    - (1) The agreements are maintained in a **compendium** entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
      - (a) **The compendium is publically available from the City of Berkeley website.**
      - (b) A list of the agreements with other agencies is listed in the table of contents.
  - (b) **The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity -- submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210**

## Council Action Items

**26. Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy**  
**From: Councilmember Harrison, Mayor Arreguin, and Councilmembers Bartlett and Worthington**

**Recommendation:** 1. Direct the City Manager and the Berkeley Police Department ("BPD" or "the Department") to amend General Order U-2: Use of Force ("General Order U-2") to: a. Enhance BPD's use of force policy statement; and, b. Create a definition of use of force; and c. Require that all uses of force be reported; and d. Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and e. Require Use of Force Reports to be captured in a manner that allows for analysis; and f. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.  
2. Direct that the City Manager report to the Council by December 12, 2017 on the progress to date.

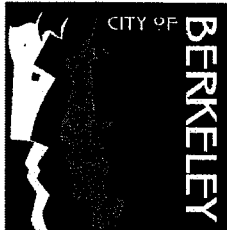
**Financial Implications:** Staff time

Contact: Kate Harrison, Councilmember, District 4, 981-7140

**Action:** Moved to Consent Calendar. Approved recommendation as revised in Supplemental Reports Packet #1.

1. *Direct the City Manager to amend Berkeley Police Department ("BPD" or "the Department") General Order U-2: Use of Force ("General Order U-2") to:*
  - a. *Enhance BPD's use of force policy statement; and*
  - b. *Create a definition of use of force; and*
  - c. *Require that all uses of force be reported; and*
  - d. *Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and*
  - e. *Require Use of Force Reports to be captured in a manner that allows for analysis; and*
  - f. *Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission ("PRC") and Council.*
2. *Direct that the City Manager report to the Council by December 12, 2017 on the progress to date and present to the Council by February 27, 2018 a final version of General Order U-2.*
3. *Prior to implementation, the revised General Order U-2 shall be submitted to the PRC in accordance with BMC 3.32.090(B).*





Office of the City Manager

December 21, 2017

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Update; Use of Force Policy Development

This memorandum provides an update on the progress of the Berkeley Police Department's work on the revision of General Order U-2, Use of Force, as requested by Council on October 31, 2017.

The working group has drafted new and revised language to U-2, including:

- Formal language regarding the value of human life and dignity, without prejudice to anyone;
- Formal language regarding using de-escalation tactics and techniques which seek to minimize the need to use force and increase the likelihood of voluntary compliance;
- Re-draft definition of force;
- Expand the threshold of reporting force, including sub-categories of physical force;
- Consider approaches to categorization of force levels; using plain language to increase transparency;
- Posting of use of force statistics on the City's Open Data Portal.

Additionally, staff is drafting a model report to serve as a template for an annual use of force report.

External factors which could affect implementation of the completed policy include: necessary review from the City Attorney's office, and the need to meet and confer with the Berkeley Police Association. Once finalized, the policy will be provided to the Police Review Commission.

We look forward to completing work on this item. In the meantime, it may be helpful to note that the Department's overall use of force use appears quite small, proportional to the number of incidents to which the Department responds. The Chief has commented on this in the past, and provided the following information for your information.

**Use of Force data against calls for service data:** In the past three years, 2015,-2017, approximately 105 of the 223,878 incidents BPD responded to resulted in a Use of Force report. In other words, .047% (*forty-seven thousandths of a percent*) of the incidents BPD responded to resulted in a documented Use of Force report. The majority of force used is physical force.

**Use of Force Complaints data against calls for service data:** In the same period, approximately 34 of the 223,878 incidents BPD responded to resulted in a Use of Force complaint: about one out of every 6,500, or .015%, *fifteen-thousandths of a percent*.

If you have any questions, please let me know.

cc: Jovan Grogan, Deputy City Manager  
Ann Marie Hogan, City Auditor  
Mark Numainville, City Clerk  
Matthai Chakko, Assistant to the City Manager / Public Information Officer



## Action Calendar – New Business

25. **Referral to Police Review Commission to Write a Charter Amendment Ballot Measure** (*Continued from October 31, 2017. Item contains revised materials.*)  
**From: Councilmembers Worthington and Harrison**  
**Recommendation:** Referral to the Police Review Commission to write a charter amendment ballot measure to present to Berkeley voters to reform the Police Review Commission structure.  
**Financial Implications:** Minimal  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**Action:** M/S/C (Arreguin/Maio) to call the previous question on Item 25.

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

**Action:** M/S/C (Hahn/Droste) to adopt the following recommendation.

*Refer to the City Manager and Police Review Commission (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.*

*Direct the City Manager (through the City Attorney) to provide a legal analysis of which proposals can be completed legislatively and which require amendments to the City Charter.*

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

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

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

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

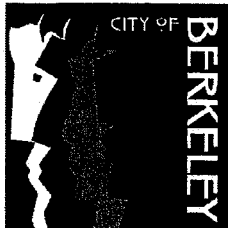
**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – Worthington; Abstain – Davila.



**PROPOSAL:**  
**GOOD GOVERNANCE POLICE**  
**ACCOUNTABILITY PLAN**

1. The Police Chief will be responsible for creating annual goals for the department with input from the community that are measurable and related to reducing crime and improving the safety situation in Berkeley.
2. The Police Chief will create an annual training and professional development plan for the department that supports the achievement of the annual goals. This plan will be submitted by the start of each fiscal year.
3. The BPD will create a budget plan that supports the achievement of these identified goals.
4. The Police Chief will **work to** identify data sources, **metrics** and measures that will assist the police department, the City Council, the Police Review Commission and the public in evaluating the effectiveness of the department. Departmental effectiveness will be evaluated annually based on the measures and reported to the PRC, the City Council and the public.
5. The BPD will hire a full time data analyst to work with staff to improve data collection and analysis and to assist in the creation of credible, reliable data that can be used for evaluation of departmental effectiveness, allocation of funds, and the focus of trainings and professional development.
6. The Berkeley Police Department shall commence regular annual or bi-annual departmental audits of assets and expenses





Office of the Mayor

## CONSENT CALENDAR

To: Members of the City Council  
From: Mayor Jesse Arreguin  
Subject: Specially Equipped Panel Van Use Policy

### RECOMMENDATION

Adopt a Resolution specifying the conditions for the use and deployment of a Specially Equipped Panel Van by the Berkeley Police Department (Attachment 1).

### BACKGROUND

On June 20, 2017, the Berkeley City Council adopted Resolution No. 68,053-N.S., pursuant to City Charter Article XI Section 67.2, for the purchase of a Specially Equipped Panel Van for use by the Berkeley Police Department in situations where there is an objective risk to the safety of civilians and/or officers from a person who may be considered armed and dangerous or in a situation that would risk injury or death to civilians or officers.

Additionally, City Council adopted Resolution No. 68,052-N.S. establishing the terms and conditions of the City of Berkeley's acceptance of the UASI grant funding to purchase the Specially Equipped Panel Van to be: (1) The City of Berkeley ("Berkeley") retains authority to determine the UASI sponsored programs and activities Berkeley will participate in; and (2) The vehicle shall be used only in UASI sponsored exercises that Berkeley chooses to participate in, and in such instances shall only be used by Berkeley personnel, according to Berkeley's policies and protocols, under Berkeley's exclusive command and control.

Council action approving the purchase of the Specially Equipped Panel Van required that the Mayor develop a draft policy on its use and deployment. This policy is required to be reviewed by the Police Review Commission and adopted by City Council prior to any deployment of the Van.

### FINANCIAL IMPLICATIONS

Staff time

### ENVIRONMENTAL SUSTAINABILITY

No impact

Specially Equipped Panel Van Use Policy  
CONSENT CALENDAR – December 19, 2017

CONTACT PERSON

Jesse Arreguín, Mayor 510-981-7100

Attachments:

1. Resolution No. XX,XXX
2. Resolution No. 68,052–N.S
3. Resolution No. 68,053–N.S.

RESOLUTION NO.

ESTABLISHING THE CONDITIONS FOR THE USE, DEPLOYMENT AND OPERATIONS TRAINING FOR SPECIALLY EQUIPPED PANEL VAN BY THE BERKLEY POLICE DEPARTMENT

WHEREAS, On June 20, 2017, the City Council adopted Resolution No. 68,053-N.S., pursuant to City Charter Article XI Section 67.2, for the purchase of a Specially Equipped Panel Van for use by the Berkeley Police Department in situations where there is an objective risk to the safety of civilians and/or officers from a person who may be considered armed and dangerous or in a situation that would risk injury or death to civilians or officers.

WHEREAS, Additionally, on June 20, 2017, the City Council adopted Resolution No. 68,052-N.S. establishing the terms and conditions of the City of Berkeley's acceptance of the UASI grant funding to purchase the Specially Equipped Panel Van to be: (1) The City of Berkeley ("Berkeley") retains authority to determine the UASI sponsored programs and activities Berkeley will participate in; and (2) The vehicle shall be used only in UASI sponsored exercises that Berkeley chooses to participate in, and in such instances shall only be used by Berkeley personnel, according to Berkeley's policies and protocols, under Berkeley's exclusive command and control.

WHEREAS, Council's action on June 20, 2017 through adoption of Resolution No. 68,053-N.S. stated that the City Council will adopt a policy for use of the Specially Equipped Panel Van prior to its being deployed in any capacity by the City of Berkeley.

WHEREAS, Requirements for use, deployment and operations training have been reviewed by the Berkeley Police Department and Police Review Commission.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it establishes the following conditions regarding the use, deployment, and training for the Specially Equipped Panel Van by the Berkeley Police Department:

USE OF THE SPECIALLY EQUIPPED PANEL VAN

The use of the Specially Equipped Panel Van will be authorized by the field supervisor and, whenever practical, the on-duty/on-call Watch Commander. The use of the Specially Equipped Panel Van will only be for supervisory approved purposes including, but not limited to, calls for service involving potentially armed subjects, Tactical Team callouts, search warrants served by at least one Tactical Team member, ~~officer or citizen rescues~~, or authorized training. The vehicle's purpose is to provide an armored rescue resource for officers to use when managing critical incidents.

The Specially Equipped Panel Van shall not be deployed during non-violent demonstrations, including for crowd control and crowd management, ~~unless there are objective facts demonstrating a risk of injury or death to police officers and/or the public.~~

~~The Specially Equipped Panel Van may be staged at pre-designated locations away from protest sites to allow for timely response. The vehicle may be called to a declared unlawful assembly, when a lawful dispersal order has been issued or when persons are engaged in criminal behavior that presents an objective risk of injury or death. The Specially Equipped Panel Van may be staged at pre-designated locations away from protest sites to allow for timely response.~~

The SWAT commander will maintain a vehicle usage log which will be provided to the City Council and Police Review Commission every ~~6~~ 12 months, or as requested.

#### SPECIALLY EQUIPPED PANEL VAN OPERATION TRAINING

Periodic briefings and training will be conducted on the operation and deployment of the Specially Equipped Panel Van. Supervisors shall submit training validation forms to document that staff members have received appropriate training regarding the use and deployment of the Specially Equipped Panel Van.

#### SPECIALLY EQUIPPED PANEL VAN DEPLOYMENT CONSIDERATIONS

Staff has the discretion to deploy the Specially Equipped Panel Van in those circumstances where there is an objective risk of serious injury or death to civilians and officers and use of the vehicle may reduce or resolve said risks by facilitating safe police management of the critical situation and rescue of injured persons. Staff should:

- Assess the situation and based on the objective facts determine that the discretionary use of the vehicle may contribute to the safe resolution of a critical incident where there is a risk of serious injury or death to civilians or officers.
- Given proper authorization for deployment of the vehicle, staff should, except in an emergency, create an operational plan for deployment of the vehicle consistent with this policy, current law and the Berkeley Police Department Use of Force policy.
- The vehicle may be used to locate and contain a threat by providing cover for officers, facilitating a rescue of an injured person or as a tactical resource to allow officers to take into custody a person who presents an objective risk of injury or death to civilians or officers.

In selecting the rescue team, the supervisor should consider experienced personnel, including but not limited to: Tactical Team Operators and/or former Tactical Team members, Hostage Negotiators and officers who have received Crisis Intervention Training (CIT). In addition, the rescue team should include an officer trained in emergency medicine support, rescue carriers, cover officers along with officers equipped with less lethal force equipment. Fire and ambulance personnel should be ready to accept injured persons at the termination point of the rescue.

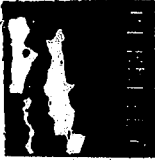
#### USE OF THE SPECIALLY EQUIPPED PANEL VAN BY OUTSIDE AGENCIES

The on-duty supervisor shall approve the use of the Specially Equipped Panel Van by outside agencies for emergency purposes. At least one on-duty Tactical Team officer shall deploy with the vehicle, to assist outside agency requests. This may include additional officers who have received training in advanced first aid. At all times any use of the Specially Equipped Panel Van shall be consistent with Berkeley Police



Department Use of Force policy. Under no circumstances shall the Specially Equipped Panel Van be used in Urban Shield exercises.





# POLICY COMPLAINT FORM

Police Review Commission (PRC)

1947 Center Street, 1<sup>st</sup> Floor, Berkeley, CA 94704

Website: [www.ci.berkeley.ca.us/prc/](http://www.ci.berkeley.ca.us/prc/)

E-mail: [prc@ci.berkeley.ca.us](mailto:prc@ci.berkeley.ca.us)

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

Received by PRC

Date Received:  
NOV 27 2017

PRC CASE # 2433

1

Name of Complainant: Guevara Clivia  
Last First Middle

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

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

E-mail address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Gender: Female Age: \_\_\_\_\_

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

2

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

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

3

Location of Incident (if applicable) Berkeley, California

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

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

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

4

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

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

5

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

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

6

**CERTIFICATION**

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

Glenn Johnson  
Signature of Complainant

NOV. 23, 2017  
Date

7

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

- Internet
- Publication: \_\_\_\_\_
- Referral: \_\_\_\_\_
- Other: \_\_\_\_\_

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

## Council Consent Items

**18. Healthy Black Families, Inc.: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds**

**From: Councilmembers Bartlett, Hahn, Maio, and Davila**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount to be determined by each Councilmember to the Healthy Black Families Inc. annual holiday celebration.

**Financial Implications:** Unknown

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

**Action:** Adopted Resolution No. 68,226–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Wengraf - \$100; Councilmember Maio - \$100; Councilmember Davila - \$75; Councilmember Harrison - \$100; Councilmember Hahn - \$100; Councilmember Worthington - \$250.

**19. Require City Council Approval of Any Proposed Acquisition of Material from the Department of Defense 1033 Program and Request Report and Related Documentation of Material Transferred**

**From: Councilmember Harrison**

**Recommendation:** 1. Adopt a Resolution requiring City Council ("Council") to review and approve any proposed acquisition of material prior to the Berkeley Police Department applying for material through the Department of Defense ("DOD") 1033 Program. 2. Refer to the City Manager a request for a report on the dates, contents, and uses of the transfers of materials to the Berkeley Police Department through the 1033 Program that have occurred to date. Direct that the City Manager issue the report by December 5, 2017. 3. Refer to the Police Review Commission a request for a report considering the City's enrollment in the 1033 Program.

**Financial Implications:** Staff time

Contact: Kate Harrison, Councilmember, District 4, 981-7140

**Action:** Moved to Action Calendar. 5 speakers. M/S/C (Harrison/Maio) to adopt Resolution No. 68,227–N.S.; Recommendation approved as amended in Supplemental Reports Packet #2 and with the change to Recommendation #2 to request an off-agenda memo from the City Manager on the equipment previously obtained through the 1033 program.

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

**20. Coyote Management and Co-Existence Educational Materials**

**From: Councilmember Wengraf**

**Recommendation:** Request that the Animal Care Commission add to their work plan a project to create educational materials and web content for the City of Berkeley website that informs Berkeley residents of coyote behavior and suggests best ways to co-exist with coyotes without conflict. Information on coyote behavior, management strategies, recommended responses to coyote encounters and attacks, and other pertinent information should be included.

**Financial Implications:** Minimal

Contact: Susan Wengraf, Councilmember, District 6, 981-7160

**Action:** Councilmember Davila added as a co-sponsor. Recommendation approved.

RESOLUTION NO. 68,227-N.S.

REQUIRING CITY COUNCIL APPROVAL OF ANY MATERIAL FROM THE  
DEPARTMENT OF DEFENSE 1033 PROGRAM

WHEREAS, the equipment provided to and utilized by the Berkeley Police Department ("BPD") must be consistent with the will of the Berkeley community; and

WHEREAS, Bay Area Police Departments such as the University of California at Berkeley Police Department and the San Francisco Police Department have acquired military material through the 1033 Program, and the BPD is enrolled in the 1033 program and may acquire material through the program in the future.

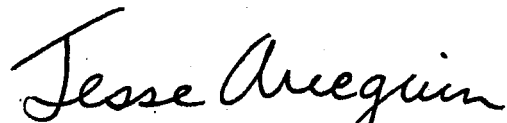
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it shall review and approve any proposed acquisition of material provided through the 1033 Program prior to the Berkeley Police Department applying for material.

The foregoing Resolution was adopted by the Berkeley City Council on November 14, 2017 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

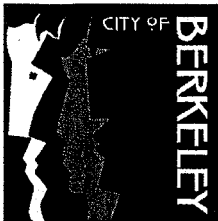
Noes: Davila.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:

  
\_\_\_\_\_  
Mark Numainville, City Clerk



Office of the City Manager

November 28, 2017

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: 1033 Program Report

On November 14, 2017, City Council approved Item 19, regarding the Department of Defense's "1033" program. With this item, Council requested "a report on the dates, contents and uses of the transfers of material to the Berkeley Police Department through the 1033 program that have occurred to date." This memorandum serves to report on the information as requested by Council.

The program provides a website where lists of available equipment can be viewed. Staff has access to this site. In 2016, staff looked at the program in order to explore the possibility of acquiring a second robot for the Emergency Ordinance Disposal ("EOD") unit, commonly referred to as the department's "bomb squad." EOD Units are subject to Federal certification. An EOD Unit is required to have at least one robot, which keeps officers safe when dealing with potentially lethal explosive devices. The desired robot cost approximately \$170,000 and would represent a valuable, additional resource for our Department. However, the equipment we sought is currently unavailable. We have registered our interest with the program, and will seek Council approval should the equipment become available. Our existing robot was obtained through UASI grant funds years ago.

While some staff remember procuring ballistic helmets through this program over ten years ago, they were ultimately not useful due to size, and they have not been a part of the Department's inventory for many years. Protective helmets are critical, as demonstrated this spring when individuals at social media-driven protests threw quarter sticks of dynamite at officers' heads.

The Berkeley Police Department currently has no materials received through this program.

The Berkeley Police Department is dedicated to serving according to our community's values. Our purchases of equipment – as with the implementation of policy,

Page 2 of 2  
November 28, 2017  
Re: 1033 Program Report

development of training and daily practices – also seek to mirror those values. Our pursuit of outside funding is part of our commitment to reduce costs to Berkeleyans while improving our service to our community.

If you have any questions, please let me know.

cc: Jovan Grogan, Deputy City Manager  
Andrew Greenwood, Chief of Police  
Ann Marie Hogan, City Auditor  
Mark Numainville, City Clerk  
Matthai Chakko, Assistant to the City Manager / Public Information Officer



**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL**

**Tuesday, December 19, 2017**

**6:00 P.M.**

**COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY**

**JESSE ARREGUIN, MAYOR**

**Councilmembers:**

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

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

**Preliminary Matters**

**Roll Call:** 6:26 p.m.

**Present:** Bartlett, Davila, Droste, Harrison, Maio, Worthington, Arreguin

**Absent:** Hahn, Wengraf

Councilmember Wengraf present at 6:27 p.m.

**Ceremonial Matters:**

1. Recognition of Hung Liu, Local Artist
2. Adjournment in Memory of San Francisco Mayor Ed Lee

**City Auditor Comments:**

The City Auditor provided an update on the positive outcomes from the cash handling audit and the audit on business license tax (Items 44 and 45).

**City Manager Comments:** None.

**Public Comment on Non-Agenda Matters:** 6 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 8 speakers.

**Consent Calendar**

**Action:** M/S/C (Harrison/Worthington) to adopt the Consent Calendar in one motion except as indicated.

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



## Action Calendar – New Business

**40a. Repealing the Revised Oleoresin Capsicum (Pepper Spray) Policy Passed September 12, 2017**

**From:** Police Review Commission

**Recommendation:** Adopt a Resolution repealing the recent change in the Berkeley Police Department's use of Oleoresin Capsicum (OC, or pepper spray).

**Financial Implications:** None

Contact: Katherine Lee, Commission Secretary, 981-4950

**40b. Companion Report: Repealing the Revised Oleoresin Capsicum (Pepper Spray) Policy Passed September 12, 2017**

**From:** City Manager

**Recommendation:** Keep in place current Council policy allowing the use of Oleoresin Capsicum (pepper spray) in specific circumstances upon specific individuals engaged in violent activity in a crowd situation.

**Financial Implications:** See report

Contact: Andrew Greenwood, Police, 981-5900

**Action:** 21 speakers. M/S/C (Maio/Arreguin) to adopt Item 40b as written.

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

**41a. Public Works Commission Recommendation for the Five-Year Paving Plan**

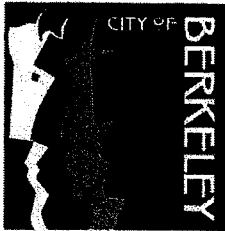
**From:** Public Works Commission

**Recommendation:** Adopt a Resolution recommending approval of the first year (2018) of the Five-Year Paving Plan (2018-2019) as proposed by staff.

**Financial Implications:** Unknown

Contact: Nisha Patel, Commission Secretary, 981-6300





City Clerk Department

December 5, 2017

To: Honorable Mayor and Members of the City Council  
From: Mark Numainville, City Clerk  
Subject: Commissioner Affidavit of Residency Procedures

As you know, Ordinance No, 7,565-N.S. was adopted on September 12, 2017 and became effective October 18, 2017. Below is a summary of the Commissioner Affidavit of Residency process as modified by this ordinance:

- Commissioners are no longer required to file an Annual Affidavit of Residency.
- An original executed Affidavit of Residency must still be filed with the City Clerk at the same time the appointment form is filed.
- To streamline the appointment process, commission applications and appointment forms have been updated to include an Affidavit of Residency section.
- Semi-annually, the City Clerk will send notification to every active commissioner advising of the residency requirement in Berkeley Municipal Code § 2.04.140 and requesting address confirmation.
- Any Commissioner found to be in violation of the residency requirements will be automatically terminated from the Commission.

Enclosed is a small supply of updated affidavit forms for your use. Electronic versions of this form and the updated commission applications are available on Groupware. To ensure consistency and accuracy, please only use these forms. I have also included the updated administrative policies regarding the affidavit for further clarification of the residency requirement.

Please contact Sarah Bunting or Leslie Rome in the City Clerk Department with any questions or concerns.

Encl.

CC: City Manager  
City Attorney  
Commission Secretaries



## Berkeleyside

### Chief: Berkeley police face 'a deepening staffing crisis'

By Emilie Raguso Dec. 15, 2017, 4:59 p.m.

Berkeley police staffing levels have reached a crisis point, and the entire traffic bureau along with some investigative positions may be on the chopping block in early 2018, according to reports this week from BPD.

The department already suspended its bicycle patrols this fall, and disbanded its Drug Task Force in recent years. Cuts in the Community Services Bureau and the suspension of the Special Investigations Bureau are also coming, officers have said.

Berkeley Police Chief Andrew Greenwood told the Police Review Commission on Wednesday that staffing is down to 160 officers by his calculations. Six of the 160 are on injury leave, and others are still in probationary training, which limits resources on patrol and in other areas even more. Greenwood said he had been making the rounds at the department this week to discuss what's to come.

"We're descending to a critical period and it has gotten worse rather than better," Greenwood told the PRC as part of his regular report to the advisory body. "We have lost so many officers that we're going to have to rethink a bit of how we do business."

When Greenwood was thrust into the chief's role last year following the abrupt departure of his predecessor, he said staffing would be among his top priorities. The department is now authorized to hire 181 officers, the result of lobbying city leaders to get more money and positions authorized. But the agency has continued to shrink. Greenwood said at least 24 officers have left, or plan to leave, the department this year, while only 17 have been hired. That reflects department trends in recent years with people leaving in the double-digits, due to retirement or jobs elsewhere, and hiring unable to keep pace.

"One of the things that we're seeing now that we never used to see is people going to other agencies," Greenwood told the PRC. He said the department may soon need to make the tough choice to shutter units "that are long-time high-value providers for our community" so that central services such as patrol and investigations can function.

BPD's investigative arm has already been suffering, with 20% to 25% of its positions currently being held open, Greenwood said.

The traffic unit, which has a sergeant and four motorcycle officers, is likely to shutter this coming year. The unit handles enforcement, education and training, as well as investigations into fatal crashes and other collisions.

"We're going to have to figure out how we retain our ability to handle some of the most critical aspects of that while having them work on patrol," he said. And one or more area coordinators

from the Community Services Bureau may be sent back to patrol. "There are no other areas for us to pull people from."

Greenwood has presented the cuts publicly as a potentiality that's still being considered. Officers have told Berkeleyside that, inside BPD, the cuts have been described as a done deal. The effect on morale has not been good.

The staffing shortage has been a national problem in recent years, with law enforcement drawing fewer applicants than it once did. That's at least in part due to the increasing scrutiny and mounting criticism of the career, and vocal demands for significant reforms.

Greenwood said BPD officers are now looking elsewhere because other agencies are taking steps to recruit more aggressively and offer more competitive hiring packages. Greenwood told the PRC the city needs to think hard about how it can retain its officers in the face of those offers from outside — particularly because filling vacant positions with qualified applicants has become increasingly difficult.

"The emphasis has to be on how we retain the people we have, how we make our staff know that they are supported and valued," he told the PRC. In the meantime, he added, he'll be working to come up with a plan about how to rebuild. He said the PRC might want to put a discussion about staffing on the agenda for January or February so there can be a more robust conversation about it.

### **BPA asks "Where's my Berkeley Cop?"**

As it happened, the Berkeley Police Association (BPA), which represents BPD officers, launched its own campaign this week to raise awareness about the staffing problem. Dubbed "Where's my Berkeley Cop?" the campaign features a new webpage that describes the staffing shortage and asks community members to speak up politically if they are concerned. (The campaign includes a paid advertisement on the Berkeleyside homepage.)

The association says officer numbers have dropped steadily since 2010 while the city's population has continued to increase, leading to "slower response times and serious consequences for public safety." The group, currently involved in contract negotiations with the city, says it may not be long before officer numbers come in below 140. Many still on staff recall when ranks reached 215 back in the 90s. Sure, crime reports were higher, too. But officers often cite that figure when discussing just how bad they feel the crunch has gotten.

"Just this year, twenty six officers have left the department for other opportunities and more are on their way out," according to the website. "How can we stop the current exodus of officers who are leaving Berkeley for other agencies and opportunities?"



On the website, the association puts the blame for the rush of departures squarely on the Berkeley City Council and what is described as its lack of support for specialized units in the department. BPD officers have also made no secret of the fact that they resent how city policy and politics limit their access to tools and opportunities that are standard in many surrounding agencies.

“BPD is no longer competitive in hiring. Most neighboring departments offer incentives to prospective officers, including opportunities to work in specialized investigative units, such as a drug or gang task force. They offer the opportunity to work as a canine officer, a bicycle officer or as a traffic officer. They have the industry standard tools such as in dash cameras, body cameras and tasers. And they also offer hiring bonuses,” BPA writes on the website. “BPD offers NONE of those.”

The association warns that the city will have to decrease its hiring standards if something isn't done. Sgt. Emily Murphy, acting association president, said the possibility of forced overtime, and its impacts on childcare, commutes, officer safety and morale, is another real worry.

“Dedicated officers who already invested in, and planned on, making a career at Berkeley PD are now forced to make hard decisions: to stay when the future is uncertain as far as career advancement and compensation — or look elsewhere,” she said. “Officers make career decisions just like everyone else: They consider the welfare of their families.”

Chief Greenwood said he had not been aware of the website or seen it before Friday. But he said he is concerned about the “deepening staffing crisis” underway at BPD, which includes longstanding staffing shortages in the dispatch center, and said wages and benefits will be key if the city hopes to keep its officers amid what's become a “competitive battle.”

“It's an absolute testament to the quality of our people that they are sought out by other agencies,” he told Berkeleyside by email. “Berkeley officers perform at an extraordinarily high level of professionalism, and handle a wide variety of calls and investigations.”

Greenwood confirmed plans are in the works to create a path forward, and said details will be shared with the community at the appropriate time.

Wednesday night, at the PRC meeting, commissioners told the chief they look forward to learning more soon. Commissioner Terry Roberts said the future is looking somewhat bleak, particularly if the numbers continue to drop.

“There's got to be some kind of strategy to shore them up,” he told the chief. Then he paused, adding: “I'm not sure what that is.”



**Lee, Katherine**

---

**From:** bob tom <cranberrysauce23@gmail.com>  
**Sent:** Thursday, December 21, 2017 3:51 PM  
**Subject:** a letter Blair Beekman. Thursday December 21, 2017. \_\_\_\_\_ A few thoughts from 2017, to continue into 2018.

**Categories:** For Agenda

Dear UASI staff, and regional approval board,

A quick review of a few ideas, I talk about often, as a member of the public, who attended most regional meetings, in 2017. I will offer these ideas again, in the first weeks, of the new year.

It is my sincere hope, people working around CBRNE technology, in the past few years, are learning to limit, and end, a palpable, obvious greed and glee, that one could feel, as an open free pass, is being created,

as more individual cities, can work with CBRNE tech., and with this, an easier, more experimental way, more individual cities, can now work with, large national security corporations.

It is also my sincere hope, these people, are keeping a good, mindful eye, on a more, responsible, open, and good ways of practicing technology, are developing, for a city and community.

And the importance, in the commitment, to learn how to formally end the era of 9/11/01, and begin, better reasoned, peaceful, and more sustainable ideas, for the future of ocal cites and communities.

And, to always understand the concept, that individual city needs, for CBRNE technology, should be a shared. minimal use process, by working with a neighboring city, or county, as its first choice.

As this also offers the ideas, of less risk, including health risks, to the people, of a city government, among other practical considerations.

I hope, after a year or two now, people involved in new CBRNE tech. ideas, are learning to identify, what corporate greed can be. And the feeling of de-regulation, and a free pass, that is around CBRNE tech., for individual cities, at this time.

Instead, this should be the time, to be settling into, and learning what responsibility can be, in what is the beginning, of new era, in peace and better reasoning, fifteen years after 9/11/01.

I hope the new, Countering Violent Extremism program, CVE, a new, more low key idea, as a data collecting program, is learning to talk with the people, in the lessons learned, from the mid-2000's, that helped define, the civil rights and civil protections, of the Muslim community, in the early days after 9/11/01.

Good thinking ideas, we are working with, to this day.

I hope you can also learn to talk with, everyday activists of today, in the local neighborhood communities, of the Bay Area, to learn, what is happening now, like with ideas, in simple, good communication,

And finally, I hope the name of UASI, is being talked about, a bit more often, by your staff.

At lunch time, or around the water cooler.

I have been bringing up this subject, for a year, and a half, now, in regional public meetings.

Sincerely,  
Blair Beekman

# PRC 2018 Meeting Schedule

## With Council Meetings and City Holidays

January							February							March						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6					1	2	3					1	2	3
7	8	9	10	11	12	13	4	5	6	7	8	9	10	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28				25	26	27	28	29	30	31

April							May							June						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7			1	2	3	4	5						1	2
8	9	10	11	12	13	14	6	7	8	9	10	11	12	3	4	5	6	7	8	9
15	16	17	18	19	20	21	13	14	15	16	17	18	19	10	11	12	13	14	15	16
22	23	24	25	26	27	28	20	21	22	23	24	25	26	17	18	19	20	21	22	23
29	30						27	28	29	30	31			24	25	26	27	28	29	30

July							August							September						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4							1
8	9	10	11	12	13	14	5	6	7	8	9	10	11	2	3	4	5	6	7	8
15	16	17	18	19	20	21	12	13	14	15	16	17	18	9	10	11	12	13	14	15
22	23	24	25	26	27	28	19	20	21	22	23	24	25	16	17	18	19	20	21	22
29	30						26	27	28	29	30	31		23	24	25	26	27	28	29
														30						

October							November							December						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6					1	2	3							1
7	8	9	10	11	12	13	4	5	6	7	8	9	10	2	3	4	5	6	7	8
14	15	16	17	18	19	20	11	12	13	14	15	16	17	9	10	11	12	13	14	15
21	22	23	24	25	26	27	18	19	20	21	22	23	24	16	17	18	19	20	21	22
28	29	30	31				25	26	27	28	29	30		23	24	25	26	27	28	29
														30	31					

  PRC Meeting     
   City Holiday     
   Council Meeting



## 2018 Commission Meeting Dates

Name of Commission: PRC COMMISSION

Commission Secretary: Katherine J. Lee

Month	Meeting Day and Date	Time
January 2018	Wed. 1/10/18	7:00 pm
	Wed. 1/24/18	7:00 pm
February 2018	Wed. 2/14/18	7:00 pm
	Wed. 2/28/18	7:00 pm
March 2018	Wed. 3/14/18	7:00 pm
	Wed. 3/28/18	7:00 pm
April 2018	Wed. 4/11/18	7:00 pm
	Wed. 4/25/18	7:00 pm
May 2018	Wed. 5/9/18	7:00 pm
	Wed. 5/23/18	7:00 pm
June 2018	Wed. 6/13/18	7:00 pm
	Wed. 6/27/18	7:00 pm

Month	Meeting Day and Date	Time
July 2018	Wed. 7/11/18	7:00 pm
	Wed. 7/25/18	7:00 pm
August 2018	No Meeting	
September 2018	Wed. 9/12/18	7:00 pm
	Wed. 9/26/18	7:00 pm
October 2018	Wed. 10/10/18	7:00 pm
	Wed. 10/24/18	7:00 pm
November 2018	Wed. 11/14/18	7:00 pm
December 2018	Wed. 12/12/18	7:00 pm

